

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**WCC No. 2001-0300**

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**CASSANDRA SCHMILL**

**Petitioner**

**vs.**

**LIBERTY NORTHWEST INSURANCE CORPORATION**

**Respondent/Insurer**

**and**

**MONTANA STATE FUND**

**Intervenor.**

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**ORDER DELINEATING ISSUES TO BE BRIEFED**

¶ 1 An in-person conference was held in this matter on September 20, 2006, at the Workers' Compensation Court in Helena, Montana. The purpose of this conference was to clarify the issues to be briefed in this case. The parties attending the conference had the opportunity to suggest issues for which briefing may benefit the Court in making determinations in this case. In light of the issues set forth by the conference attendees, this Court's recent order in *Flynn*,<sup>1</sup> and the Montana Supreme Court's recent decision in *Stavenjord*,<sup>2</sup> the Court invites the parties to brief the issues set forth below.

¶ 2 In *Stavenjord*, the Montana Supreme Court defined "open claims" as those claims "which are still actionable, in negotiation but not yet settled, now in litigation, or pending on direct appeal."<sup>3</sup> In *Flynn*, this Court defined "final" claims as "a claim in which a final judgment has been entered by the Workers' Compensation Court only if the claim is not

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<sup>1</sup> *Flynn v. Montana State Fund*, 2006 MTWCC 31.

<sup>2</sup> *Stavenjord v. Montana State Fund*, 2006 MT 257, \_\_\_ Mont. \_\_\_, \_\_\_ P.3d \_\_\_.

<sup>3</sup> *Stavenjord*, ¶ 15.

currently pending on appeal.”<sup>4</sup> This Court further defined “settled” claims as “a claim in which a department-approved settlement or court-ordered compromise of benefits has been made between the claimant and insurer.”<sup>5</sup> The issue to be briefed is:

¶ 2a Whether, in light of the above holdings, any reasons exist for this Court not to use the *Flynn* definitions of “final” and “settled” in determining which cases would be considered “final” or “settled” as mandated by the Montana Supreme Court’s remand in this case.<sup>6</sup>

¶ 3 Additional issues on which this Court requests briefing are as follows:

¶ 3a What end date should be utilized in determining whether an occupational disease claim may be part of the common fund.

¶ 3b What date should be used for the entitlement date of the occupational disease benefits at issue in this case.

¶ 3c Whether the scope of retroactive application is limited by any applicable statute of limitations or laches.

¶ 3d Whether the Uninsured Employers’ Fund falls within the ambit of the Montana Supreme Court’s decision in *Schmill II*.

¶ 4 Montana State Fund identified several specific implementation issues which, it suggests, may be identified and resolved directly with Petitioner’s counsel and submitted to the Court for consideration, approval, and if necessary, dispute resolution. The Court urges the parties to attempt to reach an agreement on the specific implementation issues and to inform the Court as to their progress. Petitioner will initiate this process and the parties shall file status reports with the Court on or before December 8, 2006.

¶ 5 Parties may choose, at their discretion, to brief any, all, or none, of the preceding issues. Briefing shall be simultaneous, with opening briefs due December 8, 2006, and response briefs due January 8, 2007.

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<sup>4</sup> *Flynn*, ¶ 28.

<sup>5</sup> *Flynn*, ¶ 26.

<sup>6</sup> *Schmill v. Liberty Northwest Ins. Corp.*, 2005 MT 144, ¶ 19, 327 Mont. 293, 114 P.3d 204 (*Schmill II*).

**THEREFORE** this Court ORDERS:

¶ 6 The parties may choose to brief any or all of the above issues, with opening briefs due December 8, 2006, and response briefs due January 8, 2007.

DATED in Helena, Montana, this 8<sup>th</sup> day of November, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Parties of Record - Via E-Mail and WebSite