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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 COMBINED MOTIONS IN LIMINE REGARDING VARIOUS EVIDENTIARY ISSUES THIS DOCUMENT RELATES TO: <i>Raan v. International Paper, et al., Cascade County Cause No. DV-18-0177 Judge Greg Pinski</i></p>
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Defendant, International Paper Company (“IP” or “Defendant”) submits these *Combined Motions in Limine on Various Evidentiary Issues and Brief in Support.*

MOTION

For the reasons set forth below, Defendant respectfully requests the Court issue an order *in limine* excluding testimony, documentary evidence, arguments, opinions, and/or references (direct or indirect) to the following evidence, at any stage of the proceedings:

1. The size or financial condition IP or IP’s law firm;
2. The financial condition of Plaintiff or Plaintiff’s family circumstances or responsibilities;

3. Defendant's liability insurance;
4. Placing profits over safety;
5. Independent lawsuits of witnesses;
6. Illness or death of co-workers, friends, or acquaintances;
7. Lay witness testimony regarding the asbestos content of products;
8. Exclusion of Witnesses
9. Use of the "every exposure," or "any dose" theories or arguments;
10. References to media articles or reports;
11. OSHA and EPA regulations or reports;
12. Evidence of, or references to, an alleged ban on asbestos;
13. Disparaging or prejudicial references to Defendant;
14. Any evidence regarding Plaintiff's work habits, such as Plaintiff being a "good employee" or "safe worker."
15. Evidence on documents, depositions, and testimony unrelated to the case against Defendant; and
16. Defendant reserves the right to file additional motions in *limine* regarding Plaintiff's experts, pending depositions and further discovery.

These Motions are supported by the following Brief in Support.

BRIEF IN SUPPORT

“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 Mont. R. Evid. 104(a) 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, and irrelevant evidence is inadmissible. Mont. R. Evid. 402. However, even 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Mont. R. Evid. 403.

Defendants respectfully request that the Court exclude the admission of or reference to the following in any matter whatsoever at trial, either directly or indirectly:

1. The size or financial condition of IP or Defendant’s law firm

The size of Defendant’s law firm or the size and wealth of IP is not relevant to any issue in the case. *See Friedland v. Allis Chalmers Co.*, 511 N.E.2d 1199, 1202 (Ill. App. Ct. 1987) (remarks regarding the size of defense counsel’s law firm were improper); *Tucker v. Kan. City S. Ry. Co.*, 765 S.W.2d 308, 312 (Mo. Ct. App. 1988) (trial court did not abuse its discretion by ordering a new trial on the basis of an improper comparison as to the size, power and wealth of the litigants). Federal Law and the Federal Jury Practice and Instructions provide the following instruction:

You should consider and decide this case as a dispute between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations, and other organizations stand equal before the law, and are to be treated as equals.

O'Malley, Grenig, Lee, FJP&I (5th Ed. 2001) § 103.12. This instruction is consistent with Montana law. Therefore, comments at any point during trial about the size and wealth of IP or the law firm representing Defendants are completely contrary to the letter and spirit of the law and should be excluded. This motion includes any argument by counsel that in any way makes direct or indirect reference to the size and wealth of a party to the lawsuit.

Defendant respectfully moves the Court in *limine* to preclude Plaintiff, Plaintiff's counsel, or any witnesses called by Plaintiff from mentioning, arguing, or making any reference to IP's financial status, corporate ownership, availability of insurance and ability to pay a judgment.

