

FILED

JUN 11 2007

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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IN THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA
BEFORE THE WORKERS' COMPENSATION JUDGE

11 Robert Flynn) WCC No. 2000-0222
12) WCC No. 2003-0771
13 and)
14)
15 Carl Miller, individually and on)
16 Behalf of other similarly situated,) MOTION TO DISMISS
17 Petitioners,) (ATLANTA SPECIALTY INSURANCE
18) AND LEADER INSURANCE)
19 vs.)
20)
21 Montana State Fund)
22 Respondent/Insurer,)

19 On September 6, 2006, Atlanta Specialty Insurance and Leader Insurance (Atlanta and
20 Leader herein) filed their respective affidavits stating that they should be dismissed from this
21 action because neither company has ever written workers' compensation insurance in Montana,
22 neither has ever had any Montana claims, and neither has any claimants meeting the Court's
23 criteria in this matter as set forth in the summons. (Document item #534, Document item #535.)

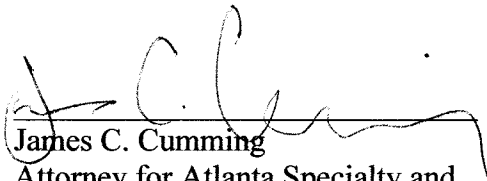
24 Atlanta and Leader understood by their statements contained in the affidavits that the
25

1 Court would allow 90 days from the date the affidavits were filed for petitioner's counsel to
2 conduct discovery for the limited purpose of proving or disproving the statements in the
3 affidavits, and without objection by petitioner's counsel, the Court would then dismiss Atlanta
4 Specialty and Leader from the action.

5 Atlanta Specialty and Leader answered the petitioner's discovery requests on November
6 9, 2006. (Document Item #555.) No party has contested or questioned those responses. Before
7 that, an appeal was filed by other defendants on November 1, 2006, before the expiration of the
8 90 day discovery period. Without an appeal having been filed, discovery would have ended on
9 approximately December 6, 2006, thereby qualifying Atlanta and Leader for dismissal.
10

11 Based on good cause and the other facts and circumstances in this case, Atlanta Specialty
12 and Leader respectfully request that the Court dismiss them with prejudice from this action.

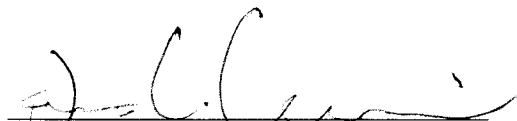
13 Dated this 8th day of June, 2007.

14 
15 James C. Cumming
16 Attorney for Atlanta Specialty and
17 Leader Insurance Companies

18 **CERTIFICATE OF SERVICE**

19 I certify that on June 8, 2007, a true and accurate copy of the foregoing document was
20 served by mail to the following by depositing a copy of the same in the U. S. Mail, postage
21 prepaid, addressed as follows:

22 Rex Palmer
23 Attorneys Inc., P. C.
24 31 W. Spruce
25 Missoula, MT 59802

26 
27 James C. Cumming

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June 8, 2007

Clara Wilson
Clerk of Court
Worker's Compensation Court
P. O. Box 537
Helena, MT 59624-0537

RE: Flynn/Miller v. Montana State Fund
WCC No. 2000-0222
WCC No. 2003-0771

Dear Clara:

Enclosed for filing is the Motion to Dismiss and Supporting Brief of Atlanta Specialty and Leader Insurance Companies.

Thank you for your assistance.

Very truly yours,


JAMES C. CUMMING

JCC/js

Enclosure