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ATTORNEYS FOR PETITIONER

FILED

APR 29 2003

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CARL MILLER, individually and on) WCC No. 2003-0771
behalf of others similarly situated,)
Petitioner,)
v.) PETITIONER'S BRIEF IN OPPOSITION
STATE COMPENSATION INS.) TO MOTION FOR STAY
FUND,)
Respondent)

* * * * *

COMES NOW Petitioner and submits this brief in opposition to the Motion for Stay submitted by Respondent on April 15, 2003.

Respondent seeks to preclude Petitioner's access to the Court. Respondent's motion is without statutory basis or other authority. Indeed, Respondent has failed to cite any authority for its motion. While the motion, as presented, seeks relief in the nature of a temporary injunction, it makes no attempt to satisfy the statutory criteria for obtaining such relief.

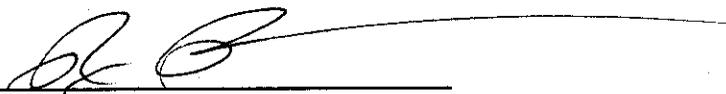
Respondent's effort to preclude Petitioner's access to the Court is a thinly veiled attempt to delay payment while seeking an advisory opinion in the hope of avoiding penalty. Respondent exposed its motive by rejecting outright Petitioner's suggestion that, subject to the Court's approval, the parties consider joining this action with *Flynn* so as to avoid any possible multiplicity of proceedings.

Pursuant to the Scheduling Order, Respondent was required to "serve the Court and the Petitioner with a Response to the Petition on or before April 18,

2003." Instead, Respondent notified the Court by letter dated April 16, 2003, that "We do not intend to file a Response to the Petition in *Miller* until the Court rules on our motion or otherwise directs such filing." By so doing, Respondent unilaterally implements the delay it desires, while at the same time preventing Petitioner and the Court from learning its position on Petitioner's contentions and claim for relief.

Respondent's motion should be summarily denied and it should be required to promptly file its Response to the Petition so that the parties may adhere to the Scheduling Order.

Dated this 28th day of April 2003.



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