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FILED

JAN - 7 2015

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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.

MOTION TO DISMISS PER AFFIDAVIT

COMES NOW the AIG Insurers (as listed on Exhibit A) and move this Court to dismiss them from the above-entitled action. Over 90 days have expired since the affidavits were filed and over six months has transpired since AIG Insurers submitted their answers to petitioner's discovery requests. (See attached Exhibit B – *Notice of Service of Discovery* dated 06/24/2014, Docket #718).

Early in these common fund proceedings the Court established an affidavit process for those insurers seeking dismissal. On December 6, 2005, the Court issued a memo describing the dismissal process. The memo stated as follows:

Attached is a blank form affidavit. If any insurer, self-insured, or guaranty association believes it should be dismissed from any of

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the common fund matters you are directed to complete the affidavit and return it to the Workers' Compensation Court. If none of the enumerated reasons apply, you must prepare a separate affidavit for the Court's review.

Memo From Court to Counsel and All Parties With Blank Affidavit Form, 12/6/05 (Flynn Docket # 390). The attached affidavit required insurer's to check an appropriate box corresponding to various reasons for dismissal. The attached affidavit also required the insurer's to agree to a 90 day discovery period during which common fund counsel would be permitted to conduct discovery to determine the truth and accuracy of the statements made in the affidavit. Specifically, the affidavit stated as follows:

I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing of this affidavit within which counsel for Petitioner[s] may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of _____ (NAME OF INSURER OR SELF INSURER). After such 90 days, if no objection is lodged by counsel for Petitioner[s], the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

Id.

Following a thorough review of their claim files, AIG insurers filed an affidavit on February 18, 2014. See *McNeilly Affidavit, 2/12/14 (Flynn Docket # 714)*. The affidavit identified two, and only two, beneficiaries of the *Flynn* decision, advised that they had been paid their *Flynn* benefits (one-half their attorneys fees incurred in obtaining SSDI benefits), and that the appropriate amount had been withheld for satisfaction of *Flynn's* counsel's common fund attorneys' fee lien. The affidavit further advised that AIG insurers were prepared to remit the attorney fee lien to *Flynn's* counsel as the Court should direct.

Following the filing of this affidavit, *Flynn's* counsel served discovery upon AIG Insurers as contemplated by the affidavit process. See *Notice of Service of Discovery, 4/9/14 (Flynn Docket # 715)*.


AIG Insurers promptly responded to *Flynn's* discovery requests. See *Notice of Service of Discovery, 6/20/14 (Flynn Docket # 718)*.¹

Since that time *Flynn's* counsel has not objected to the AIG Insurer's dismissal. Nor has he communicated with counsel for AIG Insurers in any manner regarding this

¹ Upon the Court's preference, AIG Insurer's can provide the Court with a copy of the AIG Insurer's discovery responses.

case. Accordingly, as no objection to dismissal has been filed, and pursuant to the express terms of the Court's blank form affidavit, AIG Insurers must be dismissed from this action.

Dated this 5th day of January 2015.



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following counsel of record, by the means designated below, this 5th day of January 2015:

- U.S. Mail
- FedEx
- Hand-Delivery
- Facsimile
- Email

Mr. Rex Palmer
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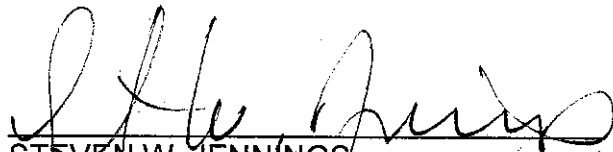

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EXHIBIT A

- AIU Insurance Co.
- American International Pacific Insurance Co.
- American Home Assurance Co.
- Birmingham Fire Insurance Co.
- Commerce & Industry Insurance Co.
- Granite State Insurance Co.
- Insurance Co. of the State of Pennsylvania
- National Union Fire Ins. Co. of Pittsburgh, PA
- New Hampshire Insurance Co.
- AIG National Insurance Co.
- American International Specialty Lines Insurance
- American International Insurance Co.
- Illinois National Insurance Co.
- American General Corp.