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Attorney for Banclnsure, Inc.

FILED

JUL - 8 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,)	WCC No. 2000-0222
)	
Petitioner,)	
)	
v.)	BANCINSURE, INC.'S
)	MOTION TO DISMISS
)	AND BRIEF IN SUPPORT
STATE COMPENSATION)	OF MOTION TO DISMISS
INSURANCE FUND,)	
)	
Respondent/Insurer for)	
)	
SALISH KOOTENAI COLLEGE,)	
)	
Employer.)	
)	

INTRODUCTION

COMES NOW, Banclnsure, Inc., by and through its counsel of record, and hereby moves the Court to dismiss Banclnsure, Inc. from the above-captioned proceedings.

Banclnsure, Inc. was served with Summons and Notice of Attorney Fee Lien in the above-captioned matter. As will be shown herein, Banclnsure, Inc. has had no claims that fall within the parameter of the *Flynn* decision and the Summons and Notice of Lien. Therefore, Banclnsure, Inc. respectfully requests that it be dismissed from the above-entitled proceedings.

ARGUMENT

Banclnsure, Inc. is an insurance company incorporated in the State of Oklahoma. (See ¶ 3 of Affidavit of James N. Cross, attached hereto as Exhibit 1.) Banclnsure, Inc. is an insurance company that insures banks and financial institutions. *Id.* at ¶ 4. Banclnsure, Inc. is licensed to sell insurance products in the State of Montana. *Id.* at ¶ 5. Banclnsure, Inc., however, did not receive its Certificate of Authority to sell insurance products in the State of Montana until January 5, 1987. Therefore, it did not sell insurance products in the State of Montana prior to that date. *Id.* at ¶ 5.

Although Banclnsure, Inc. offers workers' compensation coverage with its insurance products to its insureds in Montana, most of its insureds obtain workers' compensation coverage with other insurance providers. *Id.* at ¶ 6. Banclnsure, Inc. does not currently provide workers' compensation coverage for any entity in Montana, except for one branch of a South Dakota bank that has a branch office in Clancy, Montana. *Id.* at ¶ 7.

James N. Cross is the claims manager and vice president for Banclnsure, Inc. He has been employed in that position for six years. *Id.* at ¶ ¶ 1-2. James N. Cross is familiar with the claims history of Banclnsure, Inc.'s insureds in Montana who were covered by Banclnsure, Inc.'s products. *Id.* at ¶ 8. Banclnsure, Inc. did not receive its Certificate of Authority to sell insurance products in Montana until January 5, 1987. Banclnsure, Inc. did not do business and was not authorized to do business in the State of Montana prior to January 5, 1987. *Id.* at ¶ 5. Therefore, Banclnsure, Inc. did not sell insurance products in the State of Montana prior to that date. *Id.* at ¶ 5. Banclnsure, Inc.'s records establish that for the period of July 1, 1987, through December 22, 2004, no workers' compensation claims were submitted for coverage with Banclnsure, Inc. *Id.* at ¶ 9.

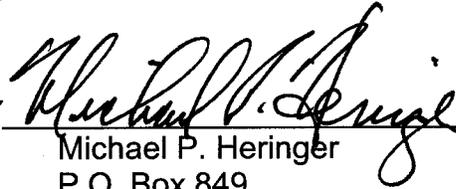
Banclnsure, Inc.'s records establish that there are no injury or occupational disease claims for which Banclnsure, Inc. has off-set on account of social security benefits at any time since June 30, 1974, through May 4, 2005. *Id.* at ¶ 10. Banclnsure, Inc. has not credited or paid any claimants' shares of attorneys' fees required under *Flynn*. Banclnsure, Inc. has no claims that fall within the parameter of the *Flynn* decision which has been settled. *Id.* at ¶ 11. Accordingly, Banclnsure, Inc. does not have any claims that fall within the criteria established by the *Flynn* decision or the Summons and Notice of Attorney Fee Lien. *Id.* at ¶ ¶ 9-12.

As established by the Affidavit of James N. Cross, Banclnsure, Inc., although served with the Summons and Notice of Attorney Fee Lien does not have any claims that fall within the criteria established by the *Flynn* decision or the Summons and Notice of Attorney Fee Lien. Therefore, it respectfully requests that it be dismissed from the above-captioned matter.

Respectfully submitted this 7th day of July, 2005.

BROWN LAW FIRM, P.C.

BY

A handwritten signature in black ink, appearing to read "Michael P. Heringer", is written over a horizontal line.

Michael P. Heringer
P.O. Box 849
Billings, MT 59103-0849
Attorney for BancInsure, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was duly served on counsel of record by U.S. mail, postage prepaid, and addressed as follows this 25 day of July, 2005:

Rex Palmer
Attorneys Inc., P.C.
301 West Spruce
Missoula, MT 59802

BY



MICHAEL P. HERINGER

- 4 Banclnsure, Inc. is an insurance company that insures banks and financial institutions.
- 5 Banclnsure, Inc. is licensed to sell insurance products in the State of Montana. Banclnsure, Inc. did not receive its Certificate of Authority to sell insurance products in Montana until January 5, 1987. Therefore, it did not sell insurance products in the State of Montana prior to that date.
- 6 Although Banclnsure, Inc. offers workers' compensation with its insurance products to its insureds in Montana, most of its insureds obtain workers' compensation coverage with other insurance providers.
- 7 Banclnsure, Inc. does not currently provide workers' compensation coverage for any entity in Montana except for one branch of a South Dakota bank that has a branch office in Clancy, Montana.
- 8 Affiant is familiar with the claims history of its insureds in Montana who were covered by Banclnsure, Inc.'s products.
- 9 Banclnsure, Inc.'s records establish that for the period of July 1, 1987, through December 22, 2004, no workers' compensation claims were submitted for coverage.
- 10 Banclnsure, Inc.'s records establish that there are no injury or occupational disease claims for which Banclnsure, Inc. has off-set on account of social security benefits at any time since June 30, 1974, through May 4, 2005.
- 11 Banclnsure, Inc. has not credited or paid any claimants' shares of attorneys' fees required under *Flynn*. Banclnsure, Inc. also has no claims that fall within the parameter of the *Flynn* decision which have been settled.
- 12 Accordingly, Banclnsure, Inc. does not have any claims that fall within the criteria established by the *Flynn* decision or the Summons and