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IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

)  
) Cause No. AC 17-0694  
)

) MOTION FOR ADDITIONAL  
) TIME TO CONDUCT DISCOVERY ON  
) DISQUALIFICATION AND  
) MOTION FOR LEAVE TO TAKE  
) DEPOSITIONS OF PLAINTIFFS'  
) COUNSEL AND BRIEF IN SUPPORT  
)  
) Applies to All Cases  
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Consolidated Cases  
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The State of Montana, BNSF Railway Company, and Maryland Casualty Company, (collectively "Defendants"), by and through counsel, respectfully submit this *Motion for Additional Time to Conduct Discovery on Disqualification and Motion for Leave to Take Depositions of Plaintiffs' Counsel, and Brief in Support*.

**I. Introduction.**

On July 26, 2018, the Court issued an Order that directed that any party who intended on filing a motion to disqualify the law firms representing the Plaintiffs because of a conflict of interest or by being a material witness to file such a motion by August 30, 2018. Defendants are gravely concerned about revelations indicating an improper payment and referral relationship between the CARD clinic and Plaintiffs' counsel. Defendants share the Court's concern that

concealed payments routed through a foundation to doctors central to nearly all Plaintiffs' asbestos diagnoses have tainted these proceedings. These revelations implicate potential ethical violations and conflicts of interest, and they appear to have prejudiced Defendants' right to a fair proceeding. The conduct potentially raises legal and civil implications beyond the present litigation. Recognizing both the importance of this issue and the gravity of the accusation, Defendants respectfully request that the Court modify its July order - extending the deadline to file motions to disqualify an additional 60 days - and granting leave to conduct the discovery outlined herein.

## **II. Standard for Disqualification.**

A district court has broad discretion in ruling on a motion to disqualify counsel. *Kueffer v. O.F. Mossberg & Sons, Inc., et al.*, 2016 MT 127, ¶ 9. This discretion “flows from its inherent authority to control trial administration in the interest of fairness and justice.” *Schuff v. A.T. Klemens & Son*, 2000 MT 357, ¶ 35. “If there are good reasons to disqualify counsel, then we accept the burdens that disqualification imposes.” *Krutzfeldt Ranch, LLC v. Pinnacle Bank*, 2012 MT 15, ¶ 33 (quoting Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility*, 352 (West 2011)).

“[T]he gravamen of a motion to disqualify is not that an attorney or firm violated one of the conflict of interest rules under our Rules of Professional Conduct . . . ; rather, a motion to disqualify must offer sufficient proof that the continued representation of one party by the attorney or firm will prejudice or adversely impact the rights of another party in the matter pending before the court. Evidence demonstrating that an attorney or firm did, in fact, violate a professional conduct rule merely serves as additional weight that may tip the scales in favor of disqualification.” *Schuff*, ¶ 36. “The most important factor in determining whether to disqualify counsel is *whether the actions have tainted the underlying trial.*” *Biocore Med. Techs., Inc. v. Khosrowshahi*, 181

F.R.D. 660, 674 (D. Kan. Sept. 4, 1998) (emphasis added); *see also World Youth Day v. Famous Artists Merchandising Exch.*, 866 F. Supp. 1297, 1303 (D. Colo. Nov. 1, 1994).

### **III. The Relevant History.**

The size and scope of the present litigation is well known to this Court. Some of the Defendants herein have been the target of hundreds of claims and lawsuits. Nearly all of these claims and lawsuits share two characteristics: (1) the claimant was or is represented by one of two law firms, McGarvey, Heberling, Sullivan and Lacey firm (MHSL) or Kovacich Snipes (KS); and (2) the claim rests on a diagnosis of asbestos disease from the CARD Clinic. The overwhelming majority of the diagnoses by the CARD clinic are controversial. Current and former CARD physicians, primarily Dr. Brad Black and Dr. Alan Whitehouse, claim to have identified a unique disease not acknowledged elsewhere in science, but for a few doctors affiliated with the Selikoff Group at Mount Sinai Hospital. CARD and the Selikoff Group have published articles in journals supporting their controversial opinions. Counsel for Plaintiffs have utilized these articles and testimony from the CARD and Selikoff doctors to support their claims at trial and most recently at the evidentiary hearing held before this Court. Defendants have worked diligently within this litigation to determine whether the relationships between the CARD clinic and its doctors, the Selikoff Group at Mount Sinai, and Plaintiffs' counsel is proper and above board.

