

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 10, 1995, at
8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: None

Members Absent: Rep. Duane Grimes

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 63, SJR 10, SJR 12
Executive Action: SJR 12 BE CONCURRED IN

{Tape: 1; Side: A}

HEARING ON SB 63

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, SD 10, described SB 63 as a bill to revise the place for a tort action when the defendant is an out-of-state corporation. He said this bill would deal directly with the concept of venue shopping. In Montana out-of-state corporations which are doing business in the state can be sued in Montana even though the accident occurred out of the state and the plaintiff lives out of the state. He said the proper place for the filing of a tort action is the county in which the defendants reside or the county where the tort was committed. This bill would provide that an out-of-state corporation can be sued in the county in which the tort was committed, the county in which the plaintiff resides, the county in which the corporation's resident agent is located or in the first judicial district.

The sponsor pointed out that railroads are under the Federal Employers' Liability Act (FELA) which is a fault system. Railroad employees are not under the state's workers compensation program which is a no-fault system. FELA states that litigation can be filed in state court or in federal court. He said the provisions of this bill would not restrict their options at all.

Proponents' Testimony:

Mark Petersmeyer, Noranda Minerals Corporation, added some remarks to his written testimony. **EXHIBIT 1** He said the aim of SB 63 is to end discrimination against out-of-state companies so that they would be treated like Montana corporations in a tort case. He said this is not a railroad issue or a big corporation issue, but it is simply a fairness issue. He said that an argument is that a plaintiff would never get a fair shake in a company town because juries aren't willing to award plaintiffs a large sum of money which might jeopardize a major source of jobs. He was skeptical that a company like Noranda would have that kind of influence in Lincoln County.

Another argument holds that out-of-state companies can always remove the lawsuit to federal court. He said this might be true for some companies and some situations; the company he represents does not have that option. The fact that their principal place of business is in Montana means that they could never meet the standard of diversity needed to remove a case to a federal court. He said this was not the point, that even if they were able to petition to the court for removal, it would not justify discrimination at the state court level.

He said the opponents were motivated by a desire to continue to treat out-of-state companies different from everyone else because

they are not organized in Montana. They should be able to argue venue before a state court judge like everyone else.

Ward Shanahan, Attorney representing Stillwater Mining Company, said the company he represents is a Delaware Corporation while the president and principal place of business are in Nye, Stillwater County, Montana. They supported SB 63.

John Alke, Montana Defense Trial Lawyers Association, stated support of this bill. He said the reason for their support was straightforward in that they do not believe that either party to a lawsuit should be able to "forum shop." The current status of the law is that if an out-of-state corporation is a defendant, the plaintiff gets to forum shop.

He described a recently-settled Burlington Northern (BN) case. He said that the Montana Supreme Court held as a matter of constitutional law that an out-of-state FELA plaintiff cannot be denied access to the Montana courts. The bill does not do that, but it does say where in the state the action can be brought. He said SB 63 complies with that supreme court case and it is fair.

Leo Berry, Attorney representing Burlington Northern (BN), illustrated for the committee the impact of the current law on BN. He said the second two pages of the illustration demonstrated lawsuits against out-of-state corporations by residents of Montana being filed in any of the 56 counties of Montana. During 1993 and 1994, 72 Montana resident cases had been filed in Montana and 62 of them were filed in Cascade County. Of those 62, he said that 55 had absolutely nothing to do with that county. **EXHIBIT 2**

He said that this bill would provide six different places to bring a lawsuit, including the federal court in Cascade County. He said that is often the proper place to file a suit because they are generally filed under FELA which is a federal act. In filing in federal court, it would relieve a portion of Montanans' tax burdens.

He said the opponents had proposed an amendment which would restrict the out-of-state cases. His interpretation of the recent Montana court case was that if the amendment were added, it would be the same as "killing" the bill because he believed that the court case decided in favor of forum shopping in Montana and it is okay to bring those cases in from out-of-state. He encouraged the committee to pass the bill unamended.

Jim Mockler, Montana Coal Council, appeared in support of SB 63. He said he believed it was an issue of fairness and not a BN issue.

Don Allen, Montana Wood Products Association, supported SB 63. He discussed some of the complications in the shipping of materials and interstate trucking under the current system.

Russ Ritter, Conda Mining and Envirocon, Inc. of Missoula, rose in support of SB 63.

Frank Crowley, Attorney for ASARCO, Inc., spoke in favor of SB 63. ASARCO is a New Jersey corporation and though forum shopping is not a current issue for them, they wanted to go on record as strongly supporting the bill because without passage of it, ASARCO would remain vulnerable to the same problem of forum shopping that other out-of-state corporations experience. He said it is a basic procedural fairness bill and there is no fundamental basis in policy or law to have a venue bill discriminate against out-of-state corporations. He submitted articles from Montana newspapers in support of SB 63. **EXHIBIT 3**

Jacqueline Lenmark, American Insurance Association (AIA), commented that the range of interested proponents demonstrated that this is not just a railroad issue but an issue of fairness for all defendants and asked for favorable action on the bill.

David Owen, Montana Chamber of Commerce, said that in his research he had seen that there was a trend from big vertical companies to small companies connected through a nexus of contracts back and forth. He said that if the state were to continue to treat out-of-state companies with a different standard of justice from those which are in-state, they would be creating an inhibited ability in the future to reach out of state for those contracts and would leave some of the third wave economic base in the state liable. He felt the bill would correct that and put the state on a good course.

Informational Testimony:

Blake Wordal, Lewis and Clark County Commissioner, said they neither supported nor opposed the bill, but asked for an amendment by striking the last six words of the bill which indicated the first judicial district. He said they feel it is unfair to single out the first judicial district because they are all civil court case whose costs are paid by Lewis and Clark County taxpayers. He said he understood from debate on the Senate floor that the sponsor would not oppose that amendment.

Opponents' Testimony:

Don Judge, AFL-CIO, said that only the big businesses were represented on the side of the proponents while there were none representing the average business person or the average citizen. He said they believed the bill was brought primarily by BN and specifically in relation to the problems they were having related to FELA.

He said it was not unusual to live on the edge of a county and be closer to another major metropolitan area which would be the center of the courts and medical and legal attentions. He firmly believed that this bill was in the interests of wealthy, moneyed

and powerful out-of-state corporations who are doing venue shopping. He said they are asking to be allowed to limit the venue of the rights of Montanan's whether small business people, ranchers, workers or farmers to sue tort claims against out-of-state corporations. He encouraged defeat of SB 63.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR SHIELL ANDERSON**.

Erik Thueson, Attorney at Law, expressed that his greatest fear about this bill was that the members of the committee had their minds made up. He presented a chart to demonstrate the history behind his opposition to the bill. He said that the law that provided that a Montana citizen could sue in any county grew out of a concentration of influence from the Butte/Anaconda area of about 70 years ago. He said that the current proposal would limit that time-honored right. He presented evidence to support his view that this was primarily a BN bill. He said he did not believe that there was evidence that there had been lawsuits which had caused out-of-state corporations to go to inconvenience in a distant county in order to defend a suit.

On his chart, he sought to demonstrate that there was a major difference between BN and all other out-of-state corporations in that BN is subject to FELA while the others are under a federal law which protects them if they think the county they are being sued in is not appropriate. This is called federal removal which allows a case to be moved to the federal court closest to the base of operation or where the injury occurred. The practical effect is that is what the corporations do in 99% of the cases currently. He described how he believed big corporations get around the venue issue presently. Because of this, he said that this bill was written specifically for BN to try to create a special venue law for themselves. He presented a copy of the previously mentioned supreme court case as part of his argument against SB 63. He also submitted to the committee a document designed to answer all questions concerning SB 63 as well as a fact sheet he compiled on the issues being discussed.

EXHIBITS 4, 5 and 6

He said that his law firm had circulated a petition to try to determine from Montanan's who would be affected by this bill what their response would be. Over 300 signatures were gathered in a few days with 250 of those signatures from Havre protesting SB 63. **EXHIBIT 7**

In addressing the issue of forum shopping, he said that out-of-state attorneys who are bringing lawsuits into the state are introducing bad practices into the state. He said he has filed a lawsuit against one of them in order to stop those practices. His concern was that in an effort to make a better civil justice system, they would be punishing the people to whom the civil justice system belongs. He said that the Montana Supreme Court had said in their recent ruling, "with regard to you, Burlington

Northern, because of the Federal Employers' Liability Act, there is a strong public policy that the railroad worker is the one that is entitled to choose the place of trial rather than the railroad." He quoted that the court said, "We have found highly persuasive the policy favoring the injured worker's choice of forum. We recently re-emphasized our commitment to the strong national policy favoring a plaintiff's selection of forum in actions brought under FELA. The FELA choice of forum simply cannot be denigrated to a secondary position....."

He said the end result of the bill would fund a great majority of the railroad cases into Havre. Those 250 Havre residents who signed the petition would know that they would not have a fair chance to trial because of the intimidation of the influence of BN in that area. He said it was an attempt to negate the decision and the federal public policy that the railroad worker, not the railroad, would chose the place where the trial is to be held.

If the committee would chose to pass the bill, he proposed some of the ways to salvage the bill to meet some objectives the committee might have. Passage of the bill unchanged favoring BN would be unconstitutional and he stated the reasons.

{Tape: 1; Side: B; Comments: The balance of the testimony is continued on Side B.}

He felt that it would be declared unconstitutional because was it was an attempt on the part of the BN to do away with the policy upheld by the recent court case that the railroad worker is entitled for good reasons to choose the place of trial. He believed the court would say that it is not rational to allow the railroad to use the arm of the government to negate the public policy that the railroad worker has the right to choose the place of trial. Legislation which negates public policy is not constitutional.

He suggested that they could change the proposal to simply say they could file suit where the out-of-state corporation is doing business. He said that was the same language the federal law uses. He suggested another way to alter the bill for passage was to add another section which would state that if the defendant were an interstate railroad company, the plaintiff is entitled to sue him in any county where the railroad is doing business. He said that would make the bill constitutional.

John Kutzman, Attorney, said the vast majority of his practice has been representing injured railroad workers. He said the committee should be considering the potentially crippled railroad workers as the true opponents of the bill though they were not represented because they were not anticipating injury. He reviewed **EXHIBIT 6** in rebuttal of proponents' testimony. He thought the committee should weigh the fact that many of the corporations incorporate in other states like Delaware because

those courts have developed corporate law and have expertise in corporate matters. He refuted the suggestion that the cases should be sent to federal court to bear the costs. But he said the federal law specifically grants the injured worker the choice of filing in state or federal court.

He said the bill would do nothing to discourage people from bringing out-of-state FELA cases into Montana. He researched about FELA cases which had been heard by the Montana Supreme Court in the last five years. Of the ten he found, a number were not truly FELA cases and only four were appeals of FELA cases actually tried. He thought this was important to consider in light of the proponent's testimony that FELA cases pose a great burden on the courts of Cascade County. He added personal testimony to refute the contention of the burden on those courts. If the bill were adopted, the cases would move to Havre where there is only one judge versus the three judges in Great Falls who have developed a great deal of expertise in dealing with FELA claims.

Fran Marceau, United Transportation Union State Legislative Director, opposed SB 63 in written testimony and furnished the committee with a copy of a news article of March 6, 1995.
EXHIBITS 8 and 9

Dave Ditzel, Brotherhood of Local Locomotive Engineers, said they were asking for the same rights as the railroad company to sue where they are doing business. He said he wanted to bring attention to the fact that the courts had confirmed the special circumstance that railroad workers have to file their suits anywhere the railroad does business. He also referred to and distributed copies of **EXHIBIT 4**.

Mike Quinn, United Transportation Union, rose in opposition to SB 63.

Informational Testimony:

EXHIBIT 10 is included in opposition to SB 63.

EXHIBIT 11 was submitted following the hearing in presenting further arguments in rebuttal and explanation by **Mr. Thueson**.

EXHIBIT 12 registered Montana Trial Lawyers' Association's opposition to SB 63.

{Tape: 1; Side: B; Approx. Counter: 22.7.}

Questions From Committee Members and Responses:

REP. WILLIAM BOHARSKI asked if there was an explanation for the majority of the cases being heard in Cascade County.

SEN. CRIPPEN said the numbers of cases filed in Cascade County was an interesting point but did not state a reason.

REP. BOHARSKI asked for an explanation of the testimony that the majority of the people listed lived and had their injury in Hill County and yet their cases were filed in Cascade County. He said he counted only four who lived and had sustained their injury in Hill County while two-thirds of the cases were filed in Cascade County. He referred to **EXHIBIT 2** in his questions.

Mr. Thueson said they file them in Cascade County mainly because there are three judges there who know FELA law. Other reasons include Great Falls being the major medical community in the northern part of the state. Most of his clients "doctor" there and it is an advantage to the client because they can bring those doctors for live testimony to trial. They don't file in Hill County because of the pervasive influence of the railroad.

REP. BOHARSKI asked **Mr. Alke** the same question. He referred the question.

Mr. Berry answered that there was a perceived advantage for filing in Cascade County. He did not know if it was a real advantage. Many of the firms represented were out-of-state law firms who preferred to file in Cascade County either because of the juries or judges there. He had estimated the cost on a normal FELA case at about \$7,000 per trial.

CHAIRMAN CLARK resumed the chair.

REP. AUBYN CURTISS followed up on **EXHIBIT 2** by asking if they were all railroad cases.

Mr. Berry said they were all railroad cases on the list.

REP. CURTISS asked if the Thueson Firm listed was a Montana firm.

Mr. Thueson replied that they were his clients and affirmed that it is a Montana firm.

REP. CURTISS asked the sponsor if it was true that there are certain types of cases which by law must be filed in the first district court.

SEN. CRIPPEN said there were.

REP. CURTISS asked if there had been much effort recently in changing the venue for those particular cases.

