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ATTORNEYS FOR PETITIONER

**FILED**  
OCT 30 2000  
OFFICE OF  
WORKERS' COMPENSATION JUDICIAL  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN ) WCC No. 5000-0222  
Petitioner, )  
)  
) PETITION FOR HEARING  
v. )  
)  
STATE COMPENSATION INS. )  
FUND )  
Respondent/Insurer for )  
)  
SALISH KOOTENAI COLLEGE )  
Employer. )

\* \* \* \* \*

As set forth in ARM 24.5.301 Petitioner alleges:

1. That prior to and on June 23, 1993, Petitioner suffered an occupational disease arising out of and in the course of his employment with Salish Kootenai College in Lake County, Montana. Petitioner injured his arms/hands while performing repetitive activities.
2. At the time the occupational disease arose and progressed, petitioner's employer was enrolled under Compensation Plan III of the Workers' Compensation Act and its insurer is State Compensation Insurance Fund.
3. A dispute exists between the parties. Claimant contends that Respondent is responsible for a pro rata share of attorney fees incurred to obtain his social security benefits. Respondent has claimed an offset for the entire Social Security award received by claimant but refuses to give credit for any portion of the fees incurred to obtain the Social Security award. As well, Claimant contends Respondent should pay a

penalty for unilaterally reducing Claimant's temporary total disability benefits to recoup the social security offset. Unilateral offset was not allowed at the time of Claimant's injury.

4. Respondent has accepted Petitioner's claim and has paid both medical and temporary total disability benefits. Respondent has recently conceded permanent total disability. Respondent disputes both of Claimant's contentions.
5. Pursuant to ARM 24.5.317, Petitioner has exchanged all available medical records relating to the injury with the Respondent and will continue to do so.
6. The parties have complied with any mediation procedure required in the Workers' Compensation Act.
7. The following is a list of individuals who are potential witnesses for Petitioner in this matter.

NAME AND ADDRESS                      GENERAL SUBJECT MATTER OF TESTIMONY

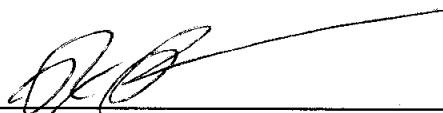
Petitioner                                      Injury and disability

8. The following is a list of written documents relating to this case which may be introduced as evidence by Petitioner:
  - a. Records, reports and letters from Petitioner's medical care providers and examiners.
  - b. Records regarding Petitioner's social security claim.
  - c. Letters to and from Respondent.

WHEREFORE, Petitioner respectfully prays that this Petition be set for hearing and that the following relief be granted:

1. An Order requiring Respondent to pay a pro rata share of attorney fees regarding social security offset.
2. An Order holding that Respondent's refusal to acknowledge its obligation to pay a pro rata share of Claimant's attorney fees incurred to obtain his Social Security benefits and Respondent's unilateral reduction of total disability benefits was unreasonable and awarding costs, a penalty and attorneys fees for each delay and refusal which the Court finds was unreasonable.

Dated this 30 day of October 2000.



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**VIA FACSIMILE @ (406) 444-7798 AND ORIGINAL BY MAIL**

October 30, 2000

Patricia J. Kessner, Clerk of Court  
Workers' Compensation Court  
PO Box 537  
Helena, MT 59624-0537

Re: Robert Flynn

Dear Ms. Kessner:

I have enclosed the original and three copies of the Petition for Hearing dated October 30, 2000, regarding the above-referenced individual. Please file with your office. After conforming the copies, please mail one copy to each of the following:

Gina Keltz  
State Fund  
PO Box 4759  
Helena, MT 59604-4759

Chief Counsel  
State Fund Legal Department  
PO Box 4759  
Helena, MT 59604-4759

Rex Palmer  
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If you have any questions or concerns, feel free to contact me. Thank you for your assistance.

Sincerely,  
ATTORNEYS INC., P.C.

  
Rex Palmer

RP:mm  
Enclosures

10-30-00