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MONTANA WORKERS' COMPENSATION COURT

CASSANDRA SCHMILL,)
)
 Petitioner,)
 vs.)
)
 LIBERTY NORTHWEST INS. CORP.,)
) WCC No. 2001-0300
 Respondent/Insurer,)
)
 and)
)
 MONTANA STATE FUND,)
)
 Intervenor.)

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Taken at: Montana Workers' Compensation Courthouse
 Helena, Montana
 Wednesday, July 27, 2016, 10:06 a.m.

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Before: The Honorable David M. Sandler
 (Appearing by telephone)

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TELEPHONIC HEARING TRANSCRIPT

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Reported by David E. Hix, ASCR, Montana Workers'
 Compensation Court Official Court Reporter, 1625 11th
 Avenue, Helena, Montana 59624-0537, (406) 444-7794,
 Official Court Reporter and Notary Public for the State
 of Montana, residing in Missoula, Montana.

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A P P E A R A N C E S

LAURIE WALLACE, ESQ., 5 Highway 2 East, Columbia Falls, Montana 59912, appearing by telephone for and on behalf of the Petitioner.

TODD A. HAMMER, ESQ., 100 Financial Drive, Suite 100, Kalispell, Montana 59904-7310, appearing by telephone for and on behalf of the Respondent Insurers.

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I N D E X

WITNESSES:

PAGE:

NONE CALLED

EXHIBITS:

NONE OFFERED

Certificate of Court Reporter.....14

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Wednesday, July 27, 2016

THE COURT: So this is the time for the first hearing on Petitioner's motion for an Order to Show Cause in the Schmill matter. And, Laurie, I'll just ask, so it looks to me like we're getting to the end of this; is that right?

MS. WALLACE: That's the goal, Your Honor.

THE COURT: And that's my goal as well. So I thought what I would do is, I think the most important thing at this point is to get some deadlines where some of this can be done, so hopefully we can get this closed in the early part of 2017. So I was going to go through the list of insurers that Todd represents and see if we can get some deadlines and find out what's going on with each individual one, if that's agreeable to everybody.

MS. WALLACE: That's exactly what I was hoping for, so that would be great.

MR. HAMMER: Yeah, I can give you a short report, Judge, on kind of where we're at. I've made some good progress on some, and maybe not so good on others. So I think deadlines would be good for the clients and would make them sort of march to the tune, so to speak.

THE COURT: Okay. Well, let's then just start with your list. So ASARCO, that's the DLI now,

1 right? We don't need to worry about them?

2 MR. HAMMER: It is, Your Honor, that's
3 right.

4 THE COURT: Okay. I'll take that up with
5 Quinlan tomorrow. Then I guess let's talk about the
6 stipulation that the two of you have entered into for
7 Continental Casualty, FH Stoltze, NorthWestern Energy
8 and Rosauers. The one thing, I didn't see a deadline in
9 those stipulations. Maybe I missed it. But if not, I
10 was wondering if I could put one in the order.

11 MR. HAMMER: I think you can, Your Honor.
12 And let me just tell you where we are with regard to
13 each of those. It's pretty easy. With regard to
14 Stoltze, Rosauers and NorthWestern, the first computer
15 search has been done, and the adjustors are going
16 through those by way of a hand search or an actual
17 search of the files right now. So I would anticipate
18 that to be done, when I say shortly, I mean relatively.
19 There's probably 100 files or so amongst all of them,
20 and I would anticipate that the adjustors, with their
21 workloads and everything, would be able to get through
22 those within 45 to 60 days, and we could have a report
23 for Laurie on those.

24 With respect to Continental Casualty, the
25 computer search -- now that we have the stipulation

1 filed, the computer search has not been done yet. I
2 don't know how involved that will be. But -- and I just
3 can't give you a kind of a sense of a nearer date by
4 which that can be accomplished.

5 THE COURT: Okay. Let me -- for a lot of
6 the other insurers you asked for 60 to 90 days. Can
7 they do that in 90 days?

8 MR. HAMMER: I'm hoping that it can be
9 done, yeah. I think Continental could be 90 days;
10 Stoltze, and Rosauers, NorthWestern, I would say 60 days
11 to finalize that. I don't know how long that hand
12 search will take.

13 THE COURT: Okay. And, Laurie, are those
14 deadlines okay with you?

15 MS. WALLACE: Yes, that would be fine.

16 THE COURT: Okay. So why don't -- just to
17 make it easy, I'll make -- I'll order that Continental
18 Casualty have their affidavit or response filed on or
19 before Monday, October 31, 2016.