2. The financial condition of Plaintiff/Decedent or Plaintiff's family circumstances or responsibilities

Such evidence has no legitimate bearing on any issue in this case and would serve solely to arouse the sympathy of the jury. *See Pennsylvania Co. v. Roy*, 102 U.S. 451, 458-60 (1880) (such evidence is "obviously irrelevant" and has "no legitimate bearing upon any issue in the case"); *see also Chicago, St. P., M. & O. R. Co. v. Arnold*, 160 F. 2d 1002, 1008 (8th Cir. 1947) (such statements are "improper"); *Chicago & Nw. Ry. Co. v. Kelly*, 74 F.2d 31, 35-36 (8th Cir. 1934) ("admission of testimony showing family responsibilities usually has been held error"); *Southern Pac. Co. v. Ralston*, 67 F.2d 958, 959-60 (10th Cir. 1933) ("[t]his has been held to be reversible error."); *Lebrecht v. Tuli*, 473 N.E.2d 1322, 1335 (Ill. Ct. App. 1985) ("evidence of plaintiff's domestic circumstances is generally not admissible. The danger is that the jury will decrease or increase an award to plaintiff based upon sympathy or prejudice."); *Cardello v. Bauer*, 433 S.W.2d 81, 82 (Mo. Ct. App. 1968) ("evidence of plaintiff's family status or the persons in plaintiff's family is improper in general. . . . [T]his is on the theory that such an inquiry is ordinarily made only for the purpose of appealing to the sympathy of the jury.")

(internal citations omitted). Accordingly, all such evidence or arguments related to the Plaintiff or Decedent's financial condition—or their financial condition or wealth relative to that of Defendant—should be excluded as irrelevant and unfairly prejudicial.

3. Defendant's Liability Insurance

Any reference to liability insurance during trial is improperly prejudicial and appropriately excluded pursuant to principles of relevance and prejudice recognized in Montana. *Jenks v. Bertelsen*, 2004 MT 50, ¶ 22, 320 Mont. 139, 147, 86 P.3d 24, 29–30. In this case, where it is alleged that large sums of money are necessary to compensate Plaintiff, it is imperative that the jury not be induced to decide any question based on the presence of liability insurance. Such inducement is improper and unfairly prejudicial. Montana Rule of Evidence Rule 411 clearly usurps any suggestion that insurance should be considered by a jury. Furthermore, the fact that insurance is injected into trial proceedings, constitutes reversible error. *Id.* (citing *D'Hooge v. McCann*, 151 Mont. 353, 359–60, 443 P.2d 747, 750(1968)).

Likewise, Defendant's liability insurance should not be considered when determining punitive damages. While Defendant was unable to locate a Montana case specifically addressing this issue, every jurisdiction to have considered the question has concluded that public policy does not permit the plaintiff to introduce evidence of a defendant's insurance as an asset in assessing a defendant's net worth for purposes of assessing punitive damages.

Defendant's position is succinctly set forth in *Michael v. Cole*, 595 P.2d 995 (Ariz. 1970):

We reject the plaintiff's assertion that the insurance policy is an asset of the defendant, which the plaintiff can introduce into evidence. The defendant does not have at his disposal the dollars that the policy represents.

Instead, he merely owns a piece of paper that evidences an insurer's promise to pay any punitive damages that result from an assessment of His own financial position.

Michael, 595 P. 2d at 997 (emphasis in original). By emphasizing "His own," the court expresses the essential point of this memorandum -- that the net worth of a party does not include any insurance which may be available. See also *Gaines v. Fleming Landfill, Inc.*, 413 S.E. 2d 897, 910 (W.Va. 1991) (confirming that "current practice" is "not [to] have the subject of insurance raised before the jury"); *Curry v. Giant Food Co.*, 522 A. 2d 1283, 1290 n.11 (D.C. 1987) (citing *Michael*, 595 P. 2d at 997, "an insurance policy is not an asset of the defendant which the plaintiff can introduce ... on the issue of punitive damages"); *Baker v. Armstrong*, 744 P. 2d 170, 173 (N.M. 1987) ("punitive damages liability coverage ... should not be considered by the jury in assessing a defendant's financial standing"); *Odoms v. Travelers Ins. Co.*, 339 So. 2d 196, 199 (Fla. 1976) (trial court's admission of policy limits as an asset in considering punitive damages was error); see also *Lewis v. Parish of Terrebone*, 894 F. 2d 142, 146 (5th Cir. 1990) ("we find no authority that evidence of insurance must be admitted when a claim for punitive damages has been made").

The exclusion of insurance evidence from consideration in determining a defendant's net worth is neither unfair nor misleading. As the *Michael* court concluded:

it must be remembered that the plaintiff may also not be disclosing her true financial status to the jury. Under the collateral source rule, when an injured plaintiff has been compensated for his injuries from a source other than the defendant, the latter cannot benefit from the recovery. . . . Similarly, we find that there is sound reasoning for not allowing a plaintiff to show that the defendant has insurance for punitive damages when a defendant asserts that he is poor.

