

LAURIE WALLACE
Bothe & Lauridsen, P.C.
P.O. Box 2020
Columbia Falls, MT 59912
Telephone: (406) 892-2193
Attorneys for Petitioner/Schmill

FILED

JUN - 6 2007

OFFICE OF
WORKER'S 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 MOTION TO COMPEL
)	RESPONSE TO DISCOVERY REQUESTS
LIBERTY NW INS. CORP.,)	FROM LUMBERMEN'S UNDERWRITING
)	ALLIANCE
Respondent/Insurer,)	
)	
and)	
)	
MONTANA STATE FUND,)	
)	
Intervenor.)	
_____)	

COMES NOW the Petitioner, CASSANDRA SCHMILL, by and through her attorney of record, and hereby moves the Court pursuant to Rule 24.5.326, Procedural Rules of the Workers' Compensation Court, for an Order compelling LUMBERMEN'S UNDERWRITING ALLIANCE (hereinafter "LUA") to respond to certain discovery requests.

By Order dated April 11, 2007, the Court allowed the Petitioner to conduct discovery in response to the Affidavit filed by LUA in this case. Pursuant to that Order, the Petitioner sent a discovery letter to LUA on April 13, 2007, in which she sought the answers to three questions:

- "1. Please describe the procedure used to determine the insurer 'has no claimants meeting the Court's criteria as set forth in the Summons.'
2. Please indicate the total number of occupational disease claims that the insurer had in Montana occurring on or after

DOCKET ITEM NO. 376

July 1, 1987.

3. Please indicate how many of the claims identified in response to question no. 2 involved the payment of temporary total disability benefits."

(Attached hereto as Exhibit No. "A".)

The Petitioner has used this form of informal discovery with every insurer who has filed an affidavit selecting the third option in response to the *Schmill* Summons. Each time the Petitioner has sent a letter to an insurer similar to the one sent to LUA, the insurer has responded to the correspondence. LUA, on the other hand, did not respond to the correspondence and so the Petitioner sent a follow-up letter dated June 4, 2007, requesting a response. (Attached hereto as Exhibit No. "B".) LUA responded that it will only respond to the Petitioner's questions if they are contained in a pleading, as opposed to correspondence. (Attached hereto as Exhibit No. "C".)

LUA's game of hide-the-ball has gone on long enough. First, LUA filed a response to the Summons, but refused to serve a copy of that response on Petitioner's counsel. Next, LUA received discovery correspondence from Petitioner's counsel, but refused to respond to it because it was not in the form of a pleading. What is especially troubling about this last refusal is that it was not made at the time the discovery was sent in April, but only after Petitioner's counsel solicited a response in June. It is clear that had Petitioner's counsel not followed up on the discovery, LUA's counsel would simply have waited until the time limit for discovery had expired and then used that as a reason not to respond.

The actions of LUA's counsel are doing nothing to benefit his client. Had LUA properly responded to the Summons by serving a copy on Petitioner's counsel and properly responded to the discovery letter, it is more than likely that LUA would have been dismissed from this litigation long ago. Instead, LUA is still in this litigation and expending substantial sums on attorney fees for no reason at all.

Moreover, LUA's actions have wasted the resources of this Court on two occasions when there is a process in place which, with every other insurer, has been self-administrating. LUA's desire to make this process take longer and cost more should not be abided by this Court. LUA's failure to respond to the discovery questions posed to it in the Petitioner's letter of April 13, 2007, was intentional. Such actions warrant the imposition of sanctions in the form of attorney fees and costs associated with the filing of this motion.

WHEREFORE, for the foregoing reasons, the Petitioner respectfully requests that the Court issue an order requiring LUA to answer the Petitioner's discovery requests as outlined in her letter dated April 13, 2007. The Petitioner would further request an award of attorney fees and reasonable expenses incurred in obtaining the Court's order.

