

11/01/2018

AFFIDAVIT OF SERVICE

| | | | | |
|--|--|------------------------------------|------------------------|--|
| Case: AC 17-0694 | Court: Supreme Court of the State of Montana | County: | Job: 2761304 | <i>Ed Smith</i> CLERK OF THE SUPREME COURT STATE OF MONTANA Case Number: AC 17-0694 |
| Plaintiff / Petitioner: | | Defendant / Respondent: | | |
| Received by: Williams Investigations | | For: Knight Nicastro LLC | | |
| To be served upon: Dr. Michael Goodman | | | | |

I, Sandi Crow, 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: Dr. Michael Goodman, Home: 1500 Spill Lake Rd, Bigfork, MT 59911

Manner of Service: Personal/Individual, Oct 25, 2018, 12:59 pm MDT

Documents:

Additional Comments:

1) Successful Attempt: Oct 25, 2018, 12:59 pm MDT at Home: 1500 Spill Lake Rd, Bigfork, MT 59911 received by Dr. Michael Goodman.

Fees: \$125.00

Sandi Crow

Sandi Crow

10/31/2018

Date

Subscribed and sworn to before me by the affiant who is personally known to me.

Lauren Markle

Notary Public

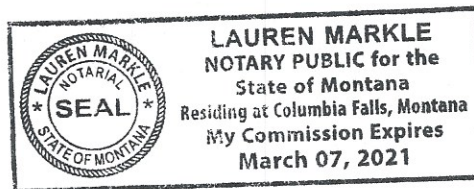
10/31/2018

Date

3/7/2021

Commission Expires

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Attorneys for BNSF Railway Company

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>Barnes, et al. v. BNSF Railway, et al.</i> Lincoln County Cause No. DV-16-111 |
|---|--|

**SUBPOENA TO TESTIFY AT A
DEPOSITION IN A CIVIL ACTION**

TO: Dr. Michael Goodman
1500 Spill Lake Rd
Big Fork, MT 59911

Testimony: **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 to testify at a deposition to be taken in this civil action.

PLACE: Moore, Cockrell, Goicoechea & Johnson, 145 Commons Loop, Suite 200,
Kalispell, MT 59901

DATE AND TIME OF DEPOSITION: November 5, 2018 commencing at 1:00 p.m.
MST

The deposition will be taken before an official court reporter or some other person authorized to administer oaths and these depositions will be videotaped. Defendant provides notice to the deponent, the Plaintiffs and the other parties to this action that the deposition may be used at the

time of trial in the above-captioned matter.

The Montana Rule of Civ. P. 45, PARTS (c), (d), (e) and (f) are attached.

Dated this 25th day of October, 2018.

A handwritten signature in blue ink, appearing to read 'N. Patrick', with a large, stylized flourish at the end.

Nadia Patrick
Attorney for BNSF Railway Company

The name, address, e-mail address, and telephone numbers of the attorneys, who issue or request this subpoena, are: Representing BNSF Railway Company is Nadia Patrick 929 Pearl Street, Suite 350, Boulder, CO 80302, npatrick@knightnicastro.com, 410-215-1219.

Rule 45. Montana Rules of Civil Procedure, PARTS (c) (d), (e) and (f):

(c) Notice of Service.

- (1) Notice shall be provided to all parties no less than 10 days before the commanded production of documents, electronically-stored information, or tangible things, or inspection of premises before trial, and shall be served on each party in the manner prescribed by Rule 5(b).
- (2) Subject to the provisions of clause (ii) of subparagraph (d)(3)(A) of this rule, a subpoena:
 - (A) for attendance at a hearing or trial may be served at any place within the state and may require the person subpoenaed to appear at the hearing or trial irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person;
 - (B) for the production of documentary evidence and/or the taking of a deposition may require a person to attend an examination or produce documentary evidence only at a place within the state; and
 - (i) in the case of residents or entities located within the state, within 100 miles of where that person resides or is employed or transacts business in person, or, if on an entity, within 100 miles of the principal location of that entity, or at such other convenient place as is fixed by order of court;
 - (ii) in the case of non-residents who have been served within the state, within 100 miles of where the non-resident is served, or at any other convenient place as is fixed by order of court.
- (3) Proof of service when necessary shall be made by filing with the clerk of court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(d) Protecting a Person Subject to a Subpoena.

- (1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction -- which may include lost earnings and reasonable attorney fees -- on a party or attorney who fails to comply.
- (2) *Command to Produce Materials or Permit Inspection.*
 - (A) *Appearance not Required.* A person commanded to produce designated documents, electronically-stored information, or tangible things, or to permit the 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) *Objections.* A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises -- or to producing electronically-stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
 - (i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.
 - (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person -- except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically-Stored Information.* These procedures apply to producing documents or electronically-stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form of Producing Electronically-Stored Information Not Specified. If a subpoena does not specify a form for producing electronically-stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically-Stored Information Produced in Only One Form. The person responding need not produce the same electronically-stored information in more than one form.

