

Mark M. Kovacich
Ross T. Johnson
KOVACICH SNIPES JOHNSON, P.C.
P.O. Box 2325
Great Falls, MT 59403
(406) 761-5595

Attorneys for KS Plaintiffs

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA
Cause No. AC 17-0694

IN RE ASBESTOS LITIGATION,

Consolidated Cases.

THIS DOCUMENT RELATES TO:
Ahner v. BNSF Railway Company, et al.
Yellowstone County Cause No. DV-19-0633
Judge Moses

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF MOTION TO
VACATE SCHEDULING CONFERENCE**

On October 11, 2019, the Plaintiff in the above-referenced matter moved the Court to vacate a scheduling conference set by the Thirteenth Judicial District Court. Defendant, BNSF Railway Company (BNSF), opposed the motion on October 14. However, BNSF's response fails to comprehend the basis for the motion.

In its response, BNSF addresses only whether the *Ahner* matter was properly placed on this Court's deferred docket. Ahner's counsel placed his claim on the deferred docket because the Court's September 13, 2018, order recognized claimants with disease characterized as "normal" or "mild" would qualify. All parties to the Libby asbestos litigation, including BNSF, have defined "mild" disease cases as cases

where the claimant has a pulmonary function test result between 70% and 79% of the predicted value. The PFT result referenced in BNSF's brief demonstrated a forced vital capacity of 76% of predicted. Ahner was, therefore, suffering from asbestos-related disease characterized as mild by the parties, including BNSF.

However, regardless of whether Ahner's disease fits the criteria for the deferred docket, it is undisputed that his claim is pending before this Asbestos Claims Court. As such, issues concerning the deferred docket, and more importantly, scheduling, must be addressed by this Court.

Plaintiff's counsel agrees the *Ahner* matter can now be moved to the active docket. As Plaintiff's counsel advised BNSF's counsel by email on October 3, Ahner participated in an updated pulmonary function test on August 28, 2019, and his diffusion capacity dropped to 60% of predicted. Nonetheless, hundreds of cases remain before this Court on the active docket. Pretrial matters, including determining which active cases to schedule for trial, must still be addressed by this Court.

As BNSF's response to Plaintiff's motion does not contest that the *Ahner* matter is properly before the Asbestos Claims Court, Plaintiff's motion seeking to vacate an independent scheduling conference in the Thirteenth Judicial District should be granted. Plaintiff's counsel do not object to participating in discussions regarding scheduling. However, such discussions should take place in this Court, in

conjunction with a coordinated scheduling effort, taking into account the other active matters pending before the Court.

DATED this 15th day of October, 2019.

KOVACICH SNIPES JOHNSON, P.C.

By: /s/ Mark M. Kovacich

Mark M. Kovacich

P.O. Box 2325

Great Falls, MT 59403

Attorneys for KS Plaintiffs

CERTIFICATE OF SERVICE

I, Mark M. Kovacich, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 10-15-2019:

Amy Poehling Eddy (Attorney)
920 South Main
Kalispell MT 59901
Representing: Amy Eddy
Service Method: eService

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Allan M. McGarvey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jon L. Heberling (Attorney)
345 First Ave E
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Ethan Aubrey Welder (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jeffrey R. Kuchel (Attorney)
305 South 4th Street East
Suite 100
Missoula MT 59801
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Danielle A.R. Coffman (Attorney)
1667 Whitefish Stage Rd
Kalispell MT 59901
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Gary M. Zadick (Attorney)
P.O. Box 1746
#2 Railroad Square, Suite B
Great Falls MT 59403
Representing: Honeywell International
Service Method: eService

Gerry P. Fagan (Attorney)
27 North 27th Street, Suite 1900
P O Box 2559
Billings MT 59103-2559
Representing: CNH Industrial America LLC
Service Method: eService

G. Patrick HagEstad (Attorney)
PO Box 4947
Missoula MT 59806
Representing: United Conveyor Corporation, Riley Stoker Corporation et al
Service Method: eService

Jennifer Marie Studebaker (Attorney)
210 East Capitol Street
Suite 2200
Jackson MS 39201
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al
Service Method: eService

