

IN THE WORKERS COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

FILED

CASSANDRA SCHMILL

JUN 23 2008

Petitioner

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer

and

MONTANA STATE FUND

Intervenor.

JOINT STATUS REPORT
OF PETITIONER AND THE MONTANA STATE FUND

COME NOW the Petitioner, CASSANDRA SCHMILL, and the Intervenor, THE MONTANA STATE FUND, by and through there attorneys of record, and file with the Court a Joint Status Report on implementation issues. The Parties consider the following to be the remaining implementation issues:

1. Whether deceased claimants are entitled to benefits.
2. Whether the appropriate search parameters and identification documentation has been used by the State Fund to identify all potential *Schmill* claimants.
3. Whether the State Fund is proposing the appropriate method for notifying claimants.
4. Whether overpayments can be deducted from benefits owed?
5. How are SSDI offsets to be calculated?
6. How are claimants with changed addresses to be contacted?
7. How are competing attorney fee liens to be handled?

As to issue number one, before the parties know if there is a dispute over these claims, the State Fund will provide the Petitioner's counsel with a list of the claims which fall into this category including a calculation of the potential benefits owed. If the parties cannot resolve their differences at that time, then the Court will be asked to intervene.

After reviewing the transcript of the *Stavenjord* hearing held on April 16, 2007, in which the State Fund presented testimony as to the search parameters used to identify *Schmill* claimants, Petitioner has no objections to the procedure employed.

The State Fund is proposing to notify only those claimants identified through its search procedure of their entitlement to *Schmill* benefits. The Petitioner agrees that no other method of notification is necessary.

The Petitioner agrees that overpayments can be deducted from *Schmill* benefits owed. The Petitioner and the Intervenor disagree on whether the attorney fee should be calculated before or after the SSDI offset is deducted from the total *Schmill* benefits owed. The parties agree that this issue should be decided by the Court.

The State Fund has represented to Petitioner that it has a multilevel procedure it uses to determine a claimant's current address. The Petitioner is satisfied that the procedure is reasonable.

The parties agree that there are potential competing attorney fee liens as between *Schmill*, *Stavenjord*, *Reesor*, *Flynn*, and *Murer*. Petitioner hereby waives any potential *Schmill* fees in *Stavenjord* and *Reesor*. An agreement is in place as to the division of fees in *Murer*. Counsel for *Flynn* has agreed to a 50-50 attorney fee split.

With the possible exception of the death cases, of which the State Fund anecdotally believes there are a small number, the parties are in a position to move forward with the payment of *Schmill* benefits. As such, the parties would ask that an attorney fee hearing be scheduled as soon as possible to determine the attorney fee entitlement. Until the attorney fee lien is confirmed, potential *Schmill* benefits cannot be paid.

The agreement here is subject to any modifications of the law that may occur with the pending decision in *Flynn*.

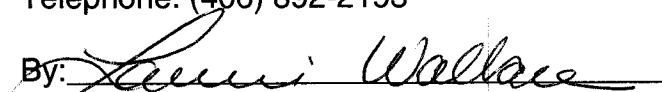
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DATED this 20th of June, 2008.

ATTORNEYS FOR PETITIONER

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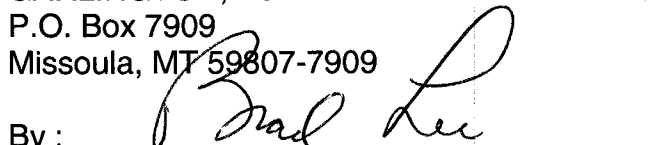
By:


LAURIE WALLACE

ATTORNEYS FOR INTERVENOR

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By:


BRAD LUCK

CERTIFICATE OF MAILING

I, Robin Stephens, do hereby certify that on the _____ day of June, 2008, I served a true and accurate copy of the JOINT STATUS REPORT OF PETITIONER AND THE MONTANA STATE FUND by U.S. mail, first class, postage prepaid to the following:

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

Robin Stephens