

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

CASSANDRA SCHMILL

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer

and

MONTANA STATE FUND

Intervenor.

ORDER DENYING MOTION TO ADD ADDITIONAL ISSUES TO BE BRIEFED

¶1 Several Respondents¹ in this case have jointly moved this Court to amend this Court's recent Order² in this case to encompass additional issues. For the reasons set forth below, the moving Respondents' motion is denied.

¹ AIU Ins. Co., American International Pacific Ins. Co., American Home Assurance Co., Birmingham Fire Ins. Co., Commerce & Industry Ins. Co., Granite State Ins. Co., Ins. Co. of the State of Pennsylvania, National Union Fire Ins. Co. of Pittsburgh, PA, New Hampshire Ins. Co., AIG National Ins. Co., American International Specialty Lines Ins., American International Ins. Co., Illinois National Ins. Co., American General Corp., Lexington Ins. Co., Atlantic Mutual Ins. Co., Centennial Ins. Co., Bituminous Fire & Marine Ins. Co., Bituminous Casualty Corp., Chubb Ins. Group, Chubb Indemnity Ins. Co., Chubb National Ins. Co., Executive Risk Indemnity Inc., Federal Ins. Co., Great Northern Ins. Co., Pacific Indemnity Co., Quadrant Indemnity Co., Vigilant Ins. Co., Combined Benefits Ins. Co., Farmers Ins. Co., Farmers Ins. Exchange, Truck Ins. Exchange, Mid-Century Ins. Co., FM Global, Affiliated FM Ins. Co., Factory Mutual Ins. Co., Great American Ins. Co., Great American Ins. Co. of NY, Great American Assurance Co., Great American Alliance Ins. Co., Great American Spirit Ins. Co., Republic Indemnity, Great West Casualty, Hartford Accident & Indemnity Co., Hartford Casualty Ins. Co., Hartford Fire Ins. Co., Hartford Ins. Co. of the Midwest, Hartford Underwriters Ins. Co., Property & Casualty Ins. Co. of Hartford, Sentinel Ins. Co. Ltd., Twin City Fire Ins. Co., Trumbull Ins. Co., Montana Health Network Workers Compensation Ins. Trust, Petroleum Casualty Co., Axis Reinsurance Co., Grocers Ins. Co., Guaranty National Ins. Co., Royal Indemnity Co., Security Ins. Co. of Hartford, Sentry Ins. Mutual Co., Sentry Select Ins. Co., Dairyland Ins. Co., Middlesex Ins. Co., PPG Industries, Inc., Connie Lee Ins. Co., Stillwater Mining Co., and Universal Underwriters Group.

² Order Delineating Issues to Be Briefed, Docket Item No. 324.

¶2 In their brief in support of this motion, the moving Respondents remind the Court of the procedure which preceded the Order which is presently at issue. The moving Respondents assert that they are not being given an opportunity to present the defenses which they identified as issues to be briefed. The moving Respondents further claim that “it appears that the Court’s intention is to adjudicate this entire case based upon the briefs requested in the *Order Delineating Issues to be Briefed*, [and] it appears that Moving Respondents will not be afforded an opportunity to brief their defenses at a later date.”³

¶3 The moving Respondents have jumped to a mistaken conclusion. Between pre-conference communications, the conference of September 20, 2006, and the follow-up letter of Petitioner’s counsel, more than twenty issues were identified by the various parties to this case as potentially requiring briefing. The Court does not care to envision briefs which attempt to resolve twenty or more issues within a single document. Likewise, the Court will not order the parties to produce such an unwieldy document. Instead, the Court has considered all the identified issues, chosen five of those issues as being most pressing at this stage in the proceedings, and requested briefs.

¶4 The Court notes that some of the chosen issues may frame how some of the remaining issues are addressed when and if they are briefed. For example, the Court has requested the parties to brief what dates are to be used as an end date and as an entitlement date for occupational disease benefits.⁴ Among the issues not chosen by the Court for this current round of briefing is the issue of whether the order to identify all *Schmill* beneficiaries creates an unreasonable and undue burden on defendants.⁵ The Court sees the possibility that the latter issue may be more readily considered after the dates are determined, as these dates may help define just how burdensome the identification of beneficiaries may be.

¶5 Therefore, this Motion is **DENIED**. The issues and deadlines as set forth in this Court’s Order Delineating Issues to be Briefed are unchanged.

DATED in Helena, Montana, this 14TH day of November, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

³ Motion to Add Additional Issues to be Briefed in the Briefing Schedule Set Forth in This Court’s *Order Delineating Issues to be Briefed* at 5, Docket Item No. 325 (“Motion”).

⁴ Order Delineating Issues to be Briefed, ¶¶ 3a-3b.

⁵ Motion at 3.

c: Parties of Record Via WebSite and E-Mail