

**FILED**

**JUN 16 2008**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,

Petitioner,

vs.

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

WCC No. 2001-0300

RESPONDING INSURERS'  
STATEMENT ON  
IMPLEMENTATION ISSUES

Responding Insurers respectfully submit this Statement on Implementation Issues in response to the Court's May 16, 2008 Order Regarding Appropriateness of Attorney Fee Hearing. (Docket # 425.) This Court previously ordered that briefing and decision on practical implementation issues identified by Responding Insurers is deferred until gateway legal issues are resolved. (Order Adopting Order of Special Master, 2/14/08, Docket #410.) The Court's May 16, 2008 Order, however, directs "the parties" to file with the Court a list of the remaining implementation issues in this case which require Court intervention." (Docket #425.) Responding Insurers submit this Statement out of an abundance of caution and to avoid any argument that they have waived any rights or acquiesced with respect to any positions on implementation taken by Liberty or the State Fund. Responding Insurers agree with the Court's prior assessment that it would be premature to address implementation issues with respect to Responding Insurers in advance of any ruling on the gateway legal issues that have now been fully briefed to this Court.

Discussions with counsel for Schmill, which remain premature, may reduce the need for some or many implementation issues to be resolved by the Court. In addition, further consideration of implementation may raise additional or collateral issues that may require this Court's resolution. Responding Insurers nevertheless reiterate the potential implementation issues that they raised on August 31, 2007 as follows:

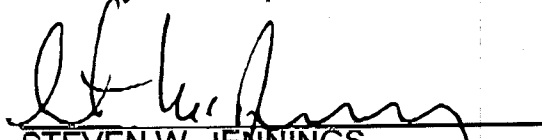
## PRACTICAL IMPLEMENTATION ISSUES

Assuming that a common fund was to exist as to Responding Insurers (and it should not), numerous implementation issues require resolution by the Court, including the following:

- Notwithstanding any final order on the scope of retroactivity, what *Schmill* beneficiaries are readily identifiable so as to be included in any common fund?
- Whether deceased claimants may be included within any common fund.
- What are appropriate search parameters and what identification documentation should be required?
- How should potential *Schmill* beneficiaries be notified?
- Whether potential *Schmill* beneficiaries may opt out of any common fund.
- What procedure should be implemented to locate claimants with changed addresses?
- What mathematical formula allows *Schmill* benefits to be calculated with mathematical certainty across all claim files?
- Whether overpayments on the files may be deducted from the increased benefits paid.
- What calculations should be used where a Social Security offset is present on a file?
- Whether Petitioner's counsel is entitled to a fixed percentage of additional benefits awarded to *Schmill* beneficiaries, or, if under the common fund doctrine, the attorney fee lien asserted by counsel is capped at an amount equal to those fees actually incurred by petitioner *Schmill* in prosecuting her case.
- How should competing common fund liens be resolved?

Respectfully submitted this 16th day of June, 2008.

CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.  
Attorneys for Respondent Insurers


  
STEVEN W. JENNINGS

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 16th day of June 2008:

- U.S. Mail
- FedEx
- Hand-Delivery
- Facsimile
- Email

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STEVEN W. JENNINGS

**Schedule 1: Responding Insurers**

AIU INSURANCE COMPANY  
AMERICAN INTERNATIONAL PACIFIC INSURANCE COMPANY  
AMERICAN HOME ASSURANCE COMPANY  
BIRMINGHAM FIRE INSURANCE COMPANY  
COMMERCE & INDUSTRY INSURANCE COMPANY  
GRANITE STATE INSURANCE COMPANY  
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA  
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA  
NEW HAMPSHIRE INSURANCE COMPANY  
AIG NATIONAL INSURANCE CO.  
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE  
AMERICAN INTERNATIONAL INSURANCE CO.  
ILLINOIS NATIONAL INSURANCE CO.  
LEXINGTON INSURANCE COMPANY  
AMERICAN RE-INSURANCE COMPANY  
AMERICAN ALTERNATIVE INSURANCE COMPANY  
ATLANTIC MUTUAL INSURANCE CO.  
CENTENNIAL INSURANCE CO.  
BITUMINOUS FIRE & MARINE INSURANCE CO.  
BITUMINOUS CASUALTY CORP.  
OLD REPUBLIC INSURANCE COMPANY  
OLD REPUBLIC SECURITY ASSURANCE CO.  
CENTRE INSURANCE COMPANY  
CHUBB INDEMNITY INSURANCE COMPANY  
CHUBB NATIONAL INSURANCE COMPANY  
EXECUTIVE RISK INDEMNITY INC.  
FEDERAL INSURANCE COMPANY  
GREAT NORTHERN INSURANCE COMPANY  
PACIFIC INDEMNITY COMPANY  
QUADRANT INDEMNITY COMPANY  
VIGILANT INSURANCE COMPANY  
CLARENDON NATIONAL INSURANCE COMPANY  
COMBINED BENEFITS INSURANCE COMPANY  
EVEREST NATIONAL INSURANCE COMPANY  
FARMERS INSURANCE EXCHANGE  
TRUCK INSURANCE EXCHANGE  
MID-CENTURY INSURANCE CO.  
FACTORY MUTUAL INSURANCE COMPANY  
GREAT AMERICAN INSURANCE CO.  
GREAT AMERICAN INSURANCE CO. OF NY  
GREAT AMERICAN ASSURANCE CO.  
GREAT AMERICAN ALLIANCE INSURANCE CO.  
GREAT AMERICAN SPIRIT INSURANCE COMPANY  
REPUBLIC INDEMNITY OF AMERICA  
REPUBLIC INDEMNITY OF CALIFORNIA  
GREAT WEST CASUALTY  
HARTFORD ACCIDENT & INDEMNITY CO.  
HARTFORD CASUALTY INSURANCE CO.  
HARTFORD FIRE INSURANCE CO.  
HARTFORD INSURANCE CO. OF THE MIDWEST  
HARTFORD UNDERWRITERS INSURANCE CO.

PROPERTY & CASUALTY INSURANCE CO. OF HARTFORD  
SENTINEL INSURANCE COMPANY LTD.  
TWIN CITY FIRE INSURANCE CO.  
TRUMBULL INSURANCE CO.  
MARKEL INSURANCE COMPANY  
EVANSTON INSURANCE COMPANY  
MONTANA HEALTH NETWORK WORKERS COMPENSATION INSURANCE TRUST  
PETROLEUM CASUALTY COMPANY  
AXIS REINSURANCE COMPANY  
GROCERS INSURANCE COMPANY  
GUARANTY NATIONAL INSURANCE COMPANY  
ROYAL INDEMNITY COMPANY  
SECURITY INSURANCE COMPANY OF HARTFORD  
SCOR REINSURANCE COMPANY  
GENERAL SECURITY INSURANCE COMPANY  
GENERAL SECURITY NATIONAL INSURANCE COMPANY  
SENTRY INSURANCE MUTUAL COMPANY  
SENTRY SELECT INSURANCE COMPANY  
DAIRYLAND INSURANCE COMPANY  
MIDDLESEX INSURANCE COMPANY  
PPG INDUSTRIES, INC.  
CONNIE LEE INSURANCE COMPANY  
STILLWATER MINING COMPANY  
PENN STAR INSURANCE COMPANY  
UNIVERSAL UNDERWRITERS GROUP  
FAIRFIELD INSURANCE COMPANY  
GENERAL REINSURANCE CORP.  
GENESIS INSURANCE COMPANY  
NORTH STAR REINSURANCE CORP.  
UNIVERSAL UNDERWRITERS GROUP  
XL INSURANCE AMERICA INC.  
XL INSURANCE COMPANY OF NEW YORK  
XL REINSURANCE AMERICA  
XL SPECIALTY INSURANCE COMPANY  
GREENWICH INSURANCE COMPANY  
AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY  
AMERICAN ZURICH INSURANCE COMPANY  
ASSURANCE COMPANY OF AMERICA  
COLONIAL AMERICAN CASUALTY & SURETY  
FIDELITY & DEPOSIT COMPANY OF MARYLAND  
NORTHERN INSURANCE COMPANY OF NEW YORK  
VALIANT INSURANCE COMPANY  
ZURICH AMERICAN INSURANCE COMPANY  
ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS