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IN THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

CASSANDRA SCHMILL,)	
Petitioner,)	
vs.)	WCC No. 2001-0300
LIBERTY NORTHWEST INSURANCE)	Judge James Jeremiah Shea
CORPORATION,)	
Respondent/Insurer,)	
and)	
MONTANA STATE FUND,)	
Intervenor.)	

TELEPHONIC CONFERENCE CALL

Workers' Compensation Court
1625 11th Avenue
Helena, Montana 59601
November 21, 2006
9:00 a.m.

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A P P E A R A N C E S:

3 FOR THE PETITIONER: Laurie Wallace
(Tel ephoni cal I y) Attorney at Law
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6 FOR LIBERTY NORTHWEST Larry Jones
INSURANCE CORP. : Attorney at Law
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12 FOR MULTIPLE INSURERS: Steve Jennings
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13 PO Box 2529
14 Bi l l i ngs, Montana 59103

15
16 Al so Present:
17 Jeani ne Bl aner, Law Cl erk
18 Jacki e Bockman, Deputy Cl erk of Court

19
20
21 Court Reporter: Ki m Johnson

1 BE IT REMEMBERED that on Tuesday, November 21, 2006,
2 before the Honorable James Jeremi ah Shea, the fol l owi ng
3 proceedi ngs were had:

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THE COURT: Good morni ng, everyone -- and Tom
Page 2

8 Martello is here, as well. So anyway, I read Brad's motion
9 for stay and his memo in support, and I guess what I would
10 ask is maybe in turn -- and Brad, I guess, first, if you
11 have anything to add to that, I think it's fairly well set
12 out in your motion and in your memo. If you have anything
13 to add, certainly, I would give you the opportunity to do
14 that now. Otherwise, I guess I'd ask Laurie to respond,
15 and anybody else who wants to be heard, and we can see
16 where we can get on this.

17 MR. LUCK: This is Brad. I don't have anything
18 further.

19 THE COURT: I don't care if -- Laurie, do you
20 want to respond to that? I mean to the motion, not
21 necessarily to what Brad just said.

22 MS. WALLACE: I do. As I understand Brad's
23 motion, what he is saying is that the first issue
24 identified by the Court in this order in this case, the
25 Court was seeking some potential briefing on that

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1 Paragraph 2-A that talks about use of the definitions in
2 Flynn for "final and settled."

3 THE COURT: Uh-huh.

4 MS. WALLACE: And Brad was saying that since
5 they are going to be challenging those definitions in the
6 appeal in Flynn, that that matter should not be briefed at
7 this point in time. That issue should be stayed.

8 THE COURT: Right.

9 MS. WALLACE: So in response to that, my
10 position is that the definitions of final and settled, as
11 set forth in Flynn, do not apply to Schmi II, and there are

12 two reasons for that -- well, I guess three:

13 First of all, Stavenjord, I think for purposes of
14 SchmiII, anyway, it sets out what open claims are and what
15 closed claims are, and it says that "claims that became
16 final by way of settlement or judgment," and that defines
17 "open claims."

18 THE COURT: Uh-huh.

19 MS. WALLACE: It seems that one of the focuses
20 of Brad's motion is this Section 39-71-107, and there are
21 two reasons -- and I guess just to clarify, it's my
22 understanding that because that provision uses the language
23 about claims paid in full, that somehow that might have a
24 bearing on the definitions that the Court came up with in
25 Flynn --

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1 THE COURT: Right.

2 MS. WALLACE: -- final and settled.

3 I don't believe that that particular statute is
4 applicable to SchmiII, and there are several reasons for
5 that. One is, that statute was enacted in 2001 and became
6 effective July 1, and SchmiII claims end June 22, 2001, so
7 that law does not apply to any of the SchmiII claims.

8 Secondly, that particular provision is in the
9 Workers' Compensation Act, not the Occupational Disease
10 Act. And the Occupational Disease Act, which is the,
11 obviously, applicable one for SchmiII, has its own
12 definition of settled claims, and that's at 39-72-711, and
13 that provision clearly sets out that a settled claim is one
14 in which there's been full and final compromised settlement
15 that was approved by the Department.

16 And then it specifically says that after the

17 Department approves that settlement, the claim is closed
18 and the insurer's liability for a settled claim is forever
19 released, so it spells it out a lot more directly in the OD
20 Act than any of the provisions in the Comp Act.

21 So it would seem to me that we would be using
22 that definition of what a settled claim is for SchmiII
23 purposes. We wouldn't even be using the Flynn definition.