DATED this 5 of June, 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 5 day of June, 2007, I served a true and accurate copy of the PETITIONER'S MOTION TO COMPEL RESPONSE TO DISCOVERY REQUESTS FROM LUMBERMEN'S UNDERWRITING ALLIANCE by U.S. mail, first class, postage prepaid to the following:

Bryce Flock
HAMMER, HEWITT, & JACOBS, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310

Laurie Wallace
Laurie Wallace

Bothe & Lauridsen, P.C.
Attorneys at Law

5 HIGHWAY 2 EAST
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KENNETH S. THOMAS
DAVID W. LAURIDSEN
LAURIE WALLACE
DAVID M. SANDLER

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1 (800) 354-3262
FAX (406) 892-0207
E-MAIL: legalpad@digisys.net
WEBSITE: www.bandllaw.com

JOHN H. BOTHE
(1951-1996)
April 13, 2007

Mr. Bryce Floch
HAMMER, HEWITT & JACOBS, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310

RE: Lumbermen's Underwriting Alliance
SCHMILL v. LIBERTY NW INS. CORP., et al.
WCC No. 2001-0300

Dear Mr. Floch:

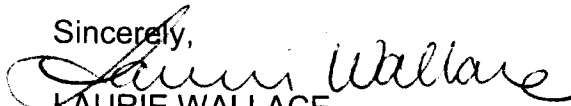
Pursuant to the Court's Order in the above-entitled matter, the Petitioner has been granted until June 20, 2007, for discovery of proving or disproving the statements made in the insurer's Affidavit, a copy of which I have enclosed with this correspondence. As such, please provide me with the following information:

1. Please describe the procedure used to determine the insurer "has no claimants meeting the Court's criteria as set forth in the Summons."
2. Please indicate the total number of occupational disease claims that the insurer had in Montana occurring on or after July 1, 1987.
3. Please indicate how many of the claims identified in response to question no. 2 involved the payment of temporary total disability benefits.

I would ask that you respond to this correspondence immediately so I have sufficient time to follow-up, if necessary, before the June 20, 2007 deadline.

Thank you for your anticipated cooperation in responding to this correspondence.

Sincerely,


LAURIE WALLACE
BOTHE & LAURIDSEN, P.C.

_W/rs
Enc.



NOV 3 2006

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA
OFFICE OF WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

WCC No. 2001-0300

Cassandra M. Schmill

Petitioner

vs.

Liberty Northwest Insurance Corporation

Respondent/Insurer.

AFFIDAVIT

STATE OF FLORIDA)
County of PALM BEACH) : ss.

¶1 I, Marianna Valer, CP-Certified Paralegal (NAME), being first duly sworn upon oath, depose and say:

¶2 I, Marianna Valer (NAME), am the Legal Analyst (POSITION) of Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER).

¶3 In my capacity as Legal Analyst (POSITION) of Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER), I am authorized to make the statements set forth in this affidavit on behalf of Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER) and to bind Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER) by these statements.


¶4 After a review of our records, I swear under oath that Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER) should be dismissed from the above-entitled action for any or all of the following reasons (check any or all that apply):

- _____ (NAME OF INSURER OR SELF-INSURER) has never written workers' compensation insurance in the state of Montana;
- _____ (NAME OF INSURER OR SELF-INSURER) does not have any Montana claims;
- Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER) has no claimants meeting the Court's criteria in this matter as set forth in the summons;
- _____ (NAME OF INSURER OR SELF-INSURER) was or is in liquidation during the period in question set forth in the amended summons served upon me.

¶15 I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing this affidavit within which counsel for Petitioner[s] may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Lumbermen's Underwriting Alliance (NAME OF INSURER OR SELF-INSURER). After such 90 days, if no objection is lodged by counsel for Petitioner[s], the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

¶16 I declare under penalty of perjury that the foregoing is correct.