SEN. CRIPPEN answered, "Not to my knowledge."

REP. DEB KOTTEL clarified the company represented by **Mr. Shanahan** and that it was incorporated in Delaware and further clarified that corporations can have dual citizenship.

Mr. Shanahan said that depending on federal court procedures that was correct.

REP. KOTTEL asked if the corporation he represented had any operations in Delaware.

Mr. Shanahan said Delaware had several tax and securities features which traditionally were more favorable and Delaware had tailored its laws to attract corporate headquarters. So, many corporations had headquarters there while doing business elsewhere.

REP. KOTTEL re-asked if the corporation had no active business in Delaware, but chooses Delaware to incorporate because it is known to have pro-management corporate laws on its books and there is an advantage to the corporation to do that.

Mr. Shanahan said that was right.

REP. KOTTEL asked if the corporation could have chosen to incorporate in Montana.

Mr. Shanahan said it could have but it had another organizational structure and is now an independent public corporation and was a joint venture with a California and Colorado corporation.

REP. KOTTEL asked **Mr. Allen** if he represented a wood products corporation which is incorporated and headquartered in another state, but its only operations are in Montana.

Mr. Allen said that was correct.

REP. KOTTEL asked if this corporation chose not to incorporate in Montana even though their only business is in Montana.

Mr. Allen said they were originally headquartered in California and it remains there, but within the last two years had sold off their other mill operations.

REP. KOTTEL re-asked the question.

Mr. Allen said their whole structure had changed. It started out in another state, they simply had not changed it because it has only been three or four months since they sold the last mill in another state.

REP. KOTTEL asked if he knew of any plans to change to their articles of incorporation to the state of Montana.

Mr. Allen said they were in the process of trying to sell it to someone else at the present time.

REP. KOTTEL discussed the beginnings of FELA as being because the work life of railroad workers was so drastically shortened by their jobs.

Mr. Judge said that he did not understand it that way. He said he understood FELA came about because of the type of job the workers had which currently put them in exchange from state to state across the country and unless they belonged to a workers compensation system which was established in each of the states they operated in, they needed to go to something more standardized for the workers.

REP. KOTTEL asked if it was correct that railroad workers are subject to relocate at any time.

Mr. Judge said that from his perspective that was correct.

REP. KOTTEL asked the sponsor if this was a BN bill.

SEN. CRIPPEN answered, "This bill deals with all out-of-state corporations. This is my bill....."

REP. KOTTEL stated, "Because railroads are under special federal statutes and there is historically a reason for allowing increased rights of venue, would you consider it a friendly amendment to exclude railroads from SB 63 and therefore SB 63 would deal with the problem of out-of-state corporations and I think that would clearly make it constitutional under the Montana State Supreme Court. Would you consider that a friendly amendment?"

SEN. CRIPPEN said he would not and REP. KOTTEL asked him why not.

SEN. CRIPPEN asked, "Why?"

REP. KOTTEL stated these reasons:

1. Because we have a federal statute, FELA, which was put in place because of unequal bargaining power between the parties, and
2. Because of the recent supreme court decision which talks to the issue of railroad workers and the right to have open venue across the state.

She asked, with those reasons, what the problem would be to exclude the railroad from the bill.

SEN. CRIPPEN said the problem was simply one of fairness.

REP. KOTTEL referred to the list of lawsuits filed in Montana (EXHIBIT 2) and asked if the sponsor was familiar with it. He had seen it, but was not familiar with it.

REP. KOTTEL asked **Mr. Berry** for details on the list's headings as referring to the federal court location.

Mr. Berry said they had wanted to make a distinction between federal and state courts.

REP. KOTTEL asked, "So when you are looking at the vast number of cases having to do with filed in Cascade County, this bill would in no way affect those cases filed before the federal district court in the sense that these people would not....."

Mr. Berry answered, "Under FELA they are entitled to file in state or federal courts and they could continue to file in federal court if they so chose."

REP. KOTTEL said she saw a number of settlement status as "Settled." She concluded from that there is no cost to the county for a trial and they were sometimes settled following the filing of the complaint.

Mr. Berry said the majority of civil cases in their entirety including FELA cases are settled before they go to trial. There are costs associated with filing which are very hard to calculate.

REP. KOTTEL said they did not hear from the eighth judicial district or county commissioners asking to be eliminated. She asked if they would consider it a friendly amendment to substitute the word, "eighth," for "first."

Mr. Berry said he would not.

REP. KOTTEL asked, "Why?"

Mr. Berry responded that he had the same question, "Why?"

REP. KOTTEL answered, "Because you'd want to limit what you say might be harassment techniques of pulling out-of-state corporations all over the state of Montana; you want to have venue in set locations and so you put the first judicial district as an alternative. Let's put the eighth in; that appears to be where many of the lawsuits are currently filed, it does limit the range of venue so it does all the things that the first judicial district does except (1) the first judicial district doesn't want it and (2) the eighth judicial district is not opposed to having those cases. That's the why."

Mr. Berry said the first judicial district was added for only one reason. The original drafting of the bill would reveal that it mentions the principal place of business which is commonly the determinant for residency. "The opponents of the bill said that was too limiting, that the principle place of business of BN would be Havre. So I suggested that the county of the resident agent, which most out-of-state corporations use CT Corp. which is

in Helena--I believe they have an office in Billings also--to receive service. The opponents said, 'That's well and good, but you will be a resident to Havre or Ekalaka, where it would be unfair.' So I said let's pick an impartial place commonly used by the legislature in the first judicial district." That's how the first judicial district was included.

REP. KOTTEL asked if he was saying that they just chose the first if they were impartial. She asked why they didn't chose the eighth, "or don't you feel they are not impartial."

Mr. Berry said he did not say that, but had said that the first judicial district is commonly used by the legislature in many other parts of the code and that was why it was chosen, for consistency purposes.

REP. KOTTEL asked, "It's not mandated by law to use the first judicial district, is it?"

Mr. Berry asked if she was talking about the plaintiff or the legislature.

REP. KOTTEL answered, "The legislature."

Mr. Berry responded, "No, the legislature determines the venue."

REP. KOTTEL clarified that they were talking about venue and not jurisdiction so that any judicial district has jurisdiction.

Mr. Berry affirmed that they were talking about venue.

REP. ANDERSON asked **Mr. Berry** to address the testimony that this bill would be unconstitutional because it is public policy to allow those people to bring their case in any forum.

Mr. Berry disagreed with that characterization of the case [the supreme court case]. He saw the case in just the opposite way in that filings cannot be restricted by non-Montana citizens in the way that **Mr. Thueson** stated. He said that the case which was referred to was a common-law principle, Forum Non Conveniens, which means a court can move a case if they think it is not a good place to have the trial. In the particular case referred to, the court said Forum Non Conveniens was not applicable to it or to other cases. He said that Montana is the only state he was aware of that utilizes that principle. Most states when faced with the kinds of things seen on the list (**EXHIBIT 2**) would grant a motion called a Forum Non Conveniens and put the case in its proper venue. The Montana courts have said that under the Montana Constitution an out-of-state corporation can be sued anywhere in the state. He cited how cases which involved an injury in Colorado being filed in Nebraska where a motion to Forum Non Conveniens was filed. Then Nebraska kicked it out saying it was a Colorado case and then it was filed in Cascade

County in Montana and the courts in Montana will not kick those kinds of cases out.

REP. ANDERSON asked him to address the claim that the nonrailroad corporations can have the venue changed.

Mr. Berry said that was true if there was complete diversity. In most of the cases they have experienced, the plaintiff just merely adds a Montana citizen or an employee of the company to thwart the diversity argument and then the case cannot be removed to a federal court.

REP. ANDERSON pointed out that the Thueson Law Firm was listed on 15 of the cases filed in the last two years. Seven of those came from Hill County and the rest from other counties were all filed in Cascade County. He asked **Mr. Thueson**, "Is it not true that you filed those in Cascade County because you felt the outcome would be more advantageous to you and the plaintiff in that county?"

Mr. Thueson said he understood that **REP. ANDERSON** was saying that he had a personal stake in it and so was trying to defeat it because of that.

REP. ANDERSON said he was asking if he felt he would get a better outcome in Cascade County.

Mr. Thueson answered, "Yes, sir, I do because of the pervasive influence that BN has in Havre where I have most of my clients."

REP. ANDERSON asked if it wasn't also true that most of the people who are injured in Havre have as prospective jurors their friends and neighbors.

Mr. Thueson replied that that was true, but the problem was that their friends and neighbors rely on BN directly or indirectly for their livelihood which made it difficult to get a fair trial.

REP. ANDERSON asked if he had ever tried a case in Hill County.

Mr. Thueson said he had never tried a railroad case in Havre, Montana.

REP. ANDERSON asked about the taxpayers in Cascade County who pay for those cases and if he had taken a poll of them to see what they felt about it.

Mr. Thueson said that some of the petitions were from people in Cascade County. He thought that more pervasive and more to the point was that in the Senate Judiciary the Cascade delegation voted against this bill. He thought they would be the last ones to put a new burden on the taxpayer. With most of the cases coming from out of state with out-of-state attorneys, he felt

there should be some controls on abuses on all attorneys whether out-of-state or not.

REP. ANDERSON asked if he was suggesting that those cases coming from out of state should be limited to venues listed in the bill.

Mr. Thueson said he was not suggesting that. He said he was suggesting with regard to railroad workers, the Montana law be consistent and perhaps in the same language as the federal law so that this bill would not be subject to constitutional attack and so that the railroad workers could choose a forum away from the railroad's influence.

REP. ANDERSON asked for the average cost of a trial in Cascade County to the taxpayers for those railroad cases.

Mr. Thueson said it probably would be the cost of impaneling the jury. He noticed that the railroad indicated that 15% of their cases go to trial. He said he did not know where they got those statistics as he had not tried a FELA case in over two and one-half years in a Cascade County court and he said he probably tries as many or more than anyone. I did not think they have more than one or two per year on the average. The cost would probably be \$15,000 in jury costs per year.

REP. ANDERSON returned to a previously asked question, "Do you feel you can get a better result in Cascade County than in other forums in the state?"

Mr. Thueson answered, "I think that Cascade County is the county that I am familiar with because I represent primarily railroaders out of Havre, the county where my clients go for medical treatment. I do know the judges are, as Mr. Kutzman indicated, sophisticated in FELA and I can get a fairly prompt recovery for my clients in Cascade County.

REP. ANDERSON asked about the cases on the list from Yellowstone County and Flathead County which were also filed in Cascade County.

Mr. Thueson denied having any cases in Yellowstone or having tried a case in Yellowstone County.

REP. ANDERSON said he was referring to it having been taken to Cascade County and why the doctors, etc. were located in Yellowstone County with the case filed in Cascade County.

Mr. Thueson said he did not have any clients in Yellowstone County.

REP. ANDERSON said the injury occurred in Yellowstone County.

Mr. Thueson said it was not his case.

REP. ANDERSON asked if it wasn't possible for medical personnel and the people who testify on his behalf to also travel to a forum other than where they are located.

Mr. Thueson said it was, but thought for a practical matter they consider doctors' busy schedules, and their costs for travel and time.

REP. ANDERSON asked if BN was reducing its force and moving people for the purpose of changing where they can bring trial.

Mr. Thueson explained that he was saying that he was trying to juxtaposition the fact that the Montana railroad workers and that no legislature should give special favors to anyone and certainly not to a corporation which has been known to throw hundreds of people out of work. He said that he understood that as a result of the merger they would be taking 60 more jobs out of the Havre area. In closing branch lines, BN had not shown a lot of consideration for the welfare of people in Montana and that they were funding their merger by raising shipping rates in Montana at the same time asking this legislature to help them against people they had injured. He said if it was a question of fairness, it was not a corporation which should be coming asking for a change in the law.

REP. ANDERSON said he still did not see any nexus between a rational business decision on BN's part and in a venue bill.

Mr. Thueson said his point was that though they may have made a good business decision they had not shown a lot of consideration for the welfare of many Montanan's whether railroad workers, farmers, ranchers or others. He did not think they should be asking the legislature to hurt Montanan's with this kind of legislation to benefit them and that it was not a rational business decision for this legislature to make.

REP. ANDERSON said he had still failed to make a nexus and commented that it seemed that he was overlooking the other Montanan's who are not injured railroad workers, but are in other forms of business and shareholders in all sorts of corporations. He thought it was inaccurate of him to classify Montanan's simply as people who were injured workers and the corporation was against them.

Mr. Thueson said he did represent business people and would hope that Montanan's would take into consideration the people they employ. He was saying that the BN had not always done well over the state. He apologized if he had come across as anti-business or anti-employer.

{Tape: 2; Side: A}

REP. CLIFF TREXLER asked how hard it is to get a change of venue when it causes some sort of inconvenience or it is felt there would be an unfair trial.

Mr. Alke replied that in a civil context it is essentially to get a change of venue. A change of venue is permitted in a criminal context under very limited situations. But he said to keep in mind that is the rule for a lawsuit between Montanan's. He did not understand how the opponents could say that they were being unfair because it is an out-of-state corporation and can't have the option of going to Cascade County. He said they can't go to Cascade under the example which was given unless it is an out-of-state corporation as the defendant. If they are worried about Montanan's, he asked why it would be fair for the man in Augusta to travel to Helena but unfair if it is against an out-of-state corporation.

REP. TREXLER said the list showed that 22 of the 27 court cases which were settled were settled in Cascade County and the rest were settled in Yellowstone County and no settlements in any other counties.

Mr. Alke cleared the record by saying that he did not represent BN and did not know FELA questions and did not know the answer to the question.

REP. BILL TASH asked if railroad workers now have open venues.

