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FILED

MAR 23 2007

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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 REPSONSE TO |
| |) | LUMBERMAN UNDERWRITING |
| LIBERTY NW INS. CORP., |) | ALLIANCE'S MOTION TO DISMISS |
| |) | |
| 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.

LUA asserts that it filed an affidavit on November 30, 2006, and that since 90 days have passed without a response from Petitioner, LUA should be dismissed. Paragraph four of the Summons requires that a copy of a response to the Summons must be served on Petitioner's counsel in addition to being filed with the Court. Petitioner's counsel has no record of being served with a copy of LUA's response to the Summons. Since LUA did not properly serve Petitioner with a copy of the response, the 90 days has not yet begun to run.

WHEREFORE, unless LUA can prove service of the affidavit on Petitioner's counsel, its Motion to Dismiss is premature and should be denied.

DOCKET ITEM NO. 364

DATED this 22 of March, 2007.

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, Laurie Wallace, do hereby certify that on the 22 day of March, 2007, 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
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JOHN H. BOTHE
(1951-1996)
March 22, 2007

Ms. Clara Wilson
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537

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

Dear Ms. Wilson:

Enclosed please find Petitioner's Response to Lumberman Underwriting Alliance's Motion to Dismiss for filing with the Court.

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

Sincerely,



LAURIE WALLACE
BOTHE & LAURIDSEN, P.C.

LW/rs
Enc.

Cc: Bryce Flock