

Timothy Bechtold
Bechtold Law Firm, PLLC
PO Box 7051
Missoula, MT 59807
406-721-1435
tim@bechtoldlaw.net

Erik Thueson
Thueson Law Office
213 5th Avenue
Helena, MT 59601
406-449-8200
erik@thuesonlawoffice.com

*Attorneys for Center for Asbestos Related Disease Clinic &
Center for Asbestos Related Disease Foundation*

IN THE ASBESTOS CLAIMS COURT FOR THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION,</p> <p><i>Consolidated Cases</i></p>	<p>Cause No. AC 17-0694</p> <p>NON-PARTIES CARD CLINIC'S AND CARD FOUNDATION'S MOTION FOR RELIEF FROM ORDER AND BRIEF IN SUPPORT</p> <p><i>Applicable to All Cases</i></p>
--	--

MOTION

This Court's Order of September 26, 2018 orders non-parties the Center for Asbestos Related Disease ("CARD") Clinic and the CARD Foundation to respond to Defendants' various subpoena duces tecum topics within 14 days, by October 10, 2018. CARD Clinic now seeks relief from the Court's Order because it is not possible for CARD Clinic to comply with the terms of the Court's Order.

BRIEF IN SUPPORT

The Court's original order partially quashing Defendants' subpoenas allowed Defendants discovery of the CARD Foundation on two categories of documents and testimony, and discovery of the CARD Clinic on 24 categories of documents and 29 topics of testimony. Defendants then moved to seek unlimited discovery on all 75 categories of documents identified in their two Amended Subpoena Deuces Tecum and all 77 topics of testimony identified in their two Amended 30(b)(6) Subpoenas. The Court's Order of September 26, 2018 allows Defendants one additional category of discovery of the CARD Foundation and 16 additional categories of discovery of the CARD Clinic. In sum, the Court has ruled that CARD Foundation must respond to three of 21 categories, and CARD Clinic must respond to 40 of 54 categories sought by Defendants.

The Court's Order of September 26, 2018 rules that CARD Clinic must respond to the various subpoena topics within 14 days, that is, by October 10. It will not be possible for the CARD Clinic to meet this Court-imposed deadline, therefore the CARD Clinic seeks relief from the Court's Order, as explained below.

Categories #1 & #2

Categories #1 and #2 require the CARD Clinic to provide CARD Clinic's complete medical chart for all plaintiffs, as well as films and outside reads. The CARD Clinic has not included outside reads when providing medical charts in the past. However, eleven members of the CARD Clinic staff have been drawn away from their normal tasks to identify plaintiffs' outside reads and produce them to Defendants. It took over 50 hours of staff time to produce outside reads for about 380 plaintiffs involved in an upcoming settlement. Staff come to work before hours and stay after hours to work on producing the outside reads, and CARD Clinic anticipates that it will be able to produce all the remaining outside reads by October 19. Moreover, in response to the

Court's Order, CARD Clinic is producing its screening database and pulmonary function test database.

In her Declaration of May 29, 2018, in support of CARD Clinic and CARD Foundation's motion to quash, Tracy McNew declared that it would take CARD Clinic at least four or months to produce medical charts for all the plaintiffs. Declaration of Tracy McNew, May 29, 2018, ¶11. It is not possible for the CARD Clinic to produce these complete medical charts by October 10. Moreover, the CARD Clinic has already produced most, if not all, of the plaintiffs' medical charts to parties already, and it would be duplicative to produce these charts again. To that end, CARD Clinic has requested parties to inform CARD Clinic with the names of the plaintiffs for whom the parties do not already have the CARD Clinic medical charts in an attempt to streamline and expedite production as much as possible, and not to duplicate the production that has already taken place "through the regular discovery process," as the Court has noted.

The remaining issue with Categories #1 and #2 is production of x-rays and CT scans. CARD Clinic uses a PACScube DatCard Rimage 3410 Professional to transfer images on the PACS system. Copying one CT scan, for example, can take about 30-45 minutes on this machine. The PACScube machine is typically in use during the normal course of CARD Clinic's business for time-sensitive patient care, so the PACScube is not available at all times for copying images to respond to the subpoena. Importantly, copying images to respond to the subpoena will cause the CARD Clinic to exceed the hours and wear covered under CARD Clinic's PACScube maintenance contract. No x-rays or CT scans are made at the CARD Clinic, and CARD Clinic encourages parties to obtain x-rays and CTs from the place of the scan's origin for more complete film records in case CARD Clinic does not order all scans taken by the third-party provider, such the Kalispell Regional Medical Center. At the rate CARD Clinic is able to transfer image files on the PACS

system, production of x-rays and CT scans will take several months. To that end, CARD Clinic has requested parties to inform CARD Clinic with the names of the plaintiffs for whom the parties do not already have x-rays and CT scans from the third-party providers in order to streamline production of these images and avoid duplication.

