

AFFIDAVIT OF SERVICE

05/16/2018

Case:	Court:	County:	Job: 2289543	<i>Ed Smith</i> CLERK OF THE SUPREME COURT STATE OF MONTANA
Plaintiff / Petitioner:		Defendant / Respondent:		
Received by: Williams Investigations		For: Knight Nicastro LLC		
To be served upon: Gail Burger, R/A for CARD Foundation				

I, Blazej Masiak, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein. I declare under penalty of perjury that the foregoing is true and correct.

Recipient Name / Address: Gail Burger, R/A for CARD Foundation, Home: 302 California Ave, Libby, MT 59923

Manner of Service: Registered Agent, May 14, 2018, 3:39 pm MDT

Documents: Subpoena Duces Tecum (Received May 13, 2018 at 7:40pm MDT), Subpoena To Testify At a Deposition in a Civil Action (Received May 13, 2018 at 7:40pm MDT)

Additional Comments:

1) Unsuccessful Attempt: May 14, 2018, 2:12 pm MDT at CARD CLINIC: 214 E 3rd St, Libby, MT 59923
Individual didn't actually work here

2) Successful Attempt: May 14, 2018, 3:39 pm MDT at Home: 302 California Ave, Libby, MT 59923 received by Gail Burger, R/A for CARD Foundation.

Fees: \$190.00



05/15/2018

Blazej Masiak
21639

Date

Williams Investigations
1900 N Last Chance Gulch Suite 12
Helena, MT 59601
630-362-0374

Chad Knight knight@KnightNicastro.com
Anthony Nicastro nicastro@KnightNicastro.com
Nadia Patrick npatrick@KnightNicastro.com
KNIGHT NICASTRO LLC
519 Southwest Blvd.
Kansas City, MO 64108
Telephone: (303) 815-5869

Attorneys for BNSF Railway Company

Jean E. Faure (jfaure@faureholden.com)
Jason T. Holden (jholden@faureholden.com)
FAURE HOLDEN ATTORNEYS AT LAW, P.C.
1314 Central Avenue
P.O. Box 2466
Great Falls, MT 59403
Telephone: (406) 452-6500
Facsimile: (406) 452-6503

Jennifer M. Studebaker (Jennifer.Studebaker@formanwatkins.com)
Vernon M. McFarland (Vernon.McFarland@formanwatkins.com)
Joshua A. Leggett (Josh.Leggett@formanwatkins.com)
FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200
Jackson, Mississippi 39201-2375
Telephone: (601) 960-8600
Facsimile (601) 960-8613

Attorneys for Defendant International Paper Company

Edward J. Longosz (elongosz@eckertseamans.com)
Kennedy Ramos (kramos@eckertseamans.com)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
1717 Pennsylvania Avenue NW, 12th Floor
Washington, DC 20006
Telephone: (202) 659-6600
Facsimile: (202) 659-6699

Attorneys for Maryland Casualty Company

Dale L. Cockrell (dcockrell@mcgalaw.com)
MOORE, COCKRELL, GOICOECHEA & JOHNSON, PC
P.O. Box 7370
Kalispell, MT 59904-0370
Telephone: (406) 751-6000
Facsimile: (406) 756-6522

Attorney for the State of Montana

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION, <i>Consolidated Cases</i>	Cause No. AC 17-0694 THIS DOCUMENT RELATES TO: <i>MacDonald v. International Paper, et al.,</i> <i>Cascade County Cause No. DV-16-549</i> Judge John Parker
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SUBPOENA DUCES TECUM

TO: Gail Burger, Registered Agent
**Center for Asbestos Related Disease Foundation (“CARD
Foundation”) 214 E. 3rd Street
Libby, MT 59923**

Production: **PLEASE TAKE NOTICE** that pursuant to Montana Rules of Civil Procedure 45 **YOU ARE COMMANDED** to appear at the time, date and place set forth below appear and to bring with you documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material as set forth in **Attachment A.**

PLACE: CARD CLINIC, 214 E. 3rd Street, Libby, Montana 59923

DATE AND TIME: June 11, 2018, 9:00 a.m.

The following provisions Montana Rule of Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; and Rule 45(d), relating to your protection as a person subject to a subpoena.

