

FEB - 3 2006

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Jacqueline T. Lenmark
KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.
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Helena, MT 59624
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Attorneys for Platte River Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,)	WCC NO. 2001-0300
)	
Petitioner,)	
)	
vs.)	MOTION TO DISMISS
)	PLATTE RIVER INSURANCE
LIBERTY NORTHWEST INSURANCE)	COMPANY
CORPORATION,)	
)	
Respondent/Insurer,)	
)	
MONTANA STATE FUND,)	
)	
Intervenor.)	

COMES NOW Platte River Insurance Company (hereinafter "Platte River") and files this motion to dismiss.

On information and belief, on December 7, 2005, this Court had served by mail on many insurers, including Platte River, a Summons requiring each of the insurers to respond to the attorney fee lien filed by Petitioners' attorneys. The Summons required that each insurer provide the Court those occupational disease cases in which an apportionment was taken prior to and including June 22, 2001, for dates of occupational disease occurring on or after July 1, 1987.

Platte River was not aware of the above-identified summons, but made a limited

appearance in response to a Summons in Flynn v. Montana State Fund (WCC No. 2000-0222). Letter of Julie Pollack, Esq., Swiss Reinsurance America Corporation to Honorable Michael McCarter (Jun. 20, 2005), WCC Docket No. 223. Based on that appearance Platte River has searched the records of the Workers' Compensation Court and makes this limited appearance in the above-entitled matter.

Platte River has since had the opportunity to complete a full review of its Montana claims files to determine what claimants it may have on workers' compensation policies meeting the criteria in this matter as set forth by the Summons dated December 7, 2005. The conclusion of Platte River is that there are no cases in which it has any claimants on workers' compensation policies meeting the criteria in this matter as set forth by the Summons dated December 7, 2005. This conclusion is supported by the attached and incorporated Affidavits of:

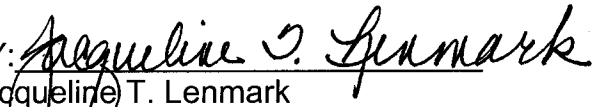
(a) Carmen Raha, Controller of Platte River (Exhibit 1, the original of which will be filed with the court when it is received); and

(b) Stuart deHaaff, former Senior Vice President and General Counsel of Underwriters Insurance Company, attesting to certain facts relating to the Stock Purchase Agreement and Transfer and Assumption Agreement concerning business of Platte River. (Exhibits 2, a copy of which is attached and the original of which is filed in Flynn v. Montana State Fund [WCC No. 2000-0222] by Platte River and by this reference is incorporated in support of this motion).

WHEREFORE, Platte River moves this Court to dismiss with prejudice Platte River on the ground that no claims exist against it and that it is not liable for any additional benefits to be paid to claimants in this matter or for attorneys' fees.

DATED this 2nd day of February, 2006.

KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.

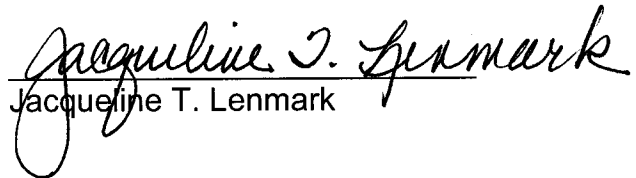
BY: 
Jacqueline T. Lenmark
50 South Last Chance Gulch
P.O. Box 598
Helena, MT 59624

CERTIFICATE OF SERVICE

I, Jacqueline T. Lenmark, one of the attorneys for Platte River Insurance Company, hereby certify that on February 2, 2006, I served a true and correct copy of the foregoing **MOTION TO DISMISS**, by depositing same in the United States Mail, first class postage prepaid, in Helena, Montana, upon the following:

Ms. Laurie Wallace
Bothe & Lauridsen PC
P O Box 2020
Columbia Falls MT 59912

DATED this 2d day of February, 2006.


