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**FILED**

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OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

Attorneys for, Lumberman's Underwriting Alliance,  
ASARCO, Inc., Benefis Healthcare, Continental Casualty Co.,  
Golden Sunlight Mines, Northwest Healthcare, Corp.,  
Northwestern Energy, LLC, F.H. Stoltze Land &  
Lumber Co., Plum Creek Timber Co. Inc, Rosauers,  
and Safeway.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

<p>CASSANDRA SCHMILL,  Petitioner,  v.  LIBERTY NORTHWEST INSURANCE CORPORATION,  Respondent/Insurer,  and  MONTANA STATE FUND,  Intervenor.</p>	<p>WCC NO. 2001-0300  <b>REPLY IN SUPPORT MOTION TO DISMISS LUMBERMAN'S UNDERWRITING ALLIANCE</b></p>
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COMES NOW Lumberman's Underwriting Alliance ("LUA"), by and through its attorneys of record, and hereby submits its reply in support of its motion to dismiss. LUA's motion to dismiss should be granted.

Petitioner's reliance on ¶4 of the Amended Summons is misplaced. Paragraph 4 of the Amended Summons requires Respondent's to serve their *response* to the Amended Summons upon Petitioner's counsel. LUA has not filed a response to the Amended

Summons. On November 30, 2006 LUA filed an affidavit requesting dismissal from this action as they have located no claims which would fall under the Schmill criteria.

Pursuant to this Court's September 27, 2005 e-mail to all Common Fund counsel, including Petitioner's counsel herein, service of LUA's affidavit was effectuated by the Common Fund website. It was the Petitioner's counsel's duty, according to the September 27, 2005 e-mail, to regularly check the Common Fund website for new filings. Moreover, Petitioner's counsel filed a letter with the Court the day after LUA filed its affidavit wherein Petitioner's counsel notified the Court it would be submitting discovery within the 90 day deadline on METSpool (Docket #341). Obviously Petitioner's counsel frequented the Schmill Common Fund website multiple times between November 30, 2006 and the present given the number of filings.

Petitioner was required to file formal discovery requests upon LUA within 90 days of LUA's November 30, 2006 affidavit. Petitioner has not filed formal discovery requests within 90 days pursuant to ¶5 of the Amended Summons. Accordingly, LUA's motion to dismiss without prejudice should be granted.

DATED this 2<sup>nd</sup> day of April, 2007.

HAMMER, HEWITT, JACOBS & FLOCH, PLLC



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**CERTIFICATE OF SERVICE**

This is to certify that I, Bryce R. Floch sent on this 2<sup>nd</sup> day of April, 2007, the forgoing attached **REPLY IN SUPPORT MOTION TO DISMISS LUMBERMAN'S UNDERWRITING ALLIANCE Fees** was duly serviced upon the following attorneys of record, by depositing a true copy thereof in the United States mail, postage paid, addressed as:

Laurie Wallace  
PO Box 2020  
Columbia Falls, MT 59912



Bryce R. Floch