Michael, 595 P. 2d at 997 (citation omitted).

Implicit in the *Michael* court's reasoning is the recognition that insurance coverage, whether for compensatory or punitive damages, should not be factored into any damage assessment, because to do so would undercut the very purpose for which such insurance is purchased. As one commentator has noted, the result of permitting the introduction of insurance as an asset in assessing net worth "is that a defendant loses the benefit of its foresight in obtaining liability coverage, for the jury will discount the coverage before assessing punitive damages. Indeed, the defendant might benefit more without any liability coverage." Gerald R. Powell & Cynthia A. Leiferman, *Results Most Embarrassing: Discovery and Admissibility of Net Worth of the Defendant*, 40 BAYLOR L. REV. 527, 533-34 (1988) (Appendix A). That, of course, is precisely the reason that the existence of insurance is generally excluded from evidence under Mississippi law.

Appellate courts have frequently recognized that insurance coverage, even for punitive damages, serves important public interests by assuring the availability of funds to pay damage awards while, at the same time, protecting a business from devastation in the event of a significant jury verdict.

If we were to determine that it is against public policy for one to protect himself by insurance against exemplary damages, such a small businessman could be crippled or virtually wiped out by an assessment of exemplar damages [W]e . . . suspect that the common sense of the community as a whole would expect a judgment including exemplary damages to be satisfied through the insurance policies for which such small business people had paid.

First Nat'l Bank of St. Mary's v. Fidelity & Deposit Co., 389 A. 2d 359, 366 (Md. 1978).

These public interests cannot be served unless the existence of insurance is excluded from

evidence at all phases of trial. The court in *Baker* recognized that once evidence of coverage is admitted, the jury can readily override its beneficial effect by adjusting the size of its award:

We hold that punitive damages liability coverage is not an asset which can be used to measure true punishment and that, therefore, it should not be considered by the jury in assessing a defendant's financial standing. Such evidence could only have the tendency to encourage the jury to discount the limits before assessing damages in accordance with the defendant's financial standing.

Baker, 744 P. 2d at 173 (citation omitted). As such, any reference to liability insurance should be prohibited at trial and during any determination of punitive damages.

4. Placing profits over safety

Argument or testimony that Defendant places a higher priority on profits than safety or are more interested in producing lumber than safety should be excluded because there is no such evidence supporting these arguments, and even if there were, the evidence would be unfairly prejudicial; no witness is competent to express an opinion about how he or she discerns the Defendants' priorities, or how IP's emphasis on safety affects its profitability. Therefore, any argument or insinuation that Defendant places profits over safety is unfounded, irrelevant and inadmissible.

5. Independent lawsuits of witnesses

When examining a witness, Plaintiff's counsel should not:

- i. make mention of that witness's physical condition or the diagnosis by any doctor of said witnesses, except to say that the witness has or had a lawsuit in which they claim or claimed injury.
- ii. make mention that any witness may have settled a lawsuit with either IP.
- iii. make mention that any witness has an increased risk of cancer or other disease, or that he or she suffers from mental anguish or fear from any increased risk of cancer or other disease.
- iv. make mention that any witness or evidence purporting to predict the development of cancer

Defendant anticipates that Plaintiff's counsel will call certain witnesses in this case who have had or currently have pending lawsuits similar to this case in which it is or was alleged that those Plaintiff's witnesses have injuries related to breathing respirable asbestos fibers. This information is irrelevant to the issues to be determined by the jury in this case. It is also unfairly prejudicial insofar as it may lead the jury to wrongly conclude that because Defendants have litigated, settled with, or paid judgments to other claimants, Plaintiffs are entitled to recover damages. Furthermore, the Court should exclude evidence of cancer or fear of cancer or other disease and evidence which purports to predict the development of cancer or other disease or any evidence regarding cancer or other disease except for evidence that relates to the Decedent, on the following grounds: that such testimony is inflammatory, highly prejudicial, hearsay, lacking in probative value, and does not meet the standard of admissible scientific evidence; that is, such evidence has not reached a scientific stage of verifiable certainty. Such evidence and argument should therefore be excluded. Mont. R. Evid. 401, 402, 403, 801, 802.