24 And as far as an open claim, we would be using,
25 you know, the Stavenjord definition.

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1 So I think those are the main reasons. I just
2 don't think that the Flynn definitions are applicable to
3 SchmiII.

4 So the Court's positing of that first issue, I
5 think my response to that would be that, no, we wouldn't
6 use the Flynn definition --

7 THE COURT: Okay.

8 MS. WALLACE: -- because they are not applicable
9 to the SchmiII claims.

10 THE COURT: And so as this pertains to Brad's
11 motion to stay, I guess, the basis for your opposition to
12 the motion to stay would be that since the Flynn
13 definitions don't apply, the Flynn appeal is irrelevant?

14 MS. WALLACE: Right.

15 THE COURT: Okay.

16 MS. WALLACE: Right.

17 THE COURT: Well, let me ask you this, and I
18 don't want -- it'd probably make sense to jump ahead, then,
19 though, since what you said in terms of Issues 3-A and 3-B,
20 as Brad pointed out in his motion, whether those are issues

21 that basically can just be stipulated to.

22 You had mentioned in there, particularly as it
23 would pertain to Issue 3-B, I guess it would be, is that
24 the end date is the 2001 date, and whether in terms of
25 framing the time period that's at issue here, is there

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1 legally a dispute here?

2 MS. WALLACE: I don't think there probably is.
3 I think Brad was right on that, the summons in Schmill in
4 Paragraph 2 --

5 THE COURT: Right.

6 MS. WALLACE: -- felt that the cases in which
7 apportionment was taken prior to and including June 22, '01
8 for dates of OD occurring after July 1, '87, and Brad
9 quotes that. I think that's accurate. And then as to the
10 3-B, both A and B are kind of one and the same.

11 THE COURT: It's basically the start date and end
12 date.

13 MS. WALLACE: Yeah, and I think the summons
14 already came up with that, and we did agree to the
15 June 22, '01 date. We did that long ago.

16 THE COURT: Okay, so I guess I had overlooked,
17 then, the 2004 order on this issue, as well. So those
18 things could, I guess, probably just be addressed by
19 stipulation and don't have to be briefed.

20 And I guess -- Tom's nodding here, so I'll take
21 that as assent and maybe ask Brad: Since you were the one
22 who put it out there, I assume you are in agreement?

23 Larry, what's your position on that?

24 MR. JONES: I agree with Brad, with whatever he
25 does.

1 THE COURT: Okay. So we know, Brad, you are
2 speaking for Larry for the remainder of the hearing.

3 No -- and Steve, do you have anything to add on
4 that, as well?

5 MR. JENNINGS: No. I'm fine with those dates.

6 THE COURT: Okay, so why don't we -- we've got
7 that issue addressed, then.

8 I guess, let's go back, then, to what Laurie said
9 as pertains to Issue 2-A, and I guess I'll ask, since her
10 -- I think she set out her position pretty clearly. I'll
11 try to throw it open there.

12 Brad, it's your motion. I guess I'll ask you to
13 respond to that.

14 And then Tom, Larry, Steve, you guys can add
15 whatever you want to what Brad has to say.

16 MR. LUCK: Thanks, Judge.

17 Laurie makes some good points, but I think that
18 all of these retroactivity issues are part of a whole and
19 all cases are related. A good example of that is on the
20 remand in the Flynn case. They directed the Court to
21 consider those issues, which are the core issues of what's
22 closed, settled, and finalized, and a whole litany of those.

23 We take some issue with the matter in which that
24 was decided, and whether we are right or not, the Supreme
25 Court needs to give us the final direction on that.

1 And I think they complicated that a little bit
2 with the Stavenjord opinion by throwing in yet another word

3 in terms of "actionable." And I do think the Flynn appeal
4 is going to pull it all together and give us, hopefully, a
5 definitive answer to all of these different issues that we
6 have raised.

7 And without belaboring the point there, you know,
8 we are concerned that in the Flynn order, you didn't
9 address all of those terms because of your interpretation
10 of the remand direction.

11 And then in relation to the statute, it's in the
12 disjunctive, and you didn't consider the second part of it.

13 I think Laurie's reference to the statute not
14 being applicable is a good argument, but our argument that
15 it is by reference is also a good argument that needs to be
16 determined in the Flynn appeal. If you recall our argument
17 in relation to Flynn, it was that we were looking for
18 assistance. And whether the statute is directly applicable
19 to the claim or not, it provides a standard and a
20 legislative direction on what should be considered final
21 and what should be considered closed.