(D) *Inaccessible Electronically-Stored Information.* The person responding need not provide discovery of electronically-stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) Information Withheld. A person withholding subpoenaed information under a claim that

it is privileged or subject to protection as trial-preparation material must:

- (i) expressly assert the claim; and
- (ii) describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(d)(3)(A)(ii).

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was sent via ECF to the Clerk of Supreme Court of Montana, In Re Asbestos Litigation and a copy was served upon the following counsel of record by Email and U.S. Mail on this 25th day of October, 2018.

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Ethan Welder
Dustin Leftridge
Jinnifer Jeresek Mariman
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Deponent

Dale R. Cockrell
Katherine A. Matic
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JOHNSON, P.C. PO Box 7370
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Attorneys for State of Montana

/s/ Nadia Patrick
Nadia Patrick
Attorneys for BNSF Railway

EXHIBIT A

**CERTIFICATE PURSUANT TO
MONTANA HEALTH CARE INFORMATION ACT**

Mont. Code Ann. § 50-16-812

I, the person seeking to obtain health care information under the attached compulsory process or method of discovery, hereby identify at least one subsection of Mont. Code Ann. § 50-16-811 under which the compulsory process or discovery is being sought. A check mark identifies the subsection. Further, if the information is being sought under Mont. Code Ann. § 50-16-811(1)(b), (1)(d), or (1)(e), I hereby certify that the requirements of Mont. Code Ann. § 50-16-812(1) for notice have been met. Pursuant to 45 CFR 164.512(e)(ii)(A) and (iii)(A)(B)(D), notice was given and (14) fourteen days were given in which to object.

Tanis Hernandez, her agents and employees, are authorized to rely upon this certification to comply with the Montana Health Care Information Act.

Mont. Code Ann. § 50-16-811

When health care information available by compulsory process.

(1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding **unless:**

- | | |
|--------------|---|
| _____ | (a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request; |
| _____ | (b) the patient has waived the right to claim confidentiality for the health care information sought; |
| <u> X </u> | (c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue; |
| _____ | (d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document; |
| _____ | (e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient; |
| _____ | (f) a patient's health care information is to be used in the patient's commitment proceeding; |

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding in which disclosure is otherwise prohibited by law.

DATED this 25th day of October, 2018.

KNIGHT NICASTRO, LLC

By: /s/ Nadia Patrick
Nadia Patrick
Attorneys for Defendant

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Anthony Nicastro nicastro@KnightNicastro.com
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IN THE SUPREME COURT OF THE STATE OF MONTANA

| | |
|---|---|
| IN RE ASBESTOS LITIGATION, <i>Consolidated Cases</i> | Cause No. AC 17-0694 THIS DOCUMENT RELATES TO: <i>Tracie Barnes, et. al. v. BNSF Railway, et. al.</i> Lincoln County Cause No: DV-16-111 |
|---|---|

BNSF'S NOTICE OF VIDEOTAPED DEPOSITION OF MICHAEL GOODMAN, MD

TO: Dr. Michael Goodman
1500 Spill Lake Rd
Big Fork, MT 59911

Testimony: **PLEASE TAKE NOTICE** that pursuant to Montana Rules of Civil Procedure 30, **YOU ARE COMMANDED** to appear at the time, date and place set forth below to testify at a deposition to be taken in this civil action.

PLACE: Moore, Cockrell, Goicoechea & Johnson, 145 Commons Loop, Suite 200, Kalispell, MT 59901

DATE AND TIME OF DEPOSITION: November 5, 2018 at 1:00 p.m.

The deposition will be taken before an official court reporter or some other person authorized to administer oaths. This deposition will videotaped, and Defendant, BNSF, provides notice to Plaintiff and the other parties to this action that the deposition may be used at the time of trial in the above-captioned matter.

Date: October 25, 2018.

Knight Nicastro, LLC
Respectfully submitted,

/s/ Nadia Patrick

Chad Knight
Anthony Nicastro
Nadia Patrick
Attorneys for BNSF Railway Company and John
Swing

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing was sent via ECF to the Clerk of Supreme Court of Montana, In Re Asbestos Litigation and a copy was served upon the following counsel of record by Email and U.S. Mail on this 25th day of October, 2018:

Roger Sullivan
Allan M. McGarvey
John F. Lacey
Ethan Welder
Dustin Leftridge
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Attorneys for MHSL Plaintiffs

Via Personal Service to:
Dr. Michael Goodman
1500 Spill Lake Rd
Big Fork, MT 59911
Deponent

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Jennifer Marie Studebaker
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/s/ Nadia Patrick
Nadia Patrick

CERTIFICATE OF SERVICE

I, Nadia Hafeez Patrick, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Other to the following on 11-01-2018:

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Service Method: Conventional

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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
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Representing: Maryland Casualty Corporation
Service Method: Conventional

Electronically Signed By: Nadia Hafeez Patrick
Dated: 11-01-2018