

LAURIE WALLACE  
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Attorneys for Petitioner/Schmill

**FILED**

AUG 30 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 MOTION TO STRIKE
	)	AFFIDAVIT OF VANLINER INS. CO.
LIBERTY NW INS. CORP.,	)	AND SUPPORTING BRIEF
	)	
Respondent/Insurer,	)	
	)	
and	)	
	)	
MONTANA STATE FUND,	)	
	)	
Intervenor.	)	
_____	)	

COMES NOW the Petitioner, CASSANDRA SCHMILL, by and through her attorneys of record, and moves the Court to strike the Affidavit of Vanliner Ins. Co. for the reason that the Affidavit is inaccurate.

On June 4, 2007, Vanliner Ins. Company served on Petitioner an Affidavit in response to the Amended Summons signed by Paul Johnson indicating that "Vanliner Insurance Company has no claimants meeting the court's criteria in this matter as set forth in the summons." (See Exhibit No. 1.) A follow-up inquiry was sent by Petitioner's counsel on June 12, 2007, seeking the response to the following 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 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.

In response to that inquiry, Vanliner responded that potential *Schmill* claims were contained on three separate computer systems: Point, VIIS, and Picasso. Vanliner then went on to state that it reviewed two out of the three computer systems for *Schmill* claims and identified approximately 100 to 150 Montana claims. Vanliner then stated that it did nothing further to determine if any of these Montana claims met the *Schmill* criteria. (See Exhibit No. 2, letter from Vanliner's counsel dated 8/8/07.)

WHEREFORE, since the foregoing facts establish that Vanliner Ins. Co. has not properly and thoroughly reviewed its Montana claims pursuant to the *Schmill* criteria, it should not be dismissed from the litigation at this time as requested in its Affidavit. If Vanliner Ins. Co. were to complete the necessary file reviews and could then truthfully complete the Affidavit selecting the appropriate option, Petitioner's counsel would reconsider her objection to Vanliner's request for dismissal from this litigation.

DATED this 29 of August, 2007.

ATTORNEYS FOR PETITIONER

BOTHE & LAURIDSEN, P.C.  
P.O. Box 2020  
Columbia Falls, MT 59912  
Telephone: (406) 892-2193

By:   
LAURIE WALLACE

CERTIFICATE OF MAILING

I, Robin Stephens, do hereby certify that on the 29 day of August, 2007, I served a true and accurate copy of the PETITIONER'S MOTION TO STRIKE AFFIDAVIT OF VANLINER INS. CO. AND SUPPORTING BRIEF by U.S. mail, first class, postage prepaid to the following:

Mr. Daniel Whyte  
KELLER, REYNOLDS, DRAKE,  
JOHNSON & GILLESPIE, PC  
P.O. Box 598  
Helena, MT 59624

Mr. Larry Jones  
Liberty NW Ins. Corp.  
700 SW Higgins, Ste. 108  
Missoula, MT 59803-1489

Mr. Bradley Luck  
GARLINGTON, LOHN & ROBINSON  
P.O. Box 7909  
Missoula, MT 59807-7909  
(Montana State Fund)

  
Robin Stephens

Daniel J. Whyte  
KELLER, REYNOLDS, DRAKE,  
JOHNSON & GILLESPIE, P.C.  
50 South Last Chance Gulch  
P.O. Box 598  
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Attorneys for Vanliner Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,

Petitioner,

v.

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Respondent/Insurer,

MONTANA STATE FUND,

Intervenor.

WCC NO. 2001-0300

**AFFIDAVIT OF PAUL JOHNSON**

STATE OF MISSOURI )

County of )

:ss

1. I, Paul Johnson, being first duly sworn upon oath, depose and says:
2. I, Paul Johnson, I am Director of Workers' Compensation Claims for Vanliner Insurance Company;
3. In my capacity as Director of Workers' Compensation Claims, I am authorized to make the statements set for in this affidavit on behalf of Vanliner Insurance Company and to bind Vanliner insurance Company by these statements;

RECEIVED JUN 11 2007

**EXHIBIT**

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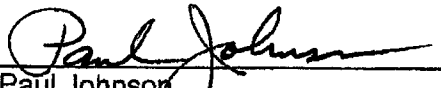
4. After a review of our records, I swear under oath that Vanliner Insurance Company should be dismissed from the above-entitled action for any or all of the following reasons:

- Vanliner Insurance Company has never written workers' compensation insurance in the state of Montana;
- Vanliner Insurance Company does not have any Montana claims;
- Vanliner Insurance Company has no claimants meeting the Court's criteria in this matter as set forth in the summons;
- Vanliner Insurance Company was or is in liquidation during the period in question set forth in the amended summons served upon me.


