

Jennilee C. Baewer Legal Assistant 500 Transwestern Plaza II 490 North 31st Street, Suite #500 Billings, MT 59101 406-255-7215 406-252-5292 - Fax jbaewer@crowleyfleck.com

February 26, 2015

Workers' Compensation Court P. O. Box 537 Helena, MT 59624-0537

RE: Schmill v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2001-0300

Flynn v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2000-0222

Dear Clerk of Court:

Per the Court's Order, enclosed please find copies of the letters AIG Property Casualty sent to the claimants listed in AIG Property's *Schmill* and *Flynn* affidavits (specifically Carole Allison; Barbara Ehman; and Shawn Heidrick) advising said claimants of the upcoming attorney fees hearing to be held on May 4, 2015 at 9 am for *Schmill* and at 10 am for *Flynn*.

AIG Property Casualty includes the following companies:

- 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

BILLINGS BISMARCK BOZEMAN BUTTE CASPER CHEYENNE HELENA KALISPELL MISSOULA SHERIDAN WILLISTON

Clerk of Court letter Re: AIG Schmill/Flynn Claimants February 26, 2015 Page 2 of 2

- American International Insurance Co.
- Illinois National Insurance Co.
- American General Corp. (not in Schmill)
- Lexington Insurance Co. (Schmill only)

If you have any questions, please call.

Sincerely, Innile C. Baller

JENNILEE C. BAEWER, PLS

Legal Assistant for Steven W. Jennings

Enclosures



Steven W. Jennings
Attorney
500 Transwestern Plaza II
490 North 31st Street, Suite #500
Billings, MT 59101
406-255-7284
406-252-5292 - Fax
sjennings@crowleyfleck.com

February 26, 2015

Barbara Ehman 1920 River Rd, 15 Missoula, MT 59801

RE:

Flynn v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2000-0222

Dear Ms. Ehman:

You have been identified as a claimant in the above-referenced Montana Common Fund action. AIG Property Casualty has identified you in the enclosed affidavit filed on February 18, 2014 (Docket No. 714). As a result of being a claimant, AIG Property Casualty has withheld certain funds from your claim to be paid to Petitioner Schmill's counsel in payment for bringing this action on behalf of Ms. Schmill and all other claimants who benefited from this action. Enclosed is a copy of the Order Establishing Hearing Date for Common Fund Attorneys' Fees (Docket No. 723), which explains the matter in detail and identifies what action you can take.

This letter does not constitute a legal relationship between this firm and yourself and is only informative in nature. If you have any questions regarding the enclosed documents, please contact an attorney and that attorney can explain them to you.

Sincerely.

STEVEN W. JENNINGS

SWJ:jcb

Enclosures



Steven W. Jennings
Attorney
500 Transwestern Plaza II
490 North 31st Street, Suite #500
Billings, MT 59101
406-255-7284
406-252-5292 - Fax
sjennings@crowleyfleck.com

February 26, 2015

Shawn Heidrick PO Box 9379 Missoula, MT 59807

RE: Flynn v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2000-0222

Dear Mt. Heidrick:

You have been identified as a claimant in the above-referenced Montana Common Fund action. AIG Property Casualty has identified you in the enclosed affidavit filed on February 18, 2014 (Docket No. 714). As a result of being a claimant, AIG Property Casualty has withheld certain funds from your claim to be paid to Petitioner Schmill's counsel in payment for bringing this action on behalf of Ms. Schmill and all other claimants who benefited from this action. Enclosed is a copy of the Order Establishing Hearing Date for Common Fund Attorneys' Fees (Docket No. 723), which explains the matter in detail and identifies what action you can take.

This letter does not constitute a legal relationship between this firm and yourself and is only informative in nature. If you have any questions regarding the enclosed documents, please contact an attorney and that attorney can explain them to you.

Sincerely,

STEVEN W. JENNINGS

SWJ:jcb

Enclosures

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2000 - 0222

ROBERT FLYNN and CARL MILLER, Individually and on Behalf of Others Similarly Situated,

Petitioners

VS.

FILED

FEB 1 8 2014

MONTANA STATE FUND,

Respondent/Insurer,

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

and

LIBERTY NORTHWEST INSURANCE CORPORATION,

Intervenor.

AFFIDAVIT

State of Oregon

:SS

County of Multnomah

- 1. I, Tathay McNeilly, Being first duly sworn upon oath, depose and say:
- 2. I, Tathay McNeilly, am the Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc.
- 3. In my capacity as Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc I am authorized to make the statements set forth in this affidavit on behalf of AIG Property Casualty Inc and to bind AIG Property Casualty Inc by these statements.
- 4. I have reviewed the Summons, the Notice of Claim of Attorney Fee Lien, and the Amended Notice of Attorneys Lien filed in the above captioned matter (the "Flynn case" or "Flynn"). Pursuant to the criteria set forth in those pleadings, and as further clarified in the cases entitled Flynn v. State Compensation Ins. Fund, 2002 MT 279, 312 Mont. 410, 60 P.3d 397; Flynn v. Montana State Fund, 2008 MT 394, 347 Mont. 146, 197 P.3d 1007; and Flynn v. Montana State Fund, 2011 MT 300, 363 Mont. 55, 267 P.3d 23; there are two claimants covered under workers compensation insurance policies issued by AIG Property Casualty Inc who appear to fall within the scope of the Flynn common fund and the attorney fee

DOCKET ITEM NO. 714

lien asserted by the Petitioner's counsel in *Flynn*. The relevant information for these claimants are:

A. Name:

Barbara Ehman

Claim Number:

073-803397

Date of Injury:

12/25/1984

Based upon my search of the claim files, Ms. Ehman was identified as a potential claimant meeting the criteria for a *Flynn* claimant. Ms. Ehman was contacted and provided documentation establishing that she had incurred \$3,430.59 in attorney's fees in order to obtain Social Security Disability Benefits.

On 2/4/2014, AIG Property Casualty Inc, at my direction, sent Ms. Ehman a check in the amount of \$1,029.18 which represents one-half of her attorneys fees incurred minus 40% (\$686.12) thereof withheld for the attorney fee lien asserted by counsel for Petitioner, Rex Palmer, pursuant to the *Amended Notice of Attorneys Lien* filed in this action on January 2, 2004.

AIG Property Casualty Inc is prepared to pay the withheld 40% (\$686.12) either to Mr. Palmer or to Ms. Ehman, as the Court shall direct.

B. Name:

Shawn Heidrick

Claim Number:

071-069776

Date of Injury:

2/19/2001

Based upon my search of the claim files, Mr. Heidrick was identified as a potential claimant meeting the criteria for a Flynn claimant. Mr. Heidrick was contacted and provided documentation establishing that he had incurred \$5,300 in attorney's fees in order to obtain Social Security Disability Benefits.

On 2/4/2014, AIG Property Casualty Inc, at my direction, sent Mr. Heidrick a check in the amount of \$1,987.50 which represents one-half of his attorney's fees minus 25% (\$662.50) thereof withheld for the attorney fee lien asserted by counsel for Petitioner, Rex Palmer, pursuant to the Amended Notice of Attorneys Lien filed in this action on January 2, 2004.

AIG Property Casualty Inc. is prepared to pay the withheld 25% (\$662.50) either to Mr. Palmer or to Mr. Heidrick as the Court shall direct.

5. Other than Ms. Ehman and Mr. Heidrick, AIG Property Casualty Inc has no claimants meeting the *Flynn* criteria as set forth in the *Summons*.

6. I declare under penalty of perjury that the foregoing is correct.

Dated this 12th day of February, 2014.

Tathay McNeilly
Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc

Signed and sworn to before me this day of d

(Signature of Notary)

(Typed, stamped or printed Name of Notary)

(NOTARIAL SEAL)

Notary Public for the State of Occasion Residing at Williams 12 13 15



CROWLEY FLECK PLLP ATTORNEYS

Jennilee C. Baewer Legal Assistant 500 Transwestern Plaza II 490 North 31st Street, Suite #500 Billings, MT 59101 406-255-7215 406-252-5292 - Fax jbaewer@crowleyfleck.com

February 13, 2014

Workers' Compensation Court P. O. Box 537 Helena, MT 59624-0537

RE: Schmill v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2001-0300

Flynn v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2000-0222

Dear Clerk of Court:

Enclosed please find the original and one copy of an affidavit for AIG Property Casualty, which includes the following companies:

- 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)

Clerk of Court letter Re: AIG SCHMILL/FLYNN Affidavits February 13, 2014 Page 2 of 2

After filing the originals (one in *Flynn* and one in *Schmill*), please time-stamp the copies and return them to our office in the enclosed postage prepaid envelope.

If you have any questions, please call.

Sincerely, Sennilee C. Balwer

JENNILEE C. BAEWER, PLS

Legal Assistant for Steven W. Jennings

Enclosures

FILED

FEB 1 3 2015

OFFICE OF WORKER'S COMPENSATION JUDGE HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2000 - 0222

ROBERT FLYNN and CARL MILLER, Individually and on Behalf of Others Similarly Situated,

Petitioners

VS.

MONTANA STATE FUND,

Respondent/Insurer,

and

LIBERTY NORTHWEST INSURANCE CORPORATION.

Intervenor.

ORDER FOR NOTIFICATION OF COMMON FUND FEE SETTLEMENT AND HEARING DATE

¶1 As a result of previous decisions in the above-captioned cause, Petitioners have established a legal precedent for certain claimants to receive additional workers' compensation benefits as a result of the AIG Insurers (see attached Exhibit A) reducing benefit payments by taking a Social Security offset without paying any share of the costs and fees incurred by the claimant to recover the Social Security award. You have been identified as a claimant who may be entitled to additional benefits. The amount of additional benefits to which you may be entitled has been determined and approved by Order of this Court. You have or will receive a letter from AIG Insurers advising you of the amount of additional benefits. There is no need for you to take any action to receive

this additional benefit. Please do not contact AIG Insurers or the Court about this entitlement.

¶2 Since the Petitioners in this case established the legal precedent for additional benefits, Petitioners' attorneys may be entitled to recover attorneys' fees from any additional amount that is due you. Petitioners propose that the attorneys' fees be fixed at twenty-five percent (25%) of the additional benefit set forth above. The AIG Insurers, by agreement, do not object to this amount. If the proposal is approved, you will receive seventy-five percent (75%) of the additional benefit set forth above. (If you have already been notified of your additional entitlement, 25% of your additional entitlement may have been withheld pending hearing on the attorneys' fees that may be payable to Petitioners' attorneys.) You have the right to support or object to the proposed amount of the attorneys' fees.

¶3 At 10:00 a.m. on the 4th day of May 2015, the Court will hold a hearing to determine the amount of the fees. The hearing will be held at the Workers' Compensation Court, 1625 11th Avenue, Helena, Montana. You have the right to be present at that hearing and to voice your support for or objection to the proposed fees. You may also file written statements supporting or objecting to the proposed fee by mailing your statement to the Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537, no later than the 28th day of April, 2015. After the hearing, the Court will determine what fees are due.

Dated this /3/kday of February 2015.

gex Palmer Steven W. Jennings JUDGE

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.



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sjennings@crowleyfleck.com

February 26, 2015

Carole Allison 934 Princeton Ave. Billings, MT 59102

RE: Schmill v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2001-0300

Dear Ms. Allison:

You have been identified as a claimant in the above-referenced Montana Common Fund action. AIG Property Casualty has identified you in the enclosed affidavit filed on February 18, 2014 (Docket No. 597). As a result of being a claimant, AIG Property Casualty has withheld certain funds from your claim to be paid to Petitioner Schmill's counsel in payment for bringing this action on behalf of Ms. Schmill and all other claimants who benefited from this action. Enclosed is a copy of the Order Establishing Hearing Date for Common Fund Attorneys' Fees (Docket No. 601), which explains the matter in detail and identifies what action you can take.

This letter does not constitute a legal relationship between this firm and yourself and is only informative in nature. If you have any questions regarding the enclosed documents, please contact an attorney and that attorney can explain them to you.

Sincerely,

STEVEN W. JENNINGS

SWJ:jcb

Enclosures

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA WCC No. 2001-0300

CASSANDRA SCHMILL,

Petitioner,

VS.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

FILED

FEB 1 8 2014

OFFICE OF WORKERS' COMPENSATION JUDGE HELENA, MONTANA

AFFIDAVIT

State of Oregon

:SS

County of Multnomah

- 1. I, Tathay McNeilly, Being first duly sworn upon oath, depose and say:
- 2. I, Tathay McNeilly, am the Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc.
- 3. In my capacity as Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc I am authorized to make the statements set forth in this affidavit on behalf of AIG Property Casualty Inc and to bind AIG Property Casualty Inc by these statements.
- 4. I have reviewed the Amended Summons and Notice of Attorney Fee Lien filed in the above captioned matter (the "Schmill case" or "Schmill"). Pursuant to the criteria set forth in that pleading, and as further clarified in the cases entitled Schmill v. Liberty Northwest Ins. Corp., 2003 MT 80, 315 Mont. 51, 67 P.3d 290; Schmill v. Liberty Northwest Ins. Corp., 2005 MT 144, 327 Mont. 293, 114 P.3d 204; and Schmill v. Liberty Northwest Ins. Corp., 2009 MT 430, 354 Mont. 88, 223 P.3d 84; there is one claimant covered under workers compensation insurance policies issued by AIG Property Casualty Inc who appears to fall within the scope of the Schmill common fund and the attorney fee lien asserted by the Petitioner's counsel in Schmill. The relevant information for this claimants is:

Name:

Carole Allison

DOCKET ITEM NO. <u>597</u>

PDF

Claim Number:

071-065657

Date of Injury:

01/25/2000

Based upon my search of the claim files, Ms. Allison was identified as a claimant meeting the criteria for a *Schmill* claimant. My file review revealed that Ms. Allison's injury/occupational disease was apportioned as 70% due to occupational factors and 30% due to non occupational factors. Ms. Allison was entitled to 4.43 weeks of temporary total disability benefits at the rate of \$425.00 for a total of \$1,882.75. Pursuant to § 39-72-706, MCA, AIG Property Casualty Inc apportioned Ms. Allison's Temporary Total Disability benefits and paid Ms. Allison \$1,317.93, or 70% of her unapportioned TTD entitlement.

On 2/4/2014, AIG Property Casualty Inc, at my direction, sent Ms. Allison a check in the amount of \$423.62 which represents 30% of Ms. Allison's un-apportioned TTD entitlement which AIG Property Casualty Inc originally withheld pursuant to § 39-72-706, MCA, minus 25% (\$141.21) thereof withheld for the attorney fee lien asserted by counsel for Petitioner, Laurie Wallace, pursuant to the *Amended Summons and Notice of Attorney Fee Lien* filed in this action on December 7, 2005.

AIG Property Casualty Inc is prepared to pay the withheld 25% (\$141.21) either to Ms. Wallace or to Ms. Allison as the Court shall direct.

- 5. Other than Ms. Allison, AIG Property Casualty Inc has no claimants meeting the *Schmill* criteria as set forth in the *Amended Summons and Notice of Attorney Fee Lien*.
- 6. I declare under penalty of perjury that the foregoing is correct.

Dated this 12th day of February, 2014.

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"

Jathay McNeilly

Assistant Vice President for Workers' Compensation Primary Claims for AIG Property Casualty Inc

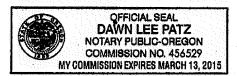
Signed and sworn to before me this 19 day of February, 2014

(Signature of Notary)

(Typed, stamped or printed Name of Notary)

(NOTARIAL SEAL)

Notary Public for the State of Chooch Residing at Work 202 My commission expires 3-13-15



CROWLEY FLECK PLLP

Jennilee C. Baewer Legal Assistant 500 Transwestern Plaza II 490 North 31st Street, Suite #500 Billings, MT 59101 406-255-7215 406-252-5292 - Fax jbaewer@crowleyfleck.com