22 So even if not directly applicable, we think, by
23 reference, it's a standard to be looked at for legislative
24 direction.

25 This whole bunch of retroactivity stuff is all

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1 created by the courts, and so it's all part of that same
2 argument.

3 I don't think the reference to the OD Act, the
4 provision on settling, is dispositive of anything because
5 that just simply says you can settle these cases. It would
6 be a little disingenuous at this point in time to say, when
7 we have negated the Occupational Disease Act and

8 incorporated by reference anything in the Workers'
9 Compensation Act, that we look to a lone statute and the OD
10 Act and say that's dispositive of any issue in terms of
11 implementation of these decisions, which basically cut the
12 guts out of the Occupational Disease Act, separation from
13 the compact.

14 So I think in total, I think Laurie makes good
15 arguments. But at the end of the day, the fact of the
16 matter is, every single term needs to be finalized. And
17 now that the fund has gotten pretty narrow between all of
18 these decisions -- and we think that Flynn is the vehicle
19 to get the final determination on that -- anything we do in
20 terms of these issues now, and even Laurie's argument, I
21 think are going to be trumped by what happens in Flynn, and
22 it would be an exercise in futility.

23 THE COURT: Well, what about, though, the
24 issue -- I guess, a couple of things. I mean, one, as to
25 her reference to the OD Act, if everybody is in agreement

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1 what the dates are that are framed here, then under, you
2 know, Buckman and Grenz, then the OD Act is going to apply
3 here, isn't it, in terms of those definitions as to what is
4 considered final, settled, closed, and the references that
5 Laurie's making to the OD Act opposed to 107, which she is
6 correct, post-dates the time period we are talking about
7 here.

8 MR. LUCK: I think that's an argument, Your
9 Honor, and that's her position. I disagree with it. I
10 think in terms of which act applies, I think what we have
11 come to in all of these decisions on the fundamental

12 entitlement issues is that there's but one set of laws for
13 compensation for someone that has an industrial injury or
14 occupational disease.

15 So as we talked about the retroactivity terms in
16 relation to all of these court cases, whichever case they
17 are from Murer out forward, we are talking about one set of
18 retroactivity standards, which is what Flynn will
19 ultimately determine.

20 THE COURT: But -- and I guess, and this kind of
21 goes back to that in terms of just a procedural question,
22 then: Is Flynn, if it comes back, and the issues that, as
23 I understand that you are appealing from my order in Flynn,
24 if those issues come back and they are framed such that
25 they are just addressing the application of 107 and the

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1 issues as you have framed them out, and when Laurie is
2 saying that these don't apply to Schmill in any event, I
3 mean, is that -- will Flynn -- and maybe I'm asking for a
4 little crystal ball gazing and there's no way to predict
5 this.

6 But I'm concerned that if we put this in
7 abeyance, then we are going to end up with an order from
8 Flynn from the Supreme Court that is basically going to be
9 a holding that Laurie is still going to be making the same
10 argument that even the Supreme Court's decision in Flynn is
11 not applicable here in Schmill because we are talking about
12 OD versus the Work Comp Act, and 107 post-dated the time
13 period we are talking about here.

14 It seems to me that irrespective of how Flynn
15 comes down from the Supreme Court, if Laurie's -- I don't
16 see that Laurie's argument is going to change, and maybe

17 that would be the issue as it would be briefed presently in
18 Flynn would be whether -- excuse me, in the present case in
19 Schmi II, whether these issues, whether Flynn applies to it
20 at all, whether it's my order in Flynn. And that was my
21 question, and that was the question put at Paragraph 2-A,
22 and maybe that's how it needs to be briefed, is whether
23 that applies in any respect. And that's kind of how Laurie
24 has framed the issue.

25 I'm kind of trying to frame my thoughts here, and

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1 I apologize, but it seems to me that if that's her argument
2 right now that the Supreme Court is probably going to have
3 the -- or may very likely issue a decision which is going
4 to be, obviously, tailored to Flynn, and Laurie's argument
5 is still going to be that Flynn doesn't apply, whether it's
6 my order or whether it's the Supreme Court's opinion that
7 Flynn doesn't apply to Schmi II. I just don't see that
8 changing.

9 MR. LUCK: And Judge, I feel your pain.

10 THE COURT: Thanks.

11 MR. LUCK: Part of the problem is that the
12 Supreme Court has been something of a moving target as it's
13 used in terms of art, and adds more all the time.

