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IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

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| <p>IN RE ASBESTOS LITIGATION,</p> <p><i>Consolidated Cases</i></p> | <p>Cause No. AC 17-0694</p> <p>PLAINTIFFS' REPLY BRIEF<br/>       IN SUPPORT OF<br/>       MOTION <i>IN LIMINE</i><br/>       RE: CARD'S FINANCES<br/>       AND RELATIONSHIP<br/>       WITH ATTORNEYS</p> <p>THIS DOCUMENT RELATES TO:<br/> <i>Barnes, et al. v. State of Montana, et al.,</i><br/>       Lincoln County Cause No. DV-16-111</p> |
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Plaintiffs, in accordance with the Court's scheduling order, submit this Reply Brief in support of their Motion *in limine* re: CARD's Finances and Relationship with Attorneys ("Plaintiffs' Motion"), and in reply to the Response Brief filed ("BNSF's Brief") by Defendants BNSF Railway Company and John Swing (collectively "BNSF") on November 16, 2018.

BNSF's Brief makes clear that BNSF intends to continue to pursue its categorical attack against CARD<sup>1</sup> and counsel well beyond the Plaintiffs' claims or specific witnesses involved in this case. It is appropriate that this Court resolve this issue pursuant to its pre-trial authority over all asbestos related claims.

<sup>1</sup> CARD ("Center for Asbestos Related Disease").

## INTRODUCTION

The CARD Clinic is a 501(c)(3) organization involved with serving the needs for medical care, research, and social services that have arisen in Libby out of the nation's only EPA-declared Public Health Emergency. The CARD Foundation is a separate non-profit foundation created to support the CARD Clinic. Both the CARD Clinic and CARD Foundation are operated by volunteer community boards of directors.

Dr. Brad Black has been a physician in Libby since 1977. He became the Lincoln County Health Officer in 1984. In his capacity as County Health Officer, Dr. Black began assisting the ATSDR<sup>2</sup> in 2000 with its federal asbestos screenings at St. John's Hospital in Libby. He transitioned from St. John's in 2003 as part of the CARD Clinic's move to a stand-alone organization. He has been with CARD since that time, and currently serves as the CEO/Medical Director of the CARD Clinic. In 2018, Dr. Black became a member of the CARD Foundation's Board of Directors. *See* Attached Exhibit 1 (November 1, 2018, Deposition of CARD Foundation 30(b)(6) Deponent Jason Williams, 13:13-19).

BNSF's Brief misstates and argumentatively distorts all other operant facts. Consistent with the need for Plaintiffs' Motion, **this alone should give the Court great pause about how BNSF, if not limited by the Court, would seek to manipulate and employ 'facts' related to these issues before a jury.**<sup>3</sup> For example, BNSF's Brief, p.2, states that, "Plaintiffs' counsel . . . contributed to CARD Clinic and through the CARD Foundation and that the CARD clinic in return referred its patients to the attorneys." The truth and the evidence voluntarily submitted to

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<sup>2</sup> Agency for Toxic Substances and Disease Registry.

<sup>3</sup> *See, e.g., Plaintiffs' Response to Defendants State, BNSF, and MCC's Motion for Additional Time to Conduct Discovery on Disqualification*, September 10, 2018 (describing the extreme manipulation of bank records by BNSF to mislead the Court and imply that Plaintiffs' counsel was paying CARD Clinic hundreds of thousands of unaccounted dollars, rather than making the true \$3,314.30 payment for medical records).

the Court via the August 15, 2018, Declaration from Jon Heberling, is that charitable donations were made to the CARD Foundation, and never to the CARD Clinic. Moreover, the truth and only evidence is that there was never a *quid pro quo* referral system between CARD and attorneys. To the contrary, Heberling affied to both the charitable purposes of the donations and that:

I have never paid, nor has my firm paid, any funds or supplied any value to the CARD Clinic or the CARD Foundation as a reward or compensation for any form of referral or recommendation of injured people, nor did any such intention or consideration enter into any decision by me or my firm to make the above described donations to the CARD Foundation.