Dr. Alan Whitehouse, a former CARD doctor who made or contributed to many of the controversial diagnoses, made the first disclosure of a potentially improper relationship, admitting that a study he and Dr. Black were authoring for publication was actually funded by the plaintiff lawyers. *Ex. A, Deposition of Alan Whitehouse, 12:13-14*. At a deposition taken on May 25, 2018, Dr. Black initially denied under oath that plaintiff attorneys had funded any studies. *Ex. B, Deposition of Brad Black, 95:23-96:4*. When presented with Dr. Whitehouse's testimony, Dr.

Black threatened to leave the deposition, then admitted that plaintiff attorneys had in fact funded a study. *Id.*, 97:1 – 103:25. Counsel for BNSF then asked Dr. Black whether he or the CARD clinic had received any funding directly or indirectly, *including through the CARD Foundation*, from plaintiff lawyers. His answer was a categorical “No.” *Id.*, 104:1 – 105:4. Dr. Black also testified the CARD clinic did not refer patients to plaintiff lawyers. *Id.*, 94:18-25 – 95:1-3.

Dr. Black’s testimony has proven false. Defendants served a Subpoena Duces Tecum (“SDT”) on the CARD Clinic, requesting, in part, disclosure of “any and all documents that evidence a referral relationship and/or referrals from law firms and/or lawyers who have represented or are representing patients of CARD Clinic; documents that reflect [CARD] payments of rent, [CARD] leasing arrangements, and/or any other arrangements made between [CARD] and any attorneys or law firms relating to [CARD]’s occupancy of any premises or space used by [CARD] for its general business, screenings and/or testings; and documents that reflect any payments made by [CARD] or any other consideration from [CARD] to your employees, agents, independent contractors or other third parties relating to referrals to CARD or otherwise obtaining clients or patients for [CARD] to test and/or screen.” *Defendant’s Amended Subpoena Duces Tecum to CARD Clinic*, ¶¶ 20, 21, 38. An additional SDT was served upon the CARD Foundation, seeking disclosure of “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; and 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.”

Plaintiffs’ counsel launched an aggressive opposition to the subpoenas. They filed a motion to quash even though they do not represent the CARD Clinic or Foundation. The Clinic and Foundation then filed their own motions to quash. This Court granted the motions in part but allowed discovery to proceed on some topics. Pursuant to the subpoena, Defendants received information of \$111,000 in payments made by MHSL or its attorneys and a \$5,000 payment made by attorney Tom Lewis of KS. This initial disclosure, however, consisted of responses to email inquiries made by CARD’s attorney. *See, disclosed emails between Tim Bechtold and Tracy McNew dated June 20, 2018 (Ex. C), June 24, 2018 (Ex. D), June 25, 2018 (Ex. E).* The inquiry and disclosure were arbitrarily limited to the last seven years, though the subpoena had no such time limitation. *Ex. C.* No checks or bank records were initially disclosed. Limited records were disclosed in the past week, after the 30(b)(6) depositions had been completed. At the 30(b)(6) deposition, the Foundation presented board member Leroy Thom to address topics related to Foundation finances. Mr. Thom repeatedly expressed ignorance as to the meaning of entries in the produced documents or knowledge about where payments originated from, or how they were directed by the CARD Foundation. *Ex. F, Deposition of Leroy Thom, 12:16 – 15:11; 16:6-14; 16:15 – 18:5; 18:23 – 19:9; 19:10-18; 22:2-5; 23:3-24:20; 24:21 – 25:7; 25: 8-14; 26:20-28:7; 30:4-15; 33:13-34:14; 39:15-40:5.*

