

ORIGINAL

FILED

10/02/2019

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0085

FILED

OCT 02 2019

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

BNSF RAILWAY COMPANY,

Petitioner,

v.

ORDER

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

Respondent.

M. R. App. P. 12(5) requires that an appendix filed with this Court in conjunction with a brief “shall include only those documents essential to the arguments. Any supplemental appendix shall include a table of contents . . . [.]”

Upon undertaking review, the Court has determined that the electronic appendix to Petitioner’s Petition for Writ of Supervisory Control, also functioning as the appendix for Petitioner’s Opening Brief, filed May 16, 2019, fails to satisfy M. R. App. P. 12(5). The appendix includes over 1,200 pages of documents, a vast majority of which are not cited in Petitioner’s brief and therefore are non-essential and should not have been included. Likewise, Petitioner’s appendix does not contain an appropriate table of contents that includes page numbers or other helps for locating cited exhibits. Petitioner’s brief cites to exhibits that are not identified in the table of contents but are instead contained within other documents identified as other exhibits, with little explanation in the citations about where the cited exhibits can be located. For example, on page 34 of its Opening Brief, Petitioner cites to Exhibits 22-24; however, there is no reference to Exhibits 22-24 in the table of contents, which only lists Exhibits A-I. After a time-consuming search, the referenced numerically identified exhibits can be located within Exhibit C, which also contains other documents. Likewise, Petitioner’s Exhibit G contains additional lettered exhibits, A-Q, yet

Petitioner does not explain in its citations which set of lettered exhibits is being referenced. The Court is aware of the attempted explanation, within Footnote 1 of the Brief, about the organization of the exhibits, but it is inadequate to meet the requirements of Rule 12(5), particularly considering the large volume of documents that were provided by Petitioners. The issues in the case are fact-intensive, and a user-friendly appendix is a necessity. Oral argument in this matter is set for October 30, 2019. Therefore,

IT IS ORDERED that Petitioner shall, within seven (7) days, file a revised appendix of documents in support its Opening Brief that complies with this Order, either in electronic or hard copy form in sufficient number as required under the Rules of Appellate Procedure. Only those documents cited in the brief should be included in the revised appendix.

The Clerk is directed to mail a true copy of this Order, to all counsel of record.

DATED this 2 day of October, 2019.

  
Chief Justice