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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' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS ON "GATEWAY LEGAL ISSUES"

Responding Insurers respectfully submit this reply in support of their motion to dismiss based on fundamental "gateway legal issues." This common fund action must be dismissed as to Responding Insurers because no common fund may be maintained without re-writing what constitutional due process means and requires in our legal system. Petitioner Schmill did not serve or otherwise notify Responding Insurers of this action until *after* the existing parties to the case had all conceded, and the court declared, that a global common fund exists. Both our federal and state constitutions, and years of judicial precedent, require notice and an opportunity to be heard *before* liability is imposed. Because constitutional rights trump other parties' concessions and resulting dicta from earlier decisions, this common fund action may not proceed against Responding Insurers. Moreover, by not addressing the issue, Schmill impliedly concedes that the beneficiaries of earlier decisions in this case are not readily ascertainable and that a common fund thus may not be maintained against Responding Insurers.

In her response, Schmill advances extraordinary arguments without citation to any legal authority addressing due process in an effort to convince this Court to enforce its earlier judgments in this case against Responding Insurers. Schmill argues that Responding Insurers have been afforded "all the due process to which they are entitled" for two reasons. (Petitioner's Response ("Resp.") at 3.) First, Schmill contends that

judicial decisions such as *Schmill v. Liberty Northwest Ins. Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290 ("*Schmill I*") are self-executing not only against the parties to the case, but also in favor of all potential claimants *and* against every insurer that has ever written workers compensation insurance in Montana. According to Schmill, because the rights and duties arising from *Schmill I* "arise automatically, there is no due process requirement that all insurers must be joined as parties to the underlying claims in order to be bound by the decisions" as if parties all along. (Resp. at 5 (emphasis added).) Second, and equally troubling, Schmill incredulously contends that "Responding Insurers had plenty of notice and ample opportunity to participate in *Schmill* prior to both Supreme Court decisions" because notices of attorney fee liens in the unrelated cases of *Rausch* and *Flynn* were mailed to "most, if not all, of the Responding Insurers." (Resp. at 5-6.) Schmill does not cite any legal authority or even explain how inadequate notice of an attorney fee lien in unrelated cases could possibly satisfy due process requirements in *this* case.

Finally, Schmill attempts to side-step her own lack of standing and failure to mediate – jurisdictional prerequisites under Montana law. Schmill concedes that she has no personal stake in the outcome of this case, and that she has wholly disregarded the mandatory mediation required by section 39-71-2401, MCA. Schmill instead retreats to circular reasoning, asserting that "since the benefits are due and owing there is no 'dispute' which needs to be mediated." (Resp. at 7.)

At bottom, the parties disagree on the fundamentals of how our judicial system operates. Responding Insurers submit that the Constitutional requirements of due process inhere even in Montana's common fund procedures, and that the global common fund found before they were parties therefore cannot be enforced against them. It is not the case, as Schmill argues, that Responding Insurers seek to deny all potential, and currently unidentified beneficiaries, of any increased benefits under *Schmill I*. Instead, Responding Insurers submit that our judicial system is based on cases or controversies submitted to the courts. A potential claimant may request additional benefits from the insurer covering his or her claim. The insurer will either accept or deny the claim based on the facts presented and Montana law, including *Schmill I*. *If* the claim is denied, the claimant must mediate with the insurer. *If* mediation is unsuccessful, the claimant may then petition this Court to decide if additional benefits are due. The Court should reject Schmill's arguments that, if adopted, would substantially re-structure our judicial system and the constitutional rights upon which it is premised.

I. Due Process Forbids this Court from Enforcing Earlier Decisions in this Case against Responding Insurers.

Responding Insurer's opening brief fully set forth the long-heralded "principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Taylor v. Sturgell*, 553 U.S. __, No. 07-371, 2008 WL 2368748, at *4 (June 12, 2008) (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940) (emphasis added); *see also Plumb v. Fourth Jud. Dist. Ct.* (1996),

