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MONTANA WORKERS' COMPENSATION COURT

CASSANDRA SCHMILL,)
)
 Petitioner,)
 vs.)
)
 LIBERTY NORTHWEST INS. CORP.,)
) WCC No. 2001-0300
 Respondent/Insurer)
)
 and)
)
 MONTANA STATE FUND,)
)
 Intervenor.)

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Taken at: Montana Workers' Compensation Courthouse
 Helena, Montana
 Tuesday, August 30, 2016, 1:03 p.m.

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Before: The Honorable David M. Sandler
 (Appearing by telephone.)

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TELEPHONIC HEARING TRANSCRIPT

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Reported by David E. Hix, ASCR, Montana Workers'
 Compensation Court Official Court Reporter, 1625 11th
 Avenue, Helena, Montana 59624-0537, (406) 444-7794,
 Official Court Reporter and Notary Public for the State
 of Montana, residing in Missoula, Montana.

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A P P E A R A N C E S

Laurie Wallace, Esq., 5 Highway 2 East, Columbia Falls, Montana 59912, appearing by telephone for and on behalf of the Petitioner.

Larry W. Jones, Esq., Wills Law Firm, P.C., 323 West Pine Street, Missoula, Montana 59802, appearing by telephone for and on behalf of the Respondent.

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I N D E X

WITNESSES:

PAGE:

NONE CALLED

EXHIBITS:

NONE OFFERED

Certificate of Court Reporter.....9

1 Tuesday, August 30, 2016

2 THE COURT: Hi, everybody. This is the time
3 for a hearing on Petitioner's Motion for Attorney's Fees
4 in Schmill versus Liberty Northwest Insurance
5 Corporation and Montana State Fund, Cause No. 2001-0300.
6 Laurie, I'll start with you. It's my understanding that
7 we're talking about 14 claimants today?

8 MS. WALLACE: Yes.

9 THE COURT: And then looking back at the
10 lien that you filed way back in July of 2003, we're
11 looking for a 25 percent fee, correct?

12 MS. WALLACE: Yes.

13 THE COURT: Okay. So based on the
14 affidavit, it's my understanding that there are 10 of 14
15 who do not object to the fees; those being Duane Kessel,
16 Marlene Martin, Greg Meyers, Kimberly Appel, Janice
17 Sorenson, Sandy Samples, Donna Goldy, Darcy Potter, and
18 Doug Smith; is that correct?

19 MS. WALLACE: Yes.

20 THE COURT: And, Larry, Liberty doesn't have
21 any objection to these fees?

22 MR. JONES: No objection, Your Honor.

23 THE COURT: Okay. Then based on the history
24 and complexity of this litigation, and past orders in
25 this case, I find that the 25 percent is the applicable

1 percentage of attorney's fees for those ten claimants
2 that I just named, and that it is a reasonable amount.
3 And so I order Liberty to pay those attorney's fees to
4 Ms. Wallace's firm.

5 So, Laurie, then the next question I have,
6 we have the three that were returned for Cornelia Jones,
7 Pamela Jones, and Linda Sutich. Are those benefits
8 going to the Justice Foundation?

9 MS. WALLACE: Well, your previous order
10 directed the claimant's portion of those benefits to go
11 to the Justice Foundation. We didn't include the
12 attorney's fees in that Cy pres. order. So I guess it's
13 something that Larry and I hadn't talked about prior to
14 this. I assumed, to be honest, that the fee still would
15 be paid to me, since if the claimant were able to accept
16 the benefits, they would only receive a certain portion
17 of it, which is the same portion that went to the
18 Justice Foundation. So I guess I'll put my bid in for
19 the fees as well, unless somebody has some objection.

20 THE COURT: No, and I wasn't as clear as I
21 should have been. I mean, when I said benefits, I was
22 thinking essentially the claimant's portion would go to
23 the Justice Foundation, and you would still get your
24 fees on those. So I didn't mean to infer that you
25 wouldn't get a fee for those claimants. Larry, do you

1 have any objection to that?

2 MR. JONES: No objection.

3 THE COURT: Okay. So for Cornelia Jones,
4 Pamela Jones, and Linda Sutich, I find that given the
5 history and complexity of this litigation and past
6 orders in this case, 25 percent is the appropriate and
7 applicable percentage and is reasonable, and I'll order
8 Liberty to pay those attorney's fees to Ms. Wallace's
9 firm.

10 And then the last is, I think we have -- oh,
11 the deceased claimant, Norma Cline, would that be the
12 same as the three that we just spoke of?