20 And then, Jackie, what's the last business
21 day of September?

22 THE CLERK: That is September 30th, which is
23 a Friday.

24 THE COURT: Okay. That works. So for FH
25 Stoltze, NorthWestern Energy, and Rosauers I'll order

1 that their affidavits or other responses be filed on or
2 before Friday, September 30, 2016.

3 MR. HAMMER: And then the next one, Your
4 Honor, is Plum Creek. And as you probably know from
5 reading the papers, Weyerhaeuser bought Plum Creek.
6 Plum Creek changed adjustors from ESIS to Sedgwick July
7 1. And, frankly, I don't know how quickly Sedgwick has
8 been able to come up to speed. I anticipate filing a
9 stipulation like we did with the others, but I would
10 submit that October 31 would be the acceptable date, if
11 that is okay with Laurie.

12 MS. WALLACE: Yeah, that would be great.

13 THE COURT: Okay. So that makes it easy.
14 So for Plum Creek we'll order that they file an
15 affidavit or their response on or before Monday, October
16 31, 2016.

17 MR. HAMMER: Yeah, Benefis Health Care
18 filed their affidavit today. I haven't received the
19 original affidavit. But I sent the e-mail to Jackie on
20 the filing of that affidavit, so that one has been
21 filed.

22 THE COURT: Okay. We saw that. So that
23 triggers the discovery period; is that right, Laurie?

24 MS. WALLACE: Yes.

25 THE COURT: Okay.

1 MR. HAMMER: And then Golden Sunlight
2 Mines, Your Honor --

3 THE COURT: Well, hold on, Todd.

4 MR. HAMMER: -- I have not heard from. And
5 Safeway Stores is now adjusted by Sedgwick. And I have
6 been in e-mail contact with the Workers' Comp TPA
7 oversight manager, Debbie Dunst. Actually, Albertson's
8 bought Safeway Stores. And we haven't gotten very far,
9 but if Laurie is okay with those two dates being October
10 31, 2016, I'll try to push them. But, frankly, we're
11 going to have to -- or I'm going to have to work hard on
12 getting them to come around.

13 I may file something with the Court
14 indicating that I may or may not be successful, and I
15 may ask for some other allowances. So those are the
16 ones for which I'm not having really good communication
17 with.

18 THE COURT: Okay. Well, let's hold on.
19 Laurie, did you have anything else with Benefis, or are
20 you done with them since they filed -- the affidavit is
21 coming?

22 MS. WALLACE: Yeah, that's fine. I haven't
23 seen it yet, but I can take a look at it and see if I
24 need to do anything further. So Benefis is fine.

25 THE COURT: Okay. So for Plum Creek, I will

1 order that they respond -- well, the three Plum Creek
2 entities that are listed, I'll order that they have
3 their affidavits or other responses filed on or before
4 Monday, October 31, 2016. And the same for Safeway,
5 I'll make that order.

6 MS. WALLACE: Your Honor.

7 THE COURT: Yeah.

8 MS. WALLACE: Could I ask you to actually --
9 since Todd isn't sure he's going to get anywhere with
10 Safeway, I guess I'd rather have them have less time, if
11 what he needs is -- and then, you know, we could maybe
12 make it like a status update deadline, like September
13 30th. Because if he's not going to get anywhere, I
14 don't want to spend a lot of time spinning our wheels
15 before you're able to do something further.

16 MR. HAMMER: I think that makes sense, Your
17 Honor, and I would concur with that.

18 THE COURT: Okay. So what are we -- meaning
19 by September 30th they have their response in?

20 MS. WALLACE: Yeah, why don't we --

21 MR. HAMMER: I would like it to be a status
22 report, because I don't know how quickly they will have
23 their response in. And if we can then, perhaps, make an
24 allowance, if Laurie is so inclined and you're so
25 inclined, you know, to October 31 to get it in. That's

1 what I understood. Laurie, were you thinking of that?

2 MS. WALLACE: Yeah, that would be fine, I
3 guess, if we wanted to do kind of a status update on
4 September 30th. And if you're having any more
5 difficulty, Todd, you can let the Court know.
6 Otherwise, their affidavit would be due by the 31st of
7 October.

