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FILED

JUL 14 2005

Attorneys for Arch Insurance Company

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,)	WCC NO. 2000-0222
)	
and)	
)	
CARL MILLER)	
)	
Petitioners,)	
)	
vs.)	
)	
MONTANA STATE FUND,)	MOTION TO DISMISS
)	
Respondent/Insurer)	
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
)	
Intervenor.)	

COMES NOW Arch insurance Company and Arch Reinsurance Company (Arch Insurance) and files this motion to dismiss.

On May 4, 2005, this Court had served by mail on many insurers, including Arch Insurance, a Summons requiring each of the insurers to respond to the attorney fee lien filed by Petitioners' attorneys. The Summons required that each insurer provide the Court those claimants whose benefits were offset on account of Social Security benefits at any time since June 30, 1974. Arch Insurance made a limited appearance in response to the

DOCKET ITEM NO. 320

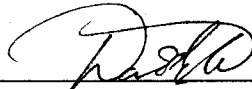
Summons.

Arch Insurance has since had the opportunity to complete a full review of its Montana claims files to determine what claimants may have been affected by Social Security offsets. The conclusion of Arch Insurance is that there are no cases where it offset claimants' workers' compensation benefits as a result of those claimants' receipt of Social Security Retirement benefits. This conclusion is supported by the attached Affidavit of Joseph Labell, Vice President and Legal Counsel for Arch Insurance (Exhibit 1).

WHEREFORE, Arch Insurance moves this Court to dismiss with prejudice Arch Insurance on the ground that no claims exist against it and that it is not liable for any additional benefits to be paid to claimants in this matter or for attorneys' fees.

DATED this 13th day of July, 2005.

KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.



Daniel J. Whyte
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Attorney for Arch Insurance

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SC 06.17.2005

Attorneys for Arch Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,

and

CARL MILLER

Petitioners,

vs.

MONTANA STATE FUND,

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Intervenor.

WCC NO. 2000-0222

**AFFIDAVIT OF
JOSEPH LABELL**

STATE OF NEW YORK)

County of New York)

Joseph Labell, being first duly sworn upon oath, deposes and states as follows:

1. I am the vice president and legal counsel for Arch Insurance Company.

2. I am familiar with the issues before the Montana Workers' Compensation Court with respect to the case of *Flynn/Miller v. Montana State Fund*, WCC No. 2000-0222 and the issues therein that affect Arch Insurance. SC 06.17.2005

3. Arch Insurance has conducted an investigation of its Montana specific claims to determine whether any apply to or are effected by the issues before the Workers' Compensation Court in the *Flynn/Miller* case and find that none apply.

4. Arch Insurance therefore has not limited any claimants from receiving social security benefits and is not obligated to pay any attorney fees under the Common Fund Doctrine.

FURTHER, your affiant sayeth not.

DATED this 17 day of June, 2005.



Joseph Labell

SUBSCRIBED AND SWORN TO before me this 17 day of June, 2005.



(Signature)

Melissa B. Gilligan

(Printed Name)

(SEAL)

Notary Public for the State of Connecticut
Residing at Stamford.
My Commission expires: 2/28/2010

**KELLER, REYNOLDS, DRAKE
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SPEED MEMO

June 10, 2005

RE: Arch Insurance Company
Robert Flynn and Carl Miller, v. Montana State Fund and Liberty Northwest Insurance Corporation
WCC No. 2000-0222

Enclosed for filing, please find a **MOTION TO DISMISS** in the above-entitled matter..
Thank you.

Daniel J. Whyte

TO: PATRICIA KESSNER
CLERK OF COURT
P O BOX 537
HELENA MT 59624