

MAY - 3 2005

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is entered into this <sup>OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA</sup> April, 2005, by REX PALMER (hereinafter Claimant's attorney), for purposes of maintaining and ensuring the confidentiality of information revealed to Claimants' attorney in *Flynn/Miller v. Montana State Fund and Liberty Northwest Ins. Corp.* and in reviewing the files disclosed in the litigation of *Ruhd v. Liberty Northwest Ins. Corp.*, (hereinafter "Ruhd"), and *Rausch, et. al v. Montana State Fund* (hereinafter "Rausch"), WCC No. 9907-8274R1, pursuant to the Court order.

WHEREAS, various insurers and self insurers operate as Plan I and Plan II workers' compensation insurers pursuant to Montana Code Annotated § 39-71-2101, et seq., and Claimants' attorney is licensed to practice law in the State of Montana and who maintains an office in Missoula, Montana; and

WHEREAS, pursuant to the procedure followed in similar common fund cases, the parties wish to follow the Court's directive to enter into a confidentiality agreement, subject to Court approval, to protect the privacy interests of those persons who may be affected by the Workers' Compensation Court's decision in *Flynn/Miller*; and

WHEREAS, as part of the implementation process, Claimants' attorney and his designated agents and health care providers or certified rehabilitation counselors are requesting permission to examine and review confidential information maintained by the above referenced Plan II workers' compensation insurer;

NOW, THEREFORE, in consideration of the foregoing premises, the parties agree as follows:

1. The term "confidential information" includes the names of claimants, claim numbers, medical records, as well as other personal information which is protected from public disclosure. The parties agree that any confidential information revealed to Claimants' attorney, and his designated agents, health care providers and certified rehabilitation counselors during the course of this litigation shall not be reproduced, disseminated or otherwise communicated by Claimants' attorney and his designated agents and health care providers and certified rehabilitation counselors or by any person acting on behalf of Claimants' attorney except as provided in this agreement or pursuant to an Order of the Workers' Compensation Court.

2. The confidential information shall be available only to Claimants' attorney, his agents and health care providers, certified rehabilitation counselors or members of his law firm, and used by him solely for the purposes of enforcing the common fund created in *Flynn/Miller*.

3. All other information in the file that does not fall under the definition of confidential information is nevertheless subject to the terms and conditions of this confidentiality agreement. This information will be made available only to Claimants' attorney and his agents as part of the file review process and may not be copied, in whole or in part, in any form and may not be disseminated to anyone through any media by him.

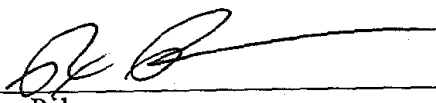
4. It is understood that the term "health care providers" referenced in this agreement includes medical experts who can review impairment determinations and, further, that a Court order is not necessary to have confidential documents obtained pursuant to this agreement to be reviewed by health care providers.

5. Pursuant to the Court's direction during the hearing on April 1, 2005, the Claimants' attorney will have the health care providers sign an agreement incorporating the confidentiality, privacy and non-disclosure requirements as set forth in this Confidentiality Agreement.


6. Pursuant to the Court's direction during the hearing on April 1, 2005, the Claimants' attorney will have the certified rehabilitation counselors sign an agreement incorporating the confidentiality, privacy and non-disclosure requirements as set forth in this Confidentiality Agreement.

7. At the conclusion of this litigation and the implementation process, whether by trial, settlement or otherwise, the confidential information subject to this agreement, as well as copies thereof, shall be returned to the insurers for disposal. However, Claimants' attorney may retain documents which he deems necessary to protect himself against potential claims for professional negligence or misconduct. Any and all documents retained by Claimants' attorney shall be placed under seal and shall not be reproduced, disseminated or otherwise communicated to any person except in connection with a defense to a claim for professional negligence or misconduct. Even when defending against such a claim, Claimants' attorney shall prudently guard against the unwarranted dissemination of the confidential information. Further, any and all documents retained by Claimants' attorney shall be destroyed after a reasonable period of time.

DATED this 28<sup>th</sup> day of April, 2005.

  
\_\_\_\_\_  
Rex Palmer

APPROVED as to form and content and SO ORDERED on this 3<sup>rd</sup> day of May, 2005.

  
\_\_\_\_\_  
Hon. Mike McCarter  
Workers' Compensation Judge

---

**LAW OFFICE OF JONES & GARBER**

*An Insurance Company Law Division*

700 SW HIGGINS AVENUE, SUITE 108 • MISSOULA, MT 59803-1489

TELEPHONE 406-543-2446 • FACSIMILE 406-829-3436

---

Larry W. Jones  
406-543-2420  
[LarryW.Jones@llawoffice.com](mailto:LarryW.Jones@llawoffice.com)

Carrie L. Garber  
406-543-2434  
[Carrie.Garber@llawoffice.com](mailto:Carrie.Garber@llawoffice.com)

---

April 29, 2005

Honorable Mike McCarter  
Workers' Compensation Court  
P. O. Box 537  
Helena, MT 59624-0537

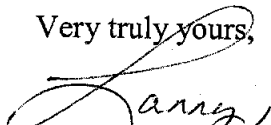
RE: Flynn/Miller, WCC No. 2000-0222

Dear Judge McCarter:

Enclosed is the signed original Confidentiality Agreement. If this agreement meets with your approval, please sign the same and return an executed copy to myself and Rex Palmer.

If you have any questions, please contact me.

Very truly yours,

  
Larry W. Jones

LWJ/cb  
Enclosure  
c: Rex Palmer (w/ enc.)

---