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FILED

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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA SCHMILL,)	WCC No. 2001-0300
)	
Petitioner,)	
)	
vs.)	LIBERTY'S REPLY BRIEF
)	
LIBERTY NORTHWEST INSURANCE CORP.,)	
)	
Respondent/Insurer.)	

Liberty incorporates by reference the arguments made by the State Fund in its OPENING BRIEF with the exception of paragraph VI and any remarks in the conclusion of its brief consistent with that section.

Liberty believes it has already adequately addressed the arguments made by Schmill in her PETITIONER'S BRIEF with the following exception.

UNDULY BURDENSOME/INEQUITABLE

Liberty adds to its earlier argument that application of Schmill retroactively would be unduly burdensome and/or inequitable the following legal argument. "The basis for workers' compensation is a contract of hire either express or implied." Buckman v. Montana Deaconess Hospital, 224 Mont. 318, 325-326 (1996). Contracts for hire may be oral or written. The retro-application of Schmill raises the question of how far back in time it could be applied. That is, Liberty's contractual obligations to a claimant, under which work comp benefits are paid, could not exceed the contract period of the obligation.

Liberty's contractual obligations under an oral contract for hire is three years and for a written contract of hire is eight years. MCA 27-2-202.

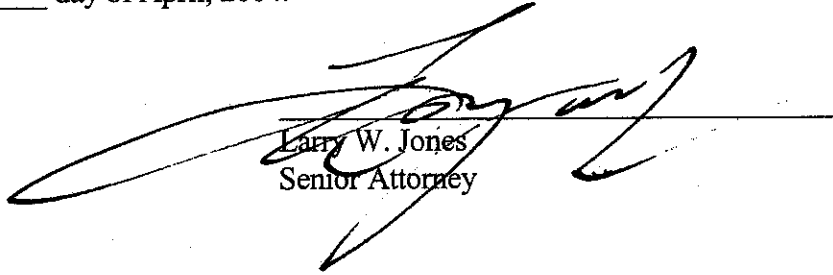
EVERY (PER 5-4-04 ERRATA LETTER) CW

Therefore, if Schmill is applied retroactively, ~~every~~ claimant and the time of injury an employer would have to be located to determine if the claimant was working under an oral or written contract of hire. If the contract of hire is oral, then only those claimants with dates of injury three years prior to this Court's decision may benefit from it. There is an eight year period for those with a written contract of hire.

If the Court were simply to ignore this contract principal and apply Schmill retroactively uniformly and irrespective of the type of contract of hire, the Court's ruling would impermissibly impair Liberty's contract rights. Synek v. State Compensation Insurance Fund, 272 Mont. 246, 252-253 (1995).

If the Court were to require Liberty to undertake this identification of claimant's employers, it would be both inequitable and unduly burdensome because of the resources it would take to identify the appropriate files and then locate the parties, if they could be located.

DATED this 12 day of April, 2004.



Larry W. Jones
Senior Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of April, 2004, I served the original of the foregoing LIBERTY'S REPLY BRIEF first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537


and a copy of the same to the following:

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