6. Illness or death of co-workers, friends, or acquaintances

Plaintiff's counsel should be barred from eliciting testimony or other evidence offered by any co-worker, friend, or acquaintance of Plaintiff or Decedent to show that Decedent suffered any health condition, illness, or death allegedly suffered by the friend, acquaintance or co-worker. The only purpose of such evidence would be an attempt to associate the condition of the friend, acquaintance, or co-worker to Decedent. Such linking of unrelated and unproven health conditions is entirely irrelevant to any issue to be tried in this case and would only unfairly prejudice the jury against Defendants. Mont R. Evid. 401, 402, 403.

7. Lay witness testimony regarding the asbestos content of products

Plaintiff's counsel should be precluded from soliciting testimony from lay witnesses regarding the composition of materials used at IP properties, and whether or not any of those

materials may have contained asbestos. *See* Mont. R. Evid. 602, (barring a witness from testifying to a matter unless evidence is introduced indicating the witness has personal knowledge of the matter); *see also* Mont. R. Evid. 701 (requiring that lay opinion testimony be (1) rationally based on the witness's perception, and (2) helpful to a clear understanding of the fact in issue).

As explained by the Montana supreme court in *State v. Clark*, 209 Mont. 473, 485 (1984), lay testimony which is not based on personal perceptions is not helpful to the jury. *Id.* (barring testimony from an investigator who learned the information he was testifying to from interviews with witnesses, not his own personal experience); *see also First Bank v. Clark*, 236 Mont. 195, 202-03 (1989) (barring lay witness testimony that an agreement had been reached in a meeting at which the witness was not personally present); *Watson v. Colusa-Parrot Mining & Smelting Co.*, 31 Mont. 513, 522 (1905) (“As to non-expert witnesses, the general principals of evidence require them to testify as to facts within their own knowledge, and not opinions, conclusions, or inferences from existing fact.”). Any testimony from lay witnesses as to the material composition of the products at issue in this case must be supported by sufficient personal knowledge. To the extent Plaintiff intends to elicit or introduce any such testimony, it should be barred.

8. Exclusion of Witnesses

Defendant requests that the Court “invoke the rule” stated in Montana Rule of Evidence 615 requiring the Court, at the request of a party, “order witnesses excluded so that they cannot hear the testimony of other witnesses.”

9. Use of the “every exposure,” or “any dose” theories or arguments

Defendant objects and moves in *limine* to bar any reference, argument, or testimony on the “every exposure” or “any dose” argument. Defendants anticipate Plaintiff's medical

witnesses will attempt to establish causation by claiming that each and every exposure to asbestos that Decedent sustained caused his disease. Commonly referred to as “every exposure” or “any dose” evidence, the basic premise of the theory is that “each and every exposure to asbestos, no matter how small, contributes substantially to the development of asbestos-related disease.” *Betz v. Pneumo Abex L.L.C.*, 44 A.3d 27, 30 (Pa. 2012).

“Every exposure” is a product of litigation and is not in any way a scientific principle. Anderson, William L. et al., *The “Any Exposure” Theory Round II – Court Review of Minimal Exposure Expert Testimony in Asbestos and Toxic Tort Litigation Since 2008*, 22 KAN. J. L. & PUB. POL’Y 1, 12 (2012). The court in *Smith v. Ford Motor Co.* aptly identified the fundamental problem with “every exposure” testimony:

Boldly stating that Mr. Smith’s mesothelioma ‘was caused by his total and cumulative exposure to asbestos, with all exposures and all products playing a contributing role’ . . . asks too much from too little evidence as far as the law is concerned. It seeks to avoid not only the rules of evidence but more importantly the burden of proof. It is somewhat like a homicide detective who discovers a murdered man from a large family. . . . When asked if there are any suspects the detective says he cannot rule out any of the murdered man’s relatives. This would be reasonable, but it would not allow the detective to attribute legal liability to every family member on the basis of such a theory. That is, in effect what [Plaintiff and Plaintiff’s expert] are trying to do here[.]

