

MONTANA WORKERS' COMPENSATION COURT

Minute Book Hearing No. 4697
Volume XXVI

Missoula, Montana
January 6, 2017

CASSANDRA SCHMILL

Laurie Wallace

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Larry W. Jones

and

MONTANA STATE FUND

Bradley J. Luck
Thomas E. Martello

WCC No. 2001-0300

The telephonic attorney fee hearing in the above-entitled matter came on at 9:00 a.m. on Friday, January 6, 2017. The Honorable David M. Sandler, Judge of the Workers' Compensation Court, presided at the Workers' Compensation Court, 1625 11th Avenue, Helena, Montana. The court reporter was David E. Hix.

Petitioner Cassandra Schmill was represented by Laurie Wallace. Respondents ASARCO, Inc. and the Uninsured Employers Fund (UEF) were represented by Quinlan L. O'Connor. Bill Wheeler from the Claims Assistance Bureau, Employment Relations Division, was also present.

The following Respondents were represented by Steven W. Jennings:

Combined Benefits Ins. Co.
St. Paul Fire & Marine Ins. Co.
St. Paul Guardian Ins. Co.
St. Paul Mercury Ins. Co.
St. Paul Protective Ins. Co.
Travelers Casualty & Surety Co. of America
Travelers Casualty & Surety Co.
Travelers Casualty Co. of Conn.
Travelers Casualty Ins. Co. of America
Travelers Commercial Casualty Co.
Travelers Commercial Ins. Co.
Travelers Constitution State Ins. Co. (f/k/a St. Paul Med. Liability Ins. Co.)
Travelers Ind. Co. of America

Travelers Indemnity Co.
Travelers Indemnity Co. of CT
Travelers Property & Casualty Ins. Co.
Travelers Property Casualty Co. of America
Discovery Property & Casualty Ins. Co.
Farmington Casualty Co.
Fidelity and Guaranty Ins. Co.
Fidelity and Guaranty Ins. Underwriters, Inc.
Northland Casualty Co.
Northland Ins. Co.
Select Ins. Co.
The Automobile Ins. Co. of Hartford, Connecticut
The Charter Oak Fire Ins. Co.
The Phoenix Ins. Co.
The Standard Fire Ins. Co.
The Travelers Casualty Co.
United States Fidelity and Guaranty Co.

Pursuant to established precedent on what satisfies due process, the hearing was held to allow public comment on the attorney fees withheld by the above-named Respondents for the benefits paid to claimants who have been awarded additional benefits pursuant to the *Schmill* decision, and of which the Respondents have withheld amounts for the attorney fees. Five of the identified claimants are Steven Leitzke, Don Poole, Julie Yohn (a/k/a Julie Ann Engle), James Branstetter, and Debra Kemper. Based on Wallace's July 2003 attorney lien, Wallace is asking for a 25% fee on these claimants. Respondents mailed letters to their client's respective claimants, advising of the proposed common fund attorney fees to be paid to Petitioner's counsel that was withheld from their award, and any refund to which they may be entitled. This letter provided an area to indicate the claimants' willingness to attend the public hearing and provided notice of the time and date of this hearing. No claimant appeared at the attorney fee hearing.

Based on the Affidavit of Laurie Wallace, Steven Leitzke, Don Poole, and Julie Yohn (a/k/a Julie Ann Engle) were contacted and stated they had no objection to the attorney fee request. Letters addressed to James Branstetter and Debra Kemper were returned¹ and attempts to reach them telephonically were unsuccessful. Respondents have no objection to the attorney fees. Given the history and complexity of this litigation and past orders in this case, the Court finds that the 25% attorney's lien is reasonable and appropriate and Respondents Insurers are **ordered** to pay those common fund attorney fees to Wallace as regards to these claimants. The Court will issue Orders, prepared by Jennings and O'Connor and approved by Wallace, dismissing their respective clients from this action without prejudice.

¹ Jennings clarified that his client also sent Ms. Kemper a letter which was not returned. Therefore, it is Jennings' and his client's belief that Ms. Kemper was aware of this hearing.

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O'Connor stated that, as to the one remaining claimant identified by the UEF, in the interest of the economies of all, the UEF paid 100% of the benefits owed and paid 25% of that amount additionally to Wallace as attorney fees. As there is no grounds for Garwood to object to the amount of attorney fees and no objection by Wallace, the Court will issue the Order, prepared by O'Connor and approved by Wallace, dismissing the UEF from this action without prejudice.

An Order will be issued incorporating this minute entry.

Court adjourned at 9:10 p.m.

DAVID M. SANDLER
Judge

Minute Entry provided to parties of record via website.

DMS/JP

Docket Item No. 719