279 Mont. 363, 379, 927 P.2d 1011, 1021; *State ex rel. McKnight v. Dist. Ct.* (1941), 111 Mont. 520, 111 P.2d 292, 295 ("[N]o one acquainted with the elemental Anglo-Saxon requirement of due process and a fair opportunity to be heard could have expected to bind those not made parties."). In order to state a claim against Responding Insurers, Schmill was required to have served a summons on them to afford them notice and an opportunity to be heard *before* the entry of judgment. *See Richland Nat. Bank & Trust v. Swenson* (1991), 249 Mont. 410, 423, 816 P.2d 1045, 1053 ("Service of the summons is the means by which the district court acquires personal jurisdiction over the defendant."); *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987) (explaining that the requirement of personal jurisdiction flows from the Due Process Clause – "It represents a restriction on judicial power . . . as a matter of individual liberty"). Otherwise, as both Montana and United States Supreme Court cases recognize, any judgment may not be enforced against Responding Insurers.

Schmill altogether ignores these bedrock due process principles. Indeed, her response does not address any of the legal authorities cited by Responding Insurers, and does not cite to any legal authority even remotely addressing due process. Instead, Schmill misconstrues Responding Insurers' position, erroneously accusing them of advocating that "they have no duty to follow case law unless they are a party litigant,"[1] before arguing that "there is no due process requirement" because the rights and duties arise automatically from her victory against Liberty Northwest in *Schmill I*. (Resp. at 3, 5.) Schmill also contends that due process was satisfied because Responding Insurers were mailed notices of attorney fee liens *in other cases* prior to the common fund decision in *Schmill v. Liberty Northwest Ins. Corp.*, 2005 MT 144, 327 Mont. 293, 114 P.3d 204 ("*Schmill II*"). This Court should summarily reject Schmill's unsupported argument.

A. Dicta from other Common Fund Decisions Did Not Address or Overrule, and Cannot Trump, Fundamental Due Process Principles.

In support of her argument that "there is no due process requirement" in common fund cases, Schmill relies on dicta from *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561, and *Murer v. State Fund* (1997), 283 Mont. 210, 942 P.2d 69.[2] Neither case addressed due process, and Schmill's attempt to devise an exception to due process from dicta in these cases should be rejected.

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[1] As noted above, Responding Insurers will consider Montana law, including case law, in evaluating the facts presented by any specific claimants who request additional benefits. More fundamentally, Schmill also had a "duty to follow case law" and the Constitution which required that she provide notice and an opportunity for Responding Insurers to be heard *before* judgments were entered.

[2] It is curious that Schmill also cites the Order Denying Motion to Quash Summons and Objections, Joining Parties, and Retaining Caption entered in *Rausch v. State Fund*, 2005 MTWCC 9, WCC No. 9907-8274R1. Judge McCarter's order did not address common fund respondents' due process rights, and dismissively rejected their jurisdictional arguments based on dicta in *Ruhd*. The objecting respondents in that case were represented by David M. Sandler, then a partner with Hammer, Hewitt, Sandler & Jacobs PLLC. (*See* Resp. Ex. 10, *Rausch*, WCC No. 9907-8274R1, Docket No. 86.) Sandler is now an attorney with Bothe & Lauridsen, P.C., Schmill's counsel in this case. It is therefore unclear how Bothe & Lauridsen could serve as common fund counsel in this case.

In *Ruhd*, the court considered an appeal by competing common fund claimants, one of whom intervened to preserve his counsel's right to common fund attorney fees arising from *Rausch v. State Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, which held that impairment awards should be paid immediately (instead of at retirement). The petitioner in *Ruhd* sued for the same benefit—an immediate impairment award—while the appeal in *Rausch* was pending. *Id.* ¶ 7. Following the decision in *Rausch*, Liberty paid Ruhd an impairment award, but Ruhd continued to seek class action or common fund status against Liberty. *Id.* ¶ 10. This court denied class and common fund certification, and Ruhd appealed. *Id.* On appeal, Liberty did not submit a brief, and the State Fund advocated as *amicus curiae* that common fund fees should "apply equally to all Plan 1, Plan 2 and Plan 3 insurers in Montana." (*Amicus Curiae* Br. of State Fund in *Ruhd* at 3-4.) The court declined to find a separate common fund in favor of Ruhd's counsel because "[t]he *Rausch* decision disposed of the questions presented by Ruhd," and the "law established by *Rausch* will not be changed by further suits." *Ruhd*, ¶¶ 22, 24. In the context of these competing common fund claimants, the court's specific *holding* was that the common fund created by *Rausch* includes fees culled from all claimants regardless of insurer. *Id.* ¶ 25.

