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MONTANA WORKERS' COMPENSATION COURT

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

Taken at: Montana Workers' Compensation Courthouse
 Helena, Montana
 Thursday, July 28, 2016, 1:43 p.m.

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

TELEPHONIC HEARING TRANSCRIPT

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., Murphy Law Firm, 619 2nd Avenue South, Great Falls, Montana 59403-3226, appearing by telephone for and on behalf of the Petitioner.

OLIVER GOE, ESQ., 800 North Last Chance Gulch, Suite 101, Helena, Montana 59624-1697, appearing for and on behalf of the Respondent Insurers.

RONALD ATWOOD, ESQ., P.O. Box 40028, Portland, Oregon, 97204-0028, appearing by telephone for and on behalf of the Respondent Insurers.

STEVEN W. JENNINGS, ESQ., 490 North 31st Street, Suite 500, P.O. Box 2529, Billings, Montana 59103-2529, appearing by telephone for and on behalf of the Respondent Insurers.

QUILAN O'CONNOR, ESQ., P.O. Box 1728, Helena, Montana 59624-1728, appearing for and on behalf of the Respondent Insurer.

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I N D E X

WITNESSES:

PAGE:

NONE CALLED

EXHIBITS:

NONE OFFERED

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Thursday, July 28, 2016

THE COURT: So this is the time to talk about Petitioner's motion for an Order to Show Cause in the Schmill Common Fund matter. Just so everybody knows, we had the hearing with Todd Hammer and his clients yesterday. And as I explained at the beginning of that hearing, just by having the hearing I've essentially granted the Motion to Show Cause. But what we're really doing is setting deadlines by which everyone has to get the required information into the Court and our eye on this to get this case closed at some point in the relatively near future; relative being the length of this case already.

So what I think I will do, because we're all somewhat scattered, is just go through with each of you in the order that you come up in Petitioner's motion. So, Mr. Goe, I will -- and just so you -- just so the defense attorneys know, we set deadlines yesterday on some of Mr. Hammer's clients, and they were -- the deadlines were either Friday, September 30th, or Monday, October 31st, depending on the circumstances of that particular insurance company. So that's the background that I'm approaching this.

So I'll start with you, Mr. Goe. I understand that American Hardware Mutual and the

1 Argonaut companies filed affidavits today; is that
2 correct?

3 MR. GOE: Yes, and Laurie pointed out to me
4 there's a -- in Paragraph 5 of the American Hardware
5 affidavit there's an error carried over from another
6 insurer. And, Laurie, and Judge, I would hope what we
7 could do is have my client, who is out in Ohio just --
8 maybe just strike that, put the right insurer in and
9 initial that and send that in, if that would be
10 adequate.

11 THE COURT: Does that work for you, Laurie?

12 MS. WALLACE: Yes.

13 THE COURT: Okay.

14 MR. GOE: So I'll have her do that. And I
15 did file an affidavit for the Argonaut companies. I was
16 advised by Transport that Todd Hammer was handling this
17 matter.

18 THE COURT: And that -- and yesterday he
19 said that he was. So I'll strike them from your list,
20 and we actually dealt with them yesterday.

21 MR. GOE: That sounds good. Electric
22 Insurance Company, I'm having a hell of a time finding
23 somebody that knows anything. I usually don't say hell
24 of a thing in court, but that's true.

25 THE COURT: That's fine.

1 MR. GOE: Sedgwick is the identified
2 adjustor, but so far I haven't had any luck. I will
3 continue to work on that, and I would think September
4 30th would be fine.

5 THE COURT: Okay. So why don't -- Okay. So
6 I will order that Electric Insurance Company file their
7 affidavit or other response on or before Friday,
8 September 30, 2016.

9 MR. GOE: I have my doubts if they were even
10 writing coverage. The reason I had them is we do
11 liability work for them.

12 THE COURT: Okay. So I'll present them with
13 the order, and see what you can come up with by the end
14 of September.

15 MR. GOE: That sounds good. I appreciate
16 it.

17 THE COURT: Okay. Ms. Wallace, do we need
18 to do anything else with Mr. Goe's clients?

19 MS. WALLACE: No, thank you.

20 THE COURT: So next on the list, it actually
21 appears under Mr. Hammer's clients. But I understand
22 that ASARCO, that the DLI now has a bond; is that
23 correct, Mr. O'Connor?

24 MR. O'CONNOR: That's correct. Following
25 their bankruptcy, the bond was assigned to the

1 Department, and we've been handling the claims. I
2 assume that they're being handled still. We have begun
3 the review of the files. All I ask is that the order
4 says September 30th, if that's okay, Ms. Wallace. I
5 expect it will be -- an affidavit to be filed well
6 before that time.

7 THE COURT: Does that work for you?

8 MS. WALLACE: That works, yes.

9 THE COURT: Okay. So I will order that
10 ASARCO, or DLI, file their affidavit on or before
11 Friday, September 30, 2016. Okay. So I think we're
12 done with them.

13 So that brings us to Mr. Atwood's clients.
14 Ms. Wallace, one thing that Jackie brought to my
15 attention this morning is J.H. Kelly had already filed
16 an affidavit in this case on October 16, 2006. It's
17 Docket No. 316.

