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April 12, 2005

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

FILED

APR 13 2005

RE: Flynn/Miller v. MSF/LNW
WCC No. 2000-0222

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Dear Judge McCarter:

I have reviewed the email of April 5, 2005, 3:27 p.m. from Jacqueline Bockman attached to which was a draft summons. My only concern is ¶5, ¶5a-c. I am concerned about the possibility of unnecessary duplication of effort.

Specifically, if an insurer formulates a strategy by which to try to identify these claims and executes that strategy, then there still may be a dispute about whether the strategy and/or the execution was appropriate. That is there may be a dispute about whether the insurer has identified all the relevant claims.

As you know this has come up in other common fund cases. As you also know, in my representation of Liberty in the Cheetham and Ruhd cases I have worked with the Court and opposing counsel to develop a strategy to identify the relevant cases and to get the agreement of the court and opposing counsel about what plan, if complied with by the insurer, will fully discharge the insurers duty.

I believe we have done just that in this case at the last hearing. Therefore, I do not think Liberty's response to the summons should be anything other than to refer to the agreements made during the last hearing.

Because I anticipate there are other possible Liberty affiliated companies that could fall under this common fund claim, I am requesting the summons be changed simply to require the insurer to respond and be available to participate in a hearing. The purpose of which is to reach agreement about exactly what the insurer is to do and once done will have discharged its duty under this common fund claim.

These are my thoughts. I am always available for a conference call. If you have any questions, please contact me at your convenience.

Very truly yours,


Larry W. Jones

LWJ/ap
c: Rex Palmer