Heberling Declaration, ¶ 13.

As another example, BNSF's Brief, p.2, argues that "evidence of Plaintiffs' counsel financial involvement with [1] CARD Clinic, [2] CARD Foundation, [3] Dr. Black, and [4] Mt. Sinai . . . raises legitimate questions of credibility." Again, the truth and evidence submitted to this Court confirms that counsel made charitable contributions to the CARD Foundation. There is no "financial involvement" between counsel and Dr. Black or Mount Sinai.

Above and beyond this Court's reliance on the touchstones of (1) basic principles of relevance, and (2) the concerns embodied in Rule 403 about the unfairly prejudicial, misleading, and time-wasting implications of such *potential* evidence, this Court should recognize that (3) BNSF's seeming inability to present this evidence without gross distortion dictates that Plaintiffs' Motion is necessary and appropriate.

This case is about the claims and the medical condition of these three Plaintiffs: Tracie Barnes, Gerrie Flores, and Rhonda Braaten. Their right to have the jury decide their claims based upon evidence and witnesses related to their cases would be incurably impaired if the irrelevant and highly prejudicial evidence regarding CARD's finances and CARD's alleged relationship with Plaintiffs' counsel were introduced.

BNSF's credibility 'evidence' involves CARD's alleged motives regarding diagnoses of Libby asbestos disease across thousands of patients. It has nothing to do with the claims of these three Plaintiffs, who rely on neither evidence of their mere diagnoses, nor more importantly upon any opinions or witnesses from CARD in carrying their burdens in the trial of this case. BNSF's attempt to inject CARD's credibility as a relevant issue stems from tenuous and overly broad allegations about the degree to which Plaintiffs' experts allegedly rely upon CARD's opinions in their own reports. Plaintiffs' experts' opinions are theirs, not of any treating provider's records reviewed. Montana law does not support BNSF's position. The risk of allowing BNSF to introduce and argue evidence regarding CARD's finances or relationship with counsel is obvious, since it would certainly serve to mislead, confuse, and prejudice the jury.

## **ARGUMENT**

### **I. Plaintiffs are not relying upon CARD witnesses or diagnoses, and therefore BNSF's attacks against CARD's credibility are not relevant.**

Rule 401, M.R. E., states in relevant part, "Relevant evidence may include evidence bearing upon the credibility **of a witness** or hearsay declarant."<sup>4</sup> Rule 402, M.R. E., states "Evidence which is not relevant is not admissible." Evidence bearing upon the credibility of a **non-witness** is not relevant, and therefore it is not admissible.

BNSF's Brief advances a number of flawed allegations against Plaintiffs' Motion. Uncontroverted from Plaintiffs' Motion is that in proving the elements of their claims, Plaintiffs will establish the existence and severity of their respective asbestos injuries, and BNSF's role in causing such injuries, without relying upon witnesses or opinions from CARD. Credibility attacks against CARD in its role as non-witness are not admissible under the Montana Rules of Evidence.

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<sup>4</sup> All emphasis herein is added unless otherwise noted.

A. Plaintiffs' experts do not rely upon or intend to testify about the opinions of CARD and/or Dr. Black.

The great majority of BNSF's Brief, pp.6-17, is an effort to call out any and all references to "CARD" from within the reports of Plaintiffs' experts. Plaintiffs' experts appropriately identify the existence, and their review, of CARD records among the many medical records in Plaintiffs' histories. That is different from stating or actually engaging "reliance upon" CARD opinions. BNSF's Brief makes no distinction. It consistently and argumentatively attaches unjustified significance to the content of Plaintiffs' experts reports with terms like "relied," "predicated," "concluded," and "based," when in truth Plaintiffs' experts made no such statements. Clearly, neglecting to review relevant records from any medical provider, including CARD, could potentially cast doubt upon an expert's opinions. However, merely identifying a Plaintiff's visits to the CARD Clinic within an expert's medical history summary does not constitute basing one's opinion on CARD medical opinions/statements. The comprehensive documentation of a patient's medical history by an expert does not prompt a credibility analysis for every medical facility.