14 But I think part of the answer to that is, if we
15 go back to the Flynn remand order, that goes to the very
16 heart of what we're trying to get our hands around here in
17 terms of the substance of these final, closed, settled, all
18 those things, and ask you to make that determination on
19 those words.

20 And those are the heart and soul, those terms and

21 their implementation effects are the heart and soul of the
22 retroactivity, whether a work comp case or an occupational
23 disease case, and you made a comprehensive determination of
24 the task they gave you in terms of those terms. We want to
25 get that clarified and see if you are totally right,

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1 partially right.

2 But those are the heart and soul of the
3 implementation and retroactivity considerations, and --

4 THE COURT: I appreciate you excluding totally
5 wrong as an option.

6 MR. LUCK: I think we are very close. I mean,
7 when we are talking about things around some of the edges,
8 but they are things that need to be determined because we
9 have to go back to 1987 and all of these, and there's lots
10 of work there.

11 So I think barring any additional loose language,
12 that, if not all, certainly very close to everything is
13 going to be determined, and we won't have to redo our steps
14 so much in terms of the Schmi II situation.

15 So my fundamental position is: I don't know
16 where they are going to go with it. But the subject matter
17 of the appeal is the very basic considerations of what we
18 mean "around the edges," and totally with the terms that
19 are the fundamental basis of the retroactivity.

20 THE COURT: Yeah.

21 MR. LUCK: So I do think it'll be applicable and
22 I do think it'll be controlling. And there's always maybe
23 a little bit more, and we won't know until we get it done,
24 but it makes sense to get that determined.

25 THE COURT: Let me ask you this, though, and I

1 guess here's kind of just in trying to get this all wrapped
2 up into one neat little package, and I recognize that
3 that's unlikely to happen is: Wouldn't it make sense,
4 though, to address this issue? I mean, 2-A is out there
5 right now, and I understand Laurie's argument, and that may
6 be the nuts and bolts of this is that Flynn is going to --
7 what the Supreme Court ultimately decides in Flynn is going
8 to be 90 percent.

9 But just having that issue of whether,
10 notwithstanding whatever the Supreme Court ultimately
11 decides in Flynn, having the issue framed in terms of the
12 question that's posed in 2-A, whether that would apply to
13 Schmi II so that we have that, so that we have that -- I
14 guess, so we are not sitting there waiting for Flynn to
15 come down.

16 And I appreciate -- and bear in mind, I mean,
17 when you talk about feeling your pain, I understand that
18 you guys have -- I mean, and you have all done an admirable
19 job of sifting through this quagmire, but I'm just
20 wondering whether, like I said, that my concern that Flynn
21 is going to come down and we're still going to have this
22 issue of whether it's applicable to Schmi II hanging out
23 there. And would it not make sense to just at least
24 address that issue and have that, and that may well be
25 ready to go up on appeal, as well, contingent on Flynn

1 coming down, so that we are not waiting for Flynn to come
2 down and then moving forward on that issue, if Flynn

3 doesn't address it.

4 And I know, like I said, a lot of this is kind of
5 trying to do crystal ball gazing on how encompassing the
6 Supreme Court's decision in Flynn is going to be, but it
7 seems to me that is still one loose end that I can see
8 hanging out there, even after the Supreme Court issues its
9 ruling on Flynn and the whole final, closed, settled issue.

10 MR. LUCK: Your Honor, I think that makes some
11 sense, and the question is just how far, in terms of all
12 these issues. But maybe the middle ground would be then --
13 I'm not totally, I'm not sure I totally understand Laurie's
14 arguments. And one of the things we wanted to avoid was
15 writing our Supreme Court brief for this set and basically
16 the same arguments and the same issues on the appeal.

17 But I wonder, if that's the case and if she does
18 feel pretty strong about that, I wonder if we should
19 modify -- if you are not inclined to do the stay -- if we
20 should modify the process a little bit and have Laurie
21 brief her take on those issues and the implementation stuff
22 and let us respond to that.

23 And to the extent, then, that it's included within
24 those things that will be handled on appeal, we can point
25 those things out. And to the extent that she can outline

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1 all those things that are separate or different or
2 inapplicable, then we can be very specific in the way we
3 respond and we can respond to those issues, and we may all
4 have the best of all worlds.

5 THE COURT: Laurie, what do you think about that?

6 MS. WALLACE: I don't really have a problem with
7 that. I think it probably makes sense. I mean, I'm

8 sitting here looking at an outline that I have right now
9 that I think clearly sets out who the Schmi II claimants are
10 and which ones that I think the defendants are having a
11 problem with. And it really doesn't bring the Flynn
12 definitions into play, hardly at all.