8 THE COURT: So why don't I order both that
9 by September 30th Safeway and Golden Sunlight Mines both
10 will be -- there will be a status filed as to the
11 progress they're making on their investigation, and also
12 that their affidavit or other response is due on October
13 31st. Is that agreeable to everybody?

14 MR. HAMMER: It is, Your Honor.

15 MS. WALLACE: Yes.

16 THE COURT: So Jackie will make that order
17 in the Minute Entry and Order Incorporating, and that
18 way Todd can show them that I expect it to be done by
19 October 31st.

20 MS. WALLACE: Okay.

21 THE COURT: And then I think Northwest
22 Healthcare has already filed an affidavit; is that
23 correct?

24 MR. HAMMER: That's right, Your Honor.

25 THE COURT: Okay. And I think those are the

1 only ones on the list under Todd's name, but we do have
2 an issue that Transport Insurance Company was listed
3 under Oliver Goe's name. But Oliver says that Todd
4 represents them.

5 MR. HAMMER: You're right, Your Honor. And
6 Transport has -- Transport and Continental, while they
7 aren't the same, are essentially the same for these
8 purposes, and I would anticipate getting Transport --
9 Transportation's affidavit filed by October 31 as well.

10 THE COURT: Okay. Laurie, that same thing,
11 that deadline works for you?

12 MS. WALLACE: Yes.

13 THE COURT: Okay. So it will be ordered
14 that Transport Insurance Company file its affidavit or
15 other response by Monday, October 31st.

16 THE CLERK: Excuse me, Judge. This is
17 Jackie. I've got my spreadsheet up, and we have -- and
18 I just want to make sure that I'm clear because there
19 does get to be confusion with insurance companies, you
20 know, close to the same name. So what I have is
21 Transport Insurance Company has already filed an
22 affidavit. Transportation Insurance Company has not, so
23 were we talking about Transportation?

24 MR. HAMMER: Yes, we are, Jackie.

25 THE CLERK: All right.

1 THE COURT: Thanks, Jackie, so go ahead and
2 make that clear in the Minute Entry and the Order
3 Incorporating. Okay. So I think we have gone through
4 all of Todd's insurance companies. Unless, Laurie, have
5 I missed any?

6 MS. WALLACE: No, that was my list.

7 THE COURT: Okay. Well, then I think unless
8 anybody has any questions or concerns, that will
9 conclude this hearing for today, and then we'll pick it
10 up tomorrow with the other defense attorneys.

11 MS. WALLACE: Just to clarify, Jackie, is
12 Larry Jones -- was he noticed on that for tomorrow as
13 well, or not.

14 THE CLERK: He wasn't, no. What I've got is
15 Quinlan O'Connor, Oliver Goe, Steve Jennings, Ron Atwood
16 and you. I didn't -- well, let me pull up your Motion
17 to Compel. I didn't see -- I don't think because Larry
18 was listed in there, that, you know, I --

19 MS. WALLACE: And that's okay. I wasn't
20 sure. That's all right. I don't know that we'll need
21 to anyway. He's already been working on them and has
22 them in progress. So maybe I'll give him a call and see
23 if he wants to participate, because he's the only other
24 one with insurers that are hanging out there.

25 THE COURT: If so, could you provide us with

1 the list of insurers that he's working with? Our goal
2 is to get this thing wrapped up, like I said, sometime
3 in early 2017, so --

4 MS. WALLACE: Right, yes, I will.

5 THE COURT: Okay. We'd appreciate it.

6 THE CLERK: Okay. Great.

7 THE COURT: All right. Anything else?

8 MS. WALLACE: No.

9 MR. HAMMER: Nothing here, Your Honor.

10 THE COURT: Okay. Well, thanks for
11 participating. And, Laurie, we'll talk to you tomorrow.

12 MS. WALLACE: All right. Thanks.

13 MR. HAMMER: Thank you.

14 (Thereupon, the telephonic hearing concluded at 10:20
15 a.m.)

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C E R T I F I C A T E

STATE OF MONTANA)
 : SS.
County of Missoula)

I, David E. Hix, ASCR, WCC Official Court Reporter and Notary Public for the State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in this cause;

That the foregoing pages of this telephonic hearing transcript constitute a true and accurate transcription of my stenotype notes.

I further certify that I am not an attorney nor counsel of any of the parties; nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 27th day of July, 2016.

David E. Hix, ASCR
WCC Official Court Reporter,
Notary Public, State of Montana
Residing in Missoula, Montana.
My Commission expires: August 1, 2017