Here, Plaintiffs' experts rely upon facts and knowledge beyond CARD. BNSF's Brief fully omits those portions of Plaintiffs' experts' reports that reflect the experts' own personal interviews and examinations of Plaintiffs.<sup>5</sup> *See, e.g.*, Report of Julie F. Hart, PhD, CIH, October 25, 2018, pp.93-94, ¶ 108 (describing exposure history of Plaintiff Gerrie Flores from Dr. Hart's March 22, 2016; May 26, 2017; and July 27, 2018, interviews); Report of Carrie A. Redlich, MD, MPH, October 25, 2018, p.3 ("I had the opportunity to evaluate and examine Mr. Barnes on 6/19/2018 at the CARD clinic and review his occupational and environmental exposure history

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<sup>5</sup> Rhonda Braaten is deceased. Accordingly, Plaintiffs' experts relied upon interviews with her husband, the Personal Representative of her estate, Kenneth Braaten, and other family members. *See, e.g.*, Report of Julie F. Hart, PhD, CIH, October 25, 2018, p.92, ¶ 107, fn.47.

and his medical history.”); Report of Jennifer Crowley, BSN, RN, CLCP, MSCC, October 24, 2018, p.2 (“An in-home assessment was completed on July 5, 2018, at the home of Mr. Barnes in Libby, Montana.”). Having conducted their own medical examinations with Plaintiffs and taken their own exposure histories from Plaintiffs, Plaintiffs’ experts do not, and do not need to, rely on CARD as the basis for their own opinions.

BNSF’s efforts to locate references to “CARD” in the pages of Plaintiffs’ expert reports cannot obfuscate the real elements on which Plaintiffs’ experts rely. Nor can BNSF’s efforts manufacture reliance on CARD witnesses or opinions in this case. The issue here is not whether all of the opinions of Plaintiffs’ experts should be admitted or accepted. BNSF’s Brief provokes the peripheral issue of whether Plaintiffs’ experts have somehow made relevant CARD’s credibility. Again, simply by noting a patient’s history, Plaintiffs’ experts do not generate a credibility issue involving CARD any more than they might for any of the dozens of other medical providers whose records were simply reviewed and noted by Plaintiffs’ experts.

The same analysis applies more strongly with those of Plaintiffs’ experts who are removed even from a review of CARD records, but merely identify the reports of fellow Plaintiffs’ experts, including Drs. Redlich or Hart for example, among the materials that they reviewed and relied upon. The Court should recognize the absurdity of BNSF’s argument (*see* BNSF’s Brief, pp.14-15) that Plaintiffs’ economist, for example, in offering a limited present value opinion for life-care plans and vocational assessments in this case, initiates a credibility question about the relationship between CARD and Plaintiffs’ attorneys despite his having never reviewed a single CARD record or medical opinion.

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- B. Plaintiffs' CARD diagnoses are not relevant, and to the extent BNSF wishes to rely on them for a statute of limitations defense, BNSF should be foreclosed from also expanding into a credibility attack against CARD.

As stated in Plaintiff's Motion, pp.6-7, Plaintiffs' claims and their related burden at trial relate to their current condition, not their initial diagnoses with asbestos-related disease.

Plaintiffs' initial diagnoses, including the credibility attack that BNSF wishes to make regarding CARD's purported motives for rendering hundreds of alleged over-diagnoses in other cases, are not relevant in this case.

BNSF's Brief, pp.19-21, asserts a statute of limitations defense. It failed to seek summary judgment on that defense. Notably, BNSF's defense absolutely depends upon an alleged diagnosis being sufficiently legitimate to support a claim that a plaintiff should have timely pursued. Therefore, BNSF cannot simultaneously argue that (a) CARD's diagnosis of the Plaintiff's condition was sufficient to cause their claim to accrue, yet (b) such diagnosis must be rejected because that diagnosis is not credible. No interpretation of Montana's discovery rule could accommodate such duplicitous argument. Similarly, the bold and unsupported suggestion in BNSF's Brief, p.21, that inquiry into the reliability of one's diagnosis is "not relevant" under Montana's discovery rule likewise cannot be sustained. Finally, BNSF cannot pursue a statute of limitations defense for the ulterior purpose of introducing a credibility issue regarding an initial diagnosis, which at the same time it would be arguing must be rejected because that same diagnosis is allegedly not credible.