13 THE COURT: Okay.

14 MR. LUCK: Otherwise, Your Honor, I think we are
15 like two ships crossing in the night --

16 THE COURT: Yeah.

17 MR. LUCK: -- if we do it simultaneously.

18 THE COURT: No, and I see what you are saying
19 there, and I think that probably makes sense. And so what
20 I will probably -- let me throw this out there and ask
21 everybody to respond to it. Basically, what I would be
22 doing is issuing an order that would void the question in
23 Paragraph 2-A, but in the same order, reframing it that the
24 issue will be briefed as to whether the applicability of
25 Flynn or how it's distinguished, I guess, would be the

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1 question.

2 And maybe, I guess, Laurie, just since you have
3 raised this issue, maybe what I would ask you to do is: If
4 you guys could confer on how you want this issue framed in
5 the order, would probably, with the -- the last thing I
6 want to do is issue an order that does not accurately frame
7 the issue.

8 So if you guys can confer as to how you think
9 that issue should be framed and just e-mail me, I will
10 issue an order that would effectively void the question in
11 Paragraph 2-A.

12 And as I would see it is that the order
13 essentially would say that it would be to address the issue
14 of whether -- I mean, it's still going to be largely -- not
15 largely, but somewhat the same question -- whether the
16 definitions in Flynn are applicable to Schmi II as far as
17 final and settled. And if you guys want to frame it and
18 you are in agreement on that, that's how my understanding
19 would be. So it's basically a subtle shift.

20 So I guess what we are doing here is narrowing
21 the question to just whether it's applicable or
22 distinguishable, and so we can modify the order, then.

23 And then what I would do is, Laurie, you could do
24 an opening brief on that, respondents could respond to
25 that, and Laurie, you would have an opportunity for a reply

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1 brief, and I would certainly entertain if people wanted to
2 have an oral argument, as well.

3 MS. WALLACE: Your Honor, I would throw this out
4 as maybe an alternative: Since I don't believe that any of
5 the Flynn definitions apply to Schmi II, I would prefer to
6 have the issue framed in terms of the definition provided
7 in Stavenj ord.

8 And I guess what I am looking at is the Court
9 provides us there with a definition of "open claims." And
10 so to the extent that anyone has an argument as to whether
11 Schmi II claims are not open claims, I would prefer to brief
12 that issue.

13 MR. LUCK: Wouldn't it be something like, "What
14 retroactivity standards are applicable to the Schmi II
15 implementation and why?"

16 THE COURT: That would probably cover it. I

17 mean, that's, you know, a little less wordy and complicated
18 than my version, but yeah, we could go with that.

19 Well, why don't you -- sounds to me like you guys
20 can -- that seems to be basically what the language would
21 be. I think it can be fairly simple, but just to make sure
22 that we are framing it accurately and so that we are at
23 least trying to avoid having to have another conference
24 call on whether I have accurately set out the issue to be
25 briefed, why don't you guys confer on that and just e-mail

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1 me with -- I suspect you should be able to agree on how the
2 issue should be framed.

3 And I will issue an order, as I said, essentially
4 voiding 2-A, and here's the issue in lieu of 2-A that the
5 Court will have to be briefed. If you guys can even come
6 to terms as to what timelines you want for the opening
7 brief reply or brief in opposition of reply, I'm with that,
8 as well.

9 MR. LUCK: Okay, Judge. Do you want to e-mail
10 Steve and Larry and I, and then we can all confer after we
11 see what you are suggesting?

12 MS. WALLACE: Sure. I didn't catch what you had
13 said, Brad, as your issues, so I don't know if you want to
14 send that to me.

15 MR. LUCK: Just basically, simplistically, what
16 are the retroactivity standards to be applied to the
17 implementation of Schmi II, in Schmi II and why? I mean,
18 so...

19 THE COURT: Yeah, and whether that's going to be
20 Stavenjord, the, you know, the standard is you were

21 referring to under the OD Act, Laurie, or whatever. And I
22 think if it's framed that broadly and you issue, you know,
23 it's a -- largely, then, it's going to be, in large part,
24 you will have the opportunity to file the opening brief and
25 you can address, you know, why, you know, why Stavenj ord,

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1 why Flynn is not applicable here or however you see fit,
2 and then there will be the response to that.

