

DEEPAK GUPTA  
LARK TURNER  
GUPTA WESSLER PLLC  
1900 L Street, NW, Suite 312  
Washington, DC 20036  
(202) 888-1741  
*deepak@guptawessler.com*

DENNIS P. CONNER  
KEITH D. MARR  
CONNER & MARR, PLLP  
P.O. Box 3028  
Great Falls, MT 59403  
(406) 727-3550  
*dennis@connermarr.com*  
*keith@connermarr.com*

*Counsel for Plaintiff-Appellee*

ANDREW S. TULUMELLO  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, DC 20036  
(202) 955-8500  
*atulumello@gibsondunn.com*

JEFF HEDGER  
MICHELLE FRIEND  
HEDGER FRIEND, PLLC  
2800 Central Avenue, Suite C  
Billings, MT 59102  
(406) 896-4100  
*jhedger@hedgerlaw.com*  
*mfriender@hedgerlaw.com*

*Counsel for Defendant-Appellant*

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
**No. DA 19-0343**

ROBERT DANNELS,

*Plaintiff-Appellee,*

v.

BNSF RAILWAY COMPANY,

*Defendant-Appellant.*

**JOINT MOTION TO HEAR ORAL  
ARGUMENT TELEPHONICALLY**

Plaintiff-Appellee Robert Dannels and Defendant-Appellant BNSF Railway Company jointly move the Court to hold oral argument in the above-captioned case

telephonically. The parties respectfully submit that there is good cause for this request, as follows:

1. Oral argument is scheduled to be heard on June 10, 2020 at 9:30 a.m.
2. Arguing counsel for Mr. Dannels, Deepak Gupta, and for BNSF, Andrew Tulumello, have both been admitted *pro hac vice* in this matter. Each is barred in the District of Columbia and has his resident office in Washington, DC.
3. In light of the COVID-19 pandemic, the parties seek an accommodation from this Court in order to avoid travel from Washington, D.C., to Helena for in-person argument on June 10. The District of Columbia's "Stay at Home" order, which restricts non-essential travel, will remain in place until at least June 8. *See* Mayor's Order 2020-066 (May 13, 2020), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Mayors-Order-2020-066-Extensions-of-Public-Emergency-and-Public-Health.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2020-066-Extensions-of-Public-Emergency-and-Public-Health.pdf). That is because "[c]ommunity transmission of COVID-19 remains widespread throughout the District" of Columbia and "in the Maryland and Virginia areas near Washington, DC." *Id.* As of this time, the CDC still recommends avoiding travel between different communities in the United States, if possible. *See* CDC, *Coronavirus in the United States—Considerations for Travelers*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html>.

4. The Washington, D.C. metro region continues to observe extremely strict restrictions due to the risk of community spread. *See White House says D.C. region among worst in country, as summer closures continue*, Wash. Post (May 22, 2020) (reporting “that the District and its suburbs have the highest rate in the country of people testing positive for the infection”), [https://www.washingtonpost.com/local/white-house-says-dc-region-among-worst-in-country-as-summer-closures-continue/2020/05/22/31e4cc8c-9c3a-11ea-ac72-3841fcc9b35f\\_story.html](https://www.washingtonpost.com/local/white-house-says-dc-region-among-worst-in-country-as-summer-closures-continue/2020/05/22/31e4cc8c-9c3a-11ea-ac72-3841fcc9b35f_story.html).

5. In recognition of the public health crisis, this Court has advised the courts of this State to conduct hearings telephonically where appropriate. *See, e.g., Order re Statewide Response by Montana State Courts to the COVID-19 Public Health Emergency* (Mont. Mar. 27, 2020); Memo. from Chief Justice Mike McGrath to Mont. Dist. Court Judges & Clerks, et al. (Apr. 22, 2020).

6. Holding oral argument telephonically or by videoconference would enable the parties to present their arguments to this Court without further postponing oral argument. This Court originally set oral argument for March 25, 2020, and granted the parties’ joint motion to reschedule oral argument to June 10.

