

LAURIE WALLACE  
 Bothe & Lauridsen, P.C.  
 P.O. Box 2020  
 Columbia Falls, MT 59912  
 Telephone: (406) 892-2193  
 Attorneys for Petitioner/Schmill

IN THE WORKERS COMPENSATION COURT OF THE STATE OF MONTANA  
 IN AND FOR THE AREA OF KALISPELL  
 BEFORE THE WORKERS' COMPENSATION JUDGE

CASSANDRA SCHMILL,	)	
	)	WCC NO. 2001-0300
Petitioner,	)	
	)	
vs.	)	PETITIONER'S OBJECTION TO LUA'S
	)	MOTION TO DISMISS
LIBERTY NW INS. CORP.,	)	
	)	
Respondent/Insurer,	)	
	)	
and	)	
	)	
MONTANA STATE FUND,	)	
	)	
Intervenor.	)	
_____	)	

COMES NOW the Petitioner, CASSANDRA SCHMILL, by and through her attorney of record, and files the following response to the Motion to Dismiss filed by Lumberman's Underwriting Alliance ("LUA"). For the reasons stated herein, the Motion should be denied.

The Supreme Court decision in *Schmill* struck down the apportionment provision of the Occupational Disease Act allowing for apportionment of benefits due to non-occupational factors affecting the occupational disease. As a result of this decision, as well as the subsequent *Schmill* decision finding the ruling applied retroactively, insurers were required to review their files to determine if any benefits were apportioned.

According to the Affidavit attached to LUA's motion, the adjuster only reviewed the occupational disease files to determine if impairment awards were apportioned. Since occupational diseases did not allow for impairment awards until after the *Stavenjord* decision was rendered, it is unlikely that any insurer will find an apportionment of impairment awards in occupational disease cases subject to the *Schmill* decision. What the

insurer is obligated to do is to identify whether there was an apportionment taken of any benefits, most notably temporary total disability benefits, at anytime, on any occupational disease file affected by the *Schmill* decision.

WHEREFORE, since the Affidavit of LUA's representative does not adequately address the issues raised in the *Schmill* decision, LUA should not yet be dismissed from this litigation. If LUA can properly respond to the Summons issued in this case, and verify that no apportionment was taken of any occupational disease benefits in cases subject to the *Schmill* decision, then LUA may be entitled to be dismissed from this litigation.

DATED this 23 of August, 2006.

ATTORNEYS FOR PETITIONER

BOTHE & LAURIDSEN, P.C.  
P.O. Box 2020  
Columbia Falls, MT 59912  
Telephone: (406) 892-2193

By: Laurie Wallace  
LAURIE WALLACE

CERTIFICATE OF MAILING

I, Robin Stephens, do hereby certify that on the 23 day of August, 2006, I served a true and accurate copy of the PETITIONER'S RESPONSE TO LUA'S MOTION TO DISMISS by U.S. mail, first class, postage prepaid to the following:

Bryce Flock  
HAMMER, HEWITT, & JACOBS, PLLC  
P.O. Box 7310  
Kalispell, MT 59904-0310

Robin Stephens  
Robin Stephens

*Bothe & Lauridsen, P.C.*  
*Attorneys at Law*

5 HIGHWAY 2 EAST  
P.O. BOX 2020  
COLUMBIA FALLS, MT 59912

KENNETH S. THOMAS  
DAVID W. LAURIDSEN  
LAURIE WALLACE  
DAVID M. SANDLER

(406) 892-2193  
1 (800) 354-3262  
FAX (406) 892-0207  
E-MAIL: [legalpad@digisys.net](mailto:legalpad@digisys.net)  
WEBSITE: [www.bandllaw.com](http://www.bandllaw.com)

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JOHN H. BOTHE  
(1951-1996)

August 23, 2006

Ms. Patricia Kessner  
Clerk of Workers'  
Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537

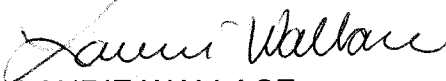
RE: SCHMILL v. LIBERTY NW INS. CORP.  
WCC No. 2001-0300

Dear Ms. Kessner:

Enclosed please find the Petitioner's Objection to LUA's Motion to Dismiss in regard to the above-referenced matter.

Should you have any questions concerning this matter, please contact me directly.

Sincerely,

  
LAURIE WALLACE  
BOTHE & LAURIDSEN, P.C.

LW/rs

cc: Bryce Floch