Jacqueline T. Lenmark

statements set forth in this affidavit on behalf of Platte River and to bind Platte River by these statements;

3. Platte River is a corporate subsidiary of Alleghany Insurance Holdings, Inc., which is a subsidiary of Alleghany Corporation ("Alleghany");

4. Alleghany purchased all of the issued and outstanding capital stock of Underwriters Insurance Company ("UIC") by a Stock Purchase Agreement dated December 5, 2001;

5. After this purchase, Alleghany changed the name of UIC to Platte River;

6. As a condition of Alleghany's purchase of UIC, all past, present and future liabilities under all binders, policies, contracts, certificates and other obligations or agreements of insurance issued by UIC prior to the closing date of the Stock Purchase Agreement and endorsements thereon and changes in coverage thereunder, disclosed and undisclosed, were assumed by North American Specialty Insurance Company pursuant to a Transfer and Assumption Agreement;

7. After review of our records, I swear under oath that Platte River should be dismissed from the above-entitled action for any or all of the following reasons:

(a) Platte River has not issued any workers' compensation policies in the state of Montana on or after January 4, 2002, and the liabilities on policies prior to that date were assumed by North American Specialty Insurance Company pursuant to a Transfer and Assumption Agreement;

(b) Platte River does not have any Montana workers' compensation insurance claims for any workers' compensation policies issued on or after January 4, 2002; and

(c) As Platte River has not issued any workers' compensation policies in the State of Montana since its acquisition by Alleghany Corporation on January 4, 2002, Platte River does not believe that it has any claimants on any workers' compensation policies issued on or after January 4, 2002, meeting the Court's criteria in this matter as set forth in the Amended Summons dated December 7, 2005, issued by the Workers' Compensation Court of the State of Montana in the matter of Schmill v. Liberty Northwest Insurance Corporation and Montana State Fund (WCC No. 2001-0300).

8. I understand that the Montana Workers' Compensation Court may allow a

period of up to ninety (90) days from the date of filing this affidavit within which Petitioners' counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Platte River. After such 90 days, if no objection is lodged by the Petitioners' counsel, the Court will dismiss the insurer from this action based on the sworn statements made by me in this affidavit.

9. The above is true and correct to the best of my knowledge.

Ms. Carmen Raha

Date: _____

So subscribed and sworn to before me this ____ day of February, 2006.

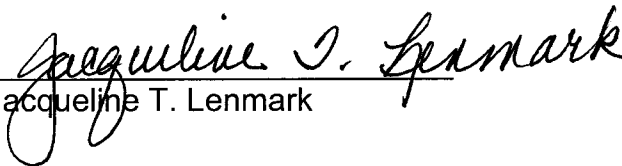
Print Name: _____
Notary Public for the State of _____
Residing at _____
My Commission Expires: ____ / ____ /20 ____

CERTIFICATE OF SERVICE

I, Jacqueline T. Lenmark, one of the attorneys for Platte River Insurance Company, hereby certify that on February 2, 2006, I served a true and correct copy of the foregoing unsigned **AFFIDAVIT OF CARMEN RAHA FOR AND ON BEHALF OF PLATTE RIVER INSURANCE COMPANY**, by depositing same in the United States Mail, first class postage prepaid, in Helena, Montana, upon the following:

Ms. Laurie Wallace
Bothe & Lauridsen PC
P O Box 2020
Columbia Falls MT 59912

DATED this 2d day of February, 2006.



Jacqueline T. Lenmark

WORKERS COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR)
) WCC No. 2002-0676
)
vs.)
)
MONTANA STATE FUND)

ROBERT FLYNN and CARL MILLER)
) WCC No. 2000-0222
)
vs.)
)
MONTANA STATE FUND, et al)

AFFIDAVIT OF STUART M. DE HAAFF

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, Stuart M. de Haaff, being first duly sworn on oath depose and say:

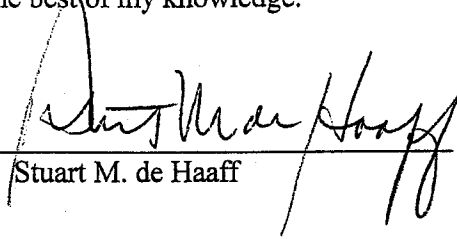
1. I was a Senior Vice President and the General Counsel of Underwriters Insurance Company, a Nebraska corporation ("UIC"), between July 1996 and January 2002 and, in that capacity, I acquired personal knowledge of the matters stated herein.
2. Effective July 1, 2001, pursuant to a Transfer and Assumption Agreement between UIC and North American Specialty Insurance Company, a New Hampshire corporation ("NAS"), NAS assumed all of UIC's business and liabilities, including, without limitation, all of the past, present and future liabilities and obligations of UIC under all binders, policies, contracts, certificates and other obligations or agreements of insurance issued by UIC (collectively, "Policyholder Contracts").
3. Pursuant to a Stock Purchase Agreement dated December 5, 2001 between Alleghany Corporation ("Alleghany") and UIC's corporate parent, Swiss Reinsurance America Corporation, Alleghany purchased all of the issued and outstanding capital stock of UIC.

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EXHIBIT
2

4. Pursuant to the Stock Purchase Agreement NAS retained all liabilities and obligations for the Policyholder Contracts issued by UIC prior to January 1, 2002 and UIC, as a wholly owned subsidiary of Alleghany, assumed all liabilities and obligations on business written by UIC on or after January 1, 2002.

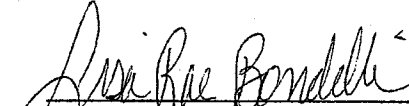
5. During 2002 following the purchase of UIC by Alleghany, UIC changed its name to Platte River Insurance Company.

6. The above is true and correct to the best of my knowledge.



Stuart M. de Haaff

So subscribed and sworn to before me this 7th day of December, 2005,



Notary Public for the State of California
My Commission Expires: April 2, 2009

(seal)



KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.

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P. O. Box 598
Helena, Montana 59624
406/442-0230 Tele.
406/449-2256 Fax
E-mail: jtlenmark@kellerlawmt.com

SPEED MEMO

February 2, 2006

Re: *Cassandra Schmill vs. Liberty Northwest Insurance Corporation and Montana State Fund*
Montana Workers' Compensation Court No. 2001-0300

For filing, please find enclosed Motion to Dismiss Platte River Insurance Company. Thank you for your assistance.

Jacqueline T. Lenmark

cc: Laurie Wallace, Esq.
(w/copy of encl. as indicated above)

TO: MS PATRICIA KESSNER
WORKERS' COMPENSATION COURT
1625 11TH AVENUE
P O BOX 537
HELENA MT 59624

Jacqueline T. Lenmark
 KELLER, REYNOLDS, DRAKE,
 JOHNSON & GILLESPIE, P.C.
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Attorneys for Platte River Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,)	WCC NO. 2001-0300
)	
Petitioner,)	
)	
vs.)	AFFIDAVIT OF CARMEN RAHA
)	FOR AND ON BEHALF OF
LIBERTY NORTHWEST INSURANCE)	PLATTE RIVER INSURANCE
)	COMPANY
CORPORATION,)	
)	
Respondent/Insurer,)	
)	
MONTANA STATE FUND,)	
)	
Intervenor.)	

STATE OF Wisconsin)
) : ss.
 COUNTY OF Dane)

Carmen Raha, being first duly sworn, on oath deposes and says:

1. I am Controller of Platte River Insurance Company ("Platte River");
2. In my capacity as Controller of Platte River, I am authorized to make the

AFFIDAVIT OF CARMEN RAHA FOR AND ON BEHALF OF
 PLATTE RIVER INSURANCE COMPANY

statements set forth in this affidavit on behalf of Platte River and to bind Platte River by these statements;

3. Platte River is a corporate subsidiary of Alleghany Insurance Holdings, Inc., which is a subsidiary of Alleghany Corporation ("Alleghany");

4. Alleghany purchased all of the issued and outstanding capital stock of Underwriters Insurance Company ("UIC") by a Stock Purchase Agreement dated December 5, 2001;

5. After this purchase, Alleghany changed the name of UIC to Platte River;

6. As a condition of Alleghany's purchase of UIC, all past, present and future liabilities under all binders, policies, contracts, certificates and other obligations or agreements of insurance issued by UIC prior to the closing date of the Stock Purchase Agreement and endorsements thereon and changes in coverage thereunder, disclosed and undisclosed, were assumed by North American Specialty Insurance Company pursuant to a Transfer and Assumption Agreement;

