

Mark M. Kovacich
Ben A. Snipes
Ross T. Johnson
KOVACICH SNIPES JOHNSON, P.C.
P.O. Box 2325
Great Falls, MT 59403
(406) 761-5595
(406) 761-5805 - fax
mark@mttriallawyers.com
ben@mttriallawyers.com
ross@mttriallawyers.com

Attorneys for KSJ Plaintiffs

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

IN RE ASBESTOS LITIGATION,

Consolidated Cases.

KSJ PLAINTIFFS' JOINDER IN MHSL'S RESPONSE BRIEFS
(Applicable to All Cases)

COMES NOW the KSJ Plaintiffs, by and through counsel of record and hereby joins and adopts by reference the briefs set forth by MHSL in response to Defendant BNSF's Motion for Show Cause and Motion to Dismiss 103 Personal Representative Claims. While these motions are aimed at the MHSL Plaintiffs, the issues addressed therein collaterally impact the ongoing deferred docket status and obligations of the

KSJ Plaintiffs. By this pleading, KSJ Plaintiffs further provide the following information, not inconsistent with the positions asserted by MHSL:

Annual Medical Exams and Serial Radiology

Libby, Montana, claimants continue to face logistical and practical challenges for local compliance with the annual medical exam deferred docket management provision. As discussed with the Court during the October 13, 2018, hearing, most clients do not get acquire (and do not medically necessitate) annual radiology surveillance. See Transcript (10/31/18), 14:16-15:1.

To address this reality, KSJ has approached certain Defendants with tolling agreements dismissing unimpaired claims, without prejudice, while tolling the statute of limitations to allow settlement or litigation when impairment arises. See Manual for Complex Litigation, Fourth, § 13.23, p. 179. KSJ counsel remains amenable to such agreements with Defendants individually and/or globally by Order of the Asbestos Claims Court (i.e. MHSL's Motion for Registry).

Costs of Acquiring Medical Records

BNSF takes the position that the Plaintiffs must bear fully the costs of providing the Defendants with the annual medical exam records. This is inconsistent with this Court's Order on Cost Sharing (August 30, 2018), establishing a repository for such records and a cost sharing platform for all involved parties. To date, KSJ Plaintiffs' minority share of record repository acquisition costs exceeds \$11,000. To

then add the complete burden for Plaintiffs to pay all acquisition costs for annual medical records is inequitable and contrary to the cost sharing Order. The repository was set up for the express purpose of records collection and should be used for the acquisition of annual medical reports.

***Warboys* impact on the reliability of CARD findings**

Wholesale exclusion of CARD medical evidence is not supported by the Montana Workers' Compensation Court's (WCC) findings in *Warboys v. Liberty Northwest Ins. Corp.*, 2020 MTWCC 5. *Warboys* was largely a factual dispute regarding the competing medical findings of treating and consulting physicians. Warboys' occupational disease claim was supported by CARD providers, a consulting pulmonologist, and a local radiologist. The Court admitted CARD's findings, along with other medical findings, and afforded them the weight it deemed appropriate.

BNSF's assertion that "no other radiologist... detected any signs of asbestos related disease in the patient" is a flat misrepresentation. BNSF Show Cause Brief, p. 18. In addition to the CARD findings, Kalispell radiologist, Dr. Patrick McDonnell, noted Warboys' January 17, 2013, CT scan revealed:

SLIGHT SMOOTH PLEURAL THICKENING OF THE MID AND LOWER HEMITHORACES BILATERALLY SUPERIMPOSED UPON OTHERWISE NORMAL PROMINENCE OF PLEURAL FAT. THE FINDINGS ARE NONSPECIFIC THOUGH COULD CONCEIVABLY REFLECT ASBESTOS RELATED DISEASE.

1/18/13 St. John's Lutheran Hospital Radiology Report, attached as Exhibit A; *Warboys*, ¶ 15.

After hearing and admitting the competing medical evidence, the Court found that Warboys did not have a "currently diagnosable ARD," but rather "nonspecific, equivocal pleural prominence." *Warboys*, ¶¶ 49, 54. Recognizing the "latency period of ARDs and the difficulty of diagnosing an ARD at its earliest stages, Warboys may develop a diagnosable ARD in the future," leaving the door open for a future occupational disease claim. *Warboys*, ¶ 54.

Warboys does not serve to diminish the credibility of the CARD providers. Instead, it illuminates the persistent issue recognized by all parties and this Court. Early ARD medical findings, without substantial impairment, necessitate early filings to preserve the applicable statute of limitations. Such premature, forced litigation is a burden on the courts, expensive for all parties, and (like *Warboys*) may not provide finality to the claims/causes at issue.

DATED this 15th day of May, 2020.

KOVACICH SNIPES JOHNSON, P.C.

By: /s/ Ben A. Snipes
Ben Snipes
P.O. Box 2325
Great Falls, MT 59403
Attorneys for KSJ Plaintiffs

CERTIFICATE OF SERVICE

I, Ben A. Snipes, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 05-15-2020:

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

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)
2419 Mullan Road
Suite B

Missoula MT 59808

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

Mark M. Kovacich (Attorney)
Kovacich Snipes Johnson, 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

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

Jennifer Jerecek 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

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

Mark S. Williams (Attorney)
235 East Pine
PO BOX 9440
Missoula MT 59807-9440
Representing: Ace Fire Underwriters Companyh
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: Conventional

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

Jon L. Heberling (Attorney)
345 First Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: Conventional

Michael D. Plachy (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

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

Mark A. Johnston (Attorney)
1717 Pennsylvania Ave. NW, 12th Floor
Washington DC 20006
Representing: Maryland Casualty Corporation
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 Ben A. Snipes
Dated: 05-15-2020