5. 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 Petitioner's counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Vanliner Insurance Company. After such 90 days, if no objection is lodged by the Petitioner's counsel, the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

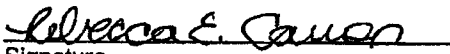
6. I declare under penalty of perjury that the foregoing is correct.

DATED this 1st day of June, 2007.

  
Paul Johnson

SUBSCRIBED AND SWORN TO before me this 1 day of June, 2007.

  
**REBECCA E. CARRON**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires July 25, 2010  
Commission #06918925

  
Signature  
Rebecca E. Carron  
Print Name  
Notary Public for the State of Missouri  
Residing at Valley Park, Missouri  
My Commission Expires: 7/25/10

2. AFFIDAVIT OF PAUL JOHNSON

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August 8, 2007

Laurie Wallace  
BOTHE & LAURIDSEN, P.C.  
5 Highway 2 East  
P.O. Box 2020  
Columbia Falls, MT 59912

**Re: Vanliner Ins. Co.  
*Schmill v. Liberty Northwest, et al.*  
WCC No. 2001-0300**

Dear Laurie:

I have received a response from Vanliner Insurance Company with respect to your June 12, 2007 inquiry in the *Schmill* matter. In your letter you asked three questions. The first was to "Please describe the procedure used to determine the insurer 'has no claimants meeting the Court's criteria as set forth in the Summons.'" Vanliner's response to that is that they reviewed each of their current claims manually to determine that they had no claimants meeting the criteria specified in the Summons.

The second question was "Please indicate the total number of occupational disease claims that insurer had in Montana occurring on or after July 1, 1987." That is a very burdensome, nearly impossible question for Vanliner to answer. Vanliner has had three separate computer systems, Point, VIIS, and Picasso since 1987. Each of those computer systems had limited functioning with respect to being able to search for identifying occupational disease claims. In addition, there are only two or three people left in the company that have any knowledge of operating the older systems and claims pertaining to Montana may not be able to be separated for review. With this in mind, in an attempt to answer your question, the Director of Workers' Compensation for Vanliner Insurance Company, Paul W. Johnson, CWCP, has obtained lists from Point and VIIS of all Montana claims. His assessment is that there appears to be about 100 to 150 Montana claims since July 1, 1987. There may be more, but a review of those claims would be extensive and very time consuming.

EXHIBIT

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Laurie Wallace  
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Question no. 3 from your June 12 letter was "Please indicate how many of claims identified in response to question no. 2 involved the payment of temporary total disability benefits." Because of the difficulty in reviewing older claims as described above, it is nearly impossible to tell on which of those potential claims temporary total disability benefits were paid.

Vanliner Insurance Company has made a good faith effort to track down all potential claims that may be affected by the Court's decision in *Schmill*. We hope that you will accept these at face value and agree to allow Vanliner Insurance Company to be dismissed from this action.

I look forward to hearing from you.

Very truly yours,



Daniel J. Whyte

DJW/mg  
cc: David Weir

*Bothe & Lauridsen, P.C.*  
*Attorneys at Law*

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JOHN H. BOTHE  
(1951-1996)

August 29, 2007

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

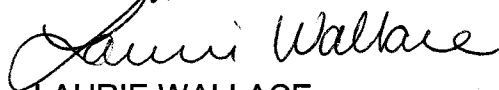
RE: SCHMILL v. LIBERTY NW INS. CORP.  
WCC No. 2001-0300

Dear Ms. Wilson:

Enclosed please find the Petitioner's Motion to Strike Affidavit of Vanliner Ins. Co. and Supporting Brief 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: Daniel Whyte  
Larry Jones  
Bradley Luck