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FILED
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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 28, May 16, 17, 21, 24, June 4, 5, 22

American Guarantee
American Zurich
Assurance
Chubb Indemnity Ins. Co. (including Chubb National Ins. Co.; Executive Risk
Ind. Inc.; Federal Ins. Co.; Great Northern Ins. Co.; Pacific Ind. Co.;
and Quadrant Ind. Co.)
Colonial American

Everest
Fidelity & Deposit
Gen Re
Maryland Casualty Co.
Mid Century Ins. Co.
Northern Ins.
Northstar
Old Republic
PPG Industries, Inc.
Republic Indemnity of California
Zaic-Valiant
Zurich American
Zurich American Illinois

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 29 of June, 2012.

ATTORNEYS FOR PETITIONER

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By: 
LAURIE WALLACE

CERTIFICATE OF MAILING

I, the undersigned, do hereby certify that on the 29 day of June, 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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