- C. BNSF twists Montana law.

Plaintiff's Motion, pp.7-8, discussed the applicable Montana law that focuses credibility and bias concerns on witnesses, not documents. *See generally* Rule 401, M.R. E.; § 26-1-302(3), MCA. BNSF's Brief, pp.3-4, quotes this Court's orders regarding CARD, **all of which expressly reference "witness" credibility** and thereby reinforce Plaintiff's Motion.

Nonetheless, BNSF ignores the prevailing need for credibility concerns to be addressed vis a vis a witness. BNSF instead argues that because documents related to CARD exist,<sup>6</sup> CARD credibility should also be made an issue. For example, BNSF's Brief, p.4, contends, "When an expert makes his or her opinion on questionably credible underlying data, that data and the issues of its credibility may be raised at trial so the jury can give the expert's testimony the proper weight and credibility." BNSF's Brief, p.4 (quoting *Wyo-Ben, Inc. v. Bixby*, 2017 MT 334, ¶ 51, 377 Mont. 318, 339 P.3d 1255). See also BNSF's Brief, p.21 (CARD's relationship with attorneys "raise legitimate questions of credibility of the medical records and diagnoses that Plaintiffs' experts rely on to generate their opinions").

First, as stated above, Plaintiffs will not rely upon CARD witnesses or opinions in this case. Second, Plaintiffs' experts do not rely upon the opinions of CARD witnesses in their own reports. The premise of BNSF's argument is therefore flawed. The credibility challenge that BNSF contemplates against what it wrongly perceives as the expert's CARD-dependent testimony is without basis. It becomes obvious that the credibility probe BNSF seeks must fail when, in the absence of a CARD witness, Plaintiffs' experts have no foundation to testify regarding CARD's diagnoses on which they did not rely.

Even were an expert to have relied upon, for example, a peer-reviewed study involving Libby asbestos, it is still not permissible for BNSF to bootstrap that reliance by a non-CARD witness into a credibility attack against some other hypothetical witness, i.e. CARD. Of course BNSF may challenge that hypothetical testifying expert's bias. But the suggestion in BNSF's Brief, p.17, that "The matter is transitive" is simply wrong and lacks support in Montana law. Indeed, BNSF's Brief is wholly untethered from authority. At page 4, it cites *Wyo-Ben, Inc. v.*

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<sup>6</sup> BNSF's Brief at various times references CARD's medical records, diagnoses, data, and medical literature as the documents sourced from CARD that should trigger credibility concerns.

*Bixby*, 2017 MT 334, ¶ 51, 377 Mont. 318, 339 P.3d 1255, for the proposition that an expert's reliance upon questionable data can spawn a separate attack against the data and its credibility at trial. *Wyo-Ben* offers no such support, and in fact never touches upon potential collateral credibility attacks into any data that an expert or his report might have referenced. The same is true for the *Boucher v. BNSF Ry. Co.*, 2017 Mont. Dist. LEXIS 33, case discussed in BNSF's Brief, pp.4-5. Having offered no authority for its position, there is only irony—and inherent failure—to the claim in BNSF's Brief, p.5, that, "it is contrary to Montana precedent to exclude issues of credibility of underlying diagnoses, medical records, and medical and scientific literature underlying those expert opinions." In truth, all the Montana authority addressing Plaintiffs' Motion demands that credibility be brought forth only through a witness, and not isolated documents.