18 MS. WALLACE: That's correct, Your Honor.
19 And what had followed was, I had done a follow-up
20 request, you know, within my 90-day time frame, for
21 additional information, clarifying what they had
22 reviewed and how they had done it. And that just kind
23 of sat there, and so Ron just was able to provide me
24 with some additional information today that, I believe,
25 satisfies my concerns about the review. So I will be

1 filing a request to dismiss J.H. Kelly in the next
2 couple of days.

3 THE COURT: Okay. Thank you. So we won't
4 do anything with them. So that leaves Louisiana Pacific
5 Corp. Mr. Atwood, can you give us an update on what
6 they're doing?

7 MR. ATWOOD: Yes. I've been in contact with
8 them. And a number of the files are in storage, so I'm
9 trying to determine how many files are in storage.
10 Those files are all in Portland, and I'm working with
11 the current adjustor, who is with Intermountain, to
12 determine what kind of data they might have on the
13 computer. And I'm actually going to be in Missoula
14 sometime next week, and so I'll have a chance to talk to
15 him about that then. I would assume that we'll be able
16 to have something to you by the end of September.

17 THE COURT: Okay. Ms. Wallace, any
18 objection to setting the deadline for Louisiana Pacific
19 for September 30th?

20 MS. WALLACE: No objection.

21 THE COURT: Okay. So I will order Louisiana
22 Pacific Corp. to file their affidavit or other response
23 on or before Friday, September 30, 2016. So I think
24 we're done with Mr. Atwood's clients. And that brings
25 us to Mr. Jennings.

1 MR. JENNINGS: Yes, Your Honor, Laurie and I
2 have spoken at length about CBIC, Combined Benefits
3 Insurance Company. This company was sold. There was
4 apparently a search done way back in 2005, and due to
5 the sale, it appears that nothing was done and files no
6 longer exist. We have been able to, as a result of that
7 earlier search, identify three likely Schmillers. We
8 are in the process of contacting them now. Because in
9 the absence of a file, that's essentially the only way
10 we can determine what benefits may or may not be owing.

11 It does appear that benefits would likely be
12 owing, and Laurie and I have talked about that. To the
13 extent we're able to locate these people and they have
14 the information that helps us, we will simply put that
15 information in the typical affidavit, after having paid
16 them their benefit and withheld the attorney's fee on
17 behalf of Laurie.

18 To the extent the information is not
19 available, i.e., they don't have notes or old documents,
20 which is quite likely, we anticipate simply getting with
21 Laurie to settle out the attorney's fee on her -- with
22 respect to her attorney's fee lien.

23 With respect to getting that accomplished,
24 all we're doing right now -- oh, we had three, but one
25 of them is deceased, so it looks like we're down to two

1 actual living claimants. But in any event, the process
2 right now is finding those peoples' last known address
3 and attempting to contact them to recreate the
4 information. With respect to Travelers --

5 THE COURT: Hold on. Let's stay on
6 Combined.

7 MR. JENNINGS: Okay.

8 THE COURT: Let's set a deadline on this.
9 Does September 30th work for you there, do you think,
10 or --

11 MR. JENNINGS: I don't anticipate a problem
12 with September 30th on that. Like the other party said,
13 I hope to file an affidavit sooner than that, but I
14 don't anticipate a problem with September 30th.

15 THE COURT: Okay. Laurie, any objection to
16 that?

17 MS. WALLACE: No.

18 THE COURT: Okay. So I'll order Combined
19 Benefits, the parent company, to file their affidavit on
20 or before September 30, 2016. So now we can go on to
21 the Travelers/St. Paul Companies.

22 MR. JENNINGS: Yeah, I think that's actually
23 going to be even easier, Judge. We have identified
24 three yeses, i.e., three Schmillers. Based on their
25 files, we have three more possibles. One of these

1 possibles, it looks like, their benefit -- their Schmill
2 benefit -- was, in fact, paid, but the attorney's fee
3 was not. So a little bit more research on that will
4 reveal those facts.

5 The two other possibles, we're looking at a
6 date of injury back in the early '90s. We're having a
7 hard time trying to find the claim file. It looks as
8 though, based on the date of injury, it would be
9 unlikely that they are Schmillers. But in any event, if
10 we are not -- if we can find the claim file, we can
11 answer that definitively. If we cannot find the claim
12 file, again, we would approach Laurie with an offer to
13 settle based on -- based on some type of average benefit
14 for the three other "yes" claimants.

15 Again, I don't anticipate September 30th
16 would be difficult, and we do anticipate being able to
17 file an affidavit before then.

18 THE COURT: Okay. So I'll go ahead then
19 with all the St. Paul and Travelers companies listed on
20 Petitioner's motion for Order to Show Cause. I'll order
21 them to file their affidavit or other response by
22 Friday, September 30, 2016.

23 So I think that's everyone. Unless anybody
24 has any questions or concerns, we'll conclude this
25 hearing. And what we'll do is, we will issue a Minute

1 Entry and an Order Incorporating in the next week or so.

2 MS. WALLACE: I have no objection, Your
3 Honor.

4 THE COURT: Okay. I don't hear anything
5 else, so that will conclude this for today. Thanks for
6 making it easy, everyone.

7 (Thereupon, the telephonic hearing concluded at 1:55
8 p.m.)

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