

MONTANA WORKERS' COMPENSATION COURT

Minute Book Hearing No. 4207  
Volume XXII

Helena, Montana  
October 25, 2010

CASSANDRA SCHMILL

Laurie Wallace

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Larry W. Jones

and

MONTANA STATE FUND

WCC No. 2001-0300

A telephone conference call came on this date at 10:00 a.m. with the above-named counsel. The conference call was scheduled at the initiation of counsel to discuss implementation issues with Liberty Northwest Insurance Corporation. Ms. Wallace advised that the implementation procedure has been resolved with Montana State Fund, therefore it was not necessary for the State Fund to participate in this conference. The court reporter was Kim Johnson.

Counsel advised that Liberty's computer technicians ran a computer program identifying potential *Schmill* claimants on a master list printout. Ms. Wallace reviewed the printout and identified which were likely *Schmill* claims. The printout does not reflect whether an apportionment was made on each claim. Ms. Wallace believes that it is Liberty's responsibility to pull and review the files to locate claims where an apportionment was made. She argues the remaining search is largely a clerical procedure and stated that this was the agreement and the procedure used with the State Fund. Mr. Jones noted that in other common fund cases, Petitioner's counsel chose to review the files themselves and further stated Liberty did not want to be back before the Court in the event Ms. Wallace was not satisfied with Liberty's file review. Mr. Jones noted a caveat for the record that the information retrieved from the computer search is only as good as the information input into the computer, that there were no guarantees, and that the computer search was the best the IT personnel could fashion.

Although not dispositive, I believe that the procedure adopted by State Fund has precedential value. After confirming State Fund has no proprietary or intellectual property interests in the method utilized in performing its search, Ms. Wallace may share State Fund's spreadsheets with Liberty to model and perform its search in the same fashion.

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Mr. Jones advised that there are other Liberty-owned companies that may be affected and that may not have been captured in the first query. Counsel agreed to work through the first query that has already been performed, and then identify and perform searches of the remaining companies in a second query.

Counsel discussed the order of the file review off the record, and advised they will contact the Court should any additional disputes arise.

JAMES JEREMIAH SHEA  
Judge

Minute Entry e-mailed to counsel on November 1, 2010.

JP/PT

Docket Item No. 478