Even if a document linked to CARD could theoretically trigger CARD's credibility, BNSF still must demonstrate under Montana's principles of evidence that the credibility issue is not too remote from the particular document or CARD reference. For example, there is a decisive difference between objective medical information/data, such as computer-generated PFTs or CT/X-Ray imaging, and subjective interpretation or opinions of a CARD provider regarding that objective medical data or a patient. Plaintiffs' experts may reference CARD objective PFT data. BNSF cannot properly suggest to the jury that it may speculate that attorney donations somehow affected the *credibility* of that **objective** data.

Relatedly, because objective X-Ray **images** or PFT **data** cannot, on their own, provoke credibility as a relevant issue, this Court must recognize that BNSF's desire to see every bit of documentary or other evidence related to CARD as equally (and completely) tainted fails under the kind of actual and relative remoteness analysis required by the rules of evidence. As argued more thoroughly below in the context of Rule 403, this inherently attenuated relevance of a

document-based credibility attack significantly tips the scale when compared to the particularly prejudicial attack that BNSF wishes to engage.

D. BNSF cannot make evidence become relevant by continuing to attack Plaintiffs and their counsel.

BNSF's Brief, pp.2, 17, accuses Plaintiffs of a "transparent" and "calculated" effort to conceal evidence from the jury. BNSF's rhetoric fails under appropriate analysis required by Plaintiffs' Motion. Nonetheless, Plaintiffs respond as follows.

First, as stated above, BNSF's version of what facts constitute the real evidence in this case is grossly misstated. It remains true that Plaintiffs' counsel have indeed been transparent and forthcoming in declaring the donations that were made to the CARD Foundation. There has never been a referral arrangement between CARD and counsel as alleged by BNSF. Conversely, as BNSF repeatedly demonstrates, the only way that BNSF seems to be able (or willing) to address these facts is by mischaracterizing the truth.

Second, BNSF's Brief, p.17, mischaracterizes this Court's July 24-25, 2018, Hearing in stating, "That hearing was held for the purpose of substantiating Dr. Black and CARD as the primary medical witnesses in the Asbestos Claims Court cases." On the contrary, the July 2018 hearing addressed Plaintiffs' Motion for a Deferred Docket. *See* July 24, 2018, Transcript, 1:8-10; 11:20—12:5 (quoting Judge Eddy). BNSF's Counsel even clarified that the hearing was to answer "whether a diagnosis by the CARD Clinic met accepted medical criteria and was fully reliable, and . . . secondly, the issue of a deferred docket." *Id.*, 12:20-24 (quoting BNSF Counsel). BNSF's Brief, p.17, is the first and only instance where the hearing has been characterized, indeed wrongfully, as "for the purpose of substantiating Dr. Black and CARD as the primary medical witnesses." If anyone is guilty of attempting a bait and switch, it is BNSF.

These three Plaintiffs, whose individual claims are set for trial based on their own disease, certainly never put forth or intended to have 'Dr. Black and CARD as the[ir] primary

medical witnesses.’ This is not to say that Plaintiffs’ medical history should be isolated from the historical care that they received at CARD. Rather, Plaintiffs are entitled—just as any party—to call upon whatever medical experts or other witnesses they choose in attempting to carry their burden of proof. And similarly, these Plaintiffs are entitled to expect that the Montana Rules of Evidence and principles of relevance will be maintained. Even though these Plaintiffs will not rely upon CARD opinions or witnesses, some CARD records related to their care may be relevant, *for instance* objective computer-generated data obtained during Plaintiffs’ pulmonary function testing at CARD. Neither use of objective computer-generated data nor a motive-attack by BNSF can inject Dr. Black or any other CARD provider to becoming a ‘primary’ medical witness. More importantly, in the absence of Plaintiffs advancing a CARD opinion or witness, such evidence does not legitimize a credibility attack against CARD.

**II. BNSF’s credibility attack against CARD should be excluded pursuant to Rule 403, M.R. E.**

Even assuming *arguendo* this Court were to consider CARD’s finances or its alleged relationship with attorneys potentially relevant, this is a clear and compelling case for application of Rule 403, M.R. E. Rule 403 recognizes the need to exclude even relevant evidence when, as here, “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury, or by considerations of undue delay [or] waste of time.”

