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**ATTORNEYS FOR INTERNATIONAL PAPER COMPANY**

IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION,  <i>Consolidated Cases.</i></p>	<p>Cause No. AC 17-0694  <b>MOTION IN LIMINE REGARDING PRIOR          CONDUCT AND IMPROPER          CHARACTER EVIDENCE          THIS DOCUMENT RELATES TO:</b>   <i>Raan v. International Paper, et al.,          Cascade County Cause No. DV-18-0177</i>          Judge Greg Pinski</p>
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Defendant, International Paper Company (“IP” or “Defendant”) submits this *Motion in Limine To Exclude Evidence of Prior Conduct and Improper Character Evidence and Brief in Support.*

**MOTION**

Defendant respectfully requests that this Court preclude the admission, mention, suggestion, or inference of evidence of unrelated prior conduct including, but not limited to, suggestions that IP or its predecessors failed to comply with OSHA regulations, was found guilty of any misconduct, criminal liability or civil liability in the past or committed any bad act unrelated to this matter. Defendant anticipates that Plaintiff will attempt to offer such evidence in an effort to establish bad

character on the part of Defendant and allege conformity with that character in the instant case. Defendant disputes the veracity of the evidence, yet such character evidence is nonetheless inadmissible under Mont. R. Evid. 404. Furthermore, Montana Rule of Evidence 403 specifically provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The mere suggestion of any such conduct would be incurably prejudicial toward the Defendants, even with a timely objection and favorable ruling. Thus, the Court should exclude it.

## **BRIEF IN SUPPORT**

### **I. LEGAL STANDARD**

"A motion in *limine* is a request for guidance by the court regarding an evidentiary question, which the court may provide at its discretion to aid the parties in formulating trial strategy." *Hunt v. K-Mart Corp.*, 1999 MT 125, ¶ 11. The purpose of such motions is to "prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial." *State v. Meredith*, 2010 MT 27, ¶ 42 (internal citations omitted). The trial court has the authority to grant motions in *limine* under Rule 104(a), Mont. R. Evid., and under its inherent power to "admit or exclude evidence and to take such precautions as are necessary to afford a fair trial for all parties." *State v. Ayers*, 2003 MT 114, ¶ 23 (internal citations omitted). Motions in *limine* may be made at any time before the challenged evidence is offered or alluded to before the jury. *Gendron v. Pawtucket Mut. Ins. Co.*, 409 A.2d 656, 659 n. 3 (Me. 1979).

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Mont. R. Evid. 401. Relevant evidence is generally admissible. Mont. R. Evid. 402. However, even relevant evidence may be inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of the cumulative evidence." Mont. R. Evid. 403.

Defendants respectfully request that the Court preclude any and all reference to evidence regarding IP's prior conduct including corporate safety efforts and corporate culture of safety.

## **II. DISCUSSION**

Defendant anticipates that Plaintiff may attempt to admit character evidence of IP's prior conduct, corporate safety efforts and safety culture. Specifically, Defendant suspects that Plaintiff may attempt to introduce, among other things, evidence that IP instructed employees to work in an unsafe manner, violated OSHA requirements, or failed to administer a safety program. Evidence of such allegations is not relevant to this case, as it does not pertain to the Plaintiff's Decedent's experiences at the Libby Lumber Mill or the alleged secondary exposures experienced by Decedent. Mont. R. Evid. 401, 402.

This evidence is not only irrelevant and therefore inadmissible under Rule 402; it also constitutes improper character evidence under Rule 404. The only purpose Plaintiff has for presenting such evidence is to demonstrate bad character on the part of Defendant and argue that in Decedent's case, Defendant acted in accordance with that bad character. This is precisely the inference Rule 404 seeks to prevent. *See State v. Dist. Court of the Eighteenth Judicial Dist.*, 2010 MT 263, ¶56 (“[T]he trial court should carefully analyze whether the evidence in question is relevant for a purpose that *does not involve drawing an impermissible inference* of action in conformity with character.”) (emphasis added).

## **III. CONCLUSION**

For the foregoing reasons, Defendants respectfully request that this Court exclude any and all evidence of and reference to IP's prior conduct, corporate safety efforts and culture.

Respectfully submitted this 9th day of November, 2018.

*/s/ Jennifer M. Studebaker*

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