

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 26

WCC No. 2012-3022

STEVE PETERSON

Petitioner

vs.

LIBERTY NW INS. CORP.

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner alleges he suffers from asbestos-related disease as a result of his 26-year history working at the Libby lumber mill. Respondent counters that Petitioner filed his claim long after the statute of limitations had run pursuant to § 39-72-403, MCA, and therefore, Petitioner's claim is time-barred.

Held: Given Petitioner's knowledge of asbestos contamination at the Libby mill and the number of occupational disease claims filed over the years by employees at the mill alleging asbestos-related disease due to their employment, Petitioner knew or should have known that his occupation contributed to his asbestos-related disease for years prior to filing a claim for benefits. Petitioner's claim for occupational disease benefits is time-barred under the statute of limitations, § 39-72-403, MCA.

Topics:

Witnesses: Credibility. The Court did not find Petitioner wholly credible where his testimony that he learned he was exposed to asbestos at his worksite only after hiring an attorney conflicted with a sworn statement and a written exposure history he provided previously. Where Petitioner worked at the site for approximately 25 years, the Court did not find it credible that he was completely unaware of asbestos contamination and clean-up at the jobsite, and numerous co-workers who filed OD claims for asbestos-related disease.

Physicians: Treating Physician: Weight of Opinions. The Court found the opinion of the treating physician more persuasive than that of the OD evaluator. Not only had Petitioner's physician treated him for ARD for over seven years, his deposition testimony was bolstered by the in-person testimony of the pulmonologist who trained him in diagnosing and treating ARD; who had treated Libby residents with ARD for decades; and who, like Petitioner's treating physician, found Petitioner was suffering from ARD.

Occupational Disease: Last Injurious Exposure. Where a Libby lumber mill worker was exposed to asbestos at work while the mill was owned by successive owners but his asbestos-related disease was not diagnosed until after the mill closed, the last owner of the mill is liable for the worker's OD since it was during its ownership that the worker was last injuriously exposed to the occupational hazard.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-72-403. Where there have been numerous litigated claims for asbestos exposure at the Libby lumber mill, one of which was filed by a co-worker who trained and worked with Petitioner, for Petitioner to maintain that he did not know of asbestos clean-up at the mill, that he did not know of fellow co-workers who had filed claims, and that he did not know he could file a claim until informed by his attorney almost five years after being diagnosed with asbestos-related disease (ARD), is incongruous with Petitioner's admitted knowledge of asbestos in and around the areas where he worked at the mill. The Court concluded that Petitioner knew or should have known that his ARD was related to an OD within one year of it being diagnosed. His claim is time-barred pursuant to § 39-72-403(1), MCA.

Limitation Period: Occupational Disease. Where there have been numerous litigated claims for asbestos exposure at the Libby lumber mill, one of which was filed by a co-worker who trained and worked with Petitioner, for Petitioner to maintain that he did not know of asbestos clean-up at the mill, that he did not know of fellow co-workers who had filed claims, and that he did not know he could file a claim until informed by his attorney almost five years after being diagnosed with asbestos-related disease (ARD), is incongruous with Petitioner's admitted knowledge of asbestos in and around the areas where he worked at the mill. The Court concluded that Petitioner knew or should have known that

his ARD was related to an OD within one year of it being diagnosed. His claim is time-barred pursuant to § 39-72-403(1), MCA.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.318. Where Petitioner raised the issue of equitable estoppel for the first time in his pretrial brief and at trial, and where there is no mention of equitable estoppel in Petitioner's contentions in the Pretrial Order which supersedes all other pleadings and governs the trial proceedings, Respondent's objections to the estoppel argument are sustained and the Court will not consider it.

¶ 1 Trial in this matter was held May 9 and 10, 2013, in the Flathead County Justice Center, 920 South Main, Kalispell, Montana. Petitioner Steve Peterson was present and represented by Laurie Wallace, Jon Heberling, and Ethan Welder. Respondent Liberty NW Ins. Corp. (Liberty) was represented by Michael P. Heringer. On June 12, 2013, trial was concluded via teleconference. The Court participated from the offices of Fisher Court Reporting in Helena. Peterson was present and represented by Laurie Wallace and Ethan Welder from the offices of Fisher Court Reporting in Kalispell. Liberty was represented by Michael P. Heringer from the offices of Fisher Court Reporting in Billings.

¶ 2 **Exhibits:** I admitted Exhibits 2, 3, 7 through 21, and 26 through 42 without objection. I sustained hearsay objections to Exhibits 1, 4, 5, 6, 22, and 23, and did not admit those exhibits. I overruled the hearsay objections to Exhibits 24 and 25 and they were admitted.

¶ 3 **Stipulations:** There were no stipulations.

¶ 4 **Witnesses and Depositions:** The depositions of Dana Headapohl, M.D., Brad Black, M.D. and Glenn Garrison were admitted without objection and are considered part of the record. Petitioner Steve Peterson, Terry Spear, Ph.D., Alan C. Whitehouse, M.D., and Don Agan, CRC, were sworn and testified.

¶ 5 **Issues Presented:** The Pretrial Order sets forth the following issues:¹

Issue One: Did Petitioner suffer an occupational disease as a result of his work at Stimson Lumber?

Issue Two: Is Petitioner's claim barred by § 39-72-403(1), MCA (2001)?

¹ Pretrial Order at 3, Docket Item No. 28.

Issue Three: If Petitioner's claim is compensable, what is his impairment rating related to his occupational disease?

Issue Four: If Petitioner's claim is compensable, whether Petitioner is entitled to PTD benefits and medical benefits related to the treatment of the occupational disease.

Issue Five: Whether Respondent has unreasonably refused to accept liability for the Petitioner's occupational disease and pay PTD, impairment, and medical benefits in accordance with § 39-71-407, MCA (2001).

Issue Six: Whether Petitioner is entitled to an increased award of 20% of all compensation benefits awarded pursuant to § 39-71-2907, MCA.

Issue Seven: Whether Petitioner is entitled to reasonable costs and attorney fees.