Mr. Alke said that he thought the point needing clarification was that it had been suggested that under the Montana Supreme Court decision it is a matter of constitutional law that a railroad worker has a choice of any of the 56 counties. The opponents said this bill would be unconstitutional (inaudible). He said that was absolutely and categorically untrue. The case which went to the supreme court was a Wyoming railroad employee who was sprayed with herbicide in the state of Wyoming and he filed a lawsuit in Cascade County. The railroad moved for the court to apply the principle of Forum Non Conveniens. The supreme court said that would be unconstitutional and would deny the out-of-state plaintiff the right to access to Montana courts. Because he was from Wyoming, if the doctrine of Non Conveniens were applied, he would be totally excluded from all Montana courts because he wouldn't meet any of the other criteria for venue. He said that if the BN decision were taken to mean what the opponents say, they couldn't have a venue bill for anybody. The doctrine the supreme court relied on was the right of full legal redress which prohibits Montana from excluding a Wyoming plaintiff from the Montana courts. If that is construed to say that the right of full legal redress means that a plaintiff can't be stopped from choosing a county, that rule would apply to everybody and it would mean that they couldn't have venue statutes. This state has always had venue statutes and he said, "It is truly absurd for the opponents to suggest that that decision means that the state of Montana

cannot say where the forum will be after the out-of-state plaintiff is admitted to the Montana court system."

REP. KOTTEL asked a series of questions to make the point that FELA law is complex.

Mr. Alke said it actually is not particularly complex as a no-fault system.

REP. KOTTEL said her point was that lawyers have areas of specialty and if a person who does a lot of insurance defense work were to represent an insurance company, would he like to take that case in front of a judge who was a domestic relations judge or would he prefer to take his case to a judge who heard a lot of business law cases.

Mr. Alke responded that all Montana courts are courts of general jurisdiction. There are no specialty judges.

REP. KOTTEL said she understood that and was asking a hypothetical question and repeated the question.

Mr. Alke said he wanted the judge who was closest to his law office.

REP. KOTTEL asked if, when he brought in expert witnesses, he paid them by the hour.

Mr. Alke said that some experts on the plaintiff side do it on a contingent fee basis. He said she was correct that the most common way to compensate experts was by the hour. He agreed that doctors charged a lot per hour.

REP. KOTTEL said it made sense that paying a number of experts to travel would be costly. It made good logical business sense that if they were located in a town that they would try the case in that county.

Mr. Alke said he couldn't agree with that because evidence could always be presented by video tape and he did not think the venue choice should be determined on an unfair basis to accommodate the medical profession.

REP. KOTTEL did not think she was saying that it was to accommodate the medical profession, but as an accommodation for the working man who would have to pay the cost of that in pursuing their case against an out-of-state corporation.

Mr. Alke answered, "True, except as I said, you can simply do it by video tape deposition and avoid the cost of travel also."

REP. KOTTEL sought to clarify a question brought by **REP. ANDERSON** by pointing out that the plaintiff he referred to was injured in Yellowstone County but his residence was in Hill County. She

said that it was true that railroad people are on the road and might be injured anywhere in Montana, but it would not be convenient to get medical treatment at the location of the injury.

Mr. Thueson said it was a railroad locomotive engineer and they travel all over the place. The injury may not occur where there is a doctor.

REP. KOTTEL asked if Hill County were closer to Yellowstone County or to Cascade County.

Mr. Thueson said that the local doctors in Havre send anyone who has a serious medical condition to Great Falls for care by specialists there because it is the closest place where they can get medical care.

REP. KOTTEL asked him to clarify anything that **Mr. Alke** might have misquoted.

Mr. Thueson said that FELA is not a no-fault system. It is a "negligence" system. It must be proved that the railroad did something wrong.

Further, he sought to correct something **Mr. Alke** misquoted about the unconstitutionality of changing venue from every county. He said that they were saying that the federal law says that railroad workers can sue anywhere the railroad is doing business. The bill would take that right away from them and would give the railroad essentially the right to choose where they want the suit to be filed. They were saying that this bill would go too far and that unless they included that the railroad can be sued anywhere they are doing business it will be unconstitutional because it would negate decades of public policy at the detriment of the persons who are supposed to be protected by it.

REP. LINDA MC CULLOCH asked if **Mr. Berry** represented BN.

Mr. Berry said he did in this legislative process.

REP. MC CULLOCH asked about out-of-state railroad workers filing suit in Montana. She understood that the railroad companies could control the workers by transferring them to other states. She asked if it was possible that some of the losses by out-of-state workers which were filed were actually Montanan's who had been transplanted to other states.

Mr. Berry said it was theoretically possible, but the movement of labor forces was covered under their labor contracts. That would determine their seniority districts and they bid on jobs. He said, "The railroad can't, at its own discretion move people from one place to another."

REP. MC CULLOCH asked the same question from **Mr. Ditzel**.

Mr. Ditzel said, "Oh, yes, you bet they can move us around." He said once they move them, the labor contracts come into play and then they can make a move. The ones who are left after a reduction in force, closed a place down or have walked out of the state can exercise the seniority once they have been moved.

REP. DANIEL MC GEE in referring to EXHIBIT 2 asked if there was a problem with the court system; i.e., the attitude or the complexion or with some issue, in Cascade County versus other counties in the state. He wanted the bottom line.

Mr. Berry said the bottom line was that there is a perception, whether real or not, that there is an advantage to filing a tort action in Great Falls.

{Tape: 2; Side: A; Approx. Counter: 19.6}

Closing by Sponsor:

SEN. CRIPPEN rebutted the comments of the opponents in his closing. He said the only defense they have is to call it a bill for the wealthy rather than to focus on the issues. He suggested that they examine the cases to see how many doctors from Great Falls are actually involved in them. He said they want to go to Great Falls because they can get a favorable hearing in those courts. They don't want to go to Great Falls to file in federal court because they won't get the verdicts they expect from the district courts. He said that if they found a liberal court in another county, they would move to those areas without consideration of having to transport witnesses. The sponsor objected strongly to the allegation that SB 63 is a BN bill and the inference that he is a "BN lackey." He said the bill is a case of fairness and has nothing to do with where the corporation is incorporated. He said that the only place in the entire law where a Montana plaintiff can file a lawsuit against a Montana defendant either in the county where the tort was committed or in the county where the defendant resides. He said that the opponents ignore that fact and it is that kind of attitude which will take Montana out of the mainstream because of demonstrating a double standard of fairness for Montana residents and nonresidents. He said the bill should be examined from the standpoint of fairness to all parties involved.

HEARING ON SJR 10

Opening Statement by Sponsor:

SEN. ETHEL HARDING, SD 37, had received advice in bringing SJR 10 to the legislature for consideration because of her personal involvement as the mother of a daughter who was murdered 21 years previously. The murderer has been on death row for 20 years and in her search to find a way to limit appeals to a reasonable number or to give some relief on the length of time in a

turnaround on appeal. This resolution would request of Congress to divide the Ninth Circuit Court of Appeals so that Montana and neighboring states would not have to wait on appeals or compete with California, Arizona and Nevada. She distributed and described information which had been supplied by **SEN. CONRAD BURNS**. She said the information would demonstrate the need for the proposed division. The resolution included a request to appoint a Montana judge to the court. **EXHIBIT 13**

Proponents' Testimony:

None

Informational Testimony:

Chris Tweeten, Department of Justice, appeared to give information with regard to the appeals process and stated that the Department of Justice took no position with respect to the portion of the resolution that recommended the dividing the Ninth Circuit Court of Appeals though there were arguments which would indicate that it might serve the needs better.

They strongly supported the portion of the resolution which urged the President to fill one of the vacancies that presently exists on the Ninth Circuit Court of Appeals with a Montana lawyer. He said an advantage to having a resident judge on the circuit court would make it possible to bring the court to Montana to hold hearings from time to time. The last judge appointed to that court has not resided full time in Montana for many years.

He discussed some of the caseload statistics which suggested a problem which the sponsor was pointing out. They felt reason for the large number of criminal cases filed per judge (representing the third highest criminal caseload of any of the federal circuits) was because the ninth circuit shares about 1,000 miles of border with Mexico. If the court were divided as is suggested, one half of it would not have to handle that large caseload associated with illegal alien traffic. The ninth circuit is twelfth of the thirteen with respect to the median time between the filing of the case and the time when that case is ultimately disposed of. He thought that the size of the caseload was the primary reason.

He discussed the history behind the division of the circuit courts as well as the commonality of Montana with states like Idaho, Oregon, Washington and Alaska rather than with California, Arizona and Nevada. He did not have an opinion of the affect that would have on a different character in the court should it be divided. He addressed an aspect of the Ninth Circuit Court of Appeals which causes the Attorney General's office problems in the area of ruling. The Ninth Circuit Court has adopted certain local rules dealing with the death penalty which have been challenged by several death penalty states including Montana because of some provision which they believe exceed the power of

the court of appeals and contravenes federal statute. He was not sure that dividing the Ninth Circuit Court of Appeals would solve any of those problems. One disadvantage of being located within the Ninth Circuit Court is that it is dominated by the state of California. Montana does not have a strong voice in the issues.

{Tape: 2; Side: A; Approx. Counter: 49.3}

Opponents' Testimony:

Ron Waterman, Attorney, distributed a letter from Chief Judge Paul Hatfield which expressed some oppositional views on the proposition of the division of the circuit. **EXHIBIT 14** He gave some history of himself as background for his opposition to SJR 10. He said that in this instance the adage, "if it ain't broke, don't fix it," was applicable. He said that there had been grounds of support laid down for the division of the circuit courts which are:

1. Congeniality among the circuit members,
2. Questions about the success of the circuit in following its own precedents, and
3. How well, generally, it functions.

He said in applying those tests to the ninth circuit, it does not warrant or merit any division. He said the congeniality is the example among the circuit courts. Because of its size it has taught other circuits how it is that they need to identify, track and follow the circuit's authority. With respect to the timeliness of appeals, he believed they stood reasonably well in turnaround time. He refuted the argument that the turnaround time between the notice of appeal to the time when a case is closed is lagging by saying that the largest amount of the time in the two-year period is consumed by the preparation of the transcript and the filing and submission of the briefs by the attorneys.

He said that there had been four models suggested in the division of the circuit and one of those is the proposal in SJR 10 (called the northern tier model). He said of the four, this one would be the least likely to be adopted because the new twelfth circuit would become the second smallest circuit in the United States behind only the first circuit in the numbers of cases docketed for filing. He said that would not be the overall solution of the problem and least likely for Congress to adopt partially because it would remove only about 20% of the docketed cases at a large cost.

He joined the sponsor in the proposition that another Montanan be appointed to one of the three vacancies on the Ninth Circuit Court of Appeals, but submitted that this resolution was not the

right vehicle to accomplish that because it would divert the attention from a meritorious request.

John Sullivan, Attorney, opposed SJR 10 because he believed it was troublesome in that it requested that the President appoint a Montana judge to the federal circuit court of appeals. He felt this was an unintentional slight to the sitting Montana judge, Judge Browning, who had been there since 1960. He believed the wording should be changed to "another" Montana judge. He felt the other issue addressed in the resolution would obscure the need for an additional Montana judge on the court. If the resolution were to be adopted, he believed the possibility would be eliminated altogether. He said it was a gross misperception that the court is now made up of an overbalance in liberal judges since the majority of judges now sitting on that court had been appointed by Republican presidents.

Russell Hill, Montana Trial Lawyers' Association (MTLA), rose in opposition to the resolution.

Questions From Committee Members and Responses:

REP. CHRIS AHNER asked the sponsor how long the person who murdered her daughter had been on death row and how many appeals he had had and when the crime had been committed.

SEN. HARDING answered, "Since January of '75." She said she thought he had had five turnaround appeals. The crime was committed on January 21, 1974.

REP. AHNER questioned **Mr. Waterman's** testimony that the Ninth Circuit Court of Appeals is a leader in timeliness in appeals. She asked that he address the timeliness in the appeals in that particular case.

Mr. Waterman said he was not an attorney of record in that case and so could not give specifics. He said it had gone to the United States Supreme Court on several occasions and it was there that it was reversed for a hearing.

{Tape: 2; Side: B}

REP. BILL CAREY asked what advice could be given to this legislative body to secure a Montana judge.

Mr. Waterman suggested that the committee could propose a friendly amendment to SJR 10 to delete all of the provisions except that on page 3, lines 17 and 18.

REP. CAREY asked if they should delete all the "Whereas's."

Mr. Waterman said he would delete everything except the proposition that another Montanan be appointed to the ninth circuit.

REP. BOHARSKI asked the sponsor if she was aware of the "another language."

SEN. HARDING said her answer to it was that Attorney General Joe Mazurek was the one who suggested the resolution and had mentioned that Montana had a judge on the court, but that it did not appear that, actually he was a Montana judge even though he had originated in Montana because he had not lived here for many years. There was no harm intended in the wording and she said it was an oversight.

REP. BOHARSKI asked if this came from the Attorney General.

SEN. HARDING said that he had said to her, "We need a Montana judge on the court."

REP. LIZ SMITH inquired if the positions were appointed on a rotation basis or a priority basis.

Mr. Waterman said the question addressed an issue which had become a highlight in some of the political process which goes on in the Congress in interaction between the President and the approval of the Congress. There are presently three vacancies on the court with two having come open within the last six months. He described the process whereby judges are appointed and could not answer why it had taken as long as it has to fill some of those vacancies. One of the vacancies has existed since President Bush was in office.

REP. SMITH asked if each of the judges writes an opinion on each appeal.

Mr. Waterman described the process of the panels made up of three members and how they heard the appeals.

REP. SMITH asked for the rationale in reducing the number of judges by extending another district which would mean losing the three vacancies.