13 MS. WALLACE: That would be my
14 understanding, Your Honor, yes.

15 THE COURT: Okay. Larry, any objection?

16 MR. JONES: No objection.

17 THE COURT: Okay. So, again, given the
18 history and complexity of this litigation and past
19 orders of the case, I find that 25 percent is the
20 applicable fee and is reasonable, and order Liberty to
21 pay that fee to Laurie's firm.

22 So unless I'm not addressing something that
23 needs to be addressed, or somebody has any questions or
24 concerns, that will end this hearing for today.

25 MS. WALLACE: Your Honor, I just had one

1 thing: I looked back at the stipulations that Larry and
2 I signed regarding Liberty and its associated companies.
3 And the last paragraph of the stipulation indicated that
4 the Court will issue a Closure Order ending Liberty's
5 responsibility to search for Common Fund cases and
6 direct it to make a Common Fund review of a case if it
7 comes up that there are benefits paid on one that would
8 then bump it back into the Common Fund circle. And so
9 I'm assuming that Liberty is anticipating, maybe, the
10 Court issuing an order saying it's done what it was
11 supposed to do, that kind of thing; is that right,
12 Larry?

13 MR. JONES: Yes, I agree.

14 THE COURT: Okay. Larry, could you do a
15 proposed order and have Laurie review it and then send
16 it to the Court for my consideration?

17 MR. JONES: Yes, of course.

18 THE COURT: Okay.

19 MR. JONES: And I may not be tracking
20 something here, Your Honor. Have you issued an order
21 directing Liberty to pay the Cy pres. money to the --
22 Laurie, remind me of the name.

23 MS. WALLACE: Well, you guys were supposed
24 to have already done that, and so you might want to
25 check. Because the Court's original order on Cy pres.

1 was June of this year.

2 THE COURT: Yeah, June 3, 2016. I'm looking
3 right at it.

4 MS. WALLACE: So it did give you an order at
5 that time to pay a dollar amount to the Justice
6 Foundation.

7 MR. JONES: Okay. I'll check on that. Let
8 me make a note here.

9 THE COURT: And, Larry, there was a -- you
10 and Laurie signed a stipulation that covered a whole
11 list of, I'll call them, your insurance companies.

12 MR. JONES: Yes, Your Honor.

13 THE COURT: And I see that Linda Sutich is
14 listed on there and the dollar amount going to the
15 Justice Foundation. And I'm just -- Janice Sorenson,
16 who we dealt with today, is also on there.

17 MS. WALLACE: It's Docket No. 636, Larry, if
18 you want to look back at the order.

19 MR. JONES: Thank you. I'm making a note.
20 I'm not just being quiet. Okay. No. 636 docket. And,
21 Laurie, we can talk to tomorrow to make sure everything
22 is wrapped up on this.

23 MS. WALLACE: That would be great.

24 MR. JONES: Your Honor, Laurie and I have
25 eagerly anticipated the moment when this case has the

1 final chapter written on it. So I appreciate you
2 holding the hearing and taking care of this.

3 THE COURT: I don't think anybody has looked
4 more forward to this than Jackie.

5 MR. JONES: And the other one, Your Honor,
6 if I may, is the Glenn Miller. And I don't think I'm
7 speaking out of turn to say that I've sent a draft
8 proposal on how to search and include the case to Rex
9 Palmer. And I'm just waiting to hear from Rex. So I
10 would like to think by the end of this year we might get
11 that one done also.

12 THE COURT: Okay. I'd appreciate it. That
13 would be great.

14 MS. WALLACE: That's all I had, Your Honor.

15 THE COURT: Okay.

16 MR. JONES: That's all I had, Your Honor.

17 THE COURT: Okay. Thank you both. I look
18 forward to getting your proposed order.

19 MR. JONES: Thank you.

20 MS. WALLACE: Thank you.

21 (Thereupon, the teleconference concluded at 1:11 p.m.)
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C E R T I F I C A T E

STATE OF MONTANA)
: SS.
County of Missoula)

I, David E. Hix, ASCR, WCC Official Court Reporter and Notary Public for the State of Montana, residing in Missoula, Montana, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in this cause;

That the foregoing pages of this telephonic hearing transcript constitute a true and accurate transcription of my stenotype notes.

I further certify that I am not an attorney nor counsel of any of the parties; nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 3rd day of September, 2016.

David E. Hix, ASCR
WCC Official Court Reporter,
Notary Public, State of Montana
Residing in Missoula, Montana.
My Commission expires: August 1, 2017