FINDINGS OF FACT

¶ 6 On June 25, 2010, Peterson signed a First Report of Injury and Occupational Disease, alleging lung disease caused by years of exposure to asbestos dust while employed with the "Stimson Lumber Facility" (Stimson) in Libby, Montana. The report reflects a date of injury of "76-02."² Peterson also signed a similar claim on the same day for the same date of injury against "Champion Lumber Facility" (Champion).³

¶ 7 Champion denied the claim by letter dated July 6, 2010, from its third-party administrator, Brentwood Services Administrators, Inc.⁴ Liberty denied the claim on behalf of Stimson by letter dated July 27, 2010.⁵ Liberty issued a second denial letter on September 27, 2012, following an occupational disease (OD) panel evaluation.⁶

Industrial Hygiene

¶ 8 Terry Spear, Ph.D., testified at trial. I found Spear to be a credible witness. Spear holds a Ph.D. in industrial hygiene and headed the Industrial Hygiene Department at Montana Tech (Tech) for ten years before he retired. Spear is currently

² Ex. 32.

³ Ex. 33.

⁴ Ex. 35.

⁵ Ex. 36.

⁶ Ex. 31.

employed part-time for Tech.⁷ Spear has authored or co-authored seven studies on Libby asbestos, has testified in several asbestos-related cases, and has reviewed hundreds of Libby lumber mill documents. Spear has visited the Stimson mill, reviewed maps and photos of the mill, interviewed former mill workers including Peterson, reviewed Environmental Protection Agency (EPA) documents regarding the mill, and previously testified before this Court as an expert witness in the Raymond Johnson OD case, which involved a former employee of the mill who developed asbestos-related disease (ARD).⁸

¶ 9 Spear testified that industrial hygiene is the science devoted to the recognition, anticipation, and control of workplace health hazards that could cause disease among workers. According to Spear, by the 1950s, asbestosis, lung cancer, and mesothelioma were all associated with asbestos exposure.⁹

¶ 10 Spear testified that Libby asbestos is an amphibole asbestos made up of three different minerals: 84% winchite, 11% richterite, and 6% tremolite.¹⁰ According to Spear, the source of Libby asbestos is Vermiculite Mountain, the site of the W.R. Grace vermiculite mine. Spear explained that Libby asbestos is extremely toxic, much more so than chrysotile asbestos, which is more often found in building products throughout the country.¹¹ Spear testified that the toxicity of asbestos is measured in terms of fibers/cc years. Spear stated that the toxicity of chrysotile asbestos has been measured at 25 fibers/cc years. Amphibole asbestos has been measured at 2 fibers/cc years or less.¹²

¶ 11 Spear explained that because asbestos fibers are needle-shaped and microscopic in size, they tend to stay airborne for long periods. They also easily re-enter the atmosphere and can travel long distances. The longer the fibers stay in the air, the greater the risk of inhalation by workers.¹³

¶ 12 Spear testified that the Stimson mill was contaminated with asbestos from different sources: 1) the mill was built on the former site of the popping plant for the mine, which contaminated the ground with asbestos fibers; 2) vermiculite contaminated with Libby amphibole was added as a soil conditioner to the area on the mill grounds

⁷ Trial Test.

⁸ *Johnson v. Liberty Nw. Ins. Corp.*, 2009 MTWCC 20; Trial Test.

⁹ Trial Test.

¹⁰ Trial Test.

¹¹ Trial Test.

¹² Trial Test.

¹³ Trial Test.

known as the nursery; 3) bark from trees harvested near the W.R. Grace mine and processed at the mill was contaminated with Libby amphibole asbestos; and 4) railroad cars previously containing vermiculite were cleaned out on a spur line on the mill property, contaminating the soil around the tracks. Spear stated that as of 1994 when the mill was tested, every building except the shipping building was contaminated with asbestos-containing material (ACM).¹⁴

¶ 13 Spear interviewed Peterson to determine the various places where Peterson worked at the mill and the jobs he performed. Spear learned that both Peterson and Raymond Johnson¹⁵ worked at some of the same areas in the plywood plant. Johnson was a dryer tender and helped train Peterson for the dryer tender job, and consequently both men would have had similar exposure to asbestos at work.¹⁶

¶ 14 Spear learned that Peterson had to climb up on the big dryer once a week and clean the top of it with a broom and an air hose to remove dust from the top and around the motors. Spear testified that sometime in the late 1980s, vermiculite and cement were mixed together as insulation for the top of the big dryer and for the dryer floor, but the mixture quickly dried out and broke up easily. Spear testified that any activity around the big dryer - vibration, heavy equipment, use of air hoses - resulted in dispersal of asbestos fibers throughout the plywood plant from the dried cement-vermiculite mixture.¹⁷

¶ 15 Spear testified there was a lot of dust in the air in the finger-jointer building where Peterson worked about 40% of his time for Stimson. Spear testified that activity by workers and machinery stirred up dust. Spear reviewed mill documents and determined that as early as 1987, the mill documented ACM in the insulation in the finger-jointer building. Spear learned that asbestos-containing pipe insulation in the finger-jointer building had been deteriorating, which meant it had a tendency to release fibers into the air.¹⁸ Other mill documents reviewed by Spear verified that during the time Peterson worked at the mill, asbestos existed in the finger-jointer roofing material, in the bathroom and lunch room, and in the finger-jointer parking lot.¹⁹ These findings were

¹⁴ Trial Test.

¹⁵ See ¶ 8.

¹⁶ Trial Test.

¹⁷ Trial Test.

¹⁸ Trial Test.

¹⁹ Trial Test.

significant to Spear in that they evidenced the likelihood of asbestos fiber dispersal into the breathing zone of workers while Peterson worked in the finger-jointer building.²⁰

¶ 16 Spear determined from Peterson that he had worked in and near the planer building, operating a forklift while the mill was still owned by Champion. According to Peterson, the air in and around the planer building was particularly dusty. Spear opined that the greatest source of asbestos contamination in Libby is soil disturbance, and there was a lot of soil disturbance in the mill area, mostly from operation of heavy equipment. In Spear's opinion, dust from the disturbed soil at the mill more probably than not contained asbestos. Spear testified he was unaware of any respirators or other airway protectors that were supplied to workers at the mill.²¹

¶ 17 From a review of EPA documents, Spear learned there had been ACM in the planer building and in the building's vermiculite insulation that contained Libby amphibole. An EPA letter dated May 10, 2001, indicated that a W.R. Grace contractor had remediated the contamination in the planer building once, but that the building became re-contaminated from an undetermined source.²²