Joshua Alexander Leggett (Attorney)

210 East Capitol Street, Suite 2200
Jackson MS 39201-2375
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al
Service Method: eService

Vernon M. McFarland (Attorney)
200 South Lamar Street, Suite 100
Jackson MS 39201-4099
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al
Service Method: eService

Jean Elizabeth Faure (Attorney)
P.O. Box 2466
1314 Central Avenue
Great Falls MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, Borg Warner Morse Tec LLC
Service Method: eService

Jason Trinity Holden (Attorney)
1314 CENTRAL AVE
P.O. BOX 2466
Montana
GREAT FALLS MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, Borg Warner Morse Tec LLC
Service Method: eService

Chad E. Adams (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Katie Rose Ranta (Attorney)
Faure Holden, Attorneys at Law, P.C.
1314 Central Avenue
P.O. Box 2466
GREAT FALLS MT 59403
Representing: Borg Warner Morse Tec LLC
Service Method: eService

Stephen Dolan Bell (Attorney)
Dorsey & Whitney LLP
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Ford Motor Company
Service Method: eService

Dan R. Larsen (Attorney)
Dorsey & Whitney LLP
111 South Main
Suite 2100
Salt Lake City UT 84111
Representing: Ford Motor Company
Service Method: eService

Kelly Gallinger (Attorney)
315 North 24th Street
Billings MT 59101
Representing: Maryland Casualty Corporation
Service Method: eService

Robert J. Phillips (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Emma Laughlin Mediak (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Daniel Jordan Auerbach (Attorney)
201 West Railroad St., Suite 300
Missoula MT 59802
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company
Service Method: eService

Leo Sean Ward (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Robert B. Pfennigs (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Rick A. Regh (Attorney)
P.O. Box 2269
GREAT FALLS MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Mark Trevor Wilson (Attorney)
300 Central Ave.
7th Floor
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.
Service Method: eService

Robert M. Murdo (Attorney)
203 North Ewing
Helena MT 59601
Representing: Mine Safety Appliance Company LLC
Service Method: eService

Murry Warhank (Attorney)
203 North Ewing Street
Helena MT 59601
Representing: Mine Safety Appliance Company LLC
Service Method: eService

Ben A. Snipes (Attorney)
Kovacich Snipes, PC
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Ross Thomas Johnson (Attorney)
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Randy J. Cox (Attorney)
P. O. Box 9199
Missoula MT 59807
Representing: A.W. Chesterson Company
Service Method: eService

Zachary Aaron Franz (Attorney)
201 W. Main St.
Suite 300
Missoula MT 59802

Representing: A.W. Chesterson Company
Service Method: eService

Robert J. Sullivan (Attorney)
PO Box 9199
Missoula MT 59807
Representing: Ingersoll-Rand, Co.
Service Method: eService

Dale R. Cockrell (Attorney)
145 Commons Loop, Suite 200
P.O. Box 7370
Kalispell MT 59904
Representing: State of Montana
Service Method: eService

Vaughn A. Crawford (Attorney)
SNELL & WILMER, L.L.P.
400 East Van Buren
Suite 1900
Phoenix AZ 85004
Representing: The Proctor & Gamble Company et al
Service Method: eService

Martin S. King (Attorney)
321 West Broadway, Suite 300
P.O. Box 4747
Missoula MT 59806
Representing: Foster Wheeler Energy Services, Inc.
Service Method: eService

Maxon R. Davis (Attorney)
P.O. Box 2103
Great Falls MT 59403
Representing: Continental Casualty Company
Service Method: eService

Tom L. Lewis (Attorney)
2715 Park Garden Lane
Great Falls MT 59404
Representing: Harold N. Samples
Service Method: eService

Keith Edward Ekstrom (Attorney)
601 Carlson Parkway #995
Minnetonka MN 55305
Representing: Brent Wetsch
Service Method: eService

William Rossbach (Attorney)
401 N. Washington
P. O. Box 8988
Missoula MT 59807
Representing: Michael Letasky
Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Chad M. Knight (Attorney)
929 Pearl Street
Ste. 350
Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Anthony Michael Nicastro (Attorney)
27 Shiloh Road, Ste 10
Billings MT 59106
Representing: BNSF Railway Company
Service Method: eService