As a result of the SDT, Defendants also came into possession of documents showing that CARD does in fact refer patients to the two law firms who have made payments to the CARD Foundation. *Ex. G.* In the meantime, the parties prepared for and attended the evidentiary hearing before this Court in July. At that hearing, counsel for Plaintiffs presented testimony from Dr. Black and members of the Selikoff Group at Mont Sinai. The testimony centered on their claim of a unique

disease process in Libby, and they supported their testimony with the literature published by CARD and the Selikoff group. While on the stand, counsel for BNSF confronted Dr. Black with his prior testimony and the more recent revelation of lawyer payments to the CARD clinic through the CARD Foundation. Dr. Black is the CEO of the CARD Clinic and a member of the Board of Directors of the CARD Foundation, yet he incredibly claimed that he had no knowledge of the payments made by the plaintiff lawyers. *Ex. H, Hearing Transcript, 257:17 – 260:15*. Black also contended that his referral arrangement with the plaintiff firms was somehow not a referral arrangement. *Id.*, 261:12 – 262:12.

This Court in its July 26, 2018 Order justifiably raised concerns over the payment and referral arrangement. The Court noted that the CARD clinic is at the center of most of the Plaintiffs' diagnoses and that the payment scheme has "tainted these proceedings." Defendants agree.

#### **IV. More Recent Revelations are Even More Troubling.**

Defendants believe that there is much more to this story than was revealed at the July hearing, and they continue to learn more, even just this week:

1. Defendants learned that CARD has obtained B Reads, and in some cases CT scan reads, that were kept in a separate file not disclosed to Defendants. These documents were not produced as a part of Plaintiffs' medical records. Just this week, Defendants received a supplemental production of thousands of pages from CARD, which included redacted B reads. Initial review of these records indicates numerous negative, or normal, reads, but the patient identifiers are redacted. Defendants need these documents in unredacted form so that they can be matched to current and former Plaintiffs. Defendants also need to discover further into how these documents came to be withheld by CARD and whether plaintiff attorneys directed or were aware of their concealment.

2. On August 28, 2018. Defendants took the deposition of Gail Burger, a former Executive Director of the CARD Foundation. Ms. Burger's significant testimony includes:

a. She was employed as Executive Director of the CARD Foundation from January 2015 to August 2016 when she was terminated by Foundation Board president Zach McNew. She believes she was terminated in retaliation for raising ethical concerns to the Board about the Foundation funneling payments from lawyers to the CARD Clinic. *Ex. I, Deposition of Gail Burger, 23:1-14; 80:10-15.* Before her firing, no concerns had been raised regarding her job performance. *Id. 84:11-13.*

b. The CARD Foundation was not operated independently of the CARD Clinic. A member of the Clinic staff maintained the financial records for both the Clinic and the Foundation. *Id. 20:3-5.* The Foundation was located in the basement of the CARD Clinic. *Id. 27:2-4.* Some of the Clinic Board members were also members of the Foundation Board, including LeRoy Thom. *Id. 65:12-20.* The Foundation Board President was the husband of a top-level manager at the Clinic. *Id. 5-7.* When Burger joined the Foundation in 2015, the Foundation had no annual budget. *Id. 55:11-13.* "Money was kind of loosely handled" and was not being handled "in line" or "above par." *Id. 25:24.* Clinic and Foundation money was comingled. *Id. 64:2-6.* When Ms. Burger raised a concern over the comingling of funds, she was told "It's all the same." *Id. 64:19-25.*

c. Burger was told by Tanis Hernandez that the Foundation was set up because the CARD Clinic could not accept donations from lawyers and doctors. *Id. 13:3-22. In other words, the intended purpose of the Foundation was to provide an indirect means by which the Clinic could accept improper payments from lawyers.* The Foundation was to accept these donations then turn them over to the Clinic. *Id. 14:1-6.* Ms. Hernandez is a CARD Clinic employee, not an employee of the Foundation. *Id. 59:5-9.* Ms. Burger could not recall the names of the doctors the

Foundation was accepting donations from to then funnel to the Clinic. *Id.* 32:1-5. She recalls more than one law firm donating money to the Foundation. *Id.* 32:9-11. Ms. Burger explained there is no reason for setting up a separate 501(c)(3) for fundraising and doing so is not typical. *Id.* 98:3-10.

