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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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- Old Republic Security Assurance Company
- General Security Insurance Company
- General Security National Insurance Company
- SCOR Reinsurance Company
- Penn Star Insurance Company
- Fairfield Insurance Company
- General Reinsurance Corp.
- Genesis Insurance Company
- North Star Reinsurance
- Greenwich Insurance Company
- XL Insurance Company of New York Inc.
- XL Insurance America, Inc.
- XL Reinsurance America
- XL Specialty Insurance Company
- American Guarantee & Liability Insurance Company
- American Zurich Insurance Company
- Assurance Company of America
- Colonial American Casualty & Surety
- Fidelity & Deposit Company of Maryland
- Maryland Casualty Company
- Northern Insurance Company of New York
- Valiant Insurance Company
- Zurich American Insurance Company
- Zurich American Insurance Company of Illinois

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,

Petitioner,

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

WCC No. 2001-0300

RESPONSE TO SUMMONS

COMES NOW the above listed Respondents ("Respondents"), and in response to this Court's *Amended Summons and Notice of Attorney Fee Lien*, dated December 7, 2005, states as follows:

RESPONDENTS DISPUTE THE ENTITLEMENT OF SCHMILL BENEFICIARIES TO ADDITIONAL BENEFITS

Respondents dispute the entitlement of claimants insured by them to additional benefits under the *Schmill* decision. The grounds upon which Respondents dispute said entitlements are as follows:

1. Certain claimants' entitlement to *Schmill* benefits are precluded by the passage of time and the applicability of the doctrines of waiver, estoppel, laches, and/or various statutes of limitations.
2. An order requiring Respondents to identify all *Schmill* beneficiaries creates an unreasonable and undue burden upon Respondents.
3. An order requiring Respondents to pay *Schmill* benefits and/or to pay or withhold the attorney lien in favor of Petitioners' attorneys is prohibited by the due process clause of the Montana Constitution, Article II, Section 17. Respondents were not parties to the *Schmill* case and were not given notice and opportunity to be heard on the merits of that case.

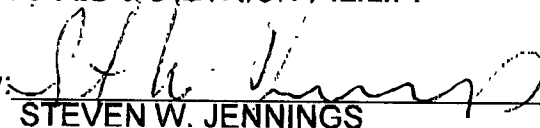
4. An order requiring Respondents to pay *Schmill* benefits and/or to pay or withhold the attorney lien in favor of Petitioners' attorneys is prohibited by the due process clause of the of the 14th Amendment to the United States Constitution. Respondents were not parties to the *Schmill* case and were not given notice and opportunity to be heard on the merits of that case.
5. No common fund may be maintained against Respondents in this case because the purported non-participating beneficiaries of the *Schmill* decision are not ascertainable for several reasons, including but not limited to the fact that Montana insurers are not required by Montana statutes or regulations to maintain claim files and records for the length of time necessary to identify all *Schmill* beneficiaries described in *Amended Summons and Notice of Attorney Fee Lien*.
6. Petitioner's common fund attorney's lien does not and cannot extend to "all Montana insurers and self-insurers" who proportionally reduced occupational disease benefits for non-occupational factors between July 1, 1987 and June 22, 2001. Petitioner's purported attorney lien notice is overbroad because *Schmill* does not apply to claims that were settled, made final, or closed prior to April 10, 2003, the date of the *Schmill* decision.
7. Even if a common fund were created through the efforts of Petitioners, neither Petitioners nor their attorney are entitled to a fixed percentage of additional benefits that may be awarded to non-participating beneficiaries with whom neither Petitioners nor their attorney have any relation. Under the common fund doctrine, non-participating beneficiaries should contribute, in proportion to the benefits actually received by them, only to the litigation costs incurred by Petitioners in the *Schmill* litigation, including reasonable attorney fees. The maximum amount of costs and attorneys' fees recoverable by the participating litigants and/or their attorney is limited to those costs and fees actually incurred in creating the benefit for the non-participating beneficiaries.
8. Respondents request and reserve the right to assert additional grounds and defenses, or to adopt the grounds presented by others responding to the summons as circumstances apply and warrant.

WHEREFORE, Respondents respectfully request this Court to enter an order:

- a. denying the entitlement to *Schmill*-type benefits by any potential claimants insured by Respondents; or alternatively,
- b. denying the enforcement of the attorney fee lien asserted by Petitioners' attorneys.

Dated this 13th day of February, 2006.

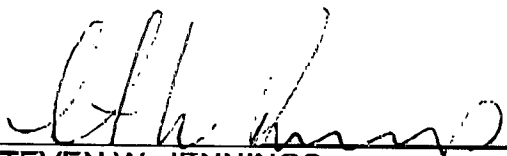
CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

By: 
STEVEN W. JENNINGS
Attorneys for Respondents Above-Listed

CERTIFICATE OF SERVICE

I, STEVEN W. JENNINGS, one of the attorneys for the law firm of Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., hereby certify that on the 13th day of February, 2006, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Ms. Laurie Wallace
Bothe & Lauridsen, P.C.
PO Box 2020
Columbia Falls, MT 59912


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Attorneys are licensed in Montana unless otherwise noted, * also licensed in North Dakota; # also licensed in Wyoming, * not licensed in Montana

February 13, 2006

Workers' Compensation Court
 PO Box 537
 Helena, MT 59624-0537

RE: *Cassandra Schmill vs. Liberty Northwest Insurance Corporation, et al.*
 WCC No. 2001-0300

Dear Clerk:

On behalf of our clients, enclosed please find a Response to Summons for filing in the above-referenced matter. Please conform the cover sheet and return in the envelope provided.

Thank you in advance for your assistance with this matter.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
 TOOLE & DIETRICH P.L.L.P.

Myrna Henschel, PLS

Myrna Henschel, Certified PLS
 Legal Secretary to Steven W. Jennings

mlh
 Enclosures
 c (w/encl.): Ms. Laurie Wallace