2013 U.S. Dist. LEXIS 7861, No. 2:08-cv-630, 7-8 (D. Utah Jan. 18, 2013) (emphasis added).

“Every exposure” is unscientific, unreliable, and without adequate factual foundation. Accordingly, the “every exposure” or “any dose” opinion falls far short of meeting the requisite standards for admissibility under Mont. R. Evid. 703, and courts consistently reject the hypothesis as such. *See Moeller v. Garlock Sealing Technologies*, 660 F.3d 950, 954 (6th Cir. 2011) (every exposure testimony insufficient to prove that the defendant’s product was a

substantial factor in bringing about the harm); *Lindstrom v. A-C Product Liability Trust*, 424 F.3d 488, 493 (6th Cir. 2005) (single fiber testimony insufficient to show causation and is not supported by the medical literature); *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 49-50 (2d Cir. 2004) (excluding single exposure testimony); *Anderson v. Ford Motor Co.*, 950 F. Supp. 2d 1217, 1221 (D. Utah June 24, 2013) (every exposure theory did not meet the standards set by Rule 702 and *Daubert* and had to be excluded).

Additionally, such testimony impermissibly shifts the burden of proof onto Defendant. All toxic tort plaintiffs must show both general and specific causation. *See, e.g., Newkirk v. Conagra Foods, Inc.*, 727 F. Supp. 2d 1006, 1013 (E.D. Wa. July 2, 2010). General causation asks whether a particular substance can cause a particular illness, while specific causation asks whether that particular substance caused a particular plaintiff's illness. *See Brookshire Bros. v. Smith*, 176 S.W.3d 30, 36-37 (Tex. Ct. App. 2004).

To prove specific causation, Plaintiff must present "expert medical opinion testimony to develop evidence from which a jury can reasonably infer that the plaintiff in this case was, in fact, caused to be injured by a specific defendant's product." *In re Toxic Substance Cases*, 2006 Pa. Dist. & Cnty. Dec. LEXIS 581, at *12-13, *aff'd in relevant part in Betz v. Pneumo Abex LLC*, 615 Pa. 504 (2012). To allow Plaintiff to present "every exposure" or "any dose" testimony improperly shifts the burden of proof to Defendant to show that Defendant's actions did *not* cause Decedent's alleged disease. *In re Toxic Substance Cases*, 2006 Pa. Dist. & Cnty. Dec. LEXIS 581, at *28. Evidence relating to "any exposure" or "any dose" fails the test mandated by Mont. R. Evid. 703, misleads the jury, and impermissibly shifts the burden of proof to Defendants. It should therefore be barred.

10. References to media articles or reports

Plaintiff's counsel should be barred from introducing evidence, eliciting testimony about, or referring to any scholarly articles, treatises, newspaper or magazine articles, and television or radio broadcasts, to show that Decedent's alleged asbestos-related disease should have been reasonably foreseeable to Defendant.

Reasonable foreseeability of harm is an essential component of the duty element in a negligence action. *Lopez v. Great Falls Pre-Release Servs.*, 1999 MT 199, ¶ 27. In order for articles, treatises, broadcasts, and the like to be admissible for the purpose of proving foreseeability, Plaintiff must first show that Defendant had actual or constructive knowledge of their contents. Such evidence is also irrelevant and would be unfairly prejudicial. Mont. R. Evid. 401, 402, 403. Further, these documents and reports are hearsay, and they are not covered by any applicable hearsay exception. Mont. R. Evid. 801, 802, 803, 804. To the extent Plaintiffs attempt to elicit or introduce any such evidence, it should be barred.

11. OSHA and EPA regulations or reports

Plaintiff's counsel should not be permitted to introduce documents regarding Occupational Safety and Health Administration ("OSHA") and Environmental Protection Agency ("EPA") regulations on occupational asbestos exposure. The findings of those agencies are neither conclusive nor even probative evidence of Decedent's individualized risk of developing an asbestos-related condition. They are therefore not relevant. Such documents also unfairly prejudice and inflame the jury because they suggest—despite having no relationship to Plaintiff's specific claims—that any site that underwent remediation shows negligence on the part of the site owner/operator. Thus, they are not admissible and should be excluded. Mont. R. Evid. 401, 402, 403.