d. Ms. Hernandez clarified to Ms. Burger that CARD knew it could not take money from lawyers. *Id.* 26:7-11. Ms. Burger objected to this arrangement, likening it to laundering money. *Id.* Ms. Burger explained, “When you take in money from a foreign entity that can’t receive th[e] funds themselves, and you give it to another entity and they run it through their books and then cut you a check, that’s kind of money laundering in my opinion.” *Id.* 27:15-19. Ms. Hernandez responded, “We don’t call it that. Okay.” *Id.* 26:9-12. Ms. Burger raised this same concern to Foundation Board president, Zach McNew, husband of Clinic employee Tracey McNew. Burger recalled that McNew’s response was not pleasant. *Id.* 27:20-28:6.

e. Ms. Burger recalled one instance of a \$20,000 check coming to the Foundation from a lawyer. She was instructed by the President of the *Clinic* (not the Foundation) to turn over the entire sum to the Clinic. *Id.* 23:23-14. Ms. Burger testified that this \$20,000 came from MHSL. *Id.* 75:3-17.<sup>1</sup>

f. Ms. Burger reviewed an excerpt from the Foundation’s ledger showing a \$40,000 deposit on October 19, 2017 followed four days later by a \$40,000 check written to the Clinic, with no identifier about where the money originated. *Id.* 29:7-19; *Ex. 1 to Burger Deposition*. Ms. Burger testified that she saw other similar entries during her time at the Foundation. *Id.* Defendants have so far found no identifier for the source of the \$40,000 payment.

g. Ms. Burger provided flash drives with financial records from the Foundation which

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<sup>1</sup> In their Notice of Disclosure filed August 16, 2018, MHSL recited what they contend is a complete list of payments to the CARD Foundation. This \$20,000 payment is not listed.



reflect payments from MHSL lawyers. These documents were not produced by the Foundation pursuant to the SDT, though Burger testified that the documents were contained on two Foundation computers. *Id.* 35:4-16. Referencing one of the documents contained in the flash drive, Burger noted a \$5,000 payment from John Heberling noted as “CARD Passthrough.” Burger explained this notation meant the money was not earmarked for any purpose but was to be immediately passed to the Clinic. *Id.* 51:23-52:13. She attempted to put a stop to this practice, believing it to be unethical. *Id.* 52:14-21. She believes other similar payments followed from Mr. Heberling through a foundation set up by Mr. Heberling. *Id.* 70:6-14.

h. Ms. Burger testified that she raised concerns about laundering of contributions from lawyers and comingling of funds at two Foundation Board meetings. She testified that these meetings were recorded and transcribed and were saved on the server shared by the Clinic and Foundation. *Id.* 66:1-67:10. No minutes were produced by the CARD Foundation or Clinic in their original response to the SDTs. A subsequent production on August 24, 2018 contained only three documents purporting to be minutes during Ms. Burger’s tenure. None of these documents consist of transcripts and no recordings were produced.

#### **V. Further Investigation is Needed.**

Other ongoing investigation has revealed additional troubling information and highlighted the need for further investigation. Annexed hereto as *Ex. J* is that *Affidavit of Chad M. Knight dated August 30, 2018* setting forth the additional discovery necessary to evaluate whether to proceed with a motion to disqualify. Specifically, Defendants seek the following:

1. Defendants need full disclosure of the CARD Clinic and Foundation financial records going back to the formation of CARD, not just limited disclosure of the last seven years. Instead of an email from CARD’s lawyer, Defendants need to review a complete record of bank

statements, tax returns and CARD's accounting documents. Defendants need to depose someone knowledgeable about these finances, including CARD's accountant. Defendants also are scheduling depositions of CARD employees Tanis Hernandez and Betty Jo Wood.

2. Defendants are pursuing discovery into the Selikoff Group at Mount Sinai and the doctors that make up the group. This group has been the subject of negative reports, including failing to disclose that a study related to cancer screenings was funded by a tobacco company, failing to disclose that patents held by the doctors created a conflict of interest, and in providing suspect and controversial opinions on behalf of plaintiff lawyers that certain medical conditions were caused by 911 exposure in New York<sup>2</sup>. Defendants just recently learned that from 2015 to 2018, \$115,000 was funneled from CARD to Mount Sinai, the same time period that studies relied upon by plaintiff lawyers at the July hearing were published. During this same time period, CARD funneled an additional \$80,000 directly to Dr. Jamie Szeinuk, a member of the Selikoff Group at Mount Sinai and principal author of some of the studies. Defendants intend to subpoena and depose Mount Sinai, Dr. Szeinuk and the other Selikoff Group doctors.