3 MS. WALLACE: Okay.

4 THE COURT: Well, let me ask this, then: Does it
5 make sense to -- we talked about 3-C and 3-D. Obviously,
6 there's no dispute to 3-D. Should we just leave 3-C and
7 3-D in the -- on the same briefing schedule that we had?

8 I know, Brad, you were referencing in your motion
9 that 3-C somewhat dovetails in with the motion for stay in
10 terms of we are addressing retroactive application, but it
11 would seem to me that probably the cleanest way to handle
12 this would be to just -- that 2-A is the one that we will
13 modify.

14 We'll void 2-A for purposes of -- because,
15 obviously, there are a lot more people than just the ones
16 on the phone who may or may not decide to brief these
17 issues.

18 But as for 3-A and 3-B, that's being addressed by
19 stipulation, and then 3-C and 3-D just stay on that. That
20 would be on the schedule as set forth in the November 8th
21 order.

22 MS. WALLACE: Sure.

23 MR. LUCK: Okay, yeah, Judge. I thought it kind
24 of tied in, that 3-C tied in a lot with those retroactivity
25 issues, but we can deal with that.

1 THE COURT: I'm happy to hear it, if we want to
2 put that -- and I don't know, I mean, let's -- if we want
3 to put 3-C in with this kind of new order that's going to
4 be in lieu of 2-A, I'm happy to do that, as well. I
5 just -- I'm sorry. Go ahead, Laurie.

6 MR. LUCK: I'm sorry, Judge, I was going to say
7 that since we are going to respond to the position she is
8 taking on that, I guess she should take a position on 3-C,
9 too, and we can respond to that in terms of how it's
10 material and why, how those things, statute of limitations
11 and laches, and I am sure she'll say, "Not at all," and
12 then we will respond to that.

13 THE COURT: Well, I guess, though, and like I
14 said, my main concern is that there are going to be other
15 issues that -- well, people will be entitled to anybody who
16 wants to be briefed on new order with the new schedule can
17 certainly be heard on that, as well.

18 But is there a consensus here as to whether we
19 should fold 3-C into the new order that's going to modify
20 2-A? Or are we going to leave 3-C on the brief and
21 schedule set forth in the November 8th order? Is there
22 consensus as to what would be the better way procedurally
23 to handle that?

24 MR. LUCK: My sense, Your Honor, is that we
25 should stay on the same schedule with everything, so that

1 with the new scheduling order, anything that we have a new
2 issue in relation to 2-A, and then if this 3-C survives to

3 SchmiII_Conference Call 11-21-07.txt
be briefed, it should be on the same schedule.

4 THE COURT: On --

5 MR. LUCK: Just so we're organized about it.

6 MS. WALLACE: I don't think, Your Honor, we can
7 give you an answer today on that because we will need to
8 frame the issue that we'll replace 2-A with.

9 THE COURT: Here's what I am going to do, then,
10 so everybody is on the same page: We will send an e-mail
11 out to the -- this is probably the easiest thing, so since
12 the opening briefs are due December 8th as to the current
13 order, we will send just an e-mail out today advising
14 people that pursuant to the conference call we are having,
15 that this order, the deadlines right now are being -- will
16 be modified, and that the Court will be issuing an order
17 next week setting forth modification of the issues to be
18 briefed and a new date. Does that make sense?

19 MR. LUCK: Sure does.

20 MS. WALLACE: Yeah.

21 THE COURT: Okay, so we will do that.

22 Does anybody else have anything to add: Steve or
23 Larry or Tom?

24 MR. JENNINGS: No.

25 MR. JONES: I have nothing.

24

1 MR. MARTELLO: I don't.

2 THE COURT: Okay, thanks everyone. We will be
3 talking to several of you here in about 25 minutes.

4 Thank you.

5 (The conference concluded at 9:45 a.m.)

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1 STATE OF MONTANA)
2 County of Lewis & Clark) : SS.

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4 I, Kimberly Johnson, Professional Court Reporter, do
5 hereby certify that:

6 I am a duly-appointed, qualified, and acting Official
7 Court Reporter for the Workers' Compensation Court of the
8 State of Montana; that I reported all of the foregoing
9 proceedings had in the above-entitled action, and the
10 foregoing transcript contains a full, true, and correct
11 transcript of the said proceedings to the best of my

12 ability.

13 IN WITNESS WHEREOF, I have hereunto set my hand this

14 5th day of December, 2006.

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Kimberly Johnson
Official Court Reporter
Workers' Compensation Court
Helena, MT 59601