Date:

May 11, 2018

/s/ 
Madia H. Patrick

/s/ Jennifer M. Studebaker
Jennifer M. Studebaker

/s/ Edward J. Longosz

Edward J. Longosz

/s/ Dale L. Cockrell

Dale L. Cockrell

The name, address, e-mail address, and telephone numbers of the attorneys, who issue or request this subpoena, are: Representing BNSF Railway Company is Chad Knight, 929 Pearl Street, Suite 350, Boulder, CO 80302, knight@knightnicastro.com, 303-815-5869; Representing International Paper Company are Jennifer Studebaker, 210 East Capitol Street Suite 2200, Jackson, MS 39201-2375, Jennifer.studebaker@formanwatkins.com, 601-973-5983; Jean Faure, 1314 Central Avenue, Great Falls, MT 59403, jfaure@faureholden.com, 406-452-6500; Representing Maryland Casualty Company are Edward J. Longosz, 1717 Pennsylvania Avenue, NW, 12th Floor, Washington, D.C. 20006, elongosz@eckertseamans.com, 202-659-6600; and Representing the State of Montana is Dale Cockrell, P.O. Box 7370, Kalispell, MT, 59904-7370, dcockrell@mcgalaw.com, 406-751-6000.

Notice to the person who issues or requests this subpoena: If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Mont. Rule of Civ. P. 45(a)(4)

Rule 45(c). Protection of persons subject to or affected by subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

- (B) Subject to subparagraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying, or any person affected thereby, may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, and to any affected person who has served written objection, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
- (i) fails to allow reasonable time for compliance; or
 - (ii) requires in the case of a deposition or production prior to hearing or trial, a person to travel beyond the 100 mile radius provided in subparagraph (b)(2) of this rule; or
 - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
1. If a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information; or
 2. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
 3. requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

Rule 45(d). Duties in responding to subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and
- (3) shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of the foregoing Subpoena Duces Tecum in a Civil Action to the following on the 12th day of May, 2018:

<u>Law Firm</u>	<u>Counsel</u>	<u>Representing</u>
Montana Supreme Court 920 South Main Kalispell MT 59901	<i>Honorable Judge Amy Poehling Eddy</i>	Amy Eddy
McGarvey Herberling Sullivan & Lacey 345 1st Ave E Kalispell, MT 59901	<i>Roger M. Sullivan</i> rsullivan@mcgarveylaw.com	Barnes, et al; Adams, et al; Clairmont, et al; Mary A. Robertson
	<i>Allan M. McGarvey</i> amcgarvey@mcgarveylaw.com	
	<i>Jon L. Herberling</i> johaire@mcgarveylaw.com	
	<i>John F. Lacey</i> jlacey@mcgarveylaw.com	
	<i>Ethan Aubrey Welder</i> ewelder@mcgarveylaw.com	
	<i>Jinnifer Jeresek Mariman</i> jmariman@mcgarveylaw.com	
	<i>Dustin Alan Richard Leftridge</i> dleftridge@mcgarveylaw.com	

