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IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. OP 19-0085

BNSF RAILWAY COMPANY,

Petitioner,

vs.

THE ASBESTOS CLAIMS COURT OF THE
STATE OF MONTANA, HONORABLE AMY
EDDY, Presiding Judge,

Respondent.

**MOTION OF MONTANA TRIAL LAWYERS ASSOCIATION
FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

COMES NOW the Montana Trial Lawyers Association (“MTLA”), and respectfully seeks leave of the Court to file an *amicus curiae* brief in this matter.

Pursuant to Mont. R. App. P. 12(7), MTLA provides the following:

STATEMENT OF INTEREST

MTLA is a member organization of approximately 400 Montana attorneys who seek justice for Montanans who have been injured or otherwise harmed by the

wrongful conduct of others. MTLA members routinely represent claimants who have been injured by the negligence of others.

REASONS WHY MTLA'S *AMICUS* BRIEF IS DESIRABLE

MTLA periodically appears in the Montana Supreme Court as *amicus* on various matters involving tort, insurance, civil procedure, workers' compensation, and constitutional issues. On these various issues, the Montana Supreme Court often invites MTLA to participate as *amicus*.

This matter is important to MTLA because one of the issues raised by Petitioner impacts injury victim's right to due process of law by prohibiting negligent parties from shifting blame to nonparties. This Court has previously addressed the impropriety of the empty chair defense in *Plumb v. Fourth Judicial Dist. Court, Missoula County*, 279 Mont. 363, 927 P.2d 1011 (1996), and *Newville v. State, Dep't of Family Servs.*, 267 Mont. 237, 883 P.2d 793 (1994), as well as defendant's attempts to dispute causation by shifting blame to nonparties in *Faulconbridge v. State*, 2006 MT 198, 333 Mont. 186, 142 P.3d 777. MTLA maintains Petitioner's argument in this matter is not consistent with Montana law as determined by this Court's prior decisions, and Petitioner's argument, if accepted, would have a detrimental impact on the rights of countless present and future victims of negligence in Montana. Should the Court grant MTLA leave to appear, MTLA will offer argument demonstrating that Montana law does not allow Petitioner to shift blame to nonparties, under the guise of causation or otherwise.

IDENTITY OF PARTY WHOSE POSITION MTLA SUPPORTS

MTLA supports the position of the Respondent.

**WHETHER THE OTHER PARTY OBJECTS TO
MTLA'S PARTICIPATION**

Counsel for BNSF Railway Company was contacted on Tuesday, June 4, 2019 and has not responded.

PROPOSED DATE FOR FILING MTLA'S *AMICUS* BRIEF

MTLA seeks to file its *amicus* brief on or before the date Respondent must file its opening brief.

WHEREFORE, based on the foregoing, MTLA respectfully requests leave from the Court to participate in this matter as *amicus curiae*. A proposed order to allow MTLA's participation is submitted herewith.

RESPECTFULLY SUBMITTED this 6th day of June, 2019.

MONTANA TRIAL LAWYERS
ASSOCIATION

By: /s/ Michael D. Cok
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CERTIFICATE OF SERVICE

I, Michael D. Cok, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus - Leave to Participate to the following on 06-06-2019:

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