

FILED

JAN 20 2006

Western Energy Co.
P.O. Box 99
Castle Rock Road
Colstrip, MT 59323
406-748-5116

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC NO. 2001-0300

CASSANDRA SCHMILL

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE COMPANY

Respondent/Insurer

and

MONTANA STATE FUND

Intervenor.

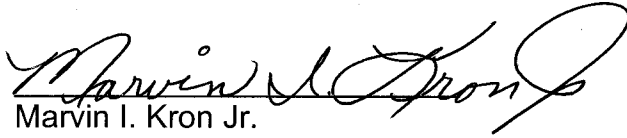
**WESTERN ENERGY COMPANY'S RESPONSE TO AMENDED
SUMMONS AND NOTICE OF ATTORNEY FEE LIEN**

Western Energy Company ("WECO") has received the Amended Summons and Notice of Attorney Fee Lien dated December 7, 2005. WECO was self-insured for workers' compensation coverage in the State of Montana from October 1, 1984 through January 14, 1990. WECO has arranged to have its pertinent files reviewed by an outside law firm in order to respond to the Amended Summons. That firm has found no indication that any employee of WECO had his/her workers' compensation benefits reduced based upon a percentage of disability attributable to non-occupational factors pursuant to §39-72-706 MCA during the time when WECO was self-insured, for dates of occupational disease occurring on or after July 1, 1987.

A copy of my affidavit and the law firm's letter reporting its findings are attached.

From our reading of the Amended Summons, it is our understanding that nothing further is required from us in this matter. If we are in error, please let us know.

Respectfully submitted this 18th day of January, 2006.



Marvin I. Kron Jr.
Rosebud Mine Safety Manager
Western Energy Company

cc: Laurie Wallace, Esquire
Bothe & Lauridsen, P.C.
P.O. Box 2020
Columbia Falls, Montana 59912

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Intervenor.

AFFIDAVIT

STATE OF MONTANA)
County of ROSEBUD)

¶1 I, MARVIN I. KRON JR., being first duly sworn upon oath, depose and say:

¶2 I, MARVIN I. KRON JR., am the Rosebud Mine Safety Manager of Western Energy Company.

¶3 In my capacity as Rosebud Mine Safety Manager, I am authorized to make the statements set forth in this affidavit on behalf of Western Energy Company and to bind Western Energy Company by these statements.

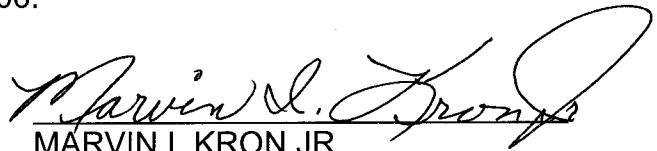
¶4 After a review of our records by counsel retained for that purpose, I swear under oath that Western Energy Company should be dismissed from the above-entitled action for the following reason:

Western Energy Company has no claimants meeting the Court's criteria in this matter as set forth in the summons.

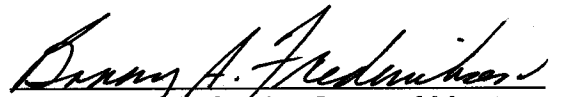
¶5 I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing this affidavit within which Petitioner's counsel may conduct discovery and investigation for the limited purposes of proving or disproving the foregoing statement made by me on behalf of Western Energy Company. After such 90 days, if no objection is lodged by the Petitioner's counsel, the Court will dismiss the insurer/self-insurer from this action based on the sworn statement made by me in this affidavit.

¶6 I declare under penalty of perjury that the foregoing is correct.

DATED this 18th day of January, 2006.


MARVIN I. KRON JR
ROSEBUD MINE SAFETY MANAGER

Signed and sworn to before me this 18 day of January, 2006.


Notary Public for the State of Montana
Residing at: Calistoga Mt

[SEAL]

My Commission Expires: 4/11/2007



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January 12, 2006

Marvin I. Kron Jr.
Western Energy Co.
PO Box 99
Colstrip, MT 59323

Re: *Schmill v. Liberty Northwest Insurance Corporation and Montana State Fund*
WCC No. 2001-0300
JK File No.: 70224/313

Dear Marvin:

We have completed our review of the workers' compensation files that you sent us in connection with the Amended Summons and Notice of Attorney Fee Lien in the above-captioned matter.

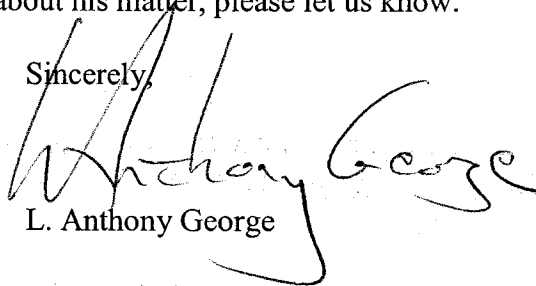
At our request, you sent us the files of all employees of Western Energy Company ("WECO") who received workers' compensation benefits while WECO was self-insured for workers' compensation (i.e. from 10/1/84 to 1/14/90 inclusive). We have reviewed those files to determine whether any of those claimants had their benefits reduced during that period based on a percentage of disability attributable to non-occupational factors pursuant to 39-72-706 MCA, for dates of occupational disease occurring on or after July 1, 1987.

We did not find any indication in the files that any of these claimants had their benefits reduced for that reason.

We believe that this answers your question and constitutes a complete response to the Amended Summons.

Should you have further questions about his matter, please let us know.

Sincerely,



L. Anthony George

LAG/jke

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