The prejudicial risk of this evidence is conceded by BNSF’s Brief, pp.18-19. As well-stated in Plaintiffs’ Motion, pp.9-10, this Court knows first-hand that BNSF’s accusations are highly charged. *See Palmer by Diacon v. Farmers Ins. Exch.* (1993), 261 Mont. 91, 124, 861 P.2d 895, 916 (“Implications of unethical or illegal behavior are inherently prejudicial.”). They further implicate sensitive and disparate, undefined obligations as applied to parties, counsel, and third-party individuals who may be associated with the CARD Clinic or CARD Foundation. Especially given BNSF’s own demonstrated tendency to present this evidence in purely

inflammatory and distorted fashion, the risk that a jury would misinterpret and prejudicially apply such allegations without regard to the real issues in this case is obvious and extreme.

BNSF's Brief, pp.18-19, suggests that this evidence is no different than the kind of accepted financial inquiry allowed of testifying experts regarding their litigation services. BNSF ignores that unlike a testifying expert, no CARD witnesses are being called upon in this case to offer litigation services so as to make their credibility or potential financial recovery/bias relevant. Moreover, BNSF's Brief, p.18, makes clear when it overstates a "financial entanglement" between counsel and these medical providers that it does not equate—or tend to portray—the finances at issue here as merely income received by a professional expert involved with litigation. Obviously, BNSF's intention is to make a more inflammatory attack and prejudicial argument here, which only further reveals the need for this Court to protect these proceedings from unfair prejudice.

BNSF's Brief, p.19, n.3, further concedes the likelihood under Rule 403 that this evidence would necessarily lead to "confusion of the issues, or misleading of the jury, or . . . undue delay [or] waste of time." BNSF argues first that its failure to move for disqualification of Plaintiffs' counsel in accordance with the Court's deadline is justified, and second that disqualification prompts "an entirely different analysis" than whether the same conduct has evidentiary value against the credibility of a witness. *Id.* Either way, BNSF relies on the same evidence and argument. The complexity of issues does not change. If allowed by the Court, Plaintiffs would be forced to pursue a trial within the trial of Plaintiffs' claims to refute all of BNSF's inflammatory allegations.<sup>7</sup> Plaintiffs' Motion, pp.9-10, made this exact point. It becomes even more clear after BNSF's Brief that the jurors cannot be expected to know the

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<sup>7</sup> Knowing the risk of indulging these accusations throughout these proceedings, this Court sought to foreclose this kind of mini-trial when it imposed a pre-trial deadline for resolving any issue of an allegedly improper role of counsel.

difference which BNSF explicitly recognizes, or to consider these facts without **substantial danger of undue prejudice**. A jury without the proper background and experience will likely be led to all kinds of incorrect conclusions. While BNSF appears interested in embracing, if not inflaming, this collateral issue for the prejudice it would impart on Plaintiffs' underlying case, this Court is equipped under Rule 403 to avoid it.

Finally, the reference in BNSF's Brief, p.19, to "invited error doctrine" is misplaced. Plaintiffs' counsel has done nothing before this or any Court that would support the conclusion that they hoped to gain by facilitating or acquiescing in potential error or misconduct. On the contrary, Plaintiffs' counsel has been open and transparent with the donations it made to the CARD Foundation. They reject any contention in BNSF's Brief that these donations were secret or wrong in the first place, and that they seek now to benefit from such conduct being *too* prejudicial to pass Rule 403 analysis.

### CONCLUSION

The goal for the Court and parties should be fairly trying these three Plaintiffs' claims. The simple fact remains that CARD witnesses and opinions are not being relied upon at all in Plaintiffs' case. BNSF's attack against CARD's credibility is therefore irrelevant. Moreover, even if seen as marginally relevant, it is a collateral, prejudicial, misleading, and time-consuming distraction from the real case that this Court should take steps to protect via Plaintiffs' Motion.