Mr. Waterman said that if the northern tier model were applied, Montana would be in the new twelfth circuit which would be the second smallest circuit court. He said the first circuit which is smallest has seven circuit judges. In the new northern tier twelfth circuit, there would be 12 judicial positions created. He said when the fifth circuit was divided, those judges who had been on the fifth circuit but who lived in other states that went to the eleventh circuit were offered the opportunity to move to the eleventh circuit. If that same circumstance occurred with the split of the ninth circuit, they would have more than seven judges who would move to the new circuit. They would fill those vacancies. More vacancies would then occur in the Ninth Circuit.

REP. SMITH asked if having the three current vacancies slows down the appeals process.

Mr. Waterman said that from having served as a lawyer representative, there is a need for every one of those positions to be filled on a full-time basis. The current lag in the appellant process has to do with the fact that there are vacancies.

REP. LOREN SOFT asked what area the first circuit includes.

Mr. Waterman said it is known as the New England Circuit including Massachusetts, Vermont, New Hampshire and Maine.

REP. SOFT asked about the construction costs of a new facility to house a new district.

Mr. Waterman said that the construction of a federal courtroom space is extremely expensive. He had repeated the figures he had projected for the construction of a 20-story building as well as providing for support staff, libraries as well as three courtrooms probably located in Seattle or Portland where it is expensive to build. In the remodeling and restructuring of the court facility in San Francisco following the 1989 earthquake, \$100 million had been allocated.

REP. SOFT asked if the cost of construction and cost of operation would be divided among the states within the district and if federal dollars would be included.

Mr. Waterman said the moneys would be appropriated out of the Congress. States would not contribute at all toward the construction of any of the federal court buildings.

REP. SOFT asked about the operating costs.

Mr. Waterman said the same would be true of those costs that they were appropriated through the Congress to the judicial conferences and then down to the individual circuits and ultimately to the districts.

REP. CURTISS recalled the three primary reasons for considering a division of the circuits. She said it looked as if the ninth circuit is costing more per people served and as if it has a disproportionate caseload relative to what is carried by other courts. She asked if it is really functioning well.

Mr. Waterman explained that the ninth circuit is unique in that it is very large because of its inclusion of California. He had not examined how much is spent in handling appeals. He explained the general functioning of the circuit and believed it does a reasonably efficient and effective job. He said that had been innovative in meeting their caseload needs.

REP. TASH asked if the court only convenes in San Francisco.

Mr. Waterman answered that the court sits in a variety of places and does not designate or permit convening in only one area. Because of the amount of business before it, it regularly breaks out the court of 28 into panels of three which sit in a variety of locations and hear appeals. There is an opportunity if there is a disagreement with the decision of a panel to request for the court to hold a hearing which would represent 13 members of the court and under that case, it would only sit in California because the facility is needed to house that 13-member court. But there is nothing to prohibit them from holding that hearing in Helena, Montana, if they so chose.

REP. TASH asked if that would be an option in regards to another Montana judge recommendation and could it be worded, "a resident Montana judge."

Mr. Waterman said with current communications, the need that was once there for the judges to reside in the area near the court is no longer a requirement. Other judges maintain chambers in their own areas and travel to where the court sits. He envisioned that a new judge appointed would continue to follow the current practice.

REP. TASH asked if when necessary they can participate in the panel through telecommunications.

Mr. Waterman said there were current studies at the United States Judicial Conference level to see if telecommunications can be utilized to avoid some of the expenses.

CHAIRMAN CLARK asked if Judge Browning was living in Montana when he was appointed to the court.

Mr. Waterman said he was not. At the time of the appointment, he was the Clerk of the U. S. Supreme Court and residing in Washington, D. C.

CHAIRMAN CLARK asked if he was a Montana resident.

Mr. Waterman said he understood that he was a Montana resident and is and will probably always be a Montana resident.

CHAIRMAN CLARK asked if he is no longer a resident of Montana.

Mr. Waterman said Judge Browning surrendered his residency in Montana several years ago as he made efforts to try to open up an opportunity for another Montanan to be appointed to the circuit. While he carried Montana residency, Montana was never in consideration for another judge so he purposefully surrendered his residency.

Closing by Sponsor:

SEN. HARDING made closing comments that under the current districting, this circuit ranks as number 12 out of 13 in the turnaround in criminal case appeals. She contended that Montana is not getting a fair shake. When Justice Harrison promoted this resolution to her, he said this was what was needed to get help for Montana. There was no inference in the bill or in its inception about the make-up of the current court in terms of liberals. There would be no change in the judges except for the request for a Montana judge. She addressed the issue of the costs. She concluded by quoting, "Justice delayed is justice denied."

HEARING ON SJR 12Opening Statement by Sponsor:

SEN. ETHEL HARDING, SD 37, introduced SJR 12 as meeting the other criteria she had been looking for in limiting appeals in habeas corpus petitions. She presented statistics to support the resolution.

{Tape: 2; Side: B; Approx. Counter: 41.4}

Proponents' Testimony:

Chris Tweeten, Department of Justice, said he did not believe there was any room for debate on this resolution. The need to bring some finality to federal court review of petitions was without doubt. He supported his remarks with statistics from the Montana caseload.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. TASH asked Mr. Tweeten how Montana compared with other states in respect to these types of appeals.

Mr. Tweeten said he had not seen a comparison in terms of the numbers of cases which were coming up in Montana, but did know that it is a nationwide problem.

REP. MC GEE asked for a definition of habeas corpus.

Mr. Tweeten explained that habeas corpus means, "let's have a body." It means that the prison warden must produce the body of the person in custody before the court and to justify the legality of the incarceration.

Closing by Sponsor:

SEN. HARDING closed by saying that they were asking for justice throughout the court system. She felt the passage of this resolution would help to restore faith in the justice system.

EXECUTIVE ACTION ON SJR 12

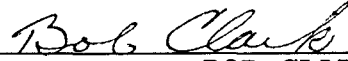
Motion/Vote: REP. KOTTEL MOVED THAT SRJ 12 BE CONCURRED IN. The motion carried unanimously.

Motion: REP. CAREY MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12 NOON.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ 9:45	✓	✓
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes		✓	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 8:30	✓	
Rep. Debbie Shea	✓ 8:35	✓	
Rep. Liz Smith	✓ 8:45	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Joint Resolution 12** (third reading copy -- blue) **be concurred in.**

Signed: _____

Bob Clark
Bob Clark, Chair

Carried by: Rep. Mercer

Committee Vote:
Yes 18, No 0

561316SC.Hbk

TESTIMONY IN SUPPORT OF SB-63
Before the
House Judiciary Committee

My name is Mark Petersmeyer and I live in Libby, Montana. I am an engineer, employed by Noranda Minerals Corp. as Project Director for their proposed copper/silver mine in Lincoln County, known as the Montanore Project. Noranda Minerals Corp. is a U.S. company incorporated in Delaware, and is therefore classified as an out-of-state corporation.

The current law lays out the proper venue for defendants in tort cases. For corporations, the proper venue is the county where the tort was committed or the county in which the corporation has its principal place of business. The historical basis in Montana venue law is that a tort action should be heard in a location that has some connection with the parties and/or subject matter of dispute.

In determining venue, Montana statutes do not distinguish between state corporations organized in Montana and those organized outside Montana. In 1924, Montana Supreme Court ruled that out-of-state companies cannot reside in Montana, which is legal fiction. Even though Noranda Minerals Corp., is chartered in Delaware, it has invested tens of millions in Lincoln County; it has no operations elsewhere. Noranda owns property in Lincoln County, our offices and employees are in Lincoln County and our main business is in Lincoln County. If we have a residence anywhere, that place is Lincoln County, but the Supreme Court says otherwise. By ruling that out-of-state companies have no residence, the Supreme Court opened the door for the present situation – the only proper place for a tort action against non-resident companies like Noranda is wherever plaintiff's attorney says it is.

The present situation is discriminatory. It treats out-of-state corporations like second-class citizens by effectively precluding them from arguing for a change in venue. Here is how it has affected Noranda:

Following a \$25 million excavation contract done in 1991, three separate tort cases were brought against Noranda by three of the contractor's employees. One is coming up shortly in which the plaintiff lives in Lincoln County, the tort occurred in Lincoln County and Noranda's operations are in Lincoln County, yet the case will be tried in Cascade County – only because we are incorporated out-of-state. Any Montana corporation would have been able to argue successfully for venue in Lincoln County. The ends of justice are not served by treating Noranda differently than Montana corporations.

Noranda has invested over \$100 million in the project to date, which may get into production, at the earliest, in 1999. We plan to invest an additional \$250 million to complete the work, much of which is planned to be done by contractors. Therefore, we will inevitably face other tort actions of the type we have already experienced. Let me make it clear that Noranda has no dispute with the undeniable right of anyone to file a tort action. Nor is this a "railroad" issue or a "big corporation" issue. What is at issue is that corporations such as Noranda are effectively denied the ability to argue venue, while Montana corporations, big and small have more control over where their torts are heard. This situation is not only unfair, but it is also bad for business because it harms the overall investment climate. When out-of-state firms are considering investment opportunities, this can only be viewed as a negative factor against Montana.

There may be more than one way to modify the law to provide fairness to out-of-state corporations. This is one of them. Noranda supports SB-63, and urges each member of this committee to do the same.

MWP/pr

A handwritten signature in cursive script, reading "M. W. Petersmeyer". The signature is written in black ink and is positioned to the right of the typed name "MWP/pr".

Cascade 15
Yellowstone 14

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OUTSIDE MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ALLARD LYLE	NORTH DAKOTA	ROOSEVELT	COLLINS FIRM	USDC	CASCADE	CV-93-123-GF-PGH	SETTLED
ASHKANNEJHAD AHMAD	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-94-527	SETTLED
BERG WILLIAM	WYOMING	WYOMING	YAEGER FIRM	STATE	YELLOWSTONE	DV-93-0167	SETTLED
BERGFELD KENNETH D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1034	SETTLED
DILLON TAY	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-829	SETTLED
EPPLE GARY D	NEBRASKA	WYOMING	ECKMAN FIRM	STATE	CASCADE	BDV-94-040	SETTLED
FERGUSON SUSAN/RANDALL	WYOMING	BIG HORN CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-66-BLG-RWA	SETTLED
GALLO RALPH	WYOMING	WYOMING	HARTELIUS FIRM	STATE	CASCADE	ADV-93-300	SETTLED
GITTINGS RICHARD E	MISSOURI	WYOMING	MORRISARD FIRM	STATE	CASCADE	BDV-94-234	SETTLED
GRAHAM ROCKY	NORTH DAKOTA	MISSOURI	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-225-BLG	SETTLED
JOHNSON LARRY D	TEXAS	FALLON CO. MT	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-1226	SETTLED
LAW PATRICK D	WYOMING	YELLOWSTONE CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-94-307	SETTLED
LEFFLER EDWIN D	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-645	SETTLED
LETEMPT GARY L	WYOMING	WASHINGTON	DOSHAN FIRM	STATE	CASCADE	ADV-93-798	SETTLED
MALONE BURL	WASHINGTON	WASHINGTON	HOYT FIRM	USDC	YELLOWSTONE	CV-94-097-BLG-JDS	SETTLED
MEEKER ROBERT	WYOMING	WASHINGTON	BURRIS DON	USDC	YELLOWSTONE	CV-93-115-BLG-JDS	SETTLED
MILLER NORMAN R	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-0014	SETTLED
MILLS JAMES L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-1241	SETTLED
MOORE LAURA L	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-423	SETTLED
MUCKLE JR JAMES A	NORTH DAKOTA	MULTIPLE ND	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-0368	SETTLED
NOYES COLONEL L	WYOMING	WYOMING	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-36-BLG-JDS	SETTLED
OLHEISER LESTER	NORTH DAKOTA	MULTIPLE MT/ND	YAEGER FIRM	STATE	CASCADE	CDV-93-892	SETTLED
PALATO LOUIE E	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	CDV-93-799	SETTLED
REINICK LESLIE	WYOMING	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-94-671	SETTLED
REVELL PAMELA M	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-94-302	SETTLED
ROBINSON JAMES C	ILLINOIS	SOUTH DAKOTA	MORRISARD FIRM	STATE	YELLOWSTONE	DV-93-213	SETTLED
ROTOLO JULIO	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	BDV-93-420	SETTLED
SAMS ANDREW L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-607	SETTLED
SCHUNWACHER TERRANCE	NORTH DAKOTA	DAWSON CO. MT	MORRISARD FIRM	STATE	CASCADE	ADV-94-314	SETTLED
SEARLS MARCUS	WASHINGTON	WASHINGTON	COLLINS FIRM	STATE	CASCADE	CV-93-164-M-CCL	SETTLED
SELIG TERRY D	WYOMING	WYOMING	STEPHENSON FIRM	USDC	MISSOULA	ADV-93-520	SETTLED
SOSA DOMINGO D	WYOMING	WYOMING	DOSHAN FIRM	STATE	CASCADE	DV-93-0285	SETTLED
STOREM JEROME M	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-012	SETTLED
THOMAS ROBERT A	WYOMING	WYOMING	MORRISARD FIRM	USDC	YELLOWSTONE	CV-94-31-BLG-RWA	SETTLED
WADDELL DEAN A	WYOMING	WYOMING	COLLINS FIRM	STATE	YELLOWSTONE	DV-94-237	SETTLED
WITTMAN RANDY L	WYOMING	WYOMING	MORRISARD FIRM	STATE	YELLOWSTONE	DV-94-323	SETTLED
YOUNG SAMUEL F	WASHINGTON	WASHINGTON	ROSE FIRM	STATE	YELLOWSTONE	CDV-93-145	SETTLED
			DEARDEN FIRM	STATE	CASCADE		SETTLED