Significantly, the court did *not* hold that it was exercising jurisdiction over all insurers in the state and ordering them to immediately scour their records over the past two decades to identify potential beneficiaries – nor could it if they had not been named as parties and served with a summons prior to the entry of judgment. While the decisions in *Rausch* and *Murer* established a "vested right" to benefits, *see Murer*, 283 Mont. at 223, 942 P.2d at 77, it remains the obligation of the claimants to identify themselves and assert their entitlements under *Schmill I*. *Rausch*, *Ruhd*, and *Murer* did not purport to revise this fundamental rule. Moreover, the "vesting" of benefits by judicial decision is no different than the right to benefits that "vests" upon workplace injury. The claim must be submitted to the employer's insurer. If the parties disagree as to whether the claim is truly vested or as to the amount, then mediation is required before a petition may be filed with this court. The Supreme Court's dicta in *Ruhd* and *Murer* neither alters that process nor creates the exception to due process that Schmill advocates. This Court should decline to overrule due process precedent on the basis of dicta that is not even susceptible to the interpretation suggested by Schmill.

B. Notice of Attorney Fee Liens in Other Cases Does Not Constitute Notice and an Opportunity to Be Heard in this Case.

Likely recognizing that her argument that "no due process is required" in common fund actions will not withstand this Court's scrutiny, Schmill next stretches credulity in arguing that Responding Insurers "were given plenty of notice and ample opportunity to participate" in this action before the two Supreme Court decisions. (Resp. at 6.) As evidence of this notice and opportunity to participate, Schmill points to the notice of attorney fee liens mailed to insurers in the *Rausch* and *Flynn* actions, contending that "Responding Insurers were forewarned of the WCC's sanctioning of both the global common fund doctrine and the enforcement of an attorney fee lien in the common fund

cases." (Resp. at 6.)[3] Schmill also mentions in passing an order dated April 25, 2003 that authorized insurers to withhold an attorney fee and that purportedly invited insurers to intervene. (*Id.*) This order was not mailed to or otherwise served on Responding Insurers, and is not, even as of June 16, 2008, available on the Court's online docket. Schmill simply cannot point to *any* notice or opportunity to be heard in a timely manner in this case. She does not and cannot dispute that she did not prepare and have summons issued to Responding Insurers until December 7, 2005, well after both *Schmill I* and *Schmill II* were decided.[4]

Significantly, Schmill does not dispute that the "[f]ailure to give notice violates 'the most rudimentary demands of due process of law,'" *Peralta v. Heights Med. Center, Inc.*, 485 U.S. 80, 84 (1988) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)), and that the notice and opportunity to be heard afforded must be "meaningful and timely," *Crismore v. Montana Bd. of Outfitters*, 2005 MT 109, ¶ 15, 327 Mont. 71, ¶ 15, 111 P.3d 681, ¶ 15 (citations omitted). *See also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) ("It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'") (citation omitted). As our Supreme Court has explained, "[t]his right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Schmill cites to no legal authority for her proposition that notice of an attorney fee lien in a separate unrelated case constitutes constitutional notice and an opportunity to be heard. Moreover, the *Rausch* and *Flynn* actions do not even involve the disparities between Occupational Disease Act benefits and Workers' Compensation Act benefits upon which this action is premised. Under Schmill's skewed theory of notice, notice of a class action in one type of wage and hour case would provide sufficient notice of any other wage and hour class actions against all employers. Employers everywhere would be forced to monitor every pending lawsuit and intervene lest a common fund class arise against them. Nearly every case could easily become a monstrosity to manage. It is thus not surprising that Schmill cites to no legal authority in support of her novel proposition.

Schmill simply cannot point to any type of notice or opportunity to be heard afforded to Responding Insurers before *Schmill I* and *Schmill II* were decided that would

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[3] Schmill also points to counsel Geoff Keller's role in 2001 as a mediator for the appeal that led to *Schmill I*. Of course, no common fund issues were addressed in *Schmill I*, and Keller did not enter an appearance in this action on behalf of Safeco Insurance Company of America and related companies ("Safeco") until years later. (*See* 2/13/06 Response to Summons, Docket # 224.) Moreover, Keller does not represent other Responding Insurers. Schmill does not argue that Safeco had engaged Keller to represent it in any common fund actions at the time of the mediation, and does not argue that Keller received any confidential information. Moreover, Schmill cites to no legal authority establishing, or even suggesting, that counsel's knowledge of an action five years before he is engaged to represent a party in the action constitutes retroactive notice and opportunity for his client to be heard. Of course, if this Court were to impute Keller's knowledge of this case in 2001 to Safeco, it should likewise impute counsel Sandler's knowledge to his current firm and disqualify Ms. Wallace and the Bothe & Lauridsen firm as common fund counsel. Sandler represented common fund respondents in *Rausch* in challenging the Court's authority to issue common fund summons. (*See* Resp. Ex. 10.)

[4] One must question, given her arguments today, why Schmill even bothered to issue summons – an unnecessary and superfluous act under her reasoning?

satisfy elemental constitutional due process. Schmill obviously knew how to find Responding Insurers, but chose not to summon them until her counsel mistakenly believed that liability was already established. Nor can Schmill rely on the fact that the Court maintains an online docket. *Mullane* is instructive. In that case, our Supreme Court held that a New York banking law permitting publication notice to settle trust accounts was incompatible with known trust beneficiaries' due process rights. *Id.* at 320. The court explained that the notice was inadequate "not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could be easily informed by other means at hand." *Id.* at 319; *see also id.* at 315 ("In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint.").

Even if the Court were to assume for the sake of argument that Responding Insurers had been provided adequate notice of this case, that unsupported assumption would still not relieve Schmill of her burden to summon and join Responding Insurers before liability was established. In the words of Justice Brandeis:

> The law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger . . . Unless duly summoned to appear in legal proceeding, a person not privy may rest assured that a judgment recovered therein will not affect his legal rights.

Chase Nat'l Bank v. Norwalk, 291 U.S. 431, 441 (1934).

Responding Insurers were clearly not provided notice or an opportunity to be heard if or when they may have received mailed notice of attorney fee liens in other cases to which they were not parties. Because Schmill did not join Responding Insurers as parties to this action until late 2005, she cannot enforce *Schmill I* and *Schmill II* against them. *Richards v. Jefferson County, Ala.*, 517 U.S. 793, 797 (1996) (concluding "that the State Supreme Court's holding that petitioners are bound by the [earlier] adjudication in *Bedingfield* deprived them of the due process of law guaranteed by the Fourteenth Amendment).

C. *Stare Decisis* Is Not a Sufficient Basis to Enforce Judgments Entered Without Due Process.

Again without explanation or citation to legal authority, Schmill suggests that due process may be disregarded because "[s]tare decisis prevents this Court from doing anything but upholding the decision of *Schmill II.*" (Resp. at 7.) Responding Insurers are not advocated that *Schmill II* should be overturned as to the State Fund or Liberty, the existing parties to the case. Rather, Responding Insurers argue that the decision cannot be enforced as a judgment against them because they were not parties. *See Richards*, 517 U.S. at 805 (reversing state supreme court decision that relied on earlier decision upholding tax as constitutional, stating that "[a] state court's freedom to rely on prior precedent in rejecting a litigant's claims does not afford it similar freedom to bind a litigant to a prior judgment in which he was not a party").

Stare decisis, moreover, also applies to judicial decisions holding that judgments entered without due process are unenforceable. *See In re Marriage of Foster*, 2004 MT 326, ¶ 18, 324 Mont. 114, ¶ 18, 102 P.3d 16, ¶18 (reversing judgment imposing constructive trust on property owned by non-party children). Indeed, our Supreme Court has recognized that only wiping the slate clean would restore Responding Insurers to the position they would have occupied had due process of law been accorded to them in the first place. *Peralta v. Heights Med. Center, Inc.*, 485 U.S. 80, 86-87 (1988) (citing *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965)).

In their opening brief Responding Insurers explained how neither the claimants nor their benefits would be readily identifiable on superficial review of the case files, leaving common fund certification unsustainable as to Responding Insurers. (*See* Resp. Ins. Br. at 13-14.) Schmill has not challenged this conclusion (except to argue that *stare decisis* should apply). As a result, this Court should find that no common fund exists as to Responding Insurers.

II. Schmill Lacks Standing and Did Not Comply with Mandatory Mediation, Two Prerequisites to this Court's Jurisdiction.

As previously recognized by this Court, "[a] party has no standing when there is no personal stake in the outcome of the controversy." *Liberty Northwest Ins. Corp. v. Behr*, 1998 MTWCC 56, ¶ 6, WCC No. 9806-7992 (7/9/98) (citing *In re Paternity of Vainio* (1997), 284 Mont. 229, 235, 943 P.2d 1282, 1286). Responding Insurers cited *Behr* and a wealth of other Montana and federal authority in their opening brief in support of their argument that Schmill lacks standing to pursue the "common fund entitlements" of unidentified potential beneficiaries of *Schmill I* and *Schmill II*. And Schmill does not dispute that her benefits were paid by Liberty at the conclusion of *Schmill I*. Because Schmill simply has no stake in the outcome of this case, she therefore lacks standing and does not present a valid case or controversy to this Court for adjudication. *See Missoula City-County Air Pollution Control Bd. v. Board of Environmental Review* (1997), 282 Mont. 255, 260, 937 P.2d 463, 466 (noting that standing is a requirement based on the "case or controversy" provisions of the United States and Montana Constitutions). This case may therefore be dismissed on jurisdictional grounds.

Similarly, this Court and the Montana Supreme Court have uniformly held that "[a]s § 39-71-2408(1), MCA, states, mediation is mandatory under the Workers' Compensation Act before a party can even petition the Workers' Compensation Court for relief." *Preston v. Transportation Ins. Co.*, 2004 MT 339, ¶ 36, 324 Mont. 225, ¶ 36, 102 P.3d 527, ¶ 36 (emphasis added). *See also Kutzler v. State Fund*, 2005 MTWCC 5, ¶ 11, WCC No. 2004-1147 (1/26/05) ("[T]he failure to complete mediation is a jurisdictional defect and the appropriate remedy is dismissal."); *Taves v. AIU*, 2003 MTWCC 43, ¶ 8, WCC No. 2003-0794 (1/26/03). Schmill does not dispute that she has failed to engage in statutorily-mandated mediation before summoning Responding Insurers before this Court. The appropriate remedy is dismissal.

In her response, Schmill does not address her lack of standing, or argue that she is somehow exempt from mandatory mediation. She does not even address the binding legal authority cited by Responding Insurers. Instead, she argues that "since the benefits are due and owing there is no 'dispute' which needs to be mediated." (Resp. at 7.) This argument defies common sense, and should be summarily rejected. The parties are briefing these issues because Responding Insurers dispute whether a common fund action may be maintained against them.

CONCLUSION

This case must be dismissed as to Responding Insurers. The global common fund recognized in *Schmill II* (without objection from any existing party to the case at the time) cannot be enforced consistent with Responding Insurers' rights to due process of law. Judgments entered without due process simply cannot be enforced against non-parties to the case. After wiping the common fund slate clean, it is readily apparent after *Stavenjord* that no common fund may be maintained as to Responding Insurers. Schmill effectively concedes that potential *Schmill* beneficiaries are not readily ascertainable through a superficial review of decades of claim files.

The Court may also find that Schmill has not satisfied jurisdictional prerequisites to assert a claim against Responding Insurers. Schmill has no stake in any claim against Responding Insurers and therefore lacks standing. Even if she had standing, however, she admittedly has failed engage in statutorily-mandated mediation before pursuing Responding Insurers in this Court. Dismissal of Responding Insurers is thus warranted for a myriad of largely uncontested reasons.

WHEREFORE Responding Insurers respectfully request that this Court issue an order dismissing Responding Insurers from this case.

Respectfully submitted this 16th day of June 2008.

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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:

[X] U.S. Mail
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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