

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. OP 24-0061

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SOUTHWEST DISTRIBUTING CO., d/b/a SWD URETHANE,

Petitioner,

v.

MONTANA NINETEENTH JUDICIAL DISTRICT COURT, LINCOLN  
COUNTY, HON. MATTHEW J. CUFFE, Presiding Judge,

Respondent.

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NORTH IDAHO INSULATION, LLC'S RESPONSE IN OPPOSITION TO  
MOTION TO STAY

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On Appeal from the Nineteenth Judicial District Court,  
Lincoln County, Montana  
Cause No. DV-2022-0000072  
Honorable Matthew J. Cuffe

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<p>Brad Condra Milodragovich, Dale &amp; Steinbrenner, P.C. 620 High Park Way P.O. Box 4947 Missoula, MT 59806-4947 bcondra@bigskylawyers.com crystal@bigskylawyers.com <i>Attorneys for Plaintiff</i></p>	<p>Todd Hammer Marcel Quinn Hammer, Quinn &amp; Shaw PLLC 100 Financial Drive, Suite 100 P.O. Box 7310 Kalispell, MT 59904-0310 toddhammer@attorneysmontana.com marcelquinn@attorneysmontana.com <i>Attorneys for Caribou Creek Log Homes, Inc.</i></p>
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Chris Sweeney Moulton Bellingham PC 27 North 27 <sup>th</sup> Street, Suite 1900 PO Box 2559 Billings, MT 59103 Phone (406) 248-7731 Christopher.Sweeney@moultonbellingham.com Lindsey.Weber@moultonbellingham.com Bobbi.owen@moultonbellingham.com <i>Attorneys for SWD Urethane</i>	Randall J. Colbert Emma L. Mediak GARLINGTON, LOHN & ROBINSON, PLLP 350 Ryman Street • P. O. Box 7909 Missoula, MT 59807-7909 Phone (406) 523-2500 Fax (406) 523-2595 rjcolbert@garlington.com elmediak@garlington.com <i>Attorneys for North Idaho  Insulation, LLC, John L. Holdeman</i>
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North Idaho Insulation (“NII”) files this Response in Opposition to Southwest Distributing Co.’s (“SWD”) Motion to Stay District Court Proceedings. NII has requested the District Court modify the scheduling order which will allow additional time before expert disclosures and the close of discovery. Additionally, the discovery burdens identified by SWD will remain regardless of this Court’s ruling because SWD remains the sole source of highly relevant information. For each of these reasons, no need exists to stay the District Court proceedings.

### **ARGUMENT**

SWD asks this Court to stay the pending District Court matter, contending that if this Court rules in SWD’s favor, SWD will be “relieved of its burdens in continuing to participate in very costly discovery efforts”. Mot. Stay Dist. Ct. Proc. Pursuant to Mont. R. App. P. 14(7)(c) at 4 (“SWD’s Br.”), Apr. 1, 2024. As detailed in NII’s Response to SWD’s Petition for Writ of Supervisory Control, the

District Court correctly concluded that it has personal jurisdiction over SWD. Def. North Idaho Insulation, LLC's Resp. SWD Urethane's Pet. Writ Sup. Control, Mar. 7, 2024.

Even if SWD were dismissed from this matter, SWD still possesses key discoverable information that the parties will need to obtain through subpoenas for documents and depositions. *See* Mont. R. Civ. P. 45 (permitting subpoenas for depositions and for production of documents or tangible things). Mr. Fleming's Complaint does not clearly state what allegedly went wrong with SWD's spray foam insulation, suggesting generally that it was "improperly installed, mixed, or formulated." App'x Pet. Writ, Jan. 31, 2024 ("App'x"), Ex. 1: Compl. Demand Jury Trial, May 9, 2022. Mr. Fleming essentially argues a *res ipsa loquitur* theory: "the roof did not demonstrate evidence of structural deformation in areas where spray foam insulation had not been installed" and, therefore, the roof deformation somehow must have been caused by the spray foam. App'x, Ex. 1 at 5.

