

## Topics for *SCHMILL v. LIBERTY*, 2007 MTWCC 27

**Common Fund Litigation: Settled Claims.** Claims in which TTD and/or PTD benefits were paid at an apportioned rate and the claim was settled by way of a petition for settlement approved by the Department of Labor & Industry or a stipulated judgment are “settled” and are not part of the common fund implementation of *Schmill*.

**Common Fund Litigation: Retroactivity.** Claims in which TTD benefits are being paid and were either apportioned in the past or are still being apportioned are subject to *Schmill* retroactivity.

**Common Fund Litigation: Retroactivity.** Claims in which the claimant was found to be PTD and had benefits paid at an apportioned rate which continue to be paid at either an apportioned or full rate are subject to *Schmill* retroactivity.

**Common Fund Litigation: Retroactivity.** Claims in which TTD benefits were paid at an apportioned rate, the claimant returned to work with no wage loss, and no additional benefits other than medical benefits were paid must be identified and paid under the retroactivity ruling in *Schmill II* as part of the common fund.

**Common Fund Litigation: Retroactivity.** Claims in which PTD benefits were paid but whose payments were stopped automatically because the claimant reached retirement age must be identified and paid under the retroactivity ruling in *Schmill II* as part of the common fund.

**Common Fund Litigation: Final Judgment.** Claims which do not involve judgment cannot be considered “final.” Furthermore, the mere existence of a final judgment cannot automatically remove a case from retroactive application. A judgment may have been rendered on a particular issue not involving apportionment, and therefore that judgment would not likely prevent payment of *Schmill* benefits.

**Common Fund Litigation: Settled Claims.** The *Stavenjord II* decision, issued after this Court’s *Flynn* Order, indicates that “paid in full” claims should not be deemed “settled.” Merely because a claim could be considered “paid in full” by the insurer at some point does not mean that additional benefits may not be demanded, and due, at a later date.

**Common Fund Litigation: Implementation: Statutes of Limitation or Laches.** For purposes of this implementation proceeding, the Special Master finds that neither the doctrine of laches nor any particular statute of limitations limits retroactive application during the implementation period. Generally speaking, prior to *Schmill*, § 39-72-706, MCA, prevented claimants from having legal grounds on which to claim unapportioned benefits. Where the legal right did not exist, claimants cannot be deemed to have inappropriately sat on their rights.

**Common Fund Litigation: Uninsured Employers’ Fund.** Since the UEF identifies no basis in statute or common law to exclude it from the retroactive application of *Schmill*, the

UEF must identify claimants entitled to additional benefits under *Schmill* and pay appropriate benefits.

**Common Fund Litigation: Final Judgment.** Cases in which a final judgment was entered by the WCC, and that judgment is not pending on appeal to the Montana Supreme Court, are excluded from retroactive application of *Schmill* if the circumstances of the particular judgment indicate that the underlying occupational disease claim is no longer actionable.