7. After review of our records, I swear under oath that Platte River should be dismissed from the above-entitled action for any or all of the following reasons:

(a) Platte River has not issued any workers' compensation policies in the state of Montana on or after January 4, 2002, and the liabilities on policies prior to that date were assumed by North American Specialty Insurance Company pursuant to a Transfer and Assumption Agreement;

(b) Platte River does not have any Montana workers' compensation insurance claims for any workers' compensation policies issued on or after January 4, 2002; and

(c) As Platte River has not issued any workers' compensation policies in the State of Montana since its acquisition by Alleghany Corporation on January 4, 2002, Platte River does not believe that it has any claimants on any workers' compensation policies issued on or after January 4, 2002, meeting the Court's criteria in this matter as set forth in the Amended Summons dated December 7, 2005, issued by the Workers' Compensation Court of the State of Montana in the matter of Schmill v. Liberty Northwest Insurance Corporation and Montana State Fund (WCC No. 2001-0300).

8. I understand that the Montana Workers' Compensation Court may allow a

period of up to ninety (90) days from the date of filing this affidavit within which Petitioners' counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Platte River. After such 90 days, if no objection is lodged by the Petitioners' counsel, the Court will dismiss the insurer from this action based on the sworn statements made by me in this affidavit.

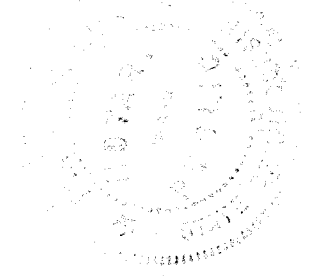
9. The above is true and correct to the best of my knowledge.

Carmen Raha
Ms. Carmen Raha

Date: 2/2/06

So subscribed and sworn to before me this 2nd day of February, 2006.

Teresa C. Lins Teresa C. Lins
Print Name: Teresa C. Lins
Notary Public for the State of Wisconsin
Residing at E4519 Maple Ct., Spring Green
My Commission Expires: 12/21/2008

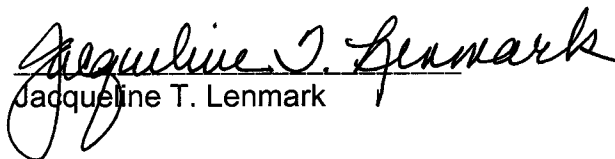


CERTIFICATE OF SERVICE

I, Jacqueline T. Lenmark, one of the attorneys for Platte River Insurance Company, hereby certify that on February 6, 2006, I served a true and correct copy of the foregoing **AFFIDAVIT OF CARMEN RAHA FOR AND ON BEHALF OF PLATTE RIVER INSURANCE COMPANY**, by depositing same in the United States Mail, first class postage prepaid, in Helena, Montana, upon the following:

Ms. Laurie Wallace
Bothe & Lauridsen PC
P O Box 2020
Columbia Falls MT 59912

DATED this 6 day of February, 2006.


Jacqueline T. Lenmark

KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.

Guardian Building, Third Floor
50 South Last Chance Gulch
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Helena, Montana 59624
406/442-0230 Tele.
406/449-2256 Fax
E-mail: jtlenmark@kellerlawmt.com

SPEED MEMO

February 6, 2006

Re: *Cassandra Schmill vs. Liberty Northwest Insurance Corporation and Montana State Fund*
Montana Workers' Compensation Court No. 2001-0300

For filing, please find enclosed PLATTE RIVER INSURANCE COMPANY'S NOTICE OF FILING and the original AFFIDAVIT OF CARMEN RAHA FOR AND ON BEHALF OF PLATTE RIVER INSURANCE COMPANY. Thank you for your assistance.

Jacqueline T. Lenmark

cc: Laurie Wallace, Esq.
(w/copy of encls. as indicated above)

TO: MS PATRICIA KESSNER
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HELENA MT 59624