Based upon Plaintiffs' Motion and briefs, Plaintiffs request their motion be granted, and that the Court issue an order preventing Defendants from referencing during trial any financial or other alleged improper relationship between Plaintiffs' attorneys and Libby's CARD Clinic or CARD Foundation, or regarding the finances of the CARD Clinic or CARD Foundation.

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

McGARVEY, HEBERLING, SULLIVAN  
& LACEY, P.C.

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# **EXHIBIT 1**

1 IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

2

3 CAUSE NO. AC 17-0694

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IN RE ASBESTOS LITIGATION,

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Consolidated Cases.

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7 This Document Relates to:  
MacDonald v. International Paper, et al.  
8 Cascade County Cause No. DV-16-549

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12 VIDEO-RECORDED TELEPHONIC 30(b)(6) DEPOSITION OF  
13 CENTER FOR ASBESTOS-RELATED DISEASE FOUNDATION WITNESS

14

JASON WILLIAMS

15

(Taken on Behalf of the Defendants  
BNSF Railway Co., International Paper Co.,  
16 Maryland Casualty Co. and State of Montana)

17

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19 Taken at the Center for Asbestos-Related Disease  
214 East Third Street  
20 Libby, Montana  
Thursday, November 1, 2018 - 9:07 a.m.

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Reported by Jolene Asa, RPR, and Notary Public  
25 for the State of Montana, Flathead County

10

1 **they -- did McGarvey Heberling come to you? Did --**

2 A. It was brought to us by CARD. Specifically,  
3 it was Tanis Hernandez and Dr. Brad Black.

4 **Q. How much money has been given to the CARD**  
5 **Foundation for the funding of that study?**

6 A. \$30,000.

7 **Q. Has money been received from any other**  
8 **source for that study?**

9 A. Not that I'm aware of, no.

10 **Q. Who is currently working on that study?**

11 A. Dr. Whitehouse.

12 **Q. And you said that was funded in 2014?**

13 A. I believe it was August of '14.

14 **Q. And where in the stages of being completed**  
15 **is that report?**

16 A. I believe the report is complete. I read  
17 it. I just don't -- I believe it hasn't been  
18 published yet, and that was the ultimate goal of it is  
19 to be published.

20 **Q. Do you have any idea as to why it has not**  
21 **been published?**

22 A. No, I do not.

23 **Q. Who would be the person to talk to as to**  
24 **whether or not it is going to be published?**

25 A. Dr. Black or Tracy McNew.

11

1 **Q. So that's the only study that you know of**  
2 **that's currently pending; correct?**

3 A. Correct.

4 **Q. Were there any other studies that were done**  
5 **in 2014?**

6 A. Not that I recall.

7 **Q. How about 2015?**

8 A. Not that I recall.

9 **Q. 2016?**

10 A. Not that I recall.

11 **Q. To your knowledge has Mr. -- Mr. Has**  
12 **Dr. Whitehouse been paid for his drafting of the**  
13 **study?**

14 A. Yes.

15 **Q. And when was that done?**

16 A. It would be August of '14.

17 **Q. And at that point was there any expectation**  
18 **given as to when the report would be completed?**

19 A. Timewise, no.

20 **Q. But you paid for the study in full?**

21 A. Correct.

22 **Q. So you said it was Dr. Black that was**  
23 **working with the McGarvey Heberling Foundation to get**  
24 **that study started?**

25 A. It would have been Dr. Black and Tanis

12

1 Hernandez.

2 **Q. And how did Dr. Whitehouse get involved?**

3 A. Specifically -- I know he was previously a  
4 doctor for CARD, and he had extensive knowledge in  
5 the -- with the background of the Libby amphibole, and  
6 so specifically I'm not sure how they brought him in,  
7 but I know he had been working with Heberling in the  
8 past doing expert research and testimony.

