

FILED

JAN -7 2015

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. ~~2000 - 0222~~ 2001 - 0300

CASSANDRA SCHMILL,

Petitioner,

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

MOTION TO DISMISS PER AFFIDAVIT

COMES NOW the AIG Insurers (as listed on Exhibit A) and move this Court to dismiss them from the above-entitled action pursuant to this Court's *Memo* of December 7, 2005. Over 90 days have expired since the affidavits were filed and petitioner failed to submit discovery requests to respondent within the allotted time.

Early in these common fund proceedings the Court established an affidavit process for those insurers seeking dismissal. On December 6, 2005, the Court issued a memo describing the dismissal process. The memo stated as follows:

Attached is a blank form affidavit. If any insurer, self-insured, or guaranty association believes it should be dismissed from any of the common fund matters you are directed to complete the affidavit and return it to the Workers' Compensation Court. If none of the

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enumerated reasons apply, you must prepare a separate affidavit for the Court's review.

Memo From Court to Counsel and All Parties With Blank Affidavit Form, 12/06/2005 (Flynn Docket # 390). The attached affidavit required insurer's to check an appropriate box corresponding to various reasons for dismissal. The attached affidavit also required the insurer's to agree to a 90 day discovery period during which common fund counsel would be permitted to conduct discovery to determine the truth and accuracy of the statements made in the affidavit. Specifically, the affidavit stated as follows:

I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing of this affidavit within which counsel for Petitioner[s] may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of _____ (NAME OF INSURER OR SELF INSURER). After such 90 days, if no objection is lodged by counsel for Petitioner[s], the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

Id.

Following a thorough review of their claim files, AIG insurers filed an affidavit on February 18, 2014. See McNeilly Affidavit, 02/12/2014 (Schmill Docket # 597). The affidavit identified one, and only one, beneficiary of the Schmill decision, advised that she had been paid her *Schmill* benefits (the percentage of TTD benefits previously withheld due to the apportionment permitted pursuant to § 39-72-706, MCA), and that the appropriate amount had been withheld for satisfaction of *Schmill's* counsel's common fund attorneys' fee lien. The affidavit further advised that AIG insurers were prepared to remit the attorney fee lien to Schmill's counsel as the Court should direct.

Following the filing of this affidavit, Schmill failed to conduct discovery as contemplated by the Court's blank form affidavit or object to dismissal. Likewise, Schmill's counsel has declined to communicate with the undersigned counsel for AIG Insurers regarding this case. Accordingly, as no objection to dismissal has been filed, and pursuant to the express terms of the Court's blank form affidavit, AIG Insurers must be dismissed from this action.

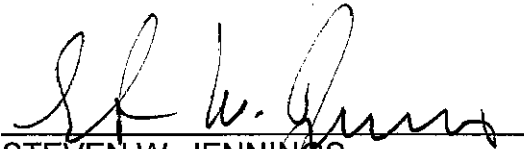
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Dated this 5th day of January 2015.


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 5th day of January 2015:

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

Ms. Laurie Wallace
Bothe & Lauridsen, P.C.
P. O. Box 2020
Columbia Falls, MT 59912



STEVEN W. JENNINGS

EXHIBIT A

- AIU Insurance Co.
- American International Pacific Insurance Co.
- American Home Assurance Co.
- Birmingham Fire Insurance Co.
- Commerce & Industry Insurance Co.
- Granite State Insurance Co.
- Insurance Co. of the State of Pennsylvania
- National Union Fire Ins. Co. of Pittsburgh, PA
- New Hampshire Insurance Co.
- AIG National Insurance Co.
- American International Specialty Lines Insurance
- American International Insurance Co.
- Illinois National Insurance Co.
- American General Corp. (*not in Schmill*)
- Lexington Insurance Co. (*Schmill only*)