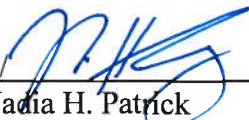
Crowley Fleck, PLLP 305 S. 4th St. E Missoula, MT 59801	<i>Jeffrey R. Kuchel</i> jkuchel@crowleyfleck.com	Accel Performanc Group, LLC, et al; MW Customs Papers, LLC
	<i>Danielle A.R. Coffman</i> dcoffman@crowleyfleck.com	
Ugrin Alexander Zadick, P.C. #2 Railroad Square, Suite B P.O. Box 1746 Great Falls, Montana 59403	<i>Gary M. Zadick</i> gmz@uazh.com	Honeywell International
N.A.	<i>Kathryn Kohn Troidahl</i> kohnkathryn1@gmail.com	Heather M. Haney, Plaintiff
Moulton Bellingham, P.C. 27 North 27th Street, Suite 1900 P.O. Box 2559 Billings, MT 59103-2559	<i>Gerry P. Fagan</i> Gerry.Fagan@moultonbellingham.com	CNH Industrial America
Nelson Law Firm, P.C. 2619 St. Johns Avenue, Suite E Billings, Montana 59102	<i>Thomas C. Bancroft</i> tbancroft@nelsonlawmontana.com	Arrowood Indemnity Co.
Milodragovich, Dale & Steinbrenner, PC 620 High Park Way Missoula, MT 59803	<i>Patrick G. HagEstad</i> gpatrick@bigskylawyers.com	Crane Co.; Riley Stoker Corp, et al.; United Conveyor Corp.
	<i>Rachel Hendershot Parkin</i> rparkin@bigskylawyers.com	Crane Co.
Marra Evenson & Bell, P.C. 2 Railroad Square, Suite C P.O. Box 1525 Great Falls, MT 59403-1525	<i>Kirk D. Evenson</i> kevenson@marralawfirm.com	CBS Corp.; Hennessy Industries, Inc.
Poore, Roth & Robinson, P.C. 1341 Harrison Ave Butte, MT 59701	<i>Mark Andrew Thieszen</i> mark@prrlaw.com	The William Powell Co.; Atlantic Richfield Co., et al
	<i>Patrick M. Sullivan</i> pss@prrlaw.com	
	<i>John Patrick Davis</i> jpd@prrlaw.com	Atlantic Richfield Company, et al.
Forman Watkins & Krutz, LLP 210 East Capitol Street Suite 2200 Jackson, Mississippi 39201- 2375	<i>Jennifer M. Studebaker</i> jennifer.studebaker@formanwatkins.com	Goulds Pump, LLC; Grinnell Corp.; ITT, LLC, et al.; International Paper Co.;
	<i>Joshua Alexander Leggett</i> josh.leggett@formanwatkins.com	
	<i>Vernon M McFarland</i> vernon.mcfarland@formanwatkins.com	
Faure Holden PC 1314 Central Ave, Great Falls, MT 59401	<i>Jean Elizabeth Faure</i> jfaure@faureholden.com	Goulds Pump, LLC; Grinnell Corp.; ITT, LLC, et al.; Borg Warner Morse Tec LLC; International Paper Co.;
	<i>Jason Trinity Holden</i> jholden@faureholden.com	
	<i>Katie Rose Ranta</i> kranta@faureholden.com	
Garlington, Lohn &		Borg Warner Morse Tec LLC

<p>Robinson, PLLP P.O. Box 7909 Missoula, MT 59807</p>	<p><i>Robert J. Phillips</i> rjphillips@garlington.com</p>	<p>BNSF Railway Company; Grefco Inc. et al</p>
	<p><i>Emma L. Mediak</i> elmediak@garlington.com</p>	
<p>Browning Kaleczyc Berry & Hoven, P.C. 201 Railroad St W # 300 Missoula, MT 59802</p>	<p><i>Chad E. Adams</i> chad@bkbh.com</p>	<p>Union Pacific Railroad Co.; Soo Line Railroad Co.; Weir Valves & Controls USA; Cyprus Amex Minerals Co.; Fischbach and Moore, Inc. et al; American Honda Motor Co., Inc.; Harder Mechanical Contractors; Nissan North American Inc.</p>
	<p><i>J. Daniel Hoven</i> dan@bkbh.com</p>	<p>Union Pacific Railroad Co.; Soo Line Railroad Co.</p>
	<p><i>Daniel J. Auerbach</i> daniel@bkbh.com</p>	<p>Weir Valves & Controls USA; Cyprus Amex Mineral Co.</p>
	<p><i>Leo Sean Ward</i> leow@bkbh.com</p>	<p>Weir Valves & Controls USA; Cyprus Amex Mineral Co.; Fischback and Moore Inc. et al; American Honda Motor Co., Inc.; Harder Mechanical Contractors; Nissan North American Inc.</p>
<p>Holland & Hart 401 North 31st Street Suite 1500 Billings, MT 59101</p>	<p><i>Scott W. Mitchell</i> smitchell@hollandhart.com</p>	<p>Pfizer, Inc.</p>
	<p><i>Brianne McClafferty</i> bcmclafferty@hollandhart.com</p>	
<p>Dorsey & Whitney LLP <i>Missoula:</i> Millennium Building 125 Bank Street, Suite 600 Missoula, MT 59802-4407</p>	<p><i>Stephen D. Bell</i> bell.steve@dorsey.com</p>	<p>Ford Motor Co.</p>
	<p><i>Dan R. Larsen</i> larsen.dan@dorsey.com</p>	

