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FILED

APR 20 2012

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 OBJECTION TO
)	DISMISSING CERTAIN INSURERS
LIBERTY NW INS. CORP.,)	
)	
Respondent/Insurer,)	
)	
and)	
)	
MONTANA STATE FUND,)	
)	
Intervenor.)	
_____)	

COMES NOW the Petitioner, CASSANDRA SCHMILL, by and through her attorneys of record, and pursuant to paragraph 5 of the general affidavit filed by certain insurers in this case, the Petitioner has 90 days in which to object to the affidavit filed by an insurer on the grounds that the affidavit is not in compliance with the Amended Summons served on the insurer.

At this time, Petitioner objects to the Affidavits filed by the following insurers on March 7, 8, and April 10, 2012:

American Alternative Ins. Co.
American Reinsurance
Bituminous Casualty Corp.
Bituminous Fire & Marine Ins. Co.
Centre Ins. Co.
Clarendon National Ins.
Dairyland Ins. Co.

DOCKET ITEM NO. 526

Fairfield Ins. Co.
Farmers Ins. Exchange
Genesis Underwriting Management/Genesis Ins. Co.
Great American Alliance Ins. Co.
Great American Assurance Co.
Great American Ins. Co.
Great American Ins. Co. of New York
Great American Spirit Ins. Co.
Greenwich Ins.
Hartford Accident and Indemnity Co.
Hartford Casualty Ins. Co.
Hartford Fire Ins. Co.
Hartford Ins. Co. of Midwest
Hartford Underwriters Ins. Co.
Middlesex Ins. Co.
Montana Health Network Workers' Compensation Ins. Trust
Petroleum Casualty Co.
Property & Casualty Ins. Co. of Hartford
Republic Indemnity
Republic Indemnity of California
Sentinel Ins. Co., LTD
Sentry Indemnity Co./Sold to Connie Lee Ins. Co. 12/17/87
Sentry Ins. A Mutual Co.
Sentry Select Ins. Co.
Stillwater Mining Co.
Truck Ins. Exchange
Trumbull Ins. Co.
Twin City Fire Ins. Co.
Universal Underwriters Ins. Co.
XL Specialty Ins. Co.

According to counsel for the foregoing insurers, Steve Jennings, in his letter of April 12, 2012, to the Workers' Compensation Court, these insurers only searched their files for *Schmill* claims back to April 10, 2003. We disagree with Mr. Jennings' conclusion that April 10, 2003, is the correct date to be used for purposes of identifying *Schmill* claimants subject to the *Flynn* decision. In the hearing held before the Court on July 14, 2005, at which Mr. Jennings was present, the parties agreed that the period of time the *Schmill* decision covered was July 1, 1987, through June 22, 2001. (*Schmill* Common Fund Document No. 72, p. 31.) There was some discussion as to why the June 22, 2001, date was being used, and it was noted that that was the date of the WCC's decision which was subsequently affirmed on appeal. The Court asked if there was anyone who disagreed with using those dates and Mr. Jennings did not respond. (*Id.*, p. 32.)

The date of June 22, 2001, was then used in the Summons and Notice of Attorney Fee Lien which was posted on the Court's website on December 7, 2005. (WCC Docket No. 79.) Insurers began responding to the Amended Summons and Notice of Attorney Fee Lien

on December 12, 2005, indicating they searched their records for *Schmill* claims for the time period July 1, 1987, through June 22, 2001. If the Court were to adopt the date of April 10, 2003, as proposed by Mr. Jennings, all of the hundreds of insurers who have filed affidavits with the Court would have to go back and re-search their records for *Schmill* claims between June 22, 2001, and April 10, 2003. Certainly, this represents a greater burden on the hundreds of insurers who have already submitted affidavits in this case than it does for Mr. Jennings' clients to go back and properly search their files using the date of June 22, 2001.

By not advocating the date of April 10, 2003, as the ending date for potential *Schmill* claims back in July of 2005 when he had the opportunity, Mr. Jennings, on behalf of his clients, has clearly waived his right to advocate a change of dates at this time.

WHEREFORE, for the foregoing reasons the Petitioner moves the Court for an Order directing the foregoing insurers to search their files for *Schmill* claims using the date June 22, 2001.

DATED this 19 of April, 2012.

ATTORNEYS FOR PETITIONER

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By Laurie Wallace
LAURIE WALLACE

CERTIFICATE OF MAILING

I, Robin Stephens, do hereby certify that on the 19 day of April, 2012, I served a true and accurate copy of the PETITIONER'S OBJECTION TO DISMISSING CERTAIN INSURERS by U.S. mail, first class, postage prepaid to the following:

Mr. Larry Jones
Liberty NW Ins. Corp.
2291 W. Broadway, Ste. 3
Missoula, MT 59808

Mr. Steven Jennings
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Mr. Thomas Martello
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Robin Stephens