

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001 - 0300

FILED

SEP 29 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 Cascade)

1. I, Monica Ebert, being first duly sworn upon oath, depose and say:
2. I, Monica Ebert, am a Claim Professional for *Travelers Indemnity Company (Travelers)*.
3. In my capacity as a Claim Professional for *Travelers*, I am authorized to make the statements set forth in this affidavit on behalf of *Travelers* and of the subsidiary companies listed and to bind *Travelers* by and the aforementioned subsidiary companies to these statements (collectively hereinafter *Travelers*).

Northland Casualty Company
Northland Insurance Company
The Travelers Casualty Company
Discover Property & Casualty Insurance Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire & Marine Insurance Company
St. Paul Guardian Insurance Company

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St. Paul Mercury Insurance Company
St. Paul Protective Insurance Company
Travelers Constitution State Insurance Company
United States Fidelity and Guaranty Company
The Automobile Insurance Company of Hartford, Connecticut
The Charter Oak Fire Insurance Company
Farmington Casualty Company
The Phoenix Insurance Company
Select Insurance Company
The Standard Fire Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
Travelers Casualty Company of Connecticut
Travelers Casualty Insurance Company of America
Travelers Commercial Casualty Company
Travelers Commercial Insurance Company
The Travelers Indemnity Company
The Travelers Indemnity Company of America
The Travelers Indemnity Company of Connecticut
Travelers Property Casualty Company of America
Travelers Property Casualty Insurance Company

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 Ins. Co.*, 2003 MT 80, 315 Mont 51, 67 P.3d 290; *Schmill v. Liberty Northwest Ins. Co.*, 2005 MT 144, 327 Mont. 239, 114 P.2d 204; 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 Travelers who appear 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:

Name: James Branstetter
Claim Number: B0M7516
Date of Injury: 5/4/2001

Based upon my search of the claim files, Mr. Branstetter was identified as a claimant meeting the criteria for a *Schmill* claimant. At the time Mr. Branstetter was receiving workers' compensation indemnity benefits, such benefits were reduced by a 20% apportionment for non-occupational factors pursuant to § 39-72-706, MCA. The 20% reduction in benefits equals \$501.70 in unpaid indemnity benefits.

Mr. Branstetter will be located and *Travelers*, at my direction, will send Mr. Branstetter a check in the amount of \$376.28 which represents the amount of indemnity benefits unpaid due to the apportionment taken pursuant to § 39-72-

706, MCA, minus 25% (\$125.42) thereof withheld for the attorney fee lien asserted by counsel for Petitioner, Laurie Wallace, pursuant to the *Amended Notice of Attorneys Lien* filed in this action on December 7, 2005.

Travelers is prepared to pay the withheld 25% (\$125.42) either to Ms. Wallace or to Mr. Branstetter, as the Court shall direct.

Name: Julie Yohn
Claim Number: DUV5964
Date of Injury: 10/1/2000

Based upon my search of the claim files, Ms. Yohn was identified as a claimant meeting the criteria for a *Schmill* claimant. At the time Ms. Yohn was receiving workers' compensation indemnity benefits, such benefits were reduced by a 25% apportionment for non-occupational factors pursuant to § 39-72-706, MCA. The 25% reduction in benefits equals \$292.20 in unpaid indemnity benefits.

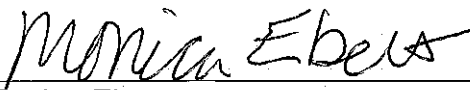
Ms. Yohn will be located by *Travelers* and, at my direction, will send Ms. Yohn a check in the amount of \$219.15 which represents the amount of indemnity benefits unpaid due to the apportionment taken pursuant to § 39-72-706, MCA, minus 25% (\$73.05) thereof withheld for the attorney fee lien asserted by counsel for Petitioner, Laurie Wallace, pursuant to the *Amended Notice of Attorneys Lien* filed in this action on December 7, 2005.

Travelers is prepared to pay the withheld 25% (\$73.05) either to Ms. Wallace or to Ms. Yohn, as the Court shall direct.

¶5 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 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 *Travelers*. After such 90 days, if no objection is lodged by counsel for Petitioner[s], the Court will dismiss the *Travelers* from this action based on the sworn statements made by me in this affidavit.

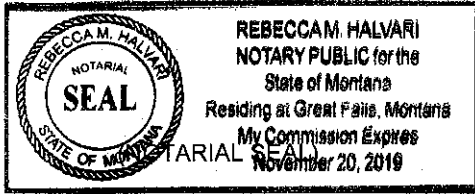
¶6 I declare under penalty of perjury that the foregoing is correct.

DATED this 27th day of September, 2016.



Monica Ebert
Title: Claim Professional

Signed and sworn to before me this 27th day of September,
2016.



Rebecca M Halvari
[Signature of Notary]

Rebecca M. Halvari
[Typed, stamped, or printed Name of Notary]
Notary Public for the State of Montana
Residing at Great Falls, Montana
My commission expires: November 20, 2019