

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

FILED

CASSANDRA SCHMILL,

SEP 30 2016

Petitioner,

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer,

And

MONTANA STATE FUND,

Intervenor.

**NOTIFICATION OF COURT AND COUNSEL
RE: ASARCO**

Pursuant to this Court's order regarding submission of an affidavit in this matter by ASARCO, the self-insured employer's bond of which is held by the Montana Department of Labor & Industry, attached hereto as Exhibit A is the Affidavit of Barb Gullickson.

As stated in Exhibit A, the Department found two individuals whose claims appear to be affected by the *Schmill* decision—Don Poole and Steve Leitzke. The Department was able to obtain contact information for Mr. Leitzke, who informally waived his objection to the payment of attorney fees from the monies owed to him.

However, the Department has been unable to contact Don Poole at this time, though efforts have been made. The Department will continue to attempt to contact Mr. Poole until such time as it appears further efforts are likely to be futile—in which case it will notify the Court of the same, or until it receives an alternative direction from the Court.

Respectfully submitted this 30th day of September, 2016.



Quinlan L. O'Connor
Agency Counsel

EXHIBIT A

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

CASSANDRA SCHMILL,

Petitioner,

Vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

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And

MONTANA STATE FUND,

Intervenor.

**AFFIDAVIT OF BARB GULLICKSON,
RE: ASARCO**

I, Barb Gullickson, being first duly sworn upon oath, state as follows:

1. From 2008 to Current (2016) I have served as the Supervisor for the Claims Assistance Unit, Workers' Compensation Claims Assistance Bureau, Employment Relations Division, Montana Department of Labor & Industry (Department).
2. In my capacity as the Supervisor, I am authorized to make the statements set forth in this affidavit on behalf of the Department and to bind the Department by these statements.
3. I have reviewed the Amended Summons and Notice of Attorney Fee Lien filed in the above-captioned matter. I reviewed the ASARCO claims files pursuant to the criteria set forth in that pleading and the determinations following it. The Department holds the self-insurance bond of ASARCO following its bankruptcy. As a result of my review, I determined that there are two claimants covered by ASARCO who appear 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:

Name:	Steve Leitzke
Claim Number:	MT200105152
Date of OD/Injury:	4/16/2001

Name: Don Poole
Claim Number: MT199811758
Date of OD/Injury 5/26/1998

4. Based on the search of the claim files, Mr. Leitzke was identified as a claimant meeting the criteria for a *Schmill* claimant. File review revealed that Mr. Leitzke's injury/occupational disease was apportioned at 80% due to occupational factors and 20% due to non-occupational factors. Mr. Leitzke was paid 9.14 weeks of temporary total disability benefits at the rate of \$331.11 for a total of \$3,026.32.

5. Based on the search of the claim files, Mr. Poole was identified as a claimant meeting the criteria for a *Schmill* claimant. File review revealed that Mr. Poole's injury/occupational disease was apportioned at 63% due to occupational factors and 37% due to non-occupational factors. Mr. Poole was paid 7.14 weeks of temporary total disability benefits at the rate of \$249.48 for a total of \$1,781.43.

6. Upon acceptance of this declaration, the Department will send Mr. Leitzke a check in the amount of \$695.39 which represents 20% of the un-apportioned TTD entitlement, minus 25% (\$173.85) thereof withheld for the attorney fee lien asserted by counsel for the Petitioner, Laurie Wallace, pursuant to the Amended Summons and Notice of Attorney Fee Lien filed in this action on December 7, 2005. Further, the Department will send Mr. Poole a check in the amount of \$1,046.14 which represents 37% of the un-apportioned TTD entitlement, minus 25% (261.54) for the attorney fee lien previously referenced.

7. The Department is prepared to pay the withheld 25% either to Ms. Wallace or to Mr. Lietzke and Mr. Poole, as the Court shall direct.

7. Other than Mr. Leitzke and Mr. Poole, the Department holding the ASARCO bond, 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 Department. After such 90 days, if no objection is lodged by the Petitioner's counsel, the Court will dismiss the Department 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 14th day of September, 2016.

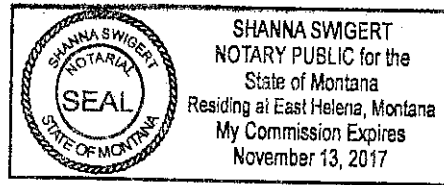
Barb Gullickson
BARB GULLICKSON

State of Montana
County of Lewis & Clark

This instrument was signed and sworn to before me on September 14, 2016

by Barb Gullickson
Print name of signer(s)

Shanna Swigert
Notary Signature



CERTIFICATE OF SERVICE

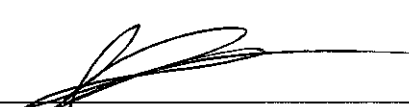
The undersigned hereby certifies that true and correct copies of the following documents:

1. Notification of Court and Counsel Re: ASARCO

was, this day, served upon each party via U.S. Mail, postage prepaid, and addressed as follows:

Laurie Wallace
Bothe & Lauridsen, P.C.
P.O. Box 2020
Columbia Falls, MT 59912

Dated this 30th day of September, 2016.



Jordon Dyrdaahl-Roberts
Department of Labor & Industry