3. Defendants recently learned that Leroy Thom, a former W.R. Grace employee and current member of the Board of Directors of the Clinic and the Foundation, is the owner of a company named Montana Machine & Fabrication. Between 2015 and 2018, CARD made payments totaling \$15,000 to Mr. Thom's company. Thom also received a payment of \$1,500 from the Foundation in 2017, yet the Foundation reported no compensation on its tax return.

4. Mr. Thom and Dr. Black are also listed as directors of another non-profit called the Libby Area Technical Assistance Group, Inc. formed as a Montana non-profit corporation on

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<sup>2</sup> Paul Goldberg, *Tobacco Company Liggett Gave \$3.6 Million to Henschke for CT Screening Research*, The Cancer Letter (Dec. 4, 2013), [https://cancerletter.com/articles/20131204\\_4/](https://cancerletter.com/articles/20131204_4/); Jeff Stier, *Exploiting 9/11*, New York Post (June 26, 2008), <https://nypost.com/2008/06/26/exploiting-911/>.

December 6, 2002. Thom is also the treasurer of the Lincoln County Asbestos Victims Relief Organization, a non-profit formed in October 1998. He has also been identified as President of the Asbestos Related Health Care Project, Inc., another non-profit formed in March 2002. According to a tax return for this non-profit, it had assets at the beginning of 2013 of \$412,000 and \$0 at the end of that year. The non-profit apparently is now defunct. Defendants need further investigation into these other non-profits and why these non-profits along with the CARD Foundation were set up when the CARD Clinic is already a non-profit with the capacity to raise its own money. As noted above, Gail Burger has testified that the intended purpose for forming the CARD Foundation was to funnel payments from plaintiff lawyers, and that CARD understood the payments were improper.

The foregoing represents some of the troubling information developed to date and serves to highlight the significant unanswered questions that remain. Particularly given the magnitude of this litigation, Defendants need to investigate this thoroughly. To that end, Defendants have served the CARD Clinic and Foundation with a deficiency letter on multiple financial topics. *Ex. K, August 17, 2018 Letter from Nadia Patrick (Counsel for BNSF) to Timothy Bechtold and Erik Theusen (Counsel for CARD Clinic and Foundation).*

#### **VI. Discovery Directed to the Plaintiff Lawyers is Warranted and Necessary.**

Defendants also need to depose the principal partners at MHSL and conduct discovery into the extent, timing and purpose of the payments to CARD, including the apparent establishment of a separate foundation used to send payments to CARD. On August 16, 2018, MHSL filed a Notice of Disclosure with an affidavit of John Heberling. In that affidavit, Mr. Heberling described the payments to CARD as the product of a benevolent purpose and unrelated to the referral relationship recently discovered. This needs further scrutiny. That MHSL believed it necessary to offer sworn testimony to explain the payments illustrates the necessity for additional discovery. The affidavit

also implicates Mont. R. Prof. C. 3.7 (Lawyer as Witness), not just for Mr. Heberling, but for the other MHSL attorneys as well.

However, the revelations to date raise concerns beyond Rule 3.7. Troubling is that the lawyers who now seek to explain the conduct as innocent first moved this Court to quash discovery into the financial payments. MHSL argued in their Motion to Quash topics 20, 21, 38 in the SDT to CARD, that the discovery was “irrelevant,” and MHSL described the discovery as a “fishing expedition” at the May 15, 2018 Asbestos Court Hearing. *Plaintiff’s Brief in Support of Motion to Quash Subpoenas on CARD Clinic and Foundation*, p. 15; *Ex. L: Excerpt from the May 15, 2018 Asbestos Court Hearing*, 63:2-65:8. MHSL also argued that the Court should quash the SDT served on the Foundation in its entirety, including the provisions seeking disclosure of payments made by Plaintiffs’ attorneys to the CARD Foundation. MHSL argued their position “first and foremost because all potential evidence regarding the CARD Foundation is not relevant before this Court.” *Plaintiff’s Brief in Support of Motion to Quash Subpoenas on CARD Clinic and Foundation*, p. 16. MHSL advanced this argument knowing that it had made payments to CARD through the Foundation totaling at least six figures.