7. The parties and their counsel acknowledge that in-person argument would be more desirable and that telephonic argument imposes logistical and other burdens on this Court and the Court’s staff. Counsel for both parties have conferred

and will endeavor to make their telephonic appearances before the Court as helpful as possible to the Court to aid the Court in its disposition of this case. If the Court prefers in-person argument, the parties are amenable to rescheduling.

8. The parties and their respective counsel and families are grateful to the Court and its staff for consideration of this joint request.

For the foregoing reasons, the joint motion to hold oral argument telephonically should be granted.

Respectfully submitted,

/s/Deepak Gupta

DEEPAK GUPTA  
LARK TURNER  
GUPTA WESSLER PLLC  
1900 L Street, NW, Suite 312  
Washington, DC 20036  
(202) 888-1741  
*deepak@guptawessler.com*

DENNIS P. CONNER  
KEITH D. MARR  
CONNER & MARR, PLLP  
P.O. Box 3028  
Great Falls, MT 59403  
(406) 727-3550  
*dennis@connermarr.com*  
*keith@connermarr.com*

*Counsel for Plaintiff-Appellee*

/s/Andrew S. Tulumello

Dated: May 26, 2020

ANDREW S. TULUMELLO  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Ave., N.W.  
Washington, DC 20036  
(202) 955-8500  
*atulumello@gibsondunn.com*

JEFF HEDGER  
MICHELLE T. FRIEND  
HEDGER FRIEND, PLLC  
2800 Central Avenue, Suite C  
Billings, MT 59102  
(406) 896-4100  
*jhedger@hedgerlaw.com*  
*mfriender@hedgerlaw.com*

*Counsel for Defendant-Appellant*

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2020, I electronically filed the foregoing motion with the Clerk of the Court for the Supreme Court of Montana using the Montana E-Pass system. All participants in the case will be served by the E-Pass system except for Deepak Gupta, to whom on May 26, 2020 I sent a copy of the foregoing motion by email.

/s/Michelle T. Friend  
Michelle T. Friend

*Counsel for Defendant-Appellant*

## **CERTIFICATE OF SERVICE**

I, Michelle T. Friend, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 05-26-2020:

Dennis P. Conner (Attorney)  
520 3rd Ave. N.  
P.O. Box 3028  
Great Falls MT 59403-3028  
Representing: Robert Dannels  
Service Method: eService

Keith D. Marr (Attorney)  
PO Box 3028  
Great Falls MT 59403  
Representing: Robert Dannels  
Service Method: eService

Timothy Charles Fox (Prosecutor)  
Montana Attorney General  
215 North Sanders  
PO Box 201401  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Deepak Gupta (Attorney)  
1900 L Street NW, Suite 312  
Washington DC 20036  
Representing: Robert Dannels  
Service Method: eService

Anthony Michael Nicastro (Attorney)  
27 Shiloh Road, Ste 10  
Billings MT 59106  
Representing: Association of American Railroads  
Service Method: eService

Mark D. Parker (Attorney)  
401 N. 31st St., Ste. 805  
P.O. Box 7212

Billings MT 59103  
Representing: Washington Legal Foundation  
Service Method: eService

Samantha A Howard (Attorney)  
401 N 31st St, Suite 805  
PO Box 7212  
Billings MT 59103  
Representing: Washington Legal Foundation  
Service Method: eService

Jeffrey Wayne Hedger (Attorney)  
2800 Central Ave., Suite C  
Billings MT 59102  
Representing: BNSF Railway Company  
Service Method: Conventional

Andrew S. Tulumello (Attorney)  
1050 Connecticut Avenue, N.W.  
Washington DC 20036  
Representing: BNSF Railway Company  
Service Method: Conventional

Electronically signed by Kelly Graf on behalf of Michelle T. Friend  
Dated: 05-26-2020