12. Evidence of or references to an alleged ban on asbestos

This Court should also preclude Plaintiff's counsel from mentioning or introducing any evidence of EPA hearings on asbestos, the testimony presented at the EPA hearings and the EPA's alleged "ban" of products containing asbestos. Such references are inaccurate and irreparably prejudicial. Neither the EPA nor any other governmental agency has banned asbestos. Asbestos is still in use in various forms and the EPA's attempt to ban asbestos was specifically overruled in *Corrosion Proof Fittings v. Environmental Protection Agency*, 947 F. 2d 1205 (5th Cir. 1991).

13. Disparaging or prejudicial references to Defendant

This Court should prohibit any party or attorney from making or eliciting any direct or indirect reference, through witnesses, exhibits, opening or closing statements, voir dire or otherwise, to a disparaging or prejudicial remark that includes, but is not limited to, use of the following terms: (a)"murderers;" (b)"criminals;" (c)"greedy;" (d)"liars;" (e)"frauds;" (f)"cheats;" (g)"fakers;" (h)"imposters;" (i)"sinister" (j)"evil" or (j) any term inferring that Defendants manufactured or generated evidence.

Use of the above-referenced disparaging terms and similar remarks are, by their very nature, highly inflammatory and improperly appeal to the passions and prejudices of the jury. Furthermore, the referenced remarks amount to "name-calling," possess no real probative value, and have no basis in fact. The use of these highly inflammatory remarks allow a party to brush aside evidentiary burdens and instead appeal to the passions of the jury. They are inadmissible under Montana Rule of Evidence 403 which states 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 use of disparaging or prejudicial remarks and inferences by

a party is properly prohibited *in limine* because, once uttered before a jury, the prejudicial damage is done, and a party cannot "unring the bell."

14. Any evidence regarding Decedent's work habits, such as Decedent being a "good employee" or "safe worker."

This Court should prohibit any party or attorney from making or eliciting any direct or indirect reference, through witnesses, exhibits, opening or closing statements, voir dire or otherwise, regarding Decedent's work habits, such as Decedent's being a "good employee" or "safe worker." The issue before the Court is whether Decedent was exposed to asbestos fibers by IP and if that exposure caused his disease. Thus, Decedent's work habits are total irrelevant to this matter. Use of these descriptive terms and similar remarks are, by their very nature, highly inflammatory and improperly appeal to the passions and prejudices of the jury. Their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury and thus should be prohibited.

15. Evidence on documents, depositions, and testimony unrelated to the case against Defendant

This Court should exclude documents, depositions, and testimony unrelated to the case against Defendant. Plaintiff's Complaint alleges that Defendant knew or should have known of the health hazards associated with asbestos at the time Decedent was allegedly exposed to asbestos. Defendant is herein informed, believe and hence allege that the Plaintiff intends to introduce documents, deposition testimony, and witnesses to show that Defendant knew or should have known of health hazards associated with asbestos at the time Decedent was allegedly exposed. The documents, depositions, and witnesses have no probative value as to the knowledge of Defendant because Defendant has no connection with the documents or the persons mentioned therein. Plaintiff cannot demonstrate that Defendant knew or should

have known of the documents. The evidence is therefore irrelevant in the case brought against Defendant.

The evidence is unfairly prejudicial to Defendant because:

- It is highly likely to confuse the jury with an overwhelming quantity of information;
- It is highly likely to mislead the jury by making it difficult to distinguish Defendant from other entities connected to asbestos containing products in Montana;
- It is inevitable that the jury will conclude that Defendant knew what other parties allegedly knew, even though there is no basis for this conclusion.

An ordinary objection or motion to strike during the course of trial, even if sustained with proper instructions to the jury, would not avoid the unfair and improper prejudice to Defendants.

16. Defendants reserve the right to file motions in *limine* with respect to Plaintiffs' designated expert witnesses, pending depositions and further discovery

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court grant this motion and enter an Order instructing, Plaintiff and his counsel, not to mention or refer to, either directly or indirectly, any evidentiary issue addressed above. Plaintiff and his counsel should be further instructed not to make any reference to the fact that this motion has been filed, argued or ruled upon by this Court, and to advise all witnesses called on behalf of Plaintiff and all persons in the courtroom at the request of Plaintiff, to comply strictly with this Court's ruling on this motion.

Respectfully submitted this 9th day of November, 2018.

/s/ Jennifer M. Studebaker

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I, Jennifer Marie Studebaker, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 11-09-2018:

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Dated: 11-09-2018