¶ 18 According to Spear, asbestos associated with Libby vermiculite was assumed to contain only tremolite until a study in the early 2000s showed the Libby amphibole also contained richterite and winchite. Spear testified that labs were not set up to look for and quantify richterite and winchite. This resulted in the underreporting of asbestos in testing samples taken from the Libby area.²³

¶ 19 Spear testified that regulatory agencies only report asbestos fibers of greater than 5 micrometers in length. Since over 50% of Libby asbestos fibers are less than 5 micrometers in length, Spear concluded that sampling reports underreported the asbestos present in Libby by more than 50%.²⁴

¶ 20 Spear participated in tree-bark studies and learned that tree bark served as a reservoir for asbestos. When these trees were disturbed, i.e., harvested, transported to the mill, and debarked, the asbestos was released into the air and soil around the mill. In interviewing former mill employees, Spear learned that bark and debris would fall off the logs in the log yard, and about once a month a loader would come in and haul the

²⁰ Trial Test.

²¹ Trial Test.

²² Trial Test.

²³ Trial Test.

²⁴ Trial Test.

bark away. Spear testified that this activity would disturb the bark and surrounding soil, causing asbestos fibers to be reintroduced (re-entrained) into the air.²⁵

¶ 21 Spear testified that inside the plywood plant there were issues with negative air pressure. Spear explained that the heat generated inside the building, combined with the operation of the ceiling fans, created a siphon effect that drew in outside air to replace inside displaced air. Spear testified that this moving air carried asbestos particles.²⁶

¶ 22 Based on the number of years Peterson worked at the lumber mill, from 1976 until 2002, Spear opined that Peterson's exposure to asbestos at the mill was severe, and far exceeded his exposure to asbestos growing up and living in the Libby community.²⁷

¶ 23 Peterson testified at trial. Because of some key inconsistencies in Peterson's testimony, I cannot find Peterson to be an entirely credible witness. Specifically, I find Peterson's testimony that he learned he was exposed to asbestos at the Libby lumber mill only after he hired an attorney – shortly before filing his OD claim in 2010 – inconsistent with his sworn statement²⁸ and the written exposure history he provided to the Center for Asbestos Related Disease (CARD) clinic in 2005.²⁹ Moreover, I do not find it credible that Peterson was completely unaware of the asbestos contamination at the mill, the asbestos cleanup at the mill, and his numerous co-workers at the mill who filed OD claims for ARD years before Peterson filed his claim.³⁰

¶ 24 Peterson started working at the mill when he was 18 years old. He was placed in the planer department after 90 days.³¹ Peterson explained that most of the time he worked at the mill for Champion he spent in the planer department. He testified that there was pipe wrap around the pipes in the planer department; some of the wrap was in good shape and some of it was deteriorated.³² There were no doors on the planer sheds so there was usually a breeze blowing through them, and on some days the dust

²⁵ Trial Test.

²⁶ Trial Test.

²⁷ Trial Test.

²⁸ Ex 34.

²⁹ Ex. 2 at 54-55; Black Dep. Ex. 2.

³⁰ Trial Test.; see, e.g., *Johnson, supra*; *Clemons v. Liberty Nw. Ins. Corp.*, 2006 MTWCC 16; *Fleming v. Int'l Paper Co.*, 2008 MT 327, 346 Mont. 141, 194 P.3d 77; *Schull v. Int'l Paper Co.*, 2005 MTWCC 36; *Young v. Liberty Nw. Ins. Co.*, 2005 MTWCC 37; *Peck v. Int'l Paper Co.*, 2010 MTWCC 35; *Kessel v. Liberty Nw. Ins. Corp.*, 2007 MT 305, 340 Mont. 92, 172 P.3d 599.

³¹ Trial Test.

³² Trial Test.

was thick, especially with the heavy equipment moving in and out. Peterson testified that vermiculite was visible on the ground in the planer sheds.³³

¶ 25 Peterson explained that it was extremely dusty in the summertime in the planer department, to the point where he would use an air hose to blow the dust off his clothes every couple of hours during his break. He also used the air hoses to blow the dust off the equipment and machinery he operated. Peterson testified that he performed every job in the planer department, including operating a lift truck and a carrier. The dust got so bad with all the equipment moving around, Peterson explained, that he would spit black sputum and blow black material out of his nose.³⁴

¶ 26 When Champion shut the mill down in the early 1990s, Peterson took a nine-month welding course in Missoula. Peterson testified that he returned to Libby and tried to find work as a welder. Instead, he was called for an interview with Stimson, and he was rehired in 1993.³⁵ After he returned to work at the mill for Stimson, Peterson testified that he spent about 60% of his time in the plywood plant and 40% in the finger-jointer building.³⁶

¶ 27 According to Peterson, it was always dusty in the finger-jointer building. The doors were open in the summertime, and equipment was always coming and going, blowing dust around. Peterson would use an air hose to blow dust off his working area. Peterson explained that the fans, supplied to keep things cool in the summer, kept the air moving.³⁷ In the plywood building, Peterson testified that among other duties he drove a lift truck, was a dryer tender, and he also worked the de-barker.³⁸ Peterson recalled seeing vermiculite around the dryer and in the bathroom in the finger-jointer building.³⁹

¶ 28 Peterson was familiar with the vermiculite that was mined in the Libby area, and he knew that Libby vermiculite was contaminated with tremolite asbestos due to all the publicity and the EPA getting involved.⁴⁰ Peterson subscribed to the newspaper and

³³ Trial Test.

³⁴ Trial Test.

³⁵ Trial Test.; Ex. 34 at 28:18-24.

³⁶ Trial Test.

³⁷ Trial Test.

³⁸ Trial Test.; Ex 34 at 25:23 - 26:2.

³⁹ Trial Test.

