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February 6, 2006

Hon. Judge Shea
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537

Re: Flynn/Miller v. Montana State Fund
WCC No. 2000-0222

Dear Judge Shea:

We have a rather unusual request for your consideration. We have discussed the suggestion with Mr. Palmer and Mr. Jones since they are counsel of record in the cause in which we make this request. Mr. Jones is in agreement with the suggestion. Mr. Palmer does not object.

All interested parties just completed briefing in this matter on the issue of what is meant by "final," "closed," and/or "inactive" for purposes of retroactive effect of judicial decisions relating to workers' compensation. The briefing was prepared and filed by counsel on both sides of the entitlement argument and is well done.

During the course of the oral argument in the *Stavenjord* case the Montana Supreme Court asked several questions directly related to this very issue. It appears that the "final," "closed," and/or "inactive" issue emanating from *Dempsey* and *Schmill* decisions will be treated again in *Stavenjord II*. Although the Workers' Compensation Court may be provided some guidance by the decision, it is clear that the Supreme Court has not had the benefit of extensive briefing particular to that important question. The terms are very different in the specialized considerations and law applicable to workers' compensation claims. It was not an issue in *Dempsey* and *Schmill* was decided after *Stavenjord* was already submitted.

We believe that the Supreme Court would be benefited by considering the briefing on this issue provided to you at your request in *Flynn*. We also believe that the *Stavenjord II* decision would be more universally applicable on this particular subject if it took into account the present briefing. We may even be able to avoid unnecessary appeal time if the direction on the subject

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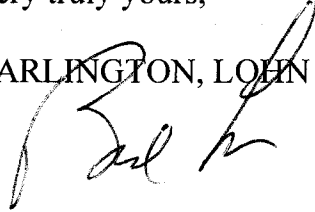
contains a consideration of the breadth of ideas and arguments set out in the recent briefing in your court.

As a result, we would request that the Court consider the unusual procedure of inquiring of the Chief Justice if the Montana Supreme Court would be interested in reviewing the briefing on retroactivity just completed in *Flynn*. Again, we understand that this is an unusual request. The Supreme Court may have no interest in reviewing the briefing. However, because of the above we make the request to determine whether you and the appellate court would consider the suggestion.

We appreciate your review of this matter.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP



Bradley J. Luck

BJL:rad

c: Mr. Rex L. Palmer
Mr. Larry Jones
Ms. Nancy Butler (Claim No. 3-93-20753-5)
Mr. James Hunt
Mr. Tom Murphy