Additionally, the affidavit executed by Mr. Heberling and offered by MHSL does not appear to be true and accurate. Mr. Heberling contends that he contributed \$5,000 to CARD in 2014. Defendants obtained CARD Foundation’s tax return from 2014, which reports that Heberling paid \$40,000 to CARD in 2014. *Ex. M*. Also, in 2014 MHSL delivered \$30,000 to the CARD Foundation, which was funneled to Dr. Alan Whitehouse personally. As noted above, Ms. Burger testified to another \$20,000 payment not listed in the Heberling affidavit, and the below deposit slip appears to show a single deposit from “McGarvey” to the CARD Foundation totaling \$330,430:



These payments occurred during the same time CARD was referring patients to MHSL, CARD was funneling payments to Mount Sinai, CARD and Mount Sinai were publishing literature used by MHSL in Libby litigation, and CARD was withholding normal B reads and CT scans. This new information is highly concerning and merits substantial further investigation, particularly in light of MHSL's attempt to explain it away. Defendants request leave to conduct full discovery into this matter including depositions of MHSL and its key partners.

Defendants are by separate motion requesting the Court to reconsider its ruling quashing certain topics in the CARD subpoenas in light of these revelations. Among those topics is discovery into CARD's relationships with providers, disclosures related to Medicare payments, including Medicare 855 or 855a enrollment forms, Electronic Data Interchange and Electronic Funds Transfer forms for Medicare enrolled providers, and other records reflecting the stated medical bases for Plaintiffs' enrollment in Medicare benefits through CARD. These records provide an important resource for determining how these diagnoses were characterized under a legal obligation for honesty and accuracy.

## CONCLUSION

Defendants agree that the substantial payments made by Plaintiffs' counsel to CARD coupled with CARD's referral of patients to those same attorneys are "tainting these proceedings." This conduct may very well disqualify some of Plaintiffs' counsel as material witnesses. Disqualification may be further warranted due to conflicts of interest. Continued involvement by Plaintiffs' counsel may prejudice Plaintiffs who received diagnoses from the CARD clinic by tainting their claims with evidence of potential collusion and fraudulent diagnoses. Disqualification may be further warranted on principals of justice and fairness to the parties, particularly based on evidence indicating that Defendants have been and continue to defend claims based on fraudulent diagnoses, potentially paid for research, and improper collusion. Finally, disqualification may be warranted as a means of protecting the public's faith in the legal system.

Based on this Court's finding that Plaintiffs' counsel's conduct is tainting these proceedings, Defendant have considered that this Court may deem disqualification warranted based on the current record, and Defendants would agree to same should that disqualification be complete and not just for purposes of appearing at trial.<sup>3</sup> Defendants anticipate that the further investigation and discovery will likely confirm that certain attorneys or firms should be disqualified. Regardless of any disqualification now or after additional investigation, Defendants need to engage in the discovery outlined above and request leave to do same.

DATED this 30<sup>th</sup> day of August, 2018.

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<sup>3</sup> Defendants recognize that the remedy under MRPC 3.7 is to disqualify the lawyer from representing the party at trial. Defendants oppose a limited disqualification for trial only and believe the evidence either does or will likely warrant disqualification for further representation of any claimant asserting a claim arising out of alleged exposure to asbestos in Libby. Defendants believe that disqualification only for purposes of trial would only cause further prejudice, in that the offending attorneys would be in position to distance themselves from the lawsuits yet still exert influence over and reap financial benefits from same.

Respectfully submitted,

/s/ Chad Knight

Chad Knight

Anthony Nicaastro

Nadia Patrick

Knight Nicaastro, LLC

Attorneys for BNSF Railway Company and John

Swing

**CERTIFICATE OF SERVICE**

I hereby certify that I have served true and accurate copies of the foregoing **MOTION FOR ADDITIONAL TIME TO CONDUCT DISCOVERY ON DISQUALIFICATION AND MOTION FOR LEAVE TO TAKE DEPOSITIONS OF PLAINTIFFS' COUNSEL, AND BRIEF IN SUPPORT** to the following on August 30, 2018:

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