⁴⁰ Ex. 34 at 19:25 - 20:11.

read the articles about asbestos contamination in the Libby area when the news first broke in the late 1990s.⁴¹

¶ 29 Peterson testified that vermiculite was easy to identify because of its slippery nature, its color, and its sparkle.⁴² Peterson saw vermiculite in the finger-jointer building and coming out of the walls in the plywood plant. He also saw ACM in the crumbling pipe wrap in the plywood plant,⁴³ and in deteriorating pipe wrap in the planer area.⁴⁴ Peterson attempted to explain in his court testimony that the sworn statement he gave admitting he knew the deteriorating pipe wrap contained asbestos was knowledge acquired only after he hired an attorney.⁴⁵

¶ 30 Peterson recalled working with a man named Ray Johnson in the plywood plant on the big dryer.⁴⁶ He testified there was what appeared to be cement on top of the big dryer, and that he would have to climb to the top of the big dryer to clean the fans and sweep off the dust.⁴⁷ Peterson stated that he never discussed with Johnson the contents of the cap on top of the big dryer and that he did not know that Johnson filed an OD claim resulting from his work as a dryer tender at the Stimson mill.⁴⁸

¶ 31 Peterson described himself as not a very social person; that he associated with those people he needed to in order to do his job, but that he was not very outgoing.⁴⁹ Peterson denied knowing of any co-workers at the mill who filed for OD benefits because of exposure to asbestos at work.⁵⁰ Peterson also stated that he was never informed by any physician that his ARD was related to his work at Stimson until after he filed his claim for benefits.⁵¹

¶ 32 Peterson testified that he suffered a couple of shoulder injuries at work and was off work for a year receiving temporary total disability (TTD) benefits until he was

⁴¹ Trial Test.; Ex. 34 at 35:10-25; 36:1 - 37:4.

⁴² Ex. 34 at 30:10-18.

⁴³ Trial Test.; Ex. 34 at 30:19 - 32:21.

⁴⁴ Ex. 34 at 34:6-14.

⁴⁵ Trial Test.

⁴⁶ See ¶ 8; Ex. 34 at 26:23 - 27:7.

⁴⁷ Trial Test.; Ex. 34 at 27:14 - 28:11.

⁴⁸ Ex. 34 at 27:24 - 28:17; *Johnson, supra*.

⁴⁹ Trial Test.

⁵⁰ Trial Test.

⁵¹ Trial Test.

released to return to work in May 2003.⁵² While he was on disability, the lumber mill closed at the end of December 2002.⁵³

¶ 33 When Peterson was first seen at the CARD clinic in 2005, he completed a Health History Questionnaire and an Exposure Questionnaire.⁵⁴ On the last page of the Exposure form the questionnaire asked the patient if he had any history working at “the lumber yard” and “the plywood plant”.⁵⁵ Peterson answered affirmatively to both questions and wrote: “1976-2000.”⁵⁶ Peterson also verified that he wrote, “Mill (Stimson)” in answer to the question: “Are there any other ways in which you came in contact with vermiculite?”⁵⁷

¶ 34 Even though Peterson admitted he knew Libby vermiculite contained asbestos prior to 2000, and even though he admitted he saw vermiculite at the mill over the years and had developed ARD by 2005, Peterson maintained in his trial testimony that he was not aware he had been exposed to vermiculite asbestos at the mill until he hired an attorney in 2010.⁵⁸ This is inconsistent with Peterson’s sworn statement, in which he agreed on multiple occasions that he knew he had been exposed to vermiculite with asbestos at the mill, at the time he was diagnosed with ARD in 2005:

Q. . . . Stimson began operating the mill in November of 1993. So that’s roughly when you began with Stimson, correct?

A. Right.

Q. And you were exposed to asbestos while working there, correct?

A. Yes.

Q. And you told that to Dr. Black in 2005 when you first saw him?

A. Yes.⁵⁹

. . . .

⁵² Trial Test.; Ex. 34 at 5:6-25; 6:13 - 7:1.

⁵³ Trial Test.; Ex. 34 at 13:8 - 14:12.

⁵⁴ Ex. 2 at 52-55; Black Dep. 22:9 - 24:9; Black Dep. Exs. 1 & 2.

⁵⁵ Ex. 2 at 55; Black Dep. Ex. 2 at 2.

⁵⁶ *Id.*

⁵⁷ Trial Test.; Ex. 2 at 55; Black Dep. Ex. 2 at 2.

⁵⁸ Trial Test.

⁵⁹ Ex. 34 at 28:21 - 29:5.

Q. So you knew you had ARD, asbestos related disease in 2005?

A. Yes.

Q. And you knew then you had also been exposed to Vermiculite with asbestos at the mill when you used to work there for Stimson?

A. Yes.

Q. So in 2005 when you first saw Dr. Black you had the shortness of breath and he was telling you it was because you had asbestos related disease; would that be correct?

A. Yes.

Q. Now, let[']s go back to your first report, your claim. I'll give it back to you. It's dated June 25, 2010.

A. Yes.

Q. And so even though Dr. Black told you you had ARD in 2005, you did not file a Workmen's Comp claim until June 2010; would that be correct?

A. You got me on this.⁶⁰

.....

Q. [Dr. Black] says you have asbestos related disease. And you've told me that you were exposed to asbestos at Stimson. Do you remember that?

A. Yes, correct.

Q. And that was in 2005. So you knew in 2005 you had ARD, and at least some of your exposure to asbestos was at the Stimson mill; would that be correct?

A. Correct.⁶¹

.....

Q. And so by the time you've seen Dr. Black in December of 2005, you knew that you had been exposed to asbestos at the Stimson mill?

A. I assumed, yes.

.....

⁶⁰ Ex. 34 at 38:17 - 39:11.

⁶¹ Ex. 34 at 40:17-24.

Q. And the reason you didn't file a claim until 2010 was because you did not know you could file a Work Comp claim for ARD until after you spoke to Jon Heberling?

