

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

FILED

CASSANDRA SCHMILL,

JUL - 8 2015

Petitioner,

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer,

And

MONTANA STATE FUND,

Intervenor.

**DECLARATION OF BERNADETTE RICE,
RE: UNINSURED EMPLOYERS' FUND**

I, Bernadette Rice, state as follows:

1. From November 1, 1993, to July 5, 2013, I served as the claims examiner for the Uninsured Employers' Fund, Employment Relations Division, Montana Department of Labor & Industry.
2. In my capacity as the claims examiner, I had day-to-day responsibility for administering all of the workers' compensation claims made to the Uninsured Employers' Fund. I have personal knowledge of the facts contained in this declaration, and, if called as a witness, I could and would testify competently to these facts.
3. I have reviewed the Amended Summons and Notice of Attorney Fee Lien filed in the above-captioned matter. I personally reviewed each of the Uninsured Employers' Fund claims files pursuant to the criteria set forth in that pleading and the determinations following it. As a result of my review, I determined that there is one claimant covered by the Uninsured Employers' Fund who appears to fall within the scope of the *Schmill* common fund and the attorney fee lien asserted by the Petitioner's counsel. The relevant information for that claimant is:

DOCKET ITEM NO. 613

Name: Douglas Garwood
Claim Number: 05-79-00070
Date of OD/Injury: 12/26/1996

4. Based upon my search of the claim files, Mr. Garwood was identified as a claimant meeting the criteria for a *Schmill* claimant. My file review revealed that Mr. Garwood's injury/occupational disease was apportioned as 70% due to occupational factors and 30% due to non-occupational factors. Mr. Garwood was entitled to 7 weeks of temporary total disability benefits at the rate of \$119.90 for a total of \$839.30. Pursuant to § 39-72-706, MCA, the UEF apportioned Mr. Garwood's TTD benefits and paid Mr. Garwood \$587.51, or 70% of his un-apportioned TTD entitlement.

5. Upon acceptance of this declaration, the UEF will send Mr. Garwood a check in the amount of \$251.79 which represents 30% of Mr. Garwood's un-apportioned TTD entitlement which the UEF originally withheld pursuant to § 39-72-706, MCA, minus 25% (\$62.95) 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.

6. The UEF is prepared to pay the withheld 25% either to Ms. Wallace or to Mr. Garwood, as the Court shall direct.

7. Other than Mr. Garwood, the Uninsured Employers' Fund has no claimants meeting the *Schmill* criteria as presented.

8. I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing this affidavit within which Petitioner's counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statements made by me on behalf of the Uninsured Employers' Fund. After such 90 days, if no objection is lodged by the Petitioner's counsel, the Court will dismiss the Uninsured Employers' Fund from this action based on the sworn statements made by me in this affidavit.

9. I declare under penalty of perjury of the laws of Montana that the foregoing facts are true and correct to the best of my knowledge.

Dated this 27th day of July, 2015.


BERNADETTE RICE