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IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION, <i>Consolidated Cases</i>	Cause No. AC 17-0694 DEFENDANT BNSF RAILWAY COMPANY'S MOTION FOR STATUS CONFERENCE Applicable to All Cases THIS DOCUMENT RELATES TO: <i>All Claims on the Active and Deferred Dockets</i>
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COMES NOW, Defendant, through counsel, and respectfully files this Motion for a Status Conference regarding all claims on the active and deferred dockets.

BACKGROUND

All activity in the Asbestos Claims Court has been largely dormant for many months due to a stay of proceedings issued pursuant to a writ of supervisory

control filed in the Montana Supreme Court in February of 2019. The Montana Supreme Court recently issued its ruling related to the cases subject to that writ on March 11, 2020. Subsequent to that decision, the Court issued its remittitur on March 27, 2020, essentially remanding all cases subject to the stay of proceedings back to this Court. Accordingly, the Asbestos Claims Court again has jurisdiction over the 1,000+ cases on both the Active and Deferred dockets.

In light of these occurrences, Defendant BNSF now moves the Court for a status conference related to the litigation of all of these cases. There are several matters BNSF would like to address at that conference, as set forth below.

MATTERS FOR THE COURT'S CONSIDERATION

Several issues will impact the litigation of cases currently before this Court. BNSF will file motions to frame these issues concurrent with the filing of this motion for a scheduling conference. The following issues for the Court's consideration are summarized below.

1. Dismissal of Noncompliant Plaintiffs on MHSL's Deferred Docket

Hundreds of plaintiffs on the deferred docket have repeatedly violated this Court's September 13, 2018 Order requiring that all deferred docket plaintiffs must obtain an annual medical examination and provide records of those examinations to the defense. This has not occurred in hundreds of cases. Accordingly, BNSF now moves to dismiss these claims.

2. Dismissal of Deceased Plaintiffs on the Deferred Docket

One-hundred and three plaintiffs currently on the deferred docket are deceased. This, also, is in violation of this Court's Order regarding the deferred docket. Accordingly, BNSF now moves to dismiss these claims as well

3. Clarification Regarding Assignment of Trial Court Judges

Recently, Judge Best has indicated her intent to reassign an asbestos case to Judge Parker in Great Falls. BNSF has no objection to this reassignment. However, BNSF seeks clarification on the precise procedure for assignment and reassignment of cases under the jurisdiction of the Asbestos Claims Court. Accordingly, BNSF has filed a motion for clarification regarding this issue.

4. Show-Cause Order Regarding a CARD Diagnosis of ARD

Two FELA cases that were once within this Court's jurisdiction fell outside of the stay of proceedings and were litigated by counsel.¹ The Montana Worker's Compensation Court also issued its findings of fact and conclusions of law in a third case.² The events that unfolded in these cases have had a significant impact on the question of whether CARD and Dr. Black have rendered reliable and legitimate diagnoses of Asbestos Related Disease in hundreds of cases before this Court. Accordingly, BNSF has filed a motion for a show-cause order from this

¹ Those cases are James Kampf v. BNSF (19th Judicial Dist., Cause No. CDV-16-0424) and Kelly Watson v. BNSF (19th Judicial Dist., Cause No. ADV-10-0740).

² *Holly Warboys v. Liberty Northwest Ins. Corp.*, 2020 MTWCC 5 (WCC No. 2017-4127 March 10, 2020).

Court requiring 103 deceased claimants on the deferred docket who do not carry a mesothelioma diagnosis to tender a diagnosis by a board-certified pulmonologist not affiliated with the CARD clinic within six months or have their claims dismissed.

CONCLUSION

For the reasons set forth above, BNSF respectfully requests a status conference regarding all cases on the active and deferred dockets. This conference should be scheduled at the Court's convenience and in any manner this Court sees fit in light of the ongoing pandemic.

DATED this 15th day of April, 2020.

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