EXHIBIT 2
DATE 3/10/95
SB 63

LAWSUITS FILED IN MONTANA 1993 AND 1994
PLAINTIFFS RESIDENTS OF MONTANA

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
ANDERSON BARRY	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-175-BLG-RWA	SETTLED
ANDERSON IVAN	FLATHEAD CO. MT	WASHINGTON	YAEGER FIRM	STATE	CASCADE	CDV-94-891	
ANDERSON ROGER D	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-30	
BARRETT JOHN L	HILL CO. MT	FLATHEAD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-718	SETTLED
BECK RANDY	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-93-146	
BECK THOMAS L	FLATHEAD CO. MT	FLATHEAD CO. MT	CONNER FIRM	STATE	CASCADE	BDV-93-289	
BERNDT STEVE	VALLEY CO. MT	NORTH DAKOTA	ROSE FIRM	USDC	YELLOWSTONE	CV-93-183-BLG-JDS	
BODNER EUGENE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-567	
BOOTH RONALD L	SHERIDAN CO. MT	ROOSEVELT	COLLINS FIRM	STATE	CASCADE	ADV-94-115	
BRADFORD JAMES D	FLATHEAD CO. MT	FLATHEAD CO. MT	BRICKER FIRM	USDC	MISSOULA	CV-93-142-M-CCL	
BRIEN FRANK	HILL CO. MT	HILL CO. MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-506	SETTLED
BROPHY MICHAEL L	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	STATE	YELLOWSTONE	DV-93-1000	SETTLED
BUNNELL BILL	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	CAVAN FIRM	STATE	YELLOWSTONE	DV-93-0616	
BURGERT DAVID E	FLATHEAD CO. MT	FLATHEAD CO. MT	MCGARVEY FIRM	STATE	FLATHEAD	DV-93-506B	
CAMPBELL WALTER D	BLAINE CO. MT	FLATHEAD CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-391	
CARTER GREGORY A	LINCOLN CO. MT	IDAHO	HARRISON FIRM	USDC	MISSOULA	CV-93-147-M-CCL	
CARTWRIGHT RONALD L	HILL CO. MT	HILL CO. MT	CURE FIRM	STATE	CASCADE	CDV-94-954	
CHURCH WESLEY D	HILL CO. MT	GLACIER CO. MT	HOYT FIRM	STATE	CASCADE	CDV-93-729	
COBB EDWARD	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-143	SETTLED
CONVERSE EDWIN F	HILL CO. MT	LIBERTY CO. MT	THUESON FIRM	STATE	CASCADE	BDV-93-392	SETTLED
CORNWELL LYNN & FAY	VALLEY CO. MT	VALLEY CO. MT	HURLY FIRM	STATE	VALLEY	19107	
CRESS KENT	DAWSON CO. MT	DAWSON CO. MT	LEWIS TOM	STATE	CASCADE	ADV-93-443	SETTLED
CURL PAMELA A	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-94-78-BLG-RWA	
DASSINGER ERNIE	ROSEBUD CO. MT	ROSEBUD CO. MT	HOYT JOHN	STATE	ROSEBUD	DV-93-28	
DEES PAUL R	HILL CO. MT	ROSEBUD CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-526	
DERRY JOHN	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-306	
DOBSON JERALD L	DAWSON CO. MT	DAWSON CO. MT	MORRISARD FIRM	USDC	YELLOWSTONE	CV-94-9-BLG-RWA	
DREW ALLAN E	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-035	SETTLED
DUNNIHO DAE F	YELLOWSTONE CO. MT	BIG HORN CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-93-496	
ERICKSON KELLY R	HILL CO. MT	HILL CO. MT	HOYT FIRM	STATE	CASCADE	BDV-93-599	
FARMER LEE	HILL CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-692	
FEENEY FRANK D	FLATHEAD CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	CDV-94-049	SETTLED
FISHER GARRETT L	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-640	
FRIEDE MATTHEW M	PONDERA CO. MT	TOOLE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-93-630	SETTLED
FRITZ RICHARD L	CASCADE CO. MT	CASCADE CO. MT	HOYT FIRM	STATE	CASCADE	ADV-94-367	
GOLDEN ROGER	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-769	SETTLED
GUERRERO SR ROBERT	YELLOWSTONE CO. MT	YELLOWSTONE CO. MT	STEPHENS FIRM	USDC	YELLOWSTONE	CV-94-100-BLG	
HAIGLER EUGENE W	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-507	
HALL THEODORE ROY	GLACIER CO. MT	GLACIER CO. MT	PRO SE	TRIBAL	BROWNING	94-CA-154	
HANSON ARLEN G	HILL CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	ADV-93-641	
HENDERSON JAMES P	CASCADE CO. MT	PONDERA CO. MT	CONNER FIRM	STATE	CASCADE	BDV-94-170	
HENZOG LARRY	FLATHEAD CO. MT	WEST GLACIER CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-970	
HITCHCOCK ALBERT	MISSOULA CO. MT	MISSOULA CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-79-M-CCL	
HOLMES JR HAROLD J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	DV-92-205	SETTLED
KEYES ROBERT J	CASCADE CO. MT	CASCADE CO. MT	COLLINS FIRM	STATE	CASCADE	CDV-93-476	
KLOBOFSKI JOHN	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-758	SETTLED
KNUDSEN LEONARD	CHOTEAU CO. MT	CASCADE CO. MT	HARTELIUS FIRM	STATE	CASCADE	ADV-93-505	
KOVARIK SANDRA	FLATHEAD CO. MT	FLATHEAD CO. MT	HOYT FIRM	USDC	CASCADE	CV-93-130-GF	

EXHIBIT 2

DATE 3-10-95

1 SB63

Plaintiff's Name	Plaintiff's Residence	Tort Location	Plaintiff's Attorney	Type of Court	County Where Case Filed	Cause #	Settlement Status
LARSON ROBERT	HILL CO. MT	HILL CO. MT	YAEGER FIRM	USDC	CASCADE	CV-94-63-GF-PCH	SETTLED
LASALLE LOGAN F	HILL CO. MT	TREASURE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-177-BLG-RWA	SETTLED
LUCKE ROBERT	FLATHEAD CO. MT	WEST GLACIER CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-277	SETTLED
MANEY PATRICK	HILL CO. MT	HILL CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-93-727	SETTLED
MARTZ JR FRANK	DAWSON CO. MT	DAWSON CO. MT	DOSHAN FIRM	STATE	CASCADE	CDV-93-048	SETTLED
MAVIS DENNIS	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-132	SETTLED
MILLER PERRY H	HILL CO. MT	TOOLE CO. MT	YAEGER FIRM	STATE	CASCADE	BDV-94-171	SETTLED
MILLER PERRY W	BLAINE CO. MT	HILL CO. MT	THOMPSON FIRM	STATE	CASCADE	BDV-93-639	SETTLED
MILLS DENNIS G	FLATHEAD CO. MT	FLATHEAD CO. MT	GROSHONG FIRM	STATE	CASCADE	CDV-93-781	SETTLED
NAYLOR JAMES D	CASCADE CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-296	SETTLED
NEUNANN WALDEMAR	FLATHEAD CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-94-69-BLG-RWA	SETTLED
NOEL FREDERICK B	FLATHEAD CO. MT	FLATHEAD CO. MT	BRICKER FIRM	STATE	CASCADE	ADV-94-304	SETTLED
OMVIG DOUGLAS L	VALLEY CO. MT	MULTIPLE MT/ND	BRICKER FIRM	STATE	CASCADE	DV-93-535	SETTLED
PEARCY NADINE	FLATHEAD CO. MT	FLATHEAD CO. MT	DEARDEN FIRM	STATE	FLATHEAD	DV-94-187R	SETTLED
PETERS DONALD L	FLATHEAD CO. MT	SHERIDAN CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-1226	SETTLED
RANBO STAN	CASCADE CO. MT	CASCADE CO. MT	THUESON FIRM	STATE	CASCADE	BDV-94-152	SETTLED
REDWOLF REDHORSE ET AL	BIG HORN CO. MT	BIG HORN CO. MT	BELUE FIRM	TRIBAL	BIG HORN	94-31	SETTLED
RICKETT RICHARD P	CUSTER CO. MT	ROSEBUD CO. MT	YAEGER FIRM	STATE	CASCADE	ADV-94-1095	SETTLED
RUNNEL GREGORY S	HILL CO. MT	LIBERTY CO. MT	BRICKER FIRM	STATE	YELLOWSTONE	DV-93-201	SETTLED
SAPP STEVE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	ADV-93-306	SETTLED
SCHAUB DANIEL J	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-998	SETTLED
SCHMID RON	PARK CO. MT	PARK CO. MT	HARTELIUS FIRM	STATE	YELLOWSTONE	CV-94-35-BLG-RWA	SETTLED
SCHWANTZ DONALD G	MISSOULA CO. MT	DEER LODGE CO. MT	KELLER FIRM	STATE	CASCADE	ADV-93-463	SETTLED
SHULUND DALE	HILL CO. MT	HILL CO. MT	DEARDEN FIRM	STATE	CASCADE	ADV-94-877	SETTLED
SONJU BRUCE	TOOLE CO. MT	PHILLIPS CO. MT	COLLINS FIRM	STATE	CASCADE	BDV-93-531	SETTLED
SORG KENT D	FLATHEAD CO. MT	FLATHEAD CO. MT	DOSHAN FIRM	STATE	CASCADE	BDV-94-303	SETTLED
SPRINGFIELD WILLIAM	BIG HORN CO. MT	BIG HORN CO. MT	LYNAUGH FIRM	TRIBAL	BIG HORN	94-341	SETTLED
SPRINKLE JONATHAN B	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-1018	SETTLED
STIFFARM JOE	HILL CO. MT	HILL CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-045-GF	SETTLED
TESKEY LARRY B	HILL CO. MT	HILL CO. MT	STEPHENSON FIRM	USDC	MISSOULA	CV-94-24-M-CCL	SETTLED
TESKEY ROBERT P	VALLEY CO. MT	HILL CO. MT	DOSHAN FIRM	STATE	CASCADE	ADV-93-397	SETTLED
TRETTZ ROBERT M	DAWSON CO. MT	MULTIPLE MT/ND	MORRISARD FIRM	USDC	YELLOWSTONE	CV-93-26-BLG-JDS	SETTLED
TURNER MARVIN	HILL CO. MT	RLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CV-93-256	SETTLED
VANKLEECK TOM	HILL CO. MT	YELLOWSTONE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-94-490	SETTLED
VICKERS BYRON	DAWSON CO. MT	PRAIRIE CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-224-BLG	SETTLED
VOSEN ROBERT L	HILL CO. MT	HILL CO. MT	BRICKER FIRM	USDC	YELLOWSTONE	CV-93-157-BLG-RWA	SETTLED
WABER JULIUS	DEER LODGE CO. MT	DEER LODGE CO. MT	JOHNSON FIRM	STATE	SILVER BOW	93-C-424	SETTLED
WAGNER ARCHIE	PHILLIPS CO. MT	NORTH DAKOTA	COLLINS FIRM	STATE	CASCADE	CDV-92-289	SETTLED
WARREN CLIFF	HILL CO. MT	BLAINE CO. MT	THUESON FIRM	STATE	CASCADE	CDV-93-252	SETTLED
WEAVER MOLLENE L	VALLEY CO. MT	VALLEY CO. MT	YAEGER FIRM	STATE	CASCADE	CDV-93-303	SETTLED
WHITE LARRY E	GLACIER CO. MT	MULTIPLE MT	HARTELIUS FIRM	STATE	CASCADE	CDV-93-737	SETTLED
WHITFORD DAVID	FLATHEAD CO. MT	FLATHEAD CO. MT	THUESON FIRM	STATE	CASCADE	ADV-94-943	SETTLED
YOUNG ETHAN V	DAWSON CO. MT	DAWSON CO. MT	COLLINS FIRM	USDC	YELLOWSTONE	CV-93-172-BLG	SETTLED

Troy Unit
D. K. Young
Manager

March 8, 1995

State of Montana
House Judiciary Committee

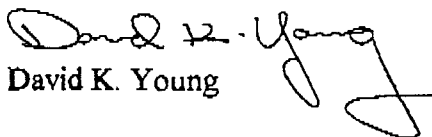
Dear Committee Members,

I would like to enter the following comments in support of Senate Bill 63.

As an employee of ASARCO Incorporated I am aware of the many potential legal actions that can occur against the company. It is my understanding that in the case of a company, such as Asarco, that is incorporated in the State of New Jersey there are no rights for the company in determining venue for possible tort action against the company. While other business and individuals have a say in the determination of venue, out of state companies do not. This seems to be discrimination against Asarco since the company does conduct an extensive amount of business in the state through considerable land holdings and operations. As a matter of fact Asarco has been in the state since the turn of the century providing jobs, buying goods and services, paying income and property taxes, paying gross proceeds taxes and other associated taxes. It would seem fair that the company should have the same rights as any other individual or company that conducts business in the state.

Thank-you for allowing me to comment on this important matter, and I hope you will consider the information that I have presented.

Sincerely,


David K. Young

■ GAZETTE OPINION

BN bill good for taxpayers

Save Montana courts for
Montana taxpayers

BURLINGTON NORTHERN is backing a reasonable bill in the Legislature.

Senate Bill 63 is an attempt to bring balance to a failure of federal law regarding injured railroad employees. The bonus is that the bill takes some onus off state taxpayers.

First, the background.

Injured railroad workers are compelled to go through an adversarial process to get compensation. They either negotiate a settlement or go to court.

Pat Keim, BN's director of government affairs, says the railroad seldom disputes the claimed injury. However, the amount of settlement sets both sides to singing the blues.

Because of a kink in federal law, Keim says, BN employees can file injury suits in any jurisdiction, regardless of where the employee lives or where the injury occurred. That sort of largess is not afforded most Americans.

It is natural, then, that the employees' attorneys seek jurisdictions where they believe they are likely to find a sympathetic ear and a history of large settlements. Among the favorites are Montana, Birmingham, Ala., and East St. Louis, Mo.

