

NO. OP 19-0085

IN THE SUPREME COURT OF THE STATE OF MONTANA

.....  
BNSF RAILWAY COMPANY,

Petitioner,

-VS-

THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA,  
THE HONORABLE AMY EDDY, PRESIDING JUDGE,

Respondent.

.....  
**PETITIONER BNSF RAILWAY COMPANY'S MOTION FOR LEAVE TO  
FILE REPLY MEMORANDUM IN SUPPORT OF PETITION FOR WRIT  
OF SUPERVISORY CONTROL REGARDING NON-PARTY  
AFFIRMATIVE DEFENSES**

*On Review from the Asbestos Claims  
Court of the State of Montana, Cause No.  
AC-17-0694  
Hon. Amy Eddy*

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## APPEARANCES:

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### *Asbestos Claims Court Judge, Respondent*

Honorable Amy Eddy  
ASBESTOS CLAIMS COURT  
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COMES NOW Petitioner BNSF RAILWAY COMPANY (“BNSF”), pursuant to Rule 14 of the Montana Rules of Appellate Procedure and through the undersigned counsel, and hereby moves the Court for leave to file the attached reply memorandum in support of its petition for a writ of supervisory control to review an order of the Asbestos Claims Court (“ACC”), the Honorable Amy Eddy, presiding Judge, entered on January 18, 2019.

Because (1) the ACC’s order contains no substantive legal discussion regarding the issue of BNSF’s nonparty liability defenses,<sup>1</sup> and (2) Plaintiffs raise new arguments in their response that Petitioner has yet to address in this appeal, Petitioner respectfully requests that this Court grant it leave to file the attached reply memorandum in support of its petition.

Respectfully submitted this 20th day of March, 2019.

KNIGHT NICASTRO, LLC

/s/ Chad M. Knight

Chad M. Knight

Anthony M. Nicastro

Nadia H. Patrick

James E. Roberts

*Attorneys for BNSF Railway Company and  
John Swing*

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<sup>1</sup> In a separate order, the ACC found Petitioner strictly liable to Plaintiffs and reasoned that the issue of nonparty negligence was therefore moot. *See* Exhibit D, Order, Jan. 18, 2019, pp. 2-3; Exhibit E, Order, Jan. 15, 2019, p. 13. Petitioner has filed a separate petition for supervisory control challenging the ACC’s finding of strict liability in Case No. OP 19-0088. Exhibit F.

## **CERTIFICATE OF SERVICE**

I, Kimberly Witt on behalf of Chad M. Knight, hereby certify that on this 20<sup>th</sup> day of March, 2019, I served a true and accurate copy of PETITIONER BNSF RAILWAY COMPANY'S MOTION FOR LEAVE TO REPLY MEMORANDUM IN SUPPORT OF WRIT OF SUPERVISORY CONTROL REGARDING NON-PARTY AFFIRMATIVE DEFENSES on the following:

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***Interested Party via First Class Mail***

The Honorable Matthew Cuffe ([mcuffe@mt.gov](mailto:mcuffe@mt.gov))

District Court Judge

Lincoln County District Court

512 California Ave.

Libby, MT 59923

***Via Email***

Knight Nicastro, LLC

/s/ Kimberly Witt

Kimberly Witt

On Behalf of Chad M. Knight

## **CERTIFICATE OF SERVICE**

I, Chad M. Knight, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 03-20-2019:

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Electronically signed by Kimberly Witt on behalf of Chad M. Knight  
Dated: 03-20-2019