<i>Salt Lake:</i> 111 South Main Street Suite 2100 Salt Lake City, UT 84111-2176		
Helland Law Firm, PLLC 311 Klein Ave Glasgow, MT 59230	<i>Peter L. Helland</i> phelland@hellandlawfirm.com	
Bohyer Erickson Beaudette & Tranel, PC 283 W Front St # 201 Missoula, MT 59802	<i>John Eric Bohyer</i> mail@bebtlaw.com	New Holland North America, Inc.
	<i>Ryan T. Heuwinkel</i> mail@bebtlaw.com	
Brown Law Firm 269 W Front St Ste. A Missoula, MT 59802	<i>Kelly Gallinger</i> kgallinger@brownfirm.com	Maryland Casualty Corp.
Doney Crowley Payne Bloomquist PC 44 6th Ave Helena, MT 59601	<i>Richard Allan Payne</i> rpayne@doneylaw.com	The Goodyear Tire & Rubber Co.
	<i>John Connors</i> Jconnors@doneylaw.com	
	<i>Mark Smith</i> msmith@doneylaw.com	
Keller Law Firm, P.C. 50 S Last Chance Gulch St Helena, MT 59601	<i>Charles J. Seifert</i> cjseifert@kellerlawmt.com	Ford Motor Co.; Maryland Casualty Corp.; Tilleman Motors and Zerbe Brothers
	<i>Ryan Lorenz</i> rlorenz@kellerlawmt.com	Maryland Casualty Corp.; Tilleman Motors and Zerbe Brothers
Jardine Stephenson Blewett PC 300 Central Ave # 700 Great Falls, MT 59401	<i>Robert B. Pfenning</i> bpfenning@jardinelaw.com	Stimson Lumber Co.; Zurn Industries Inc.; Mazda Motor of America, Inc.
	<i>Rick A. Regh</i> rregh@jardinelaw.com	
	<i>Mark Trevor Wilson</i> mwilson@jardinelaw.com	
Jackson, Murdo & Grant, P.C. 203 N Ewing St Helena, MT 59601	<i>Robert M. Murdo</i> murdo@jmgm.com	Mine Safety Appliance Co. LLC
	<i>Murry Warhank</i> mwarhank@jmgm.com	
Kovacich Snipes, P.C. 725 3rd Ave N. Great Falls, MT 59401	<i>Ben A. Snipes</i> ben@mttriallawyers.com	Backen, et al; Sue Kukus, et al
	<i>Mark M. Kovacich</i> mark@mttriallawyers.com	
	<i>Ross Thomas Johnson</i> ross@mttriallawyers.com	
Boone Karlberg P.C. 201 W Main St Suite 300 Missoula, MT 59802	<i>Randy J. Cox</i> rcox@boonekarlberg.com	A.W. Chesterson Co.; Volkswagon of America, Inc.
	<i>Zachary Aaron Franz</i> zfranz@boonekarlberg.com	A.W. Chesterson Co.
	<i>Thomas J. Leonard</i>	Volkswagon of

	tleonard@boonekarlberg.com	America, Inc.
	<i>Robert J. Sullivan</i> bsullivan@boonekarlberg.com	Ingersoll-Rand Co.
Snell & Wilmer <i>Phoenix:</i> One Arizona Center 400 East Van Buren Street Suite 1900 Phoenix, AZ 85004-2202 <i>Las Vegas:</i> Hughes Center 3883 Howard Hughes Parkway Suite 1100 Las Vegas, NV 89169-5958 <i>Salt Lake City:</i> Gateway Tower West 15 West South Temple Suite 1200 Salt Lake City, UT 84101- 1547 <i>Denver:</i> Tabor Center 1200 Seventeenth Street Suite 1900 Denver, CO 80202-5854	<i>M. Covey Morris</i> mcmorris@swlaw.com	FMC Corporation
	<i>Tracy H. Fowler</i> tfowler@swlaw.com	The Proctor & Gamble Company, et al.
	<i>Vaughn A. Crawford</i> vcrawford@swlaw.com	
Moore Cockrell Goicoechea & Johnson, P.C. PO Box 7370 Kalispell, MT 59904	<i>Dale R. Cockrell</i> dcockrell@megalaw.com	State of Montana
Law Offices of Bob Fain 2060 Overland Avenue Suite D Billings, Montana 59102	<i>Bob Fain</i> bob@fainlaw.com	Gomez, et al.
Attorney's Inc. 301 W Spruce St. Missoula, MT 59802	<i>Rexford L. Palmer</i> attorneysinc@montana.com	Alexander, et al.
Worden Thane	<i>Martin S. King</i>	Foster Wheeler