There is a bit of mid-state shuffling, too. BN workers injured within Montana tend to file suits in district courts in Yellowstone and Cascade counties.

Some injured employees file suits in federal courts in Yellowstone and Cascade counties, too, but the proposed state law would not affect those cases.

In 1993 and 1994, there were 13 BN cases filed in state district courts in Cascade County and 11 filed in Billings. In each case, the injury occurred neither in Montana nor did the injured worker live here.

Injury suits are often complex and time consuming. That means that Montana courts' calendars are being crowded for the convenience of people who neither pay taxes in this state nor have any interest in how cumbersome court calendars are.

That also means that Montana taxpayers are given the bill for these strangers. What could be stranger than that?

SB-63 holds that only people who reside in Montana or who were injured here can file injury compensation suits in this state.

That seems fair to railway workers. It seems even more fair to the taxpayers of this state. Certainly, legislators will agree and pass SB-63.

Our view

State must outlaw venue shopping

The issue: Cascade County is too popular a site for railroad injury trials that have nothing to do with us.

Our opinion: Legislators should limit where these trials can be held.

Cascade County is paying a price for its own generosity.

Over the years, we've become known as a place where a plaintiff could win a substantial award. As a result, Cascade County has become a mecca for trial attorneys, even when cases have nothing to do with us.

Now our courts are clogged with 106 railroad injury cases, and county taxpayers pay the bills for operating the courts.

Take last year, for example. Five cases filed against Burlington Northern in 1993 were on the court docket in 1994. Three were settled during the trial, but two others went to the jury — which awarded the plaintiffs \$675,000 in one case and \$850,000 in the other.

One of the cases involved a Montana wreck, but the other four were from Wyoming.

Total cost to Cascade County taxpayers for hosting these trials was nearly \$8,000.

The problem is that 56 lawsuits against Burlington Northern were filed here in 1993 alone, and there are 40 more pending from 1994.

It will take us years to work through this caseload, delaying local lawsuits.

One of the reasons is that Montana law permits venue shopping. This means lawyers can file a suit where they think they can win the biggest award, not merely in the jurisdiction where the accident happened, where the plaintiff lives, or where the company is headquartered.

The most profitable places to

Court cases

Here's a list of the number of cases filed against Burlington Northern Railroad in Cascade County over the past seven years.

1988.....	18
1989.....	35
1990.....	26
1991.....	43
1992.....	76
1993.....	56
1994.....	45

Source: Cascade County Clerk of Court

file have been Cascade and Yellowstone counties. Burlington Northern says 15 cases have been filed in Cascade and 14 in Yellowstone over the past two years in which railroad workers don't live in Montana, nor did the accidents take place here.

What to do?

The legislature should pass a law requiring that railroad injury cases can only be filed in a court where the injury occurred, where the worker lives, or where the company is headquartered.

Cascade County judges should refuse to hear cases that have nothing to do with Montana or Montanans, and the Supreme Court should back them up in declining to hear those cases.

Without some swift corrective action, Cascade County taxpayers are going to be paying a substantial price to host a bunch of lawsuits that really don't belong here.

No. 94-100

IN THE SUPREME COURT OF THE STATE OF MONTANA

1994

STATE OF MONTANA, EX REL.,
BURLINGTON NORTHERN RAILROAD
COMPANY, a corporation,
Relator,

-v-

THE DISTRICT COURT OF THE EIGHTH
JUDICIAL DISTRICT COURT, CASCADE COUNTY,
and HONORABLE JOHN M. MCCARVEL
Respondents.

FILED

MAR 2 1995

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

ORIGINAL PROCEEDING

COUNSEL OF RECORD:

For Relator:

Kurt W. Kroschel (argued), Dennis Nettiksimmons,
Kroschel & Yerger, Billings, Montana

For Plaintiff:

C. Marshall Friedman, St. Louis, Missouri, Lynn D.
Baker, Newton McCoy (argued), Hartelius, Ferguson &
Baker, Great Falls, Montana (Iddings)

For Third-Party Defendants:

Don M. Hayes, Herndon, Hartman, Sweeney & Halverson,
Billings, Montana (DuPont de Nemours & Co.); L.D.
Nybo, Nybo, Conklin & LeVeque, Great Falls, Montana
(SSI/Mobley Co.)

For Amici:

Randy Cox, Boone, Karlberg & Haddon, Missoula,
Montana, Sue Ann Love, Great Falls, Montana (Montana
Defense Trial Lawyers); Patricia O'Brien Cotter,
Cotter & Cotter, Great Falls, Montana, Lawrence
Anderson, Great Falls, Montana (Montana Trial
Lawyers Association); Robert M. Knight, Helena S.
Maclay, Knight, Maclay & Masar, Missoula, Montana

Heard: October 25, 1994

Submitted: October 25, 1994

Decided: March 2, 1995

The original of this document is stored at
the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

[Signature]
Clerk

EXHIBIT 5
DATE 3/10/95
SB 63

ANSWERS TO QUESTIONS
CONCERNING
SENATE BILL NO. 63

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

BURLINGTON NORTHERN RAILROAD
FACT SHEET - SB 63 - VENUE

WHAT IS VENUE?

Venue is the location at which a lawsuit can be filed. State law determines where a lawsuit can be filed and it varies by issue. For example, venue for a contract dispute is the county in which the defendant resides or the county in which the contract was to be performed (§25-2-121 MCA).

WHAT IS A TORT AND ITS VENUE?

Generally, a tort is an act that causes a personal injury. Currently, the venue for a tort lawsuit for an in-state corporation is the county in which the defendant resides or the county where the tort occurred. Current Montana law allows out-of-state corporations to be sued in any court of the plaintiff's choosing.

ANSWER: There is a good reason why Montanans have been given the right to sue out-of-state corporations in any county. Our history is replete with instances where companies have had a great deal of influence in the county where they reside and where the injury, coincidentally, normally occurs. Therefore, about 100 years ago, this legislature decided to give Montanans a broader choice of venue so that they could get a fair trial -- away from the influence of the corporation in the county where it resides. This is further explained in other materials provided to you.

THE PROBLEM

Because of Montana's liberal venue statute, tort litigation is being filed, not where the tort occurs or even where the plaintiff resides, but where the lawyer lives or believes the biggest damage award can be received. This is known as venue shopping. Even more incredible is that many cases are being filed in Montana's courts by residents of other states where the injury took place in other states.

ANSWER: Burlington's so-called "fact sheet" is incorrect. The Montana Supreme Court has stated for 35 years that the policies of federal law, dealing with suits by workers against the railroad, allows the worker to sue the railroad wherever it is "doing business." Why shouldn't a railroad worker be able to sue his own employer in any county where it is "doing business?" This is not "venue shopping," but merely a right that railroad workers have under long-standing law.

If anything is venue shopping, it is the results of Senate Bill 63, which allows the railroad to "shop" for the venue best suited to the railroad. Specifically,

the bill funnels most of the cases into Havre, Montana, BN's company town. Once the case is there, the railroad worker is not going to get a fair shake. Thus, when BN drafted this bill, it was forum shopping -- not the railroad worker, who simply wants to file suit where his employer is "doing business."

EXAMPLE

Noranda Minerals Corporation is developing a major gold mine near Libby, Montana (Lincoln County). Three individuals working for a subcontractor were injured. They lived in Lincoln County, the injuries took place in Lincoln County. Noranda has its only place of business in Lincoln County, but the lawsuit was filed in Great Falls (Cascade County) by a Great Falls lawyer. If Noranda were incorporated in Montana, the lawsuit would have been filed in Lincoln County.

ANSWER: If Noranda's attorneys allowed Noranda to be sued in Cascade County state Court, then it should hire new attorneys. Noranda, as an out-of-state corporation, has a right to have its suits removed to the federal court closest to where it is doing business or where the injury occurred.

If the BN were asked for a list of examples where out-of-state corporations have been forced to defend suits in far away counties, the list would be exceedingly short. This is because out-of-state corporations are allowed to remove the case to federal court. As a result, lawsuits against out-of-state corporations in state courts almost never happen if they have to defend in state court.

The Noranda situation shows why its not a great hardship to corporations, even from time to time. Noranda Mineral Corporation has decided to incorporate in Delaware, which, of course, means that it doesn't have to pay Montana taxes like an in-state corporation. If Noranda can travel all the way across the country to mine our minerals, then certainly it can travel across the Continental Divide to defend itself when it injures someone. As a multi-million dollar corporation, it is certainly capable of incurring a little extra expense to travel 200 miles. It is far better situated to do so than an injured Montanan of limited means.

WHAT IS THE FEDERAL EMPLOYERS' LIABILITY ACT(FELA)?

Railroads are prohibited from being part of a state's workers' compensation program, which generally is a no-fault system (no litigation over negligence). Injuries to railroad workers are covered by FELA, which is a fault system. As a result, there is generally more litigation over such injuries. FELA says that such litigation can be filed in federal or state court.

ANSWER: BN leaves out one important fact. As stated by the Montana Supreme Court in the recent case involving this issue, "FELA is to be given liberal construction in favor of injured railroad employees so that it may accomplish its humanitarian and remedial purposes. . . . We have found highly persuasive policy favoring the injured worker's choice of forum. . . . We recently re-emphasize our commitment to 'the strong national policy favoring a plaintiff's selection of forum in actions brought under the Federal Employers' Liability Act'." In the decision decided last week, the Montana Supreme Court said that these policies are of "paramount" concern. Any attempt to give the railroad the right to choose its place of trial at the expense of the injured Montana worker, obviously, is totally contradictory to these public policies. It will be declared unconstitutional.

THE PROBLEM

Because of Montana's liberal attitude toward lawsuits, 29 cases were filed in 1993 and '94 by railroad workers who were neither injured in Montana, nor reside in Montana. 15 of those were filed in Cascade County and 14 were filed in Yellowstone County. Interestingly only two of those 29 had a Montana lawyer as lead counsel. So these out-of-state cases are being filed by out-of-state lawyers in Montana state courts, at the expense of Montana taxpayers.

ANSWER: It may be true that there are some out-of-state cases being filed by out-of-state lawyers in Montana State Courts, but this can be fixed without taking away the rights of Montana workers in the process.

Beyond that, Burlington Northern's intentions should be seriously questioned. It has never been concerned about the welfare of Montanans. It is now funding its merger by raising freight rates to Montanans. It has thrown hundreds of people out of work along the Hi-Line. As a result of the merger, its going to throw 60 more people out of work in Havre. It has closed down branch lines to our farmers and ranchers. This is not the type of corporation that should be granted special favors at the cost of Montanans.

ABUSE

In 1993, a Minnesota law firm filed a lawsuit for an Illinois resident injured in South Dakota in Cascade County Court.

In addition, there were 91 cases filed by Montana residents. Of those 91, 79 or 86.8% were filed in either Cascade or Yellowstone County, yet 68 or 74.7% had nothing to do with those counties. Neither the tort occurred there, nor did the plaintiff live there.

ANSWER: We know of no Montanans who are going to defend the actions of out-of-state lawyers.

THE COST

Litigation is expensive. It takes up a good part of the district court's time and that costs money. How much? It's hard to say with certainty. There are costs involved with handling the paper filed with the Clerk of Court and with any pretrial activity. Most of the cases settle before trial, but unquantifiable costs are still incurred.

About 15% of the cases filed against Burlington Northern go to trial. That may vary from year to year depending on the type of case and the attorneys involved. It is estimated that a complete trial (usually seven days) costs the state and county about \$7,000 of state taxpayers' money.

ANSWER: Litigation is expensive for the litigants no matter where the case is filed. Litigation would be less expensive if the Burlington Northern would treat its workers fairly and settle with them rather than forcing them through the court system.

Burlington Northern's statement that "15% of the cases filed against Burlington Northern go to trial" is questionable and probably untrue. We don't know where they get this statistic, but we do know that a review of Montana cases over the last 10 years indicate that only four cases went to trial and were appealed. Assuming that the same amount went to trial, but were not appealed, that still would be less than one case per year going to trial throughout the State of Montana involving injured railroad workers. This being the case, it's a far cry from the "15%" the BN is representing in its so-called "fact sheet."

WHAT DOES SB 63 DO?

It treats companies incorporated in states other than Montana in a manner similar to companies incorporated in Montana. It changes where tort litigation can be filed against out-of-state corporations. Rather than being allowed to file tort litigation anywhere they feel like, plaintiffs' lawyers will have to file lawsuits:

1. Where the tort occurs, or
2. Where the plaintiff resides, or
3. Where the registered agent resides, or
4. The first judicial district (Lewis & Clark County).

ANSWER: Senate Bill 63 doesn't change the way the law works for out-of-state corporations in any measurable way -- other than for the Burlington Northern. Any out-of-state corporation currently has the right to remove a case brought against it by a Montanan to the closest federal court available. The number of exceptions over the past century can probably be counted on one's hand.

Since out-of-state corporations are not effected in any measurable way, the naked reason for Senate Bill 63 is to benefit Burlington Northern at the cost of Montana citizens. It restricts the rights of railroad workers to choose their forum. It gives BN the right to choose the forum in the majority of the cases. It allows it to funnel most of the cases into Havre, Montana, where BN has considerable control and influence.

Allowing suits in Lewis & Clark County might provide a limited advantage, but it is still directly contrary to a railroader's right to sue his own company in any location where BN is "doing business."

THE RESULT

- * Out-of-state lawsuits discouraged
- * Litigation will shift to federal courts where it belongs
- * Reduced state court costs and case load

ANSWER: Senate Bill 63 would, to a limited extent, discourage out-of-state lawsuits. Since probably all of the out-of-state lawsuits are against Burlington Northern, however, it would have no effect on other out-of-state corporations.

Litigation will not shift to the federal courts because litigation against out-of-state corporations is already in the federal courts. As mentioned above, out-of-state corporations have a right to remove the case to federal court when sued by a Montanan.

