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Attorneys for Respondent/Insurer

THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA

CARL MILLER, individually and on
behalf of others similarly situated,

Petitioner,

v.

MONTANA STATE FUND,

Respondent/Insurer.

WCC No. 2003-0771

MOTION FOR STAY

FILED

APR 16 2003

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

COMES NOW the Montana State Fund ("State Fund"), through counsel, and respectfully requests that the Court enter an Order staying the present action until such time as the entitlement and common fund issues are determined in *Flynn v. State Compensation Insurance Fund*, WCC Cause No. 2000-0222 following the decision of the Montana Supreme Court in the action (2002 MT 279). In support of the present Motion, the State Fund states, as follows:

In *Flynn*, the parties will be briefing the entitlement and common fund issues that arise as a result of the Montana Supreme Court decision. The State Fund anticipates that

issues will be decided, including but not limited to, the retroactive application of the Supreme Court decision and the entitlement to claimant's counsel in that action to common fund fees from claimants if the ruling is held to be retroactive. The State Fund also anticipates filing a request in *Flynn* to hold all payments for claims arising before the Supreme Court decision in abeyance pending determination of the retroactivity issue.

The present petition seeks to enforce the *Flynn* decision in a class action. It also seeks an award of common fund fees. It appears that the matter was filed in the mistaken belief that the State Fund would not follow the *Flynn* decision in other claims. In fact, the State Fund only seeks direction on entitlement and common fund issues from the Court and will abide by the Court's direction as the issues are briefed and determined in *Flynn*.

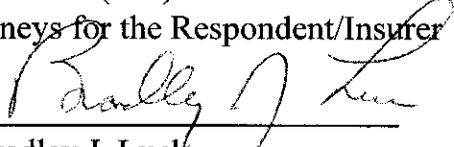
As a result, the present action is duplicative of the *Flynn* litigation and unnecessary. In addition, since the holding on issues to be briefed in *Flynn* will resolve all issues in this matter, the claims here need not be considered. Finally, the legal precedent of *Flynn*, the scope of which will be determined in that action, gives rise to a consideration of the common fund, if at all. This matter being a case subsequent to the establishment of the precedent at issue, is not the proper action to be considering common fund issues.

Therefore, the State Fund requests that the present action be held in abeyance pending a determination of entitlement and common fund issue in *Flynn*.

DATED this 15 day of April, 2003.

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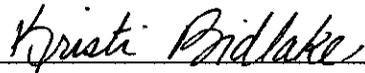
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By 
Bradley J. Luck

CERTIFICATE OF MAILING

I, the undersigned, a representative of the law firm of GARLINGTON, LOHN & ROBINSON, PLLP, hereby certify that on the 15th day of April, 2003, I mailed a true and correct copy of the foregoing MOTION FOR STAY, postage prepaid, to the following:

Rex Palmer, Esq.
Attorneys Inc., P.C.
301 West Spruce
Missoula, MT 59802



Kristi Bidlake