321 W. Broadway, Suite 300 Missoula, MT 59802	mking@wordenthane.com	Energy Services, Inc.
Davis Hatley Haffeman & Tighe, P.C. 101 River Drive North Milwaukee Station, 3rd Floor Great Falls, MT 59401	<i>Maxon R. Davis</i> max.davis@dhtlaw.com	Continental Casualty Co.
Lewis Roca Rothgerber Christie 1200 Seventeenth Street Suite 3000 Denver, CO 80202	<i>Michael D. Plachy</i> mplachy@lrrc.com	Honeywell International
	<i>Conor A. Flanigan</i> cflanigan@lrrc.com	
Michael Crill P.O. Box 145 Rimrock, AZ 86335	<i>Michael Crill</i> MAIL ONLY	Self- Represented
Christopher S. Marks 520 Pike St., Suite 2200 Seattle, WA 98101	<i>Christopher S. Marks</i> MAIL ONLY	Volkswagen of America, Inc.
Kaleva Law Offices 1911 A. Higgins Ave. P.O. Box 9312 Missoula, MT 59807-9312	<i>Kevin Twidwell</i> ktwidwell@kalevalaw.com	Libby School District No. 4
Tom L. Lewis, P.C. 2715 Park Garden Lane Great Falls, MT 59404	<i>Tom L. Lewis</i> Marias.ridge.ranch@gmail.com	Harold N. Samples
Bremseth Law Firm, P.C. 601 Carlson Parkway #995 Minnetonka, MN 55305	<i>Keith E. Ekstrom</i>	Brent Wetsch
	<i>Fredric A. Bremseth</i>	
Rossbach Hart, P.C. 401 N. Washington St. PO Box 8988 Missoula, MT 59807	<i>William A. Rossback</i>	Michael Letasky
Eckert Seamans Cherin & Mellott LLC 1717 Pennsylvania Avenue NW Ste 1200 Washington DC 20006	<i>Edward J. Longosz</i> elongosz@eckertseamans.com	Maryland Casualty Corporation
	<i>Kennedy Ramos</i> kramos@eckertseamans.com	

/s/ 
 Nadia H. Patrick
 Attorney for Defendant BNSF

/s/Jennifer M. Studebaker
 Jennifer M. Studebaker
 Attorney for International Paper Company

/s/Edward J. Longosz
 Edward J. Longosz
 Attorney for Maryland Casualty Company

/s/Dale L. Cockrell

Dale L. Cockrell

Attorney for the State of Montana

ATTACHMENT "A"

I. DEFINITIONS AND INSTRUCTIONS

For purpose of this Subpoena, the following definitions shall apply:

1. "Document" means, without limitations, the following original items, or a copy if only a copy exists, whether printed or recorded or reproduced by any mechanical process, including data stored on computers, "cloud," internal and external hard drives, CPU's, tapes, disks, punch cards, or printouts, or written or produced by hand: Correspondence, electronic correspondence, memoranda, notes, records (pictorial or otherwise), letters, papers, books, pamphlets, periodicals, telegraphs, teletypes, facsimiles, other communications sent or received, diaries, calendars, telephone logs, drafts, work papers, agenda, bulletins, notices, announcements, instructions, charts, manuals, brochures, lists, fliers, dockets, questionnaires, guidelines, contracts, agreements, criteria, forms, checklists, schedules, summaries, minutes, records and recordings of any conferences, meetings, visits, statements, interviews or telephone conversations, bills, invoices, purchase orders, statements, canceled checks, vouchers, W-2 forms, 1099 forms, receipts and other records of payments or sales, financial data, analyses, summaries or reports of consultants, statistical compilations, tabulations, tallies, plans, compilations or computer generated data, including any ancillary programming material, interviews, affidavits, printed matter (including published books, articles, speeches, and newspaper clippings), video tapes, microfiche, advertising or promotional matter, press releases, photographs and any marginal comments appearing on any document and all other writings.
2. "Testing" or "screening" means any and all screening tests or exams that were conducted by you or screening tests or exams that are in your possession, custody or control, including but not limited to, any tests used to measure and assess pulmonary function, interstitial fibrosis and/or detect pulmonary disease, including asbestos related diseases, silica related diseases, mixed dust diseases, and any pneumoconiosis, and impairment therefrom, as well as any interpretation of such tests. Such tests or exams include, but are not limited to, pulmonary function tests such as simple spirometry, lung volume tests or diffusion capacity tests; complete blood counts; measurement of arterial blood gases; chest x-rays; physical examinations; and exercise testing.
3. "You" and "your" refers to the person or entity to which this Subpoena is directed and includes that entity together with its officers, directors, incorporators,