Passing Senate Bill 63 will not diminish court costs in any measurable way. Again, it only effects the Burlington Northern.

One important result not mentioned by the Burlington Northern is that this legislation is unconstitutional. The duty of the Montana Supreme Court will be to strike Senate Bill 63 down. The Court cannot allow a special interest group to write a bill designed to benefit only the special interest group at a cost to Montanans. The Court has already stated it is not going to allow Burlington Northern to choose its own venue at the cost to its workers.

Exhibit 7 is a petition which consists of 34 pages of signatures. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. Phone # 444-2694.

EXHIBIT 7
DATE 3/10/95
SB 63

PETITION TO THE MONTANA LEGISLATURE

We are Montana citizens and taxpayers. We understand you are considering a law which would force Montanans to sue corporations, like Burlington Northern, in counties where the corporation has considerable power and influence. This would change the current law, which allows people to sue out of state corporations in any county of the state so that they don't have to be stuck in a company town where the corporation can influence the outcome of the trial.

We oppose this change. It is difficult enough to prevent powerful corporations from harming us. We don't need a new law that gives corporations even greater power over our lives when they injure us.

SIGNATURE	ADDRESS	DATE
Colby A. Baugh	54th R.T 3L Box 166	2-3-95
Dean Uegge	625 5th St. N. Glasgow MT	2-3-95
Bob Michla	Box 415	2-3-95
Kent A McCormick	705 12th St Havre MT	2-3-95
Allen Woodwick	619 4th Ave Havre MT	2-3-95
Greg W. Mah	Box 544 CHESTER	2-3-95
A. J. Leo	P.O. Box 961 Havre	2-3-95
L. L. Leo	Box 414 HARLOW MT	2-3-95
Rg R. Hodoy	1217 9th St Havre	2-3-95
Just Schroeder	1421 3rd St Havre MT	2-3-95
Bruce M. Hoover	Box 1581 Chinook MT 59523	2-3-95
A. J. Metzger	924 3rd Ave HAURE MT	2-3-95
Jack D Anderson	522 TENTH ST. HAURE MT.	2-3-95

Mr. Chairman, Members of the Committee, I'm Fran Marceau, United Transportation Union State Legislative Director, and I ask you to oppose Senate Bill 63.

Montana has a long and proud history of fostering the rights of the common man and of railroad workers in particular. Senate Bill 63 would blemish that history by changing state venue laws to benefit foreign, non-resident corporations, at the expense of average Montana citizens and workers.

Throughout this century, through an unbroken chain of decisions of the Montana Supreme Court, it has been recognized that a foreign corporation has no Montana residence for venue purposes, and can be sued in any county selected by a citizen of this state. In 1985, this was formally codified by the Montana legislature. This law has served the citizens of this state well, and good reason does not exist to change it.

Montana's venue law, in fact, is one of the few venue statutes to have been examined by the United States Supreme Court in recent years. The Supreme Court found it to be fundamentally fair and reasonable, and held that it did not impose undue hardship on foreign corporations. In that 1992 decision, the Supreme Court recognized that inconvenience to a foreign corporation will not significantly vary if that foreign corporation has to defend in Billings as opposed to Havre, for example, and held that a non-resident corporation's interest in convenience is too slight to outweigh the interest of an injured citizen in suing in the forum of his choice.

Indisputably, the right to selection of forum is a critically important one to injured citizens and workers in this state. Any Montana citizen who is injured by the negligence or recklessness of a large non-resident corporation already has an uphill battle. The private citizen may arm himself only with the services of an attorney, while the corporation can bring to bear vast sums of money and a large army of lawyers to oppose him. To deny injured Montana citizens the forum of their choice is to afford one more tactical advantage to these non-resident, foreign corporations.

There are, of course, good and proper reasons why an injured citizen of this state might want to sue in a county other than that of his residence, where the accident occurred, or where the corporation claims to have its principal place of business. Litigation will frequently center where an injured plaintiff

receives his basic medical treatment; in many instances this will necessarily occur in a major metropolitan location, even if the plaintiff resides, and the accident took place, outstate. Trial will frequently center upon the testimony of these medical experts. At present, Montana citizens have the right to take this into account when determining where to bring suit. Under Senate Bill 63, this right would be taken away from them. The cost of bringing medical doctors to a distant trial for an injured individual would be a real hardship and would often result in loss of live medical testimony for injured residents of this state.

Senate Bill 63 would also afford non-resident, foreign corporations an unfair advantage when the citizens of this state are injured as a result of so-called "toxic torts." In recent years, for example, there has been a significant amount of litigation on behalf of injured railroad workers who have suffered asbestosis and related injuries as a result of their exposure to asbestos dust while working for the railroad. These workers reside in different counties across the state, and were similarly injured in different counties throughout Montana. Under the present venue law, it was possible to consolidate the bulk of these cases in a single forum because of the right of citizens of this state to sue non-resident corporations in any county of their choosing. This resulted in major savings to the taxpayers of this state. If this had not been possible, smaller district courts in Montana would have been literally overwhelmed through repetitive, complicated, time consuming litigation. Such would be the result of Senate Bill 63.

It cannot be emphasized enough that Senate Bill 63 would result in a major wasting of judicial resources in this state. At present, the venue law regarding non-resident corporations is clear and is not the subject of legal battles. Under this bill, it can be expected that foreign corporations will attempt to claim smaller, rural counties as their principal place of business, under the belief that such counties will return smaller verdicts to the injured citizens and workers of this state. Repeated court battles over what county constitutes a foreign corporation's true principal place of business can be expected, with unnecessary cost to taxpayers and unnecessary legal expense to this state's injured citizens.

Moreover, should a foreign corporation claim a small, out-state county as its principal place of business, the limited judicial resources of that county could be completely overwhelmed as a result of the claimed presence of that single company, even though that corporation does significant business throughout the entire state.

Senate Bill 63 would also significantly impede the rights of railroad workers in this state. Injured railroad workers are not covered by state workmans' compensation, but by a Federal law known as the Federal Employers' Liability Act. Under the Act, railroad workers can sue a railroad in any Federal district where the railroad does business or maintains a line of rail. At

present, the Montana court system affords injured Montana railroad workers this same fundamental right. The United States Supreme Court has recognized that the right of an injured railroad worker to select his legal forum is a critical one which must be protected. Senate Bill 63 would, in a very real sense, eliminate this right in the Montana courts, to the detriment of all railroad workers who live here.

In our society, the right to seek legal redress in the courts is a fundamental one and one of the highest and most essential privileges of citizenship. Senate Bill 63 seeks to fix something which is not broken, and would unnecessarily erode the practical legal rights of the citizens of Montana; and burden the courts of this state.

EXHIBIT 8
DATE 3-10-95
SB 63

Great Falls Tribune
March 6, 1995

EXHIBIT 9
DATE 3/10/95
SB 103

Court rules workers can file suits in state

HELENA (AP) — Out-of-state employees of railroads operating in Montana cannot be barred from filing injury lawsuits in state courts, the Montana Supreme Court said Thursday.

The 5-2 ruling said a federal law governing such suits and the constitutional requirement for full access to Montana courts outweighs the threat of courts being deluged with suits by rail workers seeking favorable treatment.

The decision was a defeat for Burlington Northern Railroad, which wanted the justices to rule that a suit filed by Anthony Iddings, a BN worker in Wyoming, should be tossed from Montana courts.

The ruling also settled an argument that has been in the courts at least since 1959 and has been considered by the Supreme Court five times.

The main issue is a doctrine that allows a court to refuse jurisdiction over a case if it concludes a more appropriate or convenient forum can be found.

BN wanted Iddings's suit in District Court at Great Falls to be dismissed on that ground. The railroad contended a substantial increase in such filings in Montana under the Federal Employers' Liability Act warranted the dismissal.

Iddings said the number of out-of-state residents filing such FELA suits in Montana has not clogged the courts.

The number of suits under the federal law does not matter, the high court ruled.

What matters is the Montana Constitution's mandate that citizens have unrestricted access to the courts and that requirement cannot be limited only to Montana residents, the court said.

EXHIBIT 10
DATE 3/10/95
SB 63

WAYNE S. YOUNG
LOCAL CHAIRMAN, LOCAL #735
BROTHERHOOD OF MAINTENANCE OF WAY
DEARBORN ROUTE
WOLF CREEK, MONTANA 59648

Monte D. Beck
1700 W. Koch
Bozeman, Montana 59715

Dear Sir:

It has come to my attention that the Burlington Northern Railroad is trying to stop out of state workers from filing lawsuits in Montana. I would like to express my opinion on this subject.

First of all, it is my contention that while working for a company as large as BN, you should be able to bring action against the company anywhere it is located. Over the last several years, BN has cut many jobs. Employees are no longer able to hold positions where they live. For example, one sectionman here in Wolf Creek, after 15 years of employment, is presently working on a gang in Wyoming because he can no longer hold here at home. It is difficult enough to travel to Wyoming to work, without the added expense of having to file a lawsuit there should he become hurt on the job. He is not alone in this respect. Many employees affected by the sale of the line between Laurel and Sandpoint, Id. are in the same position.

Burlington Northern contends that the present practice is clogging the court system in Montana. However, I believe, that very few suits against the company ever come to trial. The majority are settled out of court.

It is my hope that you will take a long look at this and come to the conclusion that it is in the best interests of Montana and it's workers to keep the system unchanged.

Thank you for your time and consideration.

Sincerely,

Wayne S. Young

THUESON & LAMB

ATTORNEYS AT LAW
213 FIFTH AVENUE
P.O. BOX 535
HELENA, MT 59624-0535
(406) 442-8848

ERIK B. THUESON
MICHEAL F. LAMB
JOHN A. KUTZMAN

EXHIBIT 11
DATE 3/10/95
SB 63

GREAT FALLS OFFICE:
507 STRAIN BLDG.
GREAT FALLS, MT 59401
(406) 727-7304

March 13, 1995

Montana House Judiciary Committee
Capitol Station
Helena, Montana 59620

Dear Committee:

Emotions were obviously running high over Senate Bill 63. I would like to comment on a few matters brought up on Senator Crippen's closing.

First, Senator Crippen has the mistaken impression he was being called a lackey of the Burlington Northern Railroad. Quite to the contrary. I believe that Senator Crippen and others signed off on this bill based upon compelling statistics presented to them, which indicated there was forum shopping occurring within Montana. If I was in their shoes and I had been presented these statistics, I would have signed up on this bill as well.

As was made clear at the hearing last week, there obviously was considerable information which was not given to the legislators when the bill was proposed. For instance, no one mentioned that BN presents a special situation, since federal policies and statutes give the worker--not BN--the right to choose the place of trial. In addition, I don't think anyone raised the fact that all out-of-state corporations, except BN, already have an absolute right to change the place of trial to the nearest federal court if they do not like the place where it is filed. Finally, we did not know until last week that the Montana Supreme Court would indicate that any efforts to limit the railroader's right to choose the place of trial could not constitutionally be restricted beyond where the railroad is "doing business."

These implications, of course, were what was presented to this committee during hearing on this bill. It is regrettable that Senator Crippen misunderstood the remarks to be a personal attack on him. Nothing of the sort was intended. To some extent, I blame myself for not making this clear. This bill--like all proposals--should be decided on the facts.


My fear now, however, is that this bill does have an emotional life of its own and will be approved, notwithstanding the fact that it is a bad bill. Thus, I wanted to write this letter to clear the air as much as possible.

In closing, I would like to repeat that Montana lawyers, too, do not like the forum shopping that is bringing cases into Montana that have nothing to do with Montanans. Although we are abdicating the Montanan's right to a broad choice of forum for the reasons previously stated, we have long realized that these out-of-state cases would create a backlash. I believe, however, that the issues should be attacked directly and that BN should not be entitled to skillfully take advantage of the situation at the expense of Montanans.

Thank you, as always, for giving me this opportunity to comment.

Sincerely yours,

THUESON & LAMB



Erik B. Thueson

EBT:rs



EXHIBIT 12
DATE 3/10/95
SB 63

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850
March 10, 1995

Officers:

Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Sen. Bob Clark, Chair
Senate Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: Senate Bill 63

Mr. Chair, Members of the Committee:

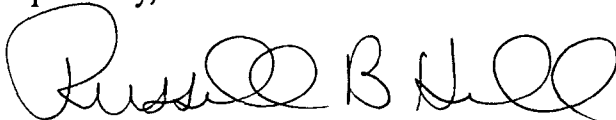
MTLA opposes SB 63, which benefits out-of-state corporations--specifically Burlington Northern railroad--at the expense of more than 800,000 Montana citizens.

BN complains often about "out-of-state railroaders" in Montana courts. *But BN itself controls the residence of its workers and frequently transfers Montana workers to other states.* And BN knows it cannot discriminate between citizens of different states.

SB 63 dramatically impacts all Montana citizens who must resort to court--*not just individuals*--and the bill covers numerous types of commercial misconduct (in franchise disputes, financial transactions, damage to business reputation, etc.). SB 63 would force many Montana individuals and businesses to fight out-of-state corporations in the "company towns" where those corporate giants exert most influence. It would force many more Montana individuals and businesses to fight out-of-state corporations in courts with less, not more, connection to the lawsuit. For example, in Lewis and Clark County, SB 63's artificial "county line" mentality would force an Augusta business or individual to fight a legal battle in faraway Helena court rather than in Great Falls or Choteau, which are much closer in both distance and economic ties.

Thank you again for this opportunity to express MTLA's opposition to Senate Bill 63.

Respectfully,



Russell B. Hill, Executive Director

CONRAD BURNS
MONTANA

United States Senate

WASHINGTON, DC 20510-2803

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE, AND
TRANSPORTATION
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

February 3, 1995

EXHIBIT 13
DATE 3/10/95
~~SS~~ STR 10

The Honorable Ethel Harding
Montana State Senate
State Capitol
Helena, MT 59620

Dear Senator Harding:

Thank you for the opportunity to lend my support to your call for reforming the Ninth Circuit Court of Appeals.