CARD Clinic respectfully asks the Court for an extension of six months to respond to Categories #1 and #2, or in the alternative allow CARD Clinic to provide medical charts “through the regular discovery process.”

Category #3

Category #3 seeks invoices for all services for all plaintiffs. CARD Clinic invoices screening to ATSDR through an online system, and can produce those invoices. CARD has also sent invoices for some research projects, and can produce those invoices as well. For invoices CARD Clinic has sent to insurance companies and directly to individuals, however, responding to this topic is more problematic and will require a significant investment of staff time. CARD Clinic staff anticipate that responding to this part of category #3 will require several months of fulltime work to go through archived and stored invoices and associating them with plaintiffs. CARD Clinic staff are working with the practice management software vendor to find a better way to respond to this request, but no better solutions have been identified to date.

CARD Clinic respectfully asks the Court for an extension of six months to respond to Category #3, or, in the alternative, to relieve CARD Clinic of the obligation of providing invoices to insurance companies and individuals.

Other Categories

For the remaining categories, CARD Clinic believes that it can comply with the Court’s October 10 deadline, either because CARD Clinic has already produced all responsive

documents or because CARD Clinic believes that it has the resources to meet the October 10 deadline imposed by the Court.

Conclusion

While CARD Clinic has already dedicated over 210 staff hours to providing documents in response to Defendants' subpoenas, the clinic remains open and CARD Clinic employees have daily workloads for which each employee was hired. Staff who have been tasked with responding to the subpoenas have to work around the clinic's regular business for access to copiers/scanners and the PACS system. Many CARD Clinic projects that are not top priorities have been delayed so staff can produce documents for the subpoena. Staff members are already working extended hours to produce the outside reads and morale has become a concern. Lastly, grant funding, which makes up over 75% of CARD Clinic's budget, cannot be used to produce these documents, and there has been no guarantee of reimbursement for staff time or legal fees, so the additional cost burden of responding to these subpoenas on the clinic is significant.

Defendants here are using the discovery processes in this Court to attempt to undermine the CARD Clinic with the apparent hope of developing other venues to attack and shut down the CARD Clinic as a litigation tactic to bolster their position in the cases before this Court. In their Motion for Additional Time to Conduct Discovery on Disqualification, Defendants stated plainly that they are seeking information from CARD Clinic related to Medicare enrollments and payments. Defendants are attempting to incite allegations of fraud against the CARD Clinic, and Defendants have apparently attempted to instigate federal investigations of the CARD Clinic, including attempting to provoke both the EPA and the FBI into investigating the CARD Clinic with the apparent aim of undermining the credibility of any diagnoses of asbestos-related diseases of Libby residents. *See* Exhibit 1, excerpts of Dr. Steven Becker's file at Becker_Corr

234-243; 320; 335. The CARD Clinic is not a party to this lawsuit or any other litigation, and asks this Court not to countenance the improper use of civil discovery employed by Defendants against CARD Clinic before this Court.

CARD Clinic will work through responding to the categories allowed in the Court's Order of September 26, 2018, but it is physically impossible for CARD Clinic to comply with the deadline set in the Court's Order, and therefore asks for relief from the Court's Order as delineated above.

Respectfully submitted this 28th day of September, 2018.

/s/Timothy Bechtold
Bechtold Law Firm, PLLC
PO Box 7051
Missoula, MT 59807
406-721-1435
tim@bechtoldlaw.net

Erik Thueson
Thueson Law Office
213 5th Avenue
Helena, MT 59601
406-449-8200
ethueson@gmail.com

*Attorneys for Center for Asbestos Related Disease Clinic &
Center for Asbestos Related Disease Foundation*

CERTIFICATE OF SERVICE

I, Timothy M. Bechtold, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 09-28-2018:

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

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

Chad M. Knight (Attorney)
929 Pearl Street
Ste. 350
Boulder CO 80302
Representing: BNSF Railway Company
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

John Eric Bohyer (Attorney)
283 W Front, Suite 201
PO Box 7729
Missoula MT 59807
Representing: Ziegler Lumber Company
Service Method: eService

Ryan T. Heuwinkel (Attorney)
283 W Front St, Suite 201
PO Box 7729
Missoula MT 59807
Representing: Ziegler Lumber Company
Service Method: eService

Stephanie A. Hollar (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company
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

Jason Eric Pepe (Attorney)
519 Southwest Boulevard
Kansas City MO 64108
Representing: BNSF Railway Company
Service Method: Conventional

Peter A. Moir (Attorney)
701 Poydras Street, Suite 2200
New Orleans LA 70139-6001
Representing: International Paper Co.
Service Method: Conventional

Mark A. Johnston (Attorney)
1717 Pennsylvania Ave. NW, 12th Floor
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: Conventional

Electronically Signed By: Timothy M. Bechtold
Dated: 09-28-2018