shareholders, employees, representatives, attorneys, agents, independent contractors, predecessors, successors, parent or affiliate companies and assigns and/or any other person or persons who has acted in association with the entity or directed the actions of said entity.

4. "Clients" or "Persons" means any person which you have rendered services to or for at any time, including but not limited to, diagnostic testing, medical screening or other testing performed.
5. "Pulmonary Testing, X-Ray or Screening Equipment or Machinery" includes, but is not limited to pulmonary testing equipment or machinery such as spirometers, body boxes, x-ray equipment, diffusion testing equipment, blood gas testing equipment, computer equipment, and related hardware or software, including related hard drives, disks and/or tapes.

II. MATERIALS TO BE PRODUCED

1. Documents and materials related to CARD Foundation's organizational structure from inception to date. This includes, but is not limited to, its business purpose; corporate structure; identities of its owners and board of directors task allocation; management and coordination of personnel; reporting hierarchy; organization of employees into divisions, departments, or teams; and distribution of decision-making authority.
2. Documents and materials related to names, job titles, job descriptions, qualifications and responsibilities of all present and former CARD Foundation employees who did any of the following: took patient histories; performed pulmonary function tests; analyzed patient data; reviewed patient diagnostic imaging; and diagnosed patients.
3. Documents and materials related to funding for all studies produced and/or published by CARD Foundation related to asbestos-related disease.
4. Documents and materials related to the relationship between CARD Foundation and law firms and/or lawyers that have represented or are currently representing

patients of CARD Clinic, including but not limited to referral relationships, personal relationships, sponsorships, donor/donee relationship, and litigation.

5. Documents and materials related to any payment, consideration, or remuneration that CARD Foundation received from law firms and/or lawyers who have represented or are representing patients of the CARD Clinic. This includes, but is not limited to: payment for expert opinions; referral fees; donations; funding for research and/or published studies; and purchasing of equipment or supplies.
6. Documents and materials related to the fundraising activities of CARD Foundation, including but not limited to solicitation of donations, fundraising events, and any other means by which the CARD Foundation funds itself.
7. Documents and materials related to CARD Foundation communication with any law firm and/or lawyer who represents or has represented CARD Clinic patients, or that otherwise relates to asbestos-related disease.
8. Documents and materials related to CARD Foundation's finances. This includes, but is not limited to information about its: financial reports; tax returns; grants; funding; employee salaries; invoices; accounts payable and receivable; and bank records.
9. Documents and materials related to all fundraising activities, including but not limited to the Big Sky Bash.
10. Documents and materials related to CARD Foundation record keeping system and document retention policy.
11. Documents and materials related to medical books, treatises, publications, journals, manuals, magazines, pamphlets, and brochures inside the CARD Foundation.
12. Documents and materials related to CARD Foundation communication with the

Environmental Protection Agency [“EPA”].

13. Documents and materials related to the manner in which the funds raised by or donated to the CARD Foundation are utilized, and any accounting of the same.
14. Documents and materials related to any communication, correspondence, discussion or documentation between the CARD Foundation and law firms and/or lawyers representing patients of the CARD Clinic, and the manner in which such documents, records or writings are prepared, received, recorded and kept in the usual course of business, including but not limited to electronically stored information/databases.
15. Documents and materials related to identities of all persons who currently serve or have served on CARD Foundation’s board.
16. Documents and materials relate to the minutes, records, and meetings of the CARD Foundation.
17. Documents and materials related to CARD Foundation newsletters.
18. Documents and materials related to the CARD Clinic.
19. Documents and materials related to the CARD Foundation’s communication with Alan C. Whitehouse, M.D.
20. Documents and materials related to the CARD Foundation’s communication with Brad Black, M.D.
21. Documents and materials related to the CARD Foundation communication with any department, professor, or author at any of the following: University of Montana, Montana State University, and Idaho State University.