9 **Q. So back in 2014 were minutes kept of the**  
10 **meetings?**

11 A. Yes.

12 **Q. And something like a study coming through**  
13 **and being funded by plaintiffs' attorneys, would that**  
14 **have been something that was discussed during the**  
15 **meetings?**

16 A. Do you mean before or after it was brought  
17 to our -- it was brought to us?

18 **Q. Once, I guess, it was brought to you --**

19 A. Yes.

20 **Q. -- would that have been something that was**  
21 **discussed at the meetings?**

22 A. Yes.

23 **Q. When I say "Brought to you," I guess I mean**  
24 **the money.**

25 A. Okay.

13

1 **Q. The money was given to the foundation?**

2 A. Right.

3 **Q. Is that something that would have been**  
4 **discussed --**

5 A. Yes.

6 **Q. -- at the meetings?**

7 **If you could just let me finish my question**  
8 **before you answer.**

9 A. Sure.

10 **Q. I understand the desire to sort of jump in,**  
11 **but it makes it easier for Jolene to get everything**  
12 **down.**

13 **So was Dr. Black a member of the foundation**  
14 **board in 2014?**

15 A. No.

16 **Q. When did he become a member of the**  
17 **foundation board?**

18 A. It would have been probably earlier this  
19 year or maybe late last year.

20 **Q. So can you please explain to me how it was**  
21 **that he was involved in bringing in the study for the**  
22 **foundation if he was not on the foundation board?**

23 A. We have close communication with CARD. I  
24 mean, obviously, we're the foundation for CARD, so  
25 there's always an open line of communication.

1 **publication?**  
 2 A. I do not know that. That's on CARD's --  
 3 that's CARD's -- CARD's -- that's from CARD.  
 4 **Q. So any moneys that were paid would come out**  
 5 **of the CARD Clinic, not the CARD Foundation?**  
 6 A. Correct. It would be out of their general  
 7 fund, I'm assuming, but not from the foundation. I  
 8 can tell you that.  
 9 MS. PATRICK: Thank you, Mr. Williams.  
 10 Anyone on the phone?  
 11 All right.  
 12 MR. BECHTOLD: Okay. So it's -- that  
 13 concludes the 30(b)(6) deposition of the CARD  
 14 Foundation.  
 15 THE VIDEOGRAPHER: This now concludes the  
 16 Video-Recorded Deposition of Jason Williams. We are  
 17 off the record. The time is approximately 9:59 a.m.  
 18 (Whereupon, the Video-Recorded Telephonic  
 19 Deposition of JASON WILLIAMS was concluded at  
 20 9:59 a.m., and signature was reserved.)  
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1 CORRECTION PAGE  
 2 PAGE LINE CORRECTION  
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 14  
 15 I have read the foregoing testimony and  
 16 believe the same to be true, except for the  
 17 corrections noted above.  
 18 DATED this \_\_\_\_ day of \_\_\_\_\_,  
 19 \_\_\_\_.  
 20  
 21  
 22 \_\_\_\_\_  
 23 JASON WILLIAMS  
 24 IN RE ASBESTOS LITIGATION  
 25 AC 17-0694

1 REPORTER'S CERTIFICATE  
 2 State of Montana )  
 3 County of Flathead )  
 4 I, Jolene Asa, Registered Professional Reporter  
 5 and Notary Public for the State of Montana, residing  
 6 in Kalispell, Montana, do hereby certify:  
 7 THAT I did report the foregoing matter at the  
 8 time and place stated in the above-entitled matter  
 9 after having duly sworn JASON WILLIAMS; and  
 10 THAT the foregoing pages constitute a true and  
 11 accurate transcription of the testimony of JASON  
 12 WILLIAMS that was taken in shorthand by me and reduced  
 13 to writing under my direction to the best of my  
 14 ability; and  
 15 THAT I am not an attorney nor counsel of any of  
 16 the parties, nor a relative or employee of any  
 17 attorney or counsel connected with the action, nor  
 18 financially interested in the action.  
 19 IN WITNESS WHEREOF, I have hereunto subscribed my  
 20 name and affixed my seal on this \_\_\_\_ day of  
 21 \_\_\_\_\_, \_\_\_\_.  
 22  
 23  
 24 \_\_\_\_\_  
 25 JOLENE ASA, RPR

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