

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CASSANDRA M. SCHMILL,

Petitioner,

v.

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Respondent/Insurer

and

MONTANA STATE FUND,

Intervenor.

WCC No. 2001-0300

**ORDER AUTHORIZING WITHHOLDING**

On July 11, 2003, Petitioner's counsel filed a Notice of Attorney Fee Lien wherein she claimed a common fund attorney fee lien of 25% as a result of any additional benefits paid as a result of the precedent established by the Montana Supreme Court's decision in *Schmill v. Liberty Northwest Ins. Corp.*, 2003 MT 80, 315 Mont. 51, 67 P.3d 290 ("*Schmill I*"). As a result of the Montana Supreme Court's decision in *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478, 97 P.3d 561, the common fund attorney fee lien of Petitioner's counsel is asserted against all entities providing workers' compensation coverage for occupational disease claims occurring on or after July 1, 1987 through June 22, 2001.

Following the issuance of *Schmill I*, the parties litigated the additional issues of common fund entitlement and retroactivity. On June 7, 2005, the Montana Supreme Court issued a decision in which it concluded that Petitioner's counsel was entitled to common fund attorney fees and that *Schmill I* applied retroactively to certain occupational disease claims occurring on or after July 1, 1987. *Schmill v. Liberty*

*Northwest Ins. Corp.*, 2005 MT 144, 327 Mont. 293, 114 P.3d 204 (“*Schmill II*”). This case has now been remanded to this Court for a determination of which claimants are entitled to receive additional benefits as a result of *Schmill I*.

Finding good cause, and until further order of the Court, all insurers, self-insured employers, and the Montana State Fund are authorized to withhold the attorney fee amounts claimed by Ms. Schmill’s counsel from any and all additional benefits which are paid to claimants on account of *Schmill I* and which would not have been paid absent that decision. By this Order, I specifically authorize all insurers, self-insured employers, and the Montana State Fund to withhold 25% of any increased occupational disease benefits which are paid as a result of *Schmill I*.

SO ORDERED.

DATED in Helena, Montana, this 2<sup>nd</sup> day of October, 2006.

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Laurie Wallace, Esq.  
Larry W. Jones, Esq.  
Thomas J. Murphy, Esq.  
Nancy Butler, Esq.  
David A. Hawkins, Esq.  
Bradley J. Luck  
Parties of Record via Website