CERTIFICATE OF SERVICE

I, Chad M. Knight, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Other to the following on 05-16-2018:

Amy Poehling Eddy (Attorney)
920 South Main
Kalispell MT 59901
Representing: Amy Eddy
Service Method: eService

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Allan M. McGarvey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jon L. Heberling (Attorney)
345 First Ave E
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Ethan Aubrey Welder (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jeffrey R. Kuchel (Attorney)
305 South 4th Street East
Suite 100
Missoula MT 59801
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Danielle A.R. Coffman (Attorney)
1667 Whitefish Stage Rd
Kalispell MT 59901
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Gary M. Zadick (Attorney)
P.O. Box 1746
#2 Railroad Square, Suite B
Great Falls MT 59403
Representing: Honeywell International
Service Method: eService

Gerry P. Fagan (Attorney)
27 North 27th Street, Suite 1900
P O Box 2559
Billings MT 59103-2559
Representing: CNH Industrial America LLC
Service Method: eService

G. Patrick HagEstad (Attorney)
PO Box 4947
Missoula MT 59806
Representing: Crane Co., United Conveyor Corporation, Riley Stoker Corporation et al
Service Method: eService

Rachel Hendershot Parkin (Attorney)
PO Box 4947
Missoula MT 59806
Representing: Crane Co.
Service Method: eService

Kirk D. Evenson (Attorney)
Marra, Evenson & Bell, P.C.

P.O. Box 1525
Great Falls MT 59403
Representing: CBS Corporation
Service Method: eService

Mark Andrew Thieszen (Attorney)
Poore Roth & Robinson, P.C.
1341 Harrison Ave
Butte MT 59701
Representing: The William Powell Company, Atlantic Richfield Company, et al
Service Method: eService

Patrick M. Sullivan (Attorney)
1341 Harrison Ave
Butte MT 59701
Representing: The William Powell Company, Atlantic Richfield Company, et al
Service Method: eService

Jennifer Marie Studebaker (Attorney)
210 East Capitol Street
Suite 2200
Jackson MS 39201
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Joshua Alexander Leggett (Attorney)
210 East Capitol Street, Suite 2200
Jackson MS 39201-2375
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Vernon M. McFarland (Attorney)
200 South Lamar Street, Suite 100
Jackson MS 39201-4099
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Jean Elizabeth Faure (Attorney)
P.O. Box 2466
1314 Central Avenue
Great Falls MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec
LLC, International Paper Co.
Service Method: eService

Jason Trinity Holden (Attorney)
1314 CENTRAL AVE
P.O. BOX 2466
Montana

GREAT FALLS MT 59403

Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec LLC, International Paper Co.

Service Method: eService

Chad E. Adams (Attorney)

PO Box 1697

Helena MT 59624

Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.

Service Method: eService

Katie Rose Ranta (Attorney)

Faure Holden, Attorneys at Law, P.C.

1314 Central Avenue

P.O. Box 2466

GREAT FALLS MT 59403

Representing: Borg Warner Morse Tec LLC

Service Method: eService

John Patrick Davis (Attorney)

1341 Harrison Avenue

Butte MT 59701

Representing: Atlantic Richfield Company, et al

Service Method: eService

Stephen Dolan Bell (Attorney)

Dorsey & Whitney LLP

125 Bank Street

Suite 600

Missoula MT 59802

Representing: Ford Motor Company

Service Method: eService

Dan R. Larsen (Attorney)

Dorsey & Whitney LLP

111 South Main

Suite 2100

Salt Lake City UT 84111

Representing: Ford Motor Company

Service Method: eService

Peter L. Helland (Attorney)

311 Klein Avenue, Suite A

P.O. Box 512

Glasgow MT 59230

Representing: Ford Motor Company

Service Method: eService

Kelly Gallinger (Attorney)
315 North 24th Street
Billings MT 59101
Representing: Maryland Casualty Corporation
Service Method: eService

Charles J. Seifert (Attorney)
P.O. Box 598
Helena MT 59624
Representing: Ford Motor Company, Maryland Casualty Corporation
Service Method: eService

Robert J. Phillips (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Emma Laughlin Mediak (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Daniel Jordan Auerbach (Attorney)
201 West Railroad St., Suite 300
Missoula MT 59802
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company
Service Method: eService

Leo Sean Ward (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Robert B. Pfennigs (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Rick A. Regh (Attorney)
P.O. Box 2269

GREAT FALLS MT 59403

Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.

