

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001 - 0300

FILED

SEP 15 2016

CASSANDRA SCHMILL

Petitioner

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer,

MONTANA STATE FUND

Intervenor.

AFFIDAVIT

State of Montana)
 : ss
County of Flathead)

1. I, Jerry Lusk Being first duly sworn upon oath, depose and say:
2. I, Jerry Lusk am the Board Chairman for CARING FOR MONTANANS, INC.
3. In my capacity as Board Chairman for Caring For Montanans, Inc. I am authorized to make the statements set forth in this affidavit on behalf of Combined Benefits Insurance Company ("CBIC") and to bind CBIC 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 those pleadings, and as further clarified in the cases entitled *Schmill v. Liberty Northwest*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290; *Schmill v. Liberty Northwest*, 2005 MT 144, 327 Mont. 293, 114 P.2d 204; *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 is one claimant covered under workers compensation insurance policies issued by CBIC 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 these claimants are:

A. Name: Debra Kemper
Claim Number: 9800275
Date of Injury: October 1, 1998

Based upon my search of the claim files, Debra Kemper was identified as a potential claimant meeting the criteria for a *Schmill* claimant. Debra Kemper was contacted and provided documentation establishing that she had \$2,436.83 withheld from her workers compensation benefits pursuant to § 39-72-702, MCA, subsequently declared unconstitutional in *Schmill v. Liberty Northwest*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290.

On August 16, 2016, McMahon, Wall & Hubley, PLLC, at my direction, sent Debra Kemper a check in the amount of \$1,827.62 which represents the amount withheld from her workers compensation benefits pursuant to § 39-72-702, MCA, minus 25% (\$609.21) of such amount withheld for the attorney fee lien asserted by counsel for Petitioner, Laurie Wallace, pursuant to the *Summons and Notice of Attorney Fee Lien* filed in this action on December 7, 2005.

McMahon, Wall & Hubley, PLLC is prepared to pay the withheld 25% (\$609.21) either to Ms. Wallace or to Debra Kemper, as the Court shall direct.

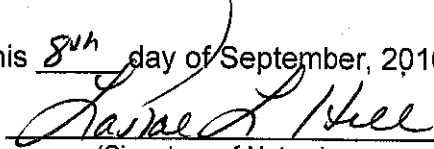
5. Other than the claimant listed above, CBIC has no claimants meeting the *Schmill* criteria as set forth in the *Summons and Notice of Attorney Fee Lien*.
6. I declare under penalty of perjury that the foregoing is correct.

Dated this 8th day of September, 2016.



Jerry Lusk, Board Chairman
Caring For Montanans, Inc.

Signed and sworn to before me this 8th day of September, 2016.



(Signature of Notary)
Notary Public for the State of Montana
Residing at Clancy MT
My commission expires 3-09-19

(NOTARIAL SEAL)