February 13, 2014

Workers' Compensation Court P. O. Box 537 Helena, MT 59624-0537

RE: Schmill v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2001-0300

Flynn v. Liberty NW Ins. Co. & MT State Fund

WCC No.: 2000-0222

Dear Clerk of Court:

Enclosed please find the original and one copy of an affidavit for AIG Property Casualty, which includes the following companies:

- 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)

Clerk of Court letter Re: AIG SCHMILL/FLYNN Affidavits February 13, 2014 Page 2 of 2

After filing the originals (one in *Flynn* and one in *Schmill*), please time-stamp the copies and return them to our office in the enclosed postage prepaid envelope.

If you have any questions, please call.

Sincerely, Senulce C. Balwer

JENNILEE C. BAEWER, PLS

Legal Assistant for Steven W. Jennings

Enclosures

RECEIVED

FEB 0 2 2015

CROWLEY FLECK PLLP

IN THE WORKERS COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

FILED

CASSANDRA SCHMILL

Petitioner

JAN 2 9 2015

VS.

OFFICE OF WORKER'S COMPENSATION JUDGE HELENA, MONTANA

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer

and

MONTANA STATE FUND

Intervenor.

ORDER ESTABLISHING HEARING DATE FOR COMMON FUND ATTORNEYS' FEES

As the result of a decision by the Montana Supreme Court on April 10, 2003, in the above-captioned case, Petitioner established the right of occupational disease claimants to receive workers' compensation benefits at the same rate as industrial injury claimants and without any apportionment deductions for non-occupational factors contributing to the occupational disease. You have been identified as a claimant who has either received such an award or is eligible to receive such an award pursuant to the Supreme Court's decision.

Since the Petitioner in this case established the legal precedent for the immediate payment of TTD benefits at the full benefit rate, the Montana Supreme Court has determined that her attorneys are entitled to recover attorneys' fees in some amount for these benefits. The attorneys' fees are payable from the increased TTD benefits that were obtained for claimants who suffered work injuries from the period of July 1, 1987, through June 22, 2001.

In recognition of this decision by the Montana Supreme Court, your workers' compensation insurer has withheld a certain percentage of your past-due TTD benefits in order to pay the attorneys' fees incurred by Petitioner. The specific percentage of the attorneys' fees to be deducted from your past-due benefits has now been agreed upon between the Petitioner and your workers' compensation insurer, but has not yet been

approved by the Montana Workers' Compensation Court. Specifically, the Petitioner and your workers' compensation insurer have agreed that the attorneys' fees be fixed at 25% of all past-due TTD benefits. If the agreement is approved by the Montana Workers' Compensation Court, the attorneys' fees will be forwarded to the Petitioner's attorneys from the amount withheld from your past-due benefits. Any remaining portion of the withheld amounts will be refunded to you.

The Court is not bound by the agreement between the Petitioner and your workers' compensation insurer and may set the amount of the attorneys' fees at some other level. The Court has scheduled a hearing to determine the amount of the attorneys' fees, which you are invited to attend, on Monday, the 4+L day of May 2015, in Helena, Montana, at 9:00 A.M. The hearing will be held in the courtroom of the Workers' Compensation Court, 1625-11th Avenue, Helena, Montana.

YOU HAVE THE RIGHT TO BE PRESENT AT THAT HEARING TO VOICE YOUR SUPPORT FOR OR OBJECTION TO THE PROPOSED ATTORNEYS' FEES. YOU MAY ALSO FILE A WRITTEN STATEMENT SUPPORTING OR OBJECTING TO THE PROPOSED ATTORNEYS' FEES BY MAILING YOUR STATEMENT TO THE WORKERS' COMPENSATION COURT, P.O. BOX 537, HELENA, MONTANA, 59624-0537, NO LATER THAN April 17 ______, 2015. All oral and/or written comments should be limited to the proposed attorneys' fees.

Dated in Helena, Montana, this 29th day of <u>January</u>, 2015.



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.
- Lexington Insurance Co.