A. Yeah, after I got the papers in the mail.⁶²

¶ 35 Peterson testified he did not recall seeing any news articles about asbestos contamination at the Libby mill, nor was he aware of articles regarding asbestos contained in the bark of trees harvested around Libby.⁶³ Peterson also testified that, prior to hiring an attorney, he was unaware of any asbestos clean-up at the mill despite having worked there for 26 years.⁶⁴

¶ 36 Peterson testified at trial that he began to experience shortness of breath the last two or three years working for Stimson, that his chest pain had gotten severe since he was first diagnosed with ARD in 2005, and that he takes Flexeril and Percocet to try and control the pain. Peterson also suffers lung spasms and shortness of breath.⁶⁵

¶ 37 Peterson applied for social security disability insurance (SSDI) benefits before he was diagnosed with ARD, but his application was denied.⁶⁶ By December 19, 2005, Peterson's treating physician, Brad Black, M.D., was of the opinion that Peterson was totally disabled due to his progressing ARD symptoms.⁶⁷ Dr. Black wrote a letter on Peterson's behalf, expressing the opinion that Peterson was totally disabled due to his ARD.⁶⁸ Peterson was subsequently awarded SSDI benefits retroactive to May 30, 2004.⁶⁹

¶ 38 Stimson's safety officer, Veronica Bovee, posted certain asbestos test results on a bulletin board at the lumber mill. Some were seen by Peterson; others he did not see as he was off work due to his shoulder injuries. Peterson recalled the document dated July 17, 2001, showing no asbestos fibers in eight locations at the mill.⁷⁰ Peterson was

⁶² Ex. 34 at 55:2-16.

⁶³ Trial Test.

⁶⁴ Trial Test.

⁶⁵ Trial Test.

⁶⁶ Trial Test.; Ex. 41 at 1.

⁶⁷ Ex. 2 at 29.

⁶⁸ Ex. 41 at 196-97; Black Dep. Ex. 8.

⁶⁹ Trial Test.; Ex. 41 at 13-18.

⁷⁰ Trial Test.; Ex. 25 at 1.

not working on September 11, 2002, when a schedule of EPA testing sites was issued.⁷¹ Peterson testified that the test results gave him a feeling that asbestos was not an issue at the mill.⁷² He also testified that the amount of vermiculite he encountered at the mill was miniscule compared to the vermiculite he encountered around Libby growing up, and that was why he attributed his ARD to contamination in the town caused by W.R. Grace and not to his employment.⁷³

¶ 39 Glenn Garrison testified by deposition. Garrison resides in Troy, Montana, and worked at the Stimson mill for 26 years. Garrison has been diagnosed with ARD, and he believes his ARD was caused by his many years working at the Libby mill. Garrison filed a claim for compensation based on his exposure to asbestos at the mill, and the claim was “resolved.”⁷⁴ Garrison filed his claim sometime in either 2004 or 2005, after he was diagnosed with ARD and after he realized he worked in some areas at the mill contaminated with asbestos.⁷⁵ Garrison saw vermiculite coming out of the walls by the drinking fountain, and swept it up off the floor every other day or so.⁷⁶

¶ 40 Garrison testified that he had heard rumors in 2002 before the mill closed that there were nine claims filed for workers’ compensation benefits due to asbestos exposure at the mill.⁷⁷

¶ 41 Garrison testified that there were regular, mandatory safety meetings regarding asbestos testing at the mill.⁷⁸ Garrison stated that the employees of the mill were apprehensive about the safety at the mill, but the information that was disseminated was that the mill was safe.⁷⁹ Regardless of what was said at those safety meetings, when Garrison was finally diagnosed with ARD in 2004 or 2005, he attributed it to his employment at the lumber mill.⁸⁰

⁷¹ Trial Test.; Ex. 25 at 2.

⁷² Trial Test.

⁷³ Trial Test.

⁷⁴ Garrison Dep. 6:7-23.

⁷⁵ Garrison Dep. 26:5-22.

⁷⁶ Garrison Dep. 26:10-13.

⁷⁷ Garrison Dep. 23:1-16.

⁷⁸ Garrison Dep. 10:13 - 11:4.

⁷⁹ Garrison Dep. 22:9-11.

⁸⁰ Garrison Dep. 30:2-13.

Medical Evidence

¶ 42 Alan C. Whitehouse, M.D., testified at trial. I found Dr. Whitehouse to be a credible witness. Dr. Whitehouse is licensed to practice medicine in both Washington and Montana, he is a specialist in pulmonary medicine, and he retired in 2009. From 2004 until he retired, Dr. Whitehouse worked at the CARD clinic in Libby. He has published peer-reviewed papers on asbestos-related disease, has treated Libby residents since approximately 1985, and has seen, by his estimate, between 800 and a thousand Libby residents suffering from ARD.⁸¹

¶ 43 Peterson was first seen at the CARD clinic on October 17, 2005,⁸² by Dr. Black, who diagnosed Peterson with advancing asbestos-related disease and ordered a CT scan. Peterson was then seen in follow-up by Dr. Black, who confirmed Peterson had asbestos-related disease as shown on the CT scan.⁸³ Dr. Whitehouse testified that he would have been a little more cautious in initially diagnosing ARD, although in hindsight, it was the correct diagnosis for Peterson.⁸⁴

¶ 44 In comparing Peterson's x-ray films over the years he was treated at the CARD clinic, Dr. Whitehouse saw extensive changes in Peterson's lungs including diffuse pleural thickening.⁸⁵ Because Peterson was a pack-a-day long-term smoker, Dr. Whitehouse was asked whether COPD or emphysema would show up on an x-ray. Dr. Whitehouse responded that neither condition would show on an x-ray.⁸⁶

¶ 45 One of Peterson's main complaints is chest pain, and Dr. Whitehouse explained that a principal symptom of Libby asbestos pleural disease is pleurisy, or inflammation between the two surfaces of the pleura, causing pain on a daily basis.⁸⁷

¶ 46 Dr. Whitehouse referred to the 5th Edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment*⁸⁸ (AMA Guides) in assigning Peterson a 60% permanent impairment rating for his loss of pulmonary function.⁸⁹ Dr.

⁸¹ Trial Test.

⁸² Ex. 2 at 25.

⁸³ Ex. 2 at 27.

⁸⁴ Trial Test.

⁸⁵ Trial Test.; Ex. 2 at 137.

⁸⁶ Trial Test.

⁸⁷ Trial Test.

⁸⁸ L. Cocchiarella, M.D., MSc, *et al.* (eds.), *American Medical Association Guides to the Evaluation of Permanent Impairment*, 5th ed., AMA Press, 2005.

⁸⁹ Trial Test.; Ex. 27 at 2.