Understanding how the spray foam could have caused the roof deformation, whether SWD had dealt with this same problem in other residences, why SWD's installation guidance changed for the product, and why SWD removed the product from the market will therefore remain key issues regardless of whether SWD remains a party to this action. *See generally*, SWD's Br. at 9-34. Even if SWD is dismissed, NII intends to depose witnesses identified by SWD who have

knowledge of these key issues. SWD's claimed burden and expense related to responding to this discovery will therefore remain the same regardless of how this Court rules on the pending Writ.

Additionally, Plaintiff Donald Fleming has now filed a motion with the District Court to amend the scheduling deadline. Ex. A: Mot. Am. Sched. Ord.; Ex. B: Prop. Am. Sched. Ord. Pursuant to the proposed amended scheduling order, Southwest's expert deadline would be on November 29, 2024, and discovery would now close on February 14, 2025. These amended deadlines will eliminate any immediate burden for SWD to retain experts or propound its own discovery.

SWD cites *Groo* in support of its Motion to Stay District Court Proceedings. SWD's Br. at 5. *Groo* involved just two parties, the plaintiff and the defendant, so a decision that no personal jurisdiction existed over the defendant would have ended the litigation in Montana. *Groo v. State Eleventh Judicial Dist. Court*, 2023 MT 193, ¶ 2, 413 Mont. 415, 537 P.3d 111. In contrast, this present litigation will continue with or without SWD as a party. SWD fails to point to any cases where this Court granted a stay under the circumstances present here: the lawsuit will continue regardless of the outcome of the Court's decision on the Writ and discovery against the party seeking the stay will remain relevant in the ongoing litigation.

## CONCLUSION

Staying this case will simply delay the resolution of this case and will not ultimately prevent the discovery from occurring because SWD remains the sole source of key information in this litigation. Staying the entire case, as opposed to amending the scheduling order as Plaintiff has requested, is unnecessary under the circumstances present here. NII respectfully requests that this Court deny SWD's Motion to Stay District Court Proceedings.

DATED this 13th day of May, 2024.

/s/ Emma L. Mediak  
*Attorneys for North Idaho Insulation, LLC, John  
L. Holdeman*

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Montana Rule of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Word for Microsoft 365 MSO is 684 words, excluding Certificate of Service and Certificate of Compliance.

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Emma L. Mediak

## **CERTIFICATE OF SERVICE**

I, Emma Laughlin Mediak, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 05-13-2024:

Marcel A. Quinn (Attorney)  
Hammer, Quinn & Shaw PLLC  
PO Box 7310  
100 Financial Drive  
Suite 100  
Kalispell MT 59904-0370  
Representing: Caribou Creek Log Homes, Inc.  
Service Method: eService

Todd A. Hammer (Attorney)  
PO Box 7310  
Kalispell MT 59901  
Representing: Caribou Creek Log Homes, Inc.  
Service Method: eService

Philip Bradford Condra (Attorney)  
PO Box 4947  
Missoula MT 59806  
Representing: Donald T. Fleming  
Service Method: eService

Randall J. Colbert (Attorney)  
Garlington, Lohn & Robinson, PLLP  
P.O. Box 7909  
Missoula MT 59807  
Representing: John L. Holdeman, North Idaho Insulation, LLC  
Service Method: eService

Christopher Thayne Sweeney (Attorney)  
P O Box 2559  
Billings MT 59103  
Representing: Southwest Distributing Co.  
Service Method: eService

Bobbi K. Owen (Attorney)  
27 North 27th Street

Suite 1900  
P.O. Box 2559  
Billings MT 59103  
Representing: Southwest Distributing Co.  
Service Method: eService

Michael David Bybee (Attorney)  
350 Ryman Street  
P.O. Box 7909  
Missoula MT 59807  
Representing: John L. Holdeman, North Idaho Insulation, LLC  
Service Method: eService

Matthew J. Cuffe (Respondent)  
Nineteenth Judicial District Court  
512 California  
Libby MT 59923  
Service Method: Conventional

Electronically signed by Cassandra DuCharme on behalf of Emma Laughlin Mediak  
Dated: 05-13-2024