

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 GRANTING PETITIONER EXTENSION OF TIME
TO CONDUCT DISCOVERY**

¶ 1 The Court is in receipt of Lumberman's Underwriting Alliance's (LUA) motion to dismiss and Petitioner's objection to this motion. LUA's motion is predicated on the affidavit filed on November 30, 2006, which was executed by Marianna Valer on behalf of LUA which states, in pertinent part, that LUA has no claimants meeting the Court's criteria in this matter as set forth in the summons. Petitioner's objection is based on the fact that LUA did not serve the affidavit on Petitioner but, rather, filed it with the Court.

¶ 2 Although paragraph 4 of the amended summons states that a response to Petitioner's request for enforcement of attorney's lien must be served on the Petitioner's attorney, paragraph 5 directs Respondents to return any completed affidavits which were served with the summons to the Workers' Compensation Court, without a requirement that the affidavit be served upon Petitioner's counsel. Petitioner, however, appears to be applying the requirement that a response to the summons be served on Petitioner's counsel to the affidavit provisions referenced in paragraph 5.

¶ 3 In the interests of assisting parties who should properly be dismissed from this action and to accomplish dismissal without the need to hire attorneys, this Court developed the affidavit process that is the subject of the present dispute. In the Court's November 27,

2005, e-mail sent to all parties, it was requested that the parties serve their affidavits on the Court. Paragraph 4 of this e-mail states that the Court will continue to serve the parties via e-mail notification. Furthermore, the e-mail stated that it is each party's responsibility to check the Court's website for new filings. Under paragraph 9, *Tracking*, the e-mail states the Court encourages Petitioner's counsel to continue tracking on their end for cross-reference purposes. To assist in this endeavor, on November 14, 2006, and June 27, 2006, this Court e-mailed the Schmill Excel spreadsheet to Petitioner's counsel.

¶ 4 Notwithstanding the previous directives to regularly check the Court's website for new filings, the Court had, in the past, forwarded frequent e-mails to the parties, stating:

This is a reminder that service in the common fund matters is not effected by mail, but via the website. Please be sure you are checking the link set forth below for filing of documents. Petitioners' counsel, please note the 90-day window to conduct discovery with the parties filing Affidavits.

¶ 5 The Court was notified by several parties that the frequent e-mails this Court served became burdensome and largely ignored. It was this Court's belief that all parties were frequenting the website for service and that these e-mails had effectively become redundant.

¶ 6 It is not entirely clear to the Court whether Petitioner's objection to Respondent's motion is premised on a lack of notice due to a lack of service of LUA's affidavit. Nevertheless, in order to mitigate any potential prejudice, the Court grants Petitioner until June 20, 2007, to conduct discovery in this matter for the limited purpose of proving or disproving the statements made in the affidavit filed by Ms. Valer. After June 20, 2007, if no objection is lodged by Petitioner, the Court will dismiss LUA from this action.

DATED in Helena, Montana, this 11th day of April, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

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