

Bockman, Jacqueline

From: Mike McCarter [marsilius@mt.net]
Sent: Monday, April 18, 2005 5:37 PM
To: Palmer, Rex; Martello, Tom; Luck, Brad; Jones Larry; Harrington, Tom
Cc: McCarter, Mike; Bockman, Jacqueline
Subject: Brad's 4/13 letter

FILED

APR 18 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

Dear Counsel,

I've also reviewed Brad's comments in his April 13th letter, which was copied to everyone. I agree to the addition of "occupational diseases" in paragraph 5. I also agree that the common fund date is the date of the original Supreme Court decision. Rex, if you disagree with me on this, please explain why.

I have asked Pat to set up a telephone conference with all of you to finalize this summons. Meanwhile, I'm sending my latest revision. It incorporates the language responsive to Larry's comments.

Mike

4/19/2005

124

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF
MONTANA

WCC No. 2000-0222

ROBERT FLYNN

and

CARL MILLER, Individually and on Behalf of
Others Similarly Situated

Petitioners

vs.

DRAFT
MONTANA STATE FUND

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE CORPORATION

Intervenor.

SUMMONS

The State of Montana to the following Insurers and Self-Insureds:

[Insert insurer names here]

¶1 On February 23, 2004, each of you named in this Summons was sent a Lien Notice notifying you of the attorney fee lien claimed by the petitioners' attorneys in the above-captioned action. The claimed lien is with respect to benefits that are payable as a result of the Montana Supreme Court's decision in *Flynn v. State Compensation Ins. Fund*, 2002 MT 279, 312 Mont. 410, 60 P.3d 397. That decision held that an insurer is liable for one-half of the attorney fees a claimant incurs in obtaining social security disability benefits which are offset by the insurer against his or her workers' compensation benefits.

¶2 Each of you named in this Summons has been identified by the Montana Department of Labor and Industry (DLI) as insurers or self-insurers providing workers' compensation insurance coverage in the State of Montana on or after July 1, 1974, which is the time frame covered by the lien asserted in this case. Accordingly, each of you named in this Summons is **ordered** to continue to withhold the attorney fees claimed in the lien notice, another copy of which is attached hereto.

¶3 By this summons, each of you is made a respondent to these proceedings and **ordered** to file a **response** to the Summons. Your response must be mailed to the Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537, or delivered to the Court at its offices on 1625 Eleventh Ave., Helena, Montana, by [date 45 days hence].

¶4 If you dispute the entitlement of claimants insured by you to additional benefits under the *Flynn* decision, then your response must set forth the particular grounds and defenses you may have and you need not at present provide the information required in the next paragraph numbered as 5.

¶5 If you do not dispute the application of *Flynn* to claimants you insured and who incurred attorney fees in obtaining social security benefits used to offset their workers' compensation benefits, then your response should so state. In addition, unless you are unable to do so within the time provided for your response, provide the following information:

¶5A The name, address, claim number, and date of injury or occupational disease for all claimants whose benefits you have offset on account of social security benefits at any time since June 30, 1974 and prior to the date of this summons.

¶5B If you have credited or paid any claimants your share of attorney fees required under *Flynn*, the date and amount of the credit or payment made as to each such claimant.

¶5C Which of the claims identified in paragraph 5A have been settled and the date of settlement. As to claims which have been settled since August 3, 2003, please provide copies of the settlement documents.

If you are unable to provide the required information within the time provided for your response, *or are uncertain whether the methodology available to you to identify such claimants and their entitlements will satisfy petitioners' counsel and the Court*, then your response should so state, *however, and you should further state how you propose to identify claimants and determine their entitlements indicate what you must do to compile the information and indicate the amount of additional time*

needed to *do so*.

¶6 You need not serve copies of your response on the attorneys in this case as the Court will take responsibility for such service. Information you provide with respect to individual claimants will not be provided to persons other than petitioners' counsel. Information concerning individual claimants will be provided to petitioners' counsel only pursuant to a confidentiality order restricting any further dissemination of the information.

DATED in Helena, Montana, this _____ day of March, 2005.

JUDGE

DRAFT