

COMES NOW the AIG Group, on behalf of its affiliated entities AIU Insurance Company; American International Pacific Insurance Company; American Home Assurance Company; Birmingham Fire Insurance Company; Commerce & Industry Insurance Company; Granite State Insurance Company; Insurance Company of the State of Pennsylvania; National Union Fire Insurance Company of Pittsburgh, PA; New Hampshire Insurance Company; AIG National Insurance Co.; American International Specialty Lines Insurance; American International Insurance Co.; Illinois National Insurance Co.; and American General Corp. (collectively "The AIG Group"), and in response to this Court's *Summons*, dated May 4, 2005, states as follows:

I. THE AIG GROUP DISPUTES THE ENTITLEMENT OF FLYNN BENEFICIARIES TO ADDITIONAL BENEFITS

The AIG Group disputes the entitlement of claimants insured by it to additional benefits under the *Flynn* decision. The grounds upon which AIG Group disputes said entitlements are as follows:

1. An order requiring The AIG Group to identify all *Flynn* beneficiaries creates an unreasonable and undue burden upon Petroleum Casualty Company.
2. An order requiring The AIG Group to pay *Flynn* benefits and/or to pay or withhold the attorney lien in favor of Rex Palmer is prohibited by Article 1, Section 17 of the Montana Constitution.
3. An order requiring Petroleum Casualty Company to pay *Flynn* benefits and/or to pay or withhold the attorney lien in favor of Rex Palmer is prohibited by the due process clause of the 14th Amendment to the United States Constitution.

II. PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT FLYNN ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, AN ORDER REQUIRING THE AIG GROUP TO PAY OR WITHHOLD THE ATTORNEY LIEN IN FAVOR OF REX PALMER IMPERMISSABLY REQUIRES PETROLEUM CASUALTY COMPANY TO ACT AS A SURETY FOR THE INDEBTEDNESS OF FLYNN BENEFICIARIES TO MR. PALMER.

III. FURTHER PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT FLYNN ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, THE AIG GROUP IS ENTITLED TO AN OFFSET FROM SUCH ENTITLEMENTS IN AN AMOUNT EQUAL TO THE COST OF IDENTIFYING AND LOCATING EACH FLYNN BENEFICIARY.

IV. FURTHER PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT FLYNN ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED

ABOVE, MR. PALMER IS NOT ENTITLED TO AN ATTORNEY FEE LIEN IN THE AMOUNT OF TWENTY-FIVE PERCENT OF THE BENEFIT ACCRUED TO NON-PARTICIPATING FLYNN BENEFICIARIES.

Neither Petitioners nor their attorney Rex Palmer are entitled to twenty-five percent of additional benefits that may be awarded to non-participating beneficiaries of the *Flynn* decision. Under the common fund doctrine, the maximum amount of costs and attorneys fees recoverable by the participating litigant and/or his attorney is limited to those costs and attorneys fees actually incurred in creating the benefit for the non-participating beneficiaries. As twenty-five percent of the collective value of the benefits accrued to non-participating beneficiaries in this case would likely exceed the actual costs and fees incurred by Petitioners, neither they nor their attorney are entitled to that percentage. Rather, the costs and attorneys fees for which each beneficiary is liable is determined by dividing Petitioners' actual costs and fees by the number of beneficiaries and then adjusting each beneficiaries liability to a figure above or below the average based upon the greater than average or lesser than average benefit received. Accordingly, neither Petitioners nor their attorney are entitled to twenty-five percent of each non-participating beneficiary's monetary benefit. Likewise, neither Petitioners nor their attorney are entitled to any costs or fees until such time as they demonstrate an accurate percentage to be withheld from each beneficiary's monetary benefit.

III. IN THE EVENT THAT FLYNN ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, AND UPON ORDER FROM THIS COURT THE AIG GROUP WILL PROVIDE THE INFORMATION REQUESTED IN PARAGRAPH 5 OF THE SUMMONS OF MAY 4, 2005.

WHEREFORE, The AIG Group respectfully requests this Court to issue an order dismissing this action on the grounds that the *Flynn* entitlement does not exist for any of the reasons enumerated in paragraph I above;

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Dated this 20th day of June, 2005.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.
Attorneys for AIU Insurance Company;
American International Pacific Insurance
Company; American Home Assurance
Company; Birmingham Fire Insurance
Company; Commerce & Industry Insurance
Company; Granite State Insurance Company;
Insurance Company of the State of
Pennsylvania; National Union Fire Insurance
Company of Pittsburgh, PA; New Hampshire
Insurance Company; AIG National Insurance
Co.; American International Specialty Lines
Insurance; American International Insurance
Co.; Illinois National Insurance Co.; and
American General Corp.

By: 

STEVEN W. JENNINGS

CERTIFICATE OF SERVICE

I, STEVEN W. JENNINGS, one of the attorneys for the law firm of Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., hereby certify that on the 20th day of June, 2005, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Mr. Rex Palmer
Attorneys Inc., PC
301 W. Spruce
Missoula, MT 59802


STEVEN W. JENNINGS