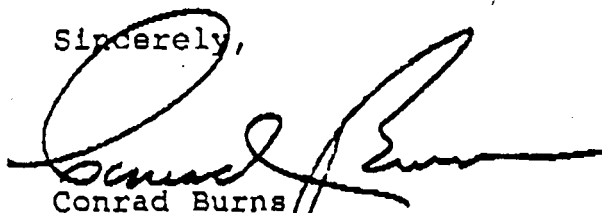
In 1989, I along with several of my colleagues from the West, introduced legislation to divide the ninth judicial circuit of the United States in to two circuits. Although the legislation was not enacted, it brought into clear focus the problems that the overloaded docket of the ninth circuit has created.

Now, a new mindset exists in Washington and as problems with the ninth circuit remain, I think it is the appropriate time to revisit this issue. Therefore, I will be working very hard over the next few months with my western states colleagues to prepare legislation and devise a strategy that will truly reform the federal judicial system for our citizens.)

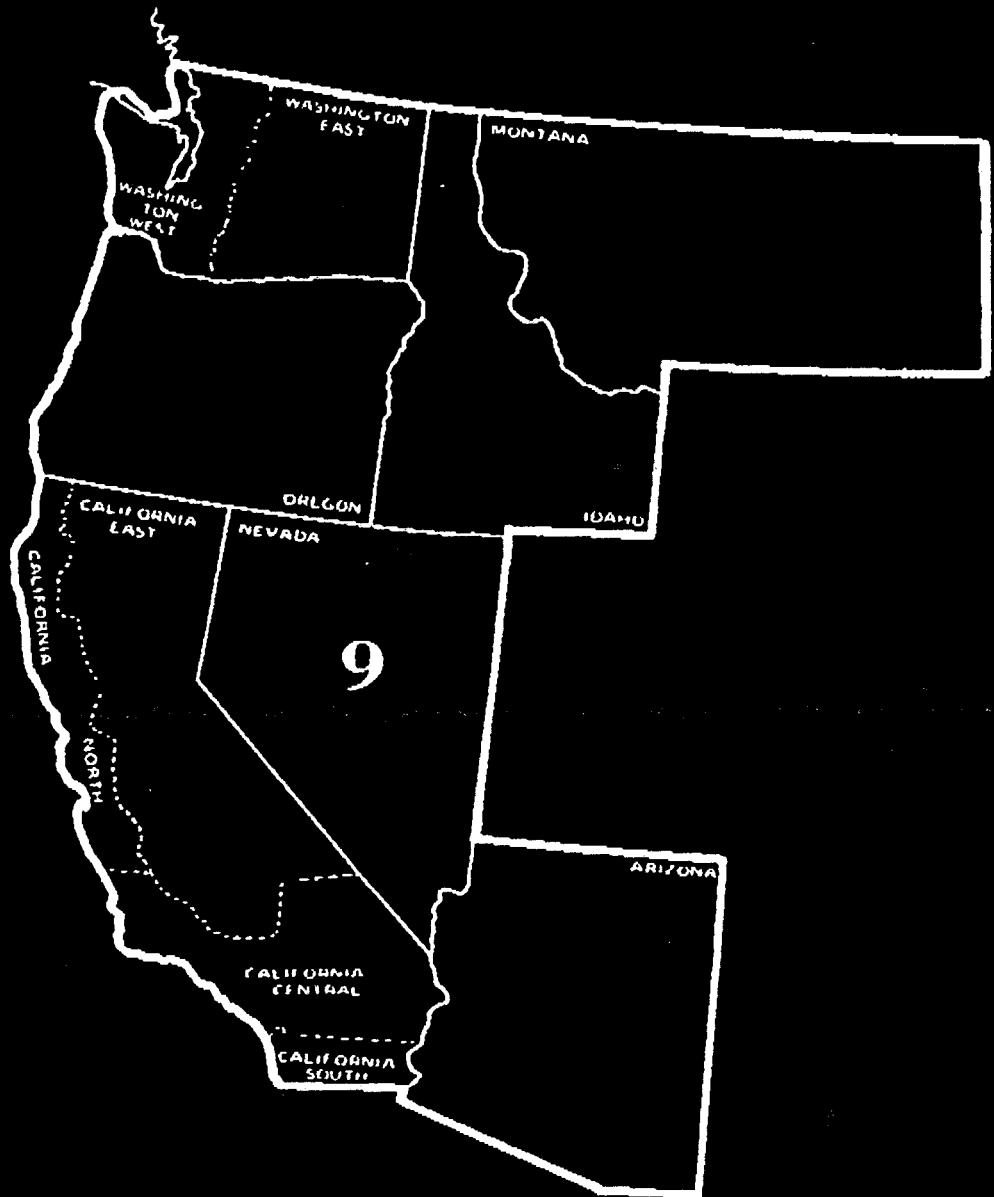
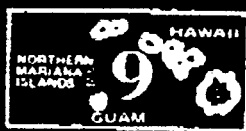
I appreciate your efforts to see this legislation through and I look forward to working with you for the benefit of our fellow Montanans.

With Best Wishes,

Sincerely,


Conrad Burns
United States Senator

CRB/mab



Alaska
Arizona
California:
 Northern
 Eastern
 Central
 Southern
Hawaii
Idaho

Montana
Nevada
Oregon
Washington:
 Eastern
 Western
Guam
Northern Mariana Islands

Districts of the

Ninth Circuit

U.S. COURT OF APPEALS - JUDICIAL WORKLOAD PROFILE

NINTH CIRCUIT

TWELVE MONTH PERIOD ENDED SEPTEMBER 30

H CIRCUIT			TWELVE MONTH PERIOD ENDED SEPTEMBER 30					
			1993	1992	1991	1990	1989	1988
A P P E A L S	Total		8,514	8,013	7,257	6,729	6,326	6,466
	Prisoner		1,699	1,601	1,451	1,216	1,112	1,048
	All Other Civil		3,864	3,581	3,244	3,209	3,174	3,800
	Criminal		2,141	2,125	1,915	1,836	1,623	1,269
	Administrative		810	706	647	468	417	349
	Percent Change In Total Filings Current Year		Over Last Year...	6.3				
		Over Earlier Years...	17.3	26.5	34.6	31.7		
T E R M I N A T E D	Total		8,966	8,036	6,791	5,397	5,626	5,904
	Consolidations & Cross Appeals		602	512	476	384	240	228
	Procedural		3,700	3,463	2,587	2,038	2,487	2,980
	O N T H E M E R I T S	Total	4,664	4,061	3,728	2,975	2,899	2,696
		Prisoner	965	798	643	454	478	326
		Other Civil	1,553	1,592	1,652	1,453	1,481	1,483
		Criminal	1,655	1,361	1,215	849	775	658
		Administrative	491	310	218	219	165	229
		Percent by Active Judges	85.2	84.3	84.2	86.0	85.9	79.6
		PENDING APPEALS		7,597	8,344	8,341	8,033	7,044
A C T I O N S P E R A C T I V E J U D G E	Terminations on the Merits		447	381	356	289	329	263
	Procedural Terminations		129	123	119	106	128	173
	W R I T T E N D E C I S I O N S	Total	147	123	116	95	97	83
		Signed	23	24	26	26	33	29
		Unsigned	112	91	83	64	52	43
		Without Comment	12	8	7	5	12	11

¹ Includes only judges active during the entire 12 month period.

U.S. COURT OF APPEALS - JUDICIAL WORKLOAD PROFILE

NINTH CIRCUIT

TWELVE MONTH PERIOD ENDED SEPTEMBER 30

1993
NUMERICAL
STANDINGCTIONS
PER
ANEL

NINTH CIRCUIT		TWELVE MONTH PERIOD ENDED SEPTEMBER 30						1993 NUMERIC STANDIN	
		1993	1992	1991	1990	1989	1988		
Number of Judgeships/ Number of Panels		28/9.3	28/9.3	28/9.3	28/9.3	28/9.3	28/9.3		
Number of Sitting Senior Judges		10	9	11	11	11	11		
Number of Vacant Judgeship Months		10.3	0.5	9.0	12.0	21.4	27.6		
A P P E A L S	Total	912	859	778	721	678	693	4	
	Prisoner	182	172	155	130	119	112	9	
	All Other Civil	414	383	349	344	340	408	4	
	Criminal	229	228	205	197	174	136	3	
	Administrative	87	76	69	50	45	37	2	
T E R M I N A T E D	Total	961	861	728	578	603	633	3	
	Consolidations & Cross Appeals	65	55	52	41	26	25	6	
	Procedural	396	371	277	218	266	319	3	
	O N T H E M E R I T S	Total	500	435	399	319	311	289	4
		Prisoner	103	86	69	49	51	35	7
		Other Civil	167	170	177	156	159	158	8
		Criminal	177	146	130	91	83	71	2
		Administrative	53	33	23	23	18	25	1
PENDING APPEALS		814	894	894	861	755	680	3	
MEDIAN TIME	Median Time From Filing Notice of Appeal To Disposition	14.6	15.2	15.6	15.7	15.8	14.7	12	
O T H E R W O R K L O A D P E R J U D G E S H I P	Applications for Interlocutory Appeals	2	2	2	2	2	2	1	
	Pro Se Mandamus Petitions	6	6	7	5	7	5	5	
	Petitions for Rehearing	54	52	43	28	25	25	4	

* See Page e.

FOR THE NATIONAL CIRCUIT PROFILE OPEN THE FOLD OUT AT THE END OF THIS SECTION

United States District Court
District of Montana
P.O. Box 1529
Great Falls, Montana 59401

EXHIBIT 14
DATE 3/10/95
~~SS~~ SJR 10

Chambers of
Paul G. Hatfield
Chief Judge

March 9, 1995

Honorable Robert Clark, Chairman
Senate Judiciary Committee
Montana State Legislature
Capitol Station
Helena, MT 59604

To the Esteemed Members of the Judiciary Committee of the Montana Senate:

Today you will consider Senate Joint Resolution No. 10, the thrust of which is to urge the United States Congress to divide the Ninth Judicial Circuit of the United States Court of Appeals. The subject has been thoroughly studied and extensively debated over the past few years at the state, regional and national level. The issue has been laid to rest on numerous occasions, only to be revived on occasion by those who believe the interests of a particular state will be better served by a smaller circuit comprised of states with homogenous interests.

I believe the conclusion to be a fallacy and urge you, as representatives of the State of Montana, to reject what is clearly a provincial notion. Our country's "experiment" in democracy has proven that strength and stability are bottomed upon diversity; primarily the diversity of ideas. The diversity extant in the Ninth Circuit imbue that Circuit with the strength and stability superior to that of its sister circuits. By its incorporation in the Ninth Circuit, the State of Montana shares in that strength and stability.

The "experiment" of the Ninth Circuit, at least so-called by its critics, has proven a success. To the extent steps need to be taken by the Congress to ensure timely disposition of cases before the Ninth Circuit Court of Appeals, those steps should include the addition of more circuit judges to adequately dispose of the caseload. I wholeheartedly agree that such an addition should include provisions that secure positions on the Ninth Circuit Court of Appeals for Montana representatives. However, a mere division of a successful entity into smaller subparts does not, of its own force, create a more efficient system. The loss of diversity would, in my opinion, equate with a loss of strength and stability.

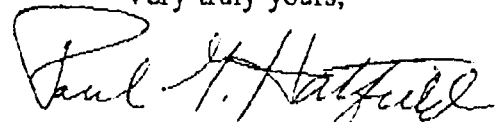
In considering Senate Joint Resolution No. 10, I ask you to bear in mind that the great State of Montana is part of an even greater federal system. The issues addressed by a federal court of appeals are primarily issues of federal law, not regional nor state law. Those issues of federal law must be resolved in accordance with the law of this

land; the law of the 50 states. State or regional interests cannot be allowed to control regardless of the structure of the federal circuit court system. Where, in diversity cases, the issue at hand is one of state law, adequate procedures are now available to ensure that the federal circuit court decides the issue in accordance with the controlling substantive law of the state. Specifically, the Ninth Circuit Court of Appeals routinely uses the process of certification to afford the Supreme Courts of the various states comprising the Ninth Circuit to resolve what is, in fact, an issue of state substantive law.

Expediency and consistency are certainly goals to be fostered in the federal court appellate system. The focus of your committee, however, I suggest, should be brought to bear upon the need for additional resources to ensure that those goals are achieved. I encourage you to urge the Congress to provide additional resources to the Ninth Circuit Court of Appeals to ensure that decisions are made expeditiously and consistently by that tribunal. The present focus of Senate Joint Resolution No. 10 is not, in my opinion, designed to foster the referenced goals.

Please consider my comments in your discussion of Senate Joint Resolution No. 10, and I thank you for your consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul G. Hatfield", with a large, stylized initial "P" and "H".

Paul G. Hatfield
Chief Judge

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Mike Quinn	UTU	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wayne S Young	BMW E	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MARK PETERSMEYER	NORANDA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dave Ditzel	BLE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
John A. Kutzman	Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Blake J. Wardal	Lewis & Clark Co	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Erick Thunes		<input type="checkbox"/>	<input checked="" type="checkbox"/>
Gaquelino J. Larmark	Am. Ins. Ass'n	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Ward Kanabek	STILLWATER MINING Farmers Ins. Group	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Don Oller	MT. Wash Products Ass'n	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Russ Oller	Wash. Corp	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Tom WATERMAN - HELENA	SELF		X
John Sullivan - Helena	self		X
Chris Tweeden	Dept of Justice	in seat	

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<u>Chris Tweeten</u>	<u>Dept of Justice</u>	<u>X</u>	

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