DATED this 10 day of November, 2006

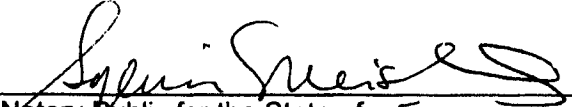


 (Name)
 Legal Analyst

 (Title)

Signed and sworn to before me this 10 day of NOVEMBER, 2006





 Notary Public for the State of FL.
 Residing at: 2501 N. Military Trail B.B. FL. 33431
 My Commission Expires: _____

(SEAL)

Bothe & Lauridsen, P.C.
Attorneys at Law

5 HIGHWAY 2 EAST
P.O. BOX 2020
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WEBSITE: www.bandllaw.com

JOHN H. BOTHE
(1951-1996)

June 4, 2007

VIA FACSIMILE - 755-5155

Mr. Bryce Floch
HAMMER, HEWITT & JACOBS, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310

RE: Lumbermen's Underwriting Alliance
SCHMILL v. LIBERTY NW INS. CORP., et al.
WCC No. 2001-0300

Dear Bryce:

My Order dated April 11, 2007, the Court allowed the Petitioner to conduct discovery in this matter in order to respond to Lumbermen's Motion to Dismiss. The Petitioner was given until June 20, 2007, in order to conduct such discovery. By letter dated April 13, 2007, I requested that Lumbermen's provide me with the response to three questions so that I could evaluate the Motion to Dismiss. To date, I have not received a response to that correspondence. If I do not receive a response by June 7, 2007, I will move the Court for an order compelling a response to my discovery questions so that I can meet the Court's deadline of June 20, 2007.

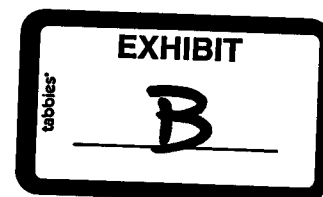
Please call me if you would like to discuss this matter in more detail.

Sincerely,



LAURIE WALLACE
BOTHE & LAURIDSEN, P.C.

LW/rs



Transmission Report

Date/Time
Local ID 1
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06-04-2007 04:17:26 p.m.
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Bothe & Lauridsen, P.C.

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June 4, 2007

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Mr. Bryce Floch
HAMMER, HEWITT & JACOBS, PLLC
P.O. Box 7310
Kalispell, MT 59904-0310

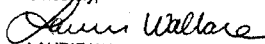
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Please call me if you would like to discuss this matter in more detail.

Sincerely,


LAURIE WALLACE
BOTHE & LAURIDSEN, P.C.

LW/rs

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct

HAMMER, HEWITT, JACOBS & FLOCH PLLC

ATTORNEYS:

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WEBSITE: WWW.ATTORNEYSMONTANA.COM

PARALEGALS:

POOKIE BROWN
PAM WARBURTON
MARIAN GEE

June 4, 2007

Sent Via Facsimile Only

Laurie Wallace
BOTHE & LAURIDSEN, P.C.
PO Box 2020
Columbia Falls, MT 59912


RE: Schmill

Dear Laurie:

I am in receipt of your June 4, 2007 correspondence. I have been awaiting your compliance with the Court's order and submission of formal discovery in accordance with the Workers' Compensation Court's rules of procedure. Upon receipt of the formal discovery requests my client will respond in accordance with the rules of procedure.

Should you have any questions, please do not hesitate contacting me to discuss the issue further.

Cordially,



Bryce R. Floch

BRF:mg

EXHIBIT

tabbles®

C

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Attorneys at Law

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JOHN H. BOTHE
(1951-1996)
June 5, 2007

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

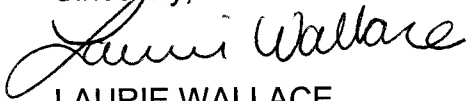
RE: SCHMILL v. LIBERTY NW INS. CORP.
WCC No. 2001-0300

Dear Ms. Wilson:

Enclosed please find the Petitioner's Motion to Compel Response to Discovery Requests from Lumbermen's Underwriting Alliance in regard to the above-referenced matter.

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

Sincerely,



LAURIE WALLACE
BOTHE & LAURIDSEN, P.C.

LW/rs
Enc.
cc: Bryce Floch