Service Method: eService

Mark Trevor Wilson (Attorney)

300 Central Ave.

7th Floor

P.O. Box 2269

Great Falls MT 59403

Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.

Service Method: eService

Robert M. Murdo (Attorney)

203 North Ewing

Helena MT 59601

Representing: Mine Safety Appliance Company LLC

Service Method: eService

Murry Warhank (Attorney)

203 North Ewing Street

Helena MT 59601

Representing: Mine Safety Appliance Company LLC

Service Method: eService

Ben A. Snipes (Attorney)

Kovacich Snipes, PC

P.O. Box 2325

Great Falls MT 59403

Representing: Backen et al, Sue Kukus, et al

Service Method: eService

Mark M. Kovacich (Attorney)

Kovacich Snipes, PC

P.O. Box 2325

Great Falls MT 59403

Representing: Backen et al, Sue Kukus, et al

Service Method: eService

Ross Thomas Johnson (Attorney)

P.O. Box 2325

Great Falls MT 59403

Representing: Backen et al, Sue Kukus, et al

Service Method: eService

Randy J. Cox (Attorney)

P. O. Box 9199

Missoula MT 59807

Representing: A.W. Chesterson Company

Service Method: eService

Zachary Aaron Franz (Attorney)
201 W. Main St.
Suite 300
Missoula MT 59802
Representing: A.W. Chesterson Company
Service Method: eService

M. Covey Morris (Attorney)
Tabor Center
1200 Seventeenth St., Ste. 1900
Denver CO 80202
Representing: FMC Corporation
Service Method: eService

Robert J. Sullivan (Attorney)
PO Box 9199
Missoula MT 59807
Representing: Ingersoll-Rand, Co.
Service Method: eService

Dale R. Cockrell (Attorney)
145 Commons Loop, Suite 200
P.O. Box 7370
Kalispell MT 59904
Representing: State of Montana
Service Method: eService

Vaughn A. Crawford (Attorney)
SNELL & WILMER, L.L.P.
400 East Van Buren
Suite 1900
Phoenix AZ 85004
Representing: The Proctor & Gamble Company et al
Service Method: eService

Tracy H. Fowler (Attorney)
15 West South Temple
Suite 1200
South Jordan UT 84101
Representing: The Proctor & Gamble Company et al
Service Method: eService

Martin S. King (Attorney)
321 West Broadway, Suite 300
P.O. Box 4747
Missoula MT 59806
Representing: Foster Wheeler Energy Services, Inc.
Service Method: eService

Maxon R. Davis (Attorney)
P.O. Box 2103
Great Falls MT 59403
Representing: Continental Casualty Company
Service Method: eService

Tom L. Lewis (Attorney)
2715 Park Garden Lane
Great Falls MT 59404
Representing: Harold N. Samples
Service Method: eService

Keith Edward Ekstrom (Attorney)
601 Carlson Parkway #995
Minnetonka MN 55305
Representing: Brent Wetsch
Service Method: eService

William Rossbach (Attorney)
401 N. Washington
P. O. Box 8988
Missoula MT 59807
Representing: Michael Letasky
Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Anthony Michael Nicastro (Attorney)
401 North 31st Street
Suite 770
Billings MT 59101
Representing: BNSF Railway Company
Service Method: eService

Nadia Hafeez Patrick (Attorney)
929 Pearl Street Suite 350

Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Kevin A. Twidwell (Attorney)
1911 South Higgins Ave
PO Box 9312
Missoula MT 59807
Representing: Libby School District #4
Service Method: eService

Jinnifer Jeresek Mariman (Attorney)
345 First Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Michael Crill (Other)
PO Box 145
Rimrock AZ 86335
Service Method: Conventional

Michael D. Plachy (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Conor A. Flanigan (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Fredric A. Bremseth (Attorney)
601 Carlson Parkway, Suite 995
Minnetonka MN 55305-5232
Representing: Brent Wetsch
Service Method: Conventional

Walter G. Watkins (Attorney)
210 E. Capitol Street, Ste. 2200
Jackson MS 39201
Representing: International Paper Co.
Service Method: Conventional

Electronically Signed By: Chad M. Knight
Dated: 05-16-2018