Nadia Hafeez Patrick (Attorney)
929 Pearl Street Suite 350
Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Kevin A. Twidwell (Attorney)
1911 South Higgins Ave
PO Box 9312
Missoula MT 59807
Representing: Libby School District #4
Service Method: eService

Jinnifer Jeresek Mariman (Attorney)
345 First Avenue East

Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

James E. Roberts (Attorney)
283 West Front Street
Suite 203
Missoula MT 59802
Representing: BNSF Railway Company
Service Method: eService

Jacy Suenram (Attorney)
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al
Service Method: eService

William Adam Duerk (Attorney)
283 West Front Street
Suite 203
Missoula MT 59802
Representing: BNSF Railway Company
Service Method: eService

Daniel W. Hileman (Attorney)
22 Second Ave. W., Suite 4000
Kalispell MT 59901
Representing: Maryland Casualty Corporation
Service Method: eService

Nathan Andrew Huey (Attorney)
201 West Main Street
Suite 101
Missoula MT 59802
Representing: Robinson Insulation Company
Service Method: eService

Michael Crill (Other)
PO Box 145
Rimrock AZ 86335
Service Method: Conventional

Tammy Peterson (Interested Observer)
Asbestos Court Clerk
Helena MT 59601
Service Method: E-mail Delivery

Matthew Cuffe (Other)
512 California

Libby MT 59923
Service Method: Conventional

Mike McMahon (Other)
227 Broadway, Second Floor
Helena MT 59601
Service Method: Conventional

Jon A. Oldenburg (Other)
P.O. Box 1124
Lewistown MT 59457
Service Method: Conventional

John W. Parker (Other)
Cascade County Courthouse
325 2nd Avenue North
Great Falls MT 59401
Service Method: Conventional

Greg Pinski (Other)
415 2nd Ave N
Great Falls MT 59401
Service Method: Conventional

Dan Wilson (Other)
Flathead County District Court
920 South, Main, Suite 210
Kalispell MT 59901
Service Method: Conventional

Michael D. Plachy (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Conor A. Flanigan (Attorney)
1200 17th Street
Denver CO 80202
Representing: Honeywell International
Service Method: Conventional

Charles J. Seifert (Attorney)
50 S. Last Chance Gulch 3rd Fl.
P.O. Box 598
Helena MT 59624
Representing: Ford Motor Company, Maryland Casualty Corporation
Service Method: Conventional

M. Covey Morris (Attorney)
390 Interlocken Crescent #100
Broomfield CO 80021
Representing: FMC Corporation
Service Method: Conventional

Tracy H. Fowler (Attorney)
15 West South Temple, Ste. 1200
Salt Lake City UT 84101
Representing: The Proctor & Gamble Company et al
Service Method: Conventional

Fredric A. Bremseth (Attorney)
601 Carlson Parkway, Suite 995
Minnetonka MN 55305-5232
Representing: Brent Wetsch
Service Method: Conventional

Jason Eric Pepe (Attorney)
519 Southwest Boulevard
Kansas City MO 64108
Representing: BNSF Railway Company
Service Method: Conventional

Mark A. Johnston (Attorney)
1717 Pennsylvania Ave. NW, 12th Floor
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: Conventional

Erik H Nelson (Attorney)
519 Southwest Boulevard
Kansas City MO 64108
Representing: BNSF Railway Company
Service Method: Conventional

Michael E. Wise (Attorney)
519 Southwest Boulevard
Kansas City MO 64108
Representing: BNSF Railway Company
Service Method: Conventional

Walter G. Watkins (Attorney)
210 E. Capitol Street, Ste. 2200
Jackson MS 39201
Representing: International Paper Co.
Service Method: Conventional

Nancy M. Erfle (Attorney)

Gordon Rees LLP
121 SW Morrison St., Suite 1575
Portland OR 97204
Representing: Robinson Insulation Company
Service Method: Conventional

Electronically signed by Dawnell Komac on behalf of Mark M. Kovacich
Dated: 10-15-2019