

FILED

October 17, 2022

Office of

Workers' Compensation Judge

Helena, Montana

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Attorneys for Liberty Northwest

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.

MONTANA STATE FUND

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE CORPORATION

Intervenor.

JOINT STIPULATION FOR DISMISSAL OF LIBERTY NORTHWEST INSURANCE CORPORATION

Petitioners through their attorney, Rex Palmer, and Respondent Liberty Northwest insurance Corporation ("liberty"), through its attorney, Leo S. Ward, stipulate and agree as follows:

Docket Item No. 760

Definitions

A. "Flynn/Miller Decisions" means the various decisions and orders entered by this Court and the Montana Supreme Court in the above captioned action.

B. "Flynn/Miller Benefits" means:

- i) one-half (½) of the representative's fee authorized by the Social Security Administration in connection with the representative's successful efforts to obtain Social Security disability benefits for a Liberty Workers' Compensation or Occupational Disease Act claimant, and
- ii) one-half (½) of the costs actually incurred by a Liberty Workers' Compensation or Occupational Disease Act claimant in connection with the claimant's successful efforts to obtain Social Security disability benefits.

WHEREAS:

1. Liberty is the only named Respondent still actively involved in this action, and
2. Pursuant to the Flynn/Miller Decisions Liberty has identified claimants potentially entitled to Flynn/Miller Benefits and provided their contact information to the Court and Rex Palmer, after which the Court mailed notice to the identified claimants, and
3. A small number of claimants responded and Liberty either:
 - i) paid such claimants the claimant's portion of the Flynn/Miller Benefits and with the permission of Rex Palmer has withheld from the claimant's share the amount necessary to satisfy Rex Palmer's common fund attorneys fee lien, or
 - ii) the status of such claimant's entitlement to Flynn/Miller Benefits continues to be investigated by Rex Palmer and Liberty, and

WHEREAS:

4. Pursuant to the Court's observations and conclusions articulated by the Court in a conference call with the attorneys for the parties on August 24, 2022,
 - i) insurers that are subject to the Flynn/Miller Decisions should identify and pay claimants any Flynn/Miller Benefits to which the claimants are entitled, and
 - ii) any such payments are subject to Rex Palmer's common fund attorneys fee lien and the insurers are authorized to withhold from the claimant's share of the claimant's Flynn/Miller Benefits the amount necessary to satisfy the common fund lien and at the same time pay that amount directly to Rex Palmer without a hearing and without involving the court unless one of the affected individuals or entities desires input from the court, and if so this Court should retain continuing jurisdiction over such matters.

THEREFORE:

5. The parties hereby stipulate and agree Liberty may be dismissed from this case and shall pay the Flynn/Miller Benefits to the identified claimants and pay to Rex Palmer his common fund fees as set out above without further involvement of the court.

6. The parties further stipulate and agree that dismissal of Liberty, the remaining named Respondent in this matter, does not in any way compromise or release any insurer, including Liberty, from its obligation to identify and pay claimants any Flynn/Miller Benefits to which the claimants may be entitled nor does it in any way compromise or diminish Rex Palmer's common fund attorneys fee lien against Flynn/Miller Benefits paid pursuant to the Flynn/Miller Decisions.

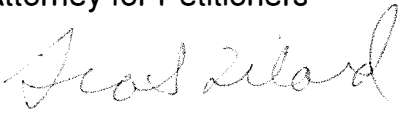
7. Each party shall bear its own attorney fees and costs in resolving this case as set forth above.



Rex Palmer
Attorney for Petitioners

Oct 14, 2022

Date



Leo S. Ward
Attorney for Respondent
Liberty Northwest Insurance Corporation

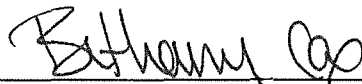
10-17-22

Date

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October, 2022, a true and correct copy of the foregoing was deposited in the United States mail, postage prepaid, and addressed as follows:

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



BROWNING, KALECZYC, BERRY & HOVEN, P.C.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2000-2022

ROBERT FLYNN and CARL MILLER,
Individually and on Behalf of Others Similarly Situated,

Petitioners,
v.

MONTANA STATE FUND,
Respondent/Insurer.

And

LIBERTY NORTHWEST INSURANCE CORPORATION,
Intervenor.

Order of Dismissal of Liberty Northwest Insurance Corporation

Pursuant to the Joint Stipulation for Dismissal of Liberty Northwest Insurance Corporation submitted by the attorneys for Robert Flynn, Carl Miller and Liberty Northwest Insurance Corporation, the Court hereby orders that Liberty Northwest Insurance Corporation is dismissed from this case and that the parties shall resolve any remaining common fund claims in accordance with the Joint Stipulation. Each party shall bear its own attorney fees and costs in resolving this case.

DATED this _____ day of _____, 2022.

Judge David M. Sandler
Montana Workers' Compensation Court

cc: Leo Ward
Rex Palmer

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October 17, 2022

David M. Sandler
Workers' Compensation Court
1625 11th Ave.
P.O. Box 537
Helena, MT 59624


RE: *Flynn and Miller v Montana State Fund and Liberty Northwest Insurance Company*

Dear Judge Sandler :

I have attached for your consideration the Joint Stipulation for Dismissal of Liberty Northwest Insurance Corporation, which you requested during our last status conference. If it meets with your approval, please sign the attached Order of Dismissal. Your assistance is appreciated.

Sincerely,

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By 

Leo S. Ward

Enclosure