Whitehouse further testified that the date of Peterson's maximum medical improvement (MMI) was irrelevant, as there was no date of maximum improvement for Peterson; his condition would continue to deteriorate. In terms of disability, Dr. Whitehouse opined that Peterson was totally disabled and unable to work.⁹⁰

¶ 47 Dr. Whitehouse testified, based on his knowledge of where Peterson worked at the lumber mill, the exposure studies performed by Spear, and testing performed by the EPA, that Peterson's employment at the lumber mill was a significant factor in his development of ARD.⁹¹

¶ 48 Dr. Black testified by deposition. Dr. Black is employed at the CARD clinic in Libby, Montana. Dr. Black's original specialty was pediatrics; however, after moving to Libby he practiced more general medicine.⁹² Dr. Black started the CARD clinic in July 2000⁹³ to meet the needs of the public once it became evident there was a community problem with wide-spread exposure to asbestos.⁹⁴ He immediately brought in Dr. Whitehouse as a consulting pulmonologist, and Dr. Black trained under Dr. Whitehouse for about nine years until Dr. Whitehouse retired.⁹⁵

¶ 49 Dr. Black explained that in the 1990s, an investigative reporter discovered there was a community-wide asbestos problem and published a series of articles that got the attention of federal agencies and eventually led to an EPA investigation.⁹⁶ The CARD clinic set up a screening protocol, which provided testing for individuals who had a history of having lived, worked, or played in the Libby area for at least ten years prior to their screening.⁹⁷ Dr. Black first saw Peterson on October 17, 2005.⁹⁸

¶ 50 Dr. Black noted in his initial interview with Peterson that Peterson had been exposed to area asbestos, having been born and raised in Libby, recreating around the ball fields, playing in the ore piles, and "working at the lumber mill for at least 24 years before it closed."⁹⁹ Dr. Black explained that the purpose of the questionnaire forms he used for his initial intake of patients was to allow him to assess the amount of exposure

⁹⁰ Trial Test.

⁹¹ Trial Test.

⁹² Black Dep. 7:7-24.

⁹³ Black Dep. 14:17-19.

⁹⁴ Black Dep. 8:10-17.

⁹⁵ Black Dep. 6:16-21; 8:21 - 9:2.

⁹⁶ Black Dep. 13:11 - 14:1.

⁹⁷ Black Dep. 14:23 - 15:14.

⁹⁸ Black Dep. 15:22-25.

⁹⁹ Ex. 2 at 25.

an individual had to asbestos fibers to determine if sufficient cause existed to anticipate health problems.¹⁰⁰

¶ 51 Dr. Black referred to those places where a patient might be exposed to asbestos as “pathways,” and those pathways were identified on the CARD clinic’s Exposure Questionnaire, based on a screening program established by the federal government.¹⁰¹ “[L]umber yard” and “plywood plant” were listed on the questionnaire as commonly known pathways.¹⁰² Dr. Black was familiar with asbestos cleanup at the plywood plant while it was owned by Champion and then Stimson.¹⁰³ He knew about the aggregate of cement and vermiculite on top of the dryers, and that those patients who had worked on the dryers “frequently showed up with significant problems, much more so than probably any other spot in the plant”¹⁰⁴

¶ 52 At the time Dr. Black first saw Peterson in October 2005, the lining of Peterson’s lungs, called the pleura, was so scarred it was visible on x-rays. Normally, explained Dr. Black, the pleura is as thin as plastic wrap and not visible on x-rays.¹⁰⁵ Dr. Black ordered a CT scan to confirm the findings on the x-ray.¹⁰⁶ Dr. Black did not find any evidence that Peterson’s cigarette smoking had any effect on his lungs.¹⁰⁷ Dr. Black recommended that Peterson follow up with the W.R. Grace medical plan called HNA.¹⁰⁸

¶ 53 Dr. Black next saw Peterson on December 19, 2005, when Peterson was complaining of increased dyspnea, or shortness of breath.¹⁰⁹ Dr. Black felt that Peterson was by then totally disabled.¹¹⁰ Dr. Black testified that he was unsure whether Peterson ever informed him where Peterson worked at the lumber mill but that those who worked around plywood were fairly aware of exposure to asbestos:

I don’t know that he ever told me, you know, “I got exposed here or there.” I don’t think a lot of those people knew exactly where they got

¹⁰⁰ Black Dep. 24:7-17; 35:11-23.

¹⁰¹ Ex. 2 at 54-55; Black Dep. Ex. 2; Black Dep. 24:22 - 25:8.

¹⁰² Black Dep. 31:5-19.

¹⁰³ Black Dep. 31:20 - 32:10.

¹⁰⁴ Black Dep. 32:11 - 33:4.

¹⁰⁵ Black Dep. 47:19-22.

¹⁰⁶ Black Dep. 49:22-24.

¹⁰⁷ Black Dep. 50:16 - 51:5.

¹⁰⁸ Black Dep. 54:5-10.

¹⁰⁹ Black Dep. 44:14-18; 59:22 - 60:12.

¹¹⁰ Black Dep. 59:22 - 60:22.

exposed, you know, until later on. I think the plywood workers were very aware. They ran through a lot of vermiculite, and it stood out to them, "That's where I know I got some exposure."¹¹¹

. . . .

I don't think we ever saw anybody probably with as significant disease as those that worked in plywood. Plywood clearly stood out as a bigger source, it seems, bigger source of exposure.¹¹²

¶ 54 Dr. Black also believed that Peterson's work at the Stimson lumber mill "significantly" contributed to the development of his ARD.¹¹³

¶ 55 Dana Headapohl, M.D., testified by deposition. Dr. Headapohl is a board-certified occupational medicine specialist who has worked at the Occupational and Environmental Health Services Clinic at St. Patrick Hospital in Missoula, Montana, for over twenty-five years.¹¹⁴ On June 13, 2012, Dr. Headapohl performed an OD evaluation on Peterson for the Workers' Compensation Claims Assistance Bureau of the Montana Department of Labor & Industry.¹¹⁵

¶ 56 Dr. Headapohl concluded that Peterson had evidence of asbestos exposure, but that he did not in her opinion have asbestosis. Dr. Headapohl opined that the pleural plaques present in Peterson's lungs were evidence of asbestos exposure but were asymptomatic.¹¹⁶ Dr. Headapohl did not believe that Peterson's pleural plaques would cause him any symptoms or any activity restrictions.¹¹⁷ Dr. Headapohl believed that any pulmonary restriction that Peterson had was secondary to Peterson's scoliosis and smoking-related emphysema and not to his pulmonary exposure. Dr. Headapohl did not agree with the 60% impairment rating assigned by Dr. Whitehouse for Peterson's pulmonary condition because, in her opinion, Peterson's pulmonary condition is unrelated to his occupational exposures. Dr. Headapohl also believed Dr. Whitehouse used the wrong edition of the AMA Guides.¹¹⁸

¹¹¹ Black Dep 69:15-21.

¹¹² Black Dep. 79:7-11.

¹¹³ Black Dep. 98:24 - 99:14.

¹¹⁴ Headapohl Dep. 5:4-22.

¹¹⁵ Headapohl Dep.10:7-19; Dep. Ex. 11 at 1; Ex 3.

¹¹⁶ Headapohl Dep. 33:20 - 34:2; 34:24 - 35:1; Headapohl Dep. Ex. 11 at 39-40.

¹¹⁷ Headapohl Dep. 37:3-5.

¹¹⁸ Headapohl Dep. 37:13 - 39:6.

Vocational Rehabilitation

¶ 57 Don Agan testified at trial. I found Agan to be a credible witness. Agan is a certified vocational rehabilitation counselor who received his certification in 1992.¹¹⁹ Agan interviewed Peterson and reviewed Peterson's medical records. Agan learned that, following Peterson's shoulder injury, he was released to light-duty employment, but by the time Peterson had reached MMI in 2003, the mill had closed. Peterson went to vocational school in Missoula and received a certificate for repairing recreational vehicles, but Agan opined that that vocation required a medium- to heavy-duty physical ability that was incompatible with Peterson's light-duty release.¹²⁰

¶ 58 Agan performed an employability assessment on Peterson and came to the conclusion that, given Peterson's shoulder injuries and his ARD, Peterson had not been employable since December 19, 2005, when Dr. Black determined that Peterson was totally disabled.¹²¹

CONCLUSIONS OF LAW

¶ 59 This case is governed by the 2001 version of the Occupational Disease Act (ODA) since the law in effect on the employee's last day of work governs the resolution of an OD claim.¹²²

Issue One: Did Petitioner suffer an occupational disease as a result of his work at Stimson Lumber?

¶ 60 The claimant bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.¹²³

¶ 61 Section 39-72-102(10), MCA, states, in pertinent part, "(10) 'Occupational disease' means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift."

¹¹⁹ Trial Test.

¹²⁰ Trial Test.

¹²¹ Trial Test.; Ex. 2 at 29.

¹²² *Montana State Fund v. Grande*, 2012 MT 67, ¶ 23, 364 Mont. 333, 274 P.3d 728 (citing *Hardgrove v. Transp. Ins. Co.*, 2004 MT 340, ¶ 2, 324 Mont. 238, 103 P.3d 999).

¹²³ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶ 62 For an employer to be liable for an occupational disease, the condition must arise out of the claimant's employment. Section 39-72-408(1), MCA, states:

(1) Occupational diseases are considered to arise out of the employment if:

(a) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(b) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(c) the disease can be fairly traced to the employment as the proximate cause;

(d) the disease comes from a hazard to which workers would not have been equally exposed outside of the employment.

¶ 63 Finally, where there is more than one employer involved in the development of an occupational disease, § 39-72-303, MCA, provides in relevant part, "(1) Where compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease."

¶ 64 Although Dr. Black and Dr. Headapohl disagreed whether Peterson was suffering from ARD, I find the opinion of Dr. Black, the treating physician, more persuasive.¹²⁴ Not only did he treat Peterson for over seven years and determine that Peterson was suffering from ARD, his opinion was bolstered by the in-person testimony of Dr. Whitehouse, who trained Dr. Black and who has treated Libby residents with ARD for decades. Dr. Whitehouse, like Dr. Black, is experienced with reading x-rays of patients suffering from ARD, and he agreed with Dr. Black that Peterson is indeed suffering from ARD.

¶ 65 Both Dr. Black and Dr. Whitehouse expressed the opinion that Peterson's work at the Stimson lumber mill was a significant factor in Peterson's development of ARD. These opinions agree with Spear's testimony that Peterson's exposure to asbestos at the mill was severe. I therefore conclude that Peterson's ARD meets the definition of an occupational disease as a result of his work at the Stimson lumber mill. Under *In Re*:

¹²⁴ *EBI/Orion v. Blythe*, 1998 MT 90, ¶ 12, 288 Mont. 356, 957 P. 2d 1134 ("[A]s a general rule, the opinion of a treating physician is accorded greater weight than the opinions of other expert witnesses.").

Claim of Mitchell,¹²⁵ Stimson would be the employer liable for Peterson's disease, being the last employer where Peterson was injuriously exposed to the hazard of asbestos.

Issue Two: Is Petitioner's claim barred by § 39-72-403(1), MCA (2001)?

¶ 66 Section 39-72-403, MCA states, in pertinent part:

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant ***knew or should have known*** that the claimant's condition resulted from an occupational disease. . . .

(2) The insurer may, upon a reasonable showing by the claimant . . . that the claimant . . . could not have known that the claimant's condition . . . was related to an occupational disease, waive the claim time requirement up to an additional 2 years. (Emphasis added.)

¶ 67 Liberty argues that Peterson clearly knew he was exposed to asbestos-contaminated vermiculite at the Libby lumber mill, and that his diagnosis of ARD by Dr. Black in October 2005 triggered the running of the one-year statute of limitations because he should have known his condition was related to his employment.

¶ 68 Peterson counters that his doctors never informed him that his ARD was related to his employment, and that he had no way of knowing that his condition was related to his work at Stimson until informed by his attorney some four and half years after his ARD diagnosis. I am not persuaded by Peterson's argument.

¶ 69 As this Court explained in *Corcoran v. Montana Schools Group Ins. Auth.*,¹²⁶ "harm" and "damage" under the definition of an OD¹²⁷ must mean something more than mere pain; "[r]ather, the terms indicate something more significant, such as a condition requiring medical diagnosis and treatment." The Court concluded that the statute of limitations under § 39-72-403, MCA, commences to run "when the worker has some specific knowledge of a specific pathological condition stemming from employment and requiring diagnosis or treatment."¹²⁸

¹²⁵ *Liberty Nw. Ins. Corp. v. Montana State Fund*, 2009 MT 386, 353 Mont. 299, 219 P.3d 1267 (*In Re: Claim of Mitchell*).

¹²⁶ 2000 MTWCC 30, ¶ 52.

¹²⁷ § 39-72-102(10), MCA.

¹²⁸ 2000 MTWCC 30, ¶ 53.

¶ 70 In *Grenz v. Fire & Cas. of Conn.*,¹²⁹ the Montana Supreme Court affirmed this Court's holding that Grenz's OD claim was time-barred under a two-year statute of limitations. In *Grenz*, the hearing examiner determined that the claimant knew or should have known at least four years prior to filing his OD claim that his doctor believed his degenerative arthritis was being aggravated by his work.

¶ 71 Peterson worked in very dusty conditions at the lumber mill, first under Champion in the planer department where conditions were so bad he spat black sputum and blew dust off himself regularly with an air hose. Then, under Stimson, Peterson worked under similar, dusty conditions in the finger-jointer building. He began to experience shortness of breath two to three years before the mill closed. Peterson saw vermiculite in every place he worked at the mill. Filling out the CARD clinic's "Exposure Questionnaire" in 2005 during his initial visit, Peterson put an "x" in the boxes next to: "Worked at the lumber yard?" and "Worked at the plywood plant?" Peterson wrote: "1976-2000" next to the two questions, and in response to the question: "Are there any other ways in which you came in contact with vermiculite?" Peterson wrote: "Mill (Stimson)."¹³⁰

¶ 72 There have been at least seven litigated claims against the mill for OD benefits.¹³¹ One of those claimants, Raymond Johnson, trained Peterson to be a dryer tender. Glenn Garrison, who was called by Peterson as a witness, saw vermiculite coming out of the walls and heard rumors there were some nine employees of the mill who had filed claims for asbestos exposure. Garrison filed his own claim for asbestos exposure soon after being diagnosed with ARD. Dr. Black opined that his patients like Peterson, who worked around plywood, were particularly aware of vermiculite contamination at their worksite.¹³²

¶ 73 Viewing the evidence in its entirety, I simply cannot find it credible that Peterson could be so isolated as to not know his ARD was related to his employment at the mill. Maintaining he did not know of asbestos clean-up at the mill, that he did not know of fellow co-workers who had filed claims, and that he did not know he could file a claim until informed by his attorney almost five years after being diagnosed with ARD, is incongruous with Peterson's admitted knowledge of asbestos in and around the areas where he worked at the mill.

¹²⁹ 278 Mont. 268, 924 P.2d 264 (1996).

¹³⁰ Ex. 2 at 54-55; Black Dep. Ex. 2.

¹³¹ See footnote 30, *supra*.

¹³² See ¶¶ 51, 53, *supra*.

¶ 74 Peterson argues the facts of his case are similar to those in *Keller v. Montana State Fund*, WCC No. 2012-2879, in which I issued a bench ruling following trial, finding that Keller had suffered an asbestos-related OD and that his claim was filed timely after tolling the statute of limitations.¹³³ Peterson's reliance on *Keller* in this case is misplaced.

¶ 75 Keller was a logger who only resided in Libby for one year in the late 1960s. He did not get the Libby newspaper. Keller logged in the mountains outside Libby for nearly twenty years, knew of no co-workers or other loggers who contracted asbestos disease, and appeared to be the first logger who had brought a claim for ARD before this Court. Applying the reasonable man standard, I found that Keller should not have known his condition resulted from his employment until advised by his attorney, and his claim was filed timely.

¶ 76 In contrast to *Keller*, Peterson had numerous co-workers who had filed ARD claims against the mill. Unlike Keller, Peterson regularly observed vermiculite in his work area. Unlike Keller, there was regular testing for asbestos at the lumber mill and there had been asbestos mitigation at the mill in the past. Peterson lived in Libby and subscribed to the newspaper. Finally, Peterson himself acknowledged in his sworn statement that he knew he had ARD and knew that he had been exposed to asbestos at work as early as 2005. There is simply no fair comparison between Keller and Peterson in terms of their respective knowledge of their exposure and diagnosis.

¶ 77 Finally, Peterson argued for the first time at trial and in his trial brief¹³⁴ that Liberty should be equitably estopped from claiming the statute of limitations bars his claim under § 39-72-403, MCA. At trial, Liberty objected to this contention and the presentation of evidence regarding it on the grounds that Peterson never raised this issue in his pleadings nor in his contentions in the Pretrial Order.

¶ 78 ARM 24.5.318(6) provides that the pretrial order shall supersede all other pleadings and shall govern the trial proceedings. Amendments to the pretrial order shall be allowed either by stipulation of the parties or leave of court for good cause shown. Liberty did not stipulate to an amendment of the Pretrial Order. The Pretrial Order was finalized by the parties on February 11, 2013, with no mention of equitable estoppel. On April 22, 2013, a follow-up pretrial conference was conducted and no amendments were made to the Pretrial Order except to note that two witnesses would testify via deposition. Although Peterson did not move to amend the Pretrial Order in response to Liberty's objection, I can find no good cause as to why Peterson failed to set forth

¹³³ Minute Book Hearing No. 4393, Docket Item No. 21.

¹³⁴ Trial Brief of Petitioner Steve M. Peterson at 16, Docket Item No. 22.

estoppel as a contention in the Pretrial Order in any event. Therefore, Liberty's objection to the estoppel argument is sustained and the Court will not consider it.

¶ 79 For the reasons stated above, I conclude that Peterson knew or should have known that his condition was related to an occupational disease within one year following his diagnosis for ARD. He was diagnosed with ARD in October 2005, and he had one year from that date to file his claim. Peterson's claim is time-barred under § 39-72-403, MCA.

¶ 80 Having concluded that Peterson's claim is time-barred, this conclusion is dispositive of this matter and I do not reach the remaining issues outlined in the Pretrial Order.

JUDGMENT

¶ 81 Petitioner's claim for OD benefits is time-barred pursuant to § 39-72-403, MCA.

¶ 82 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 31st day of December, 2013.

(SEAL)

JAMES JEREMIAH SHEA
JUDGE

c: Laurie Wallace
Jon Heberling
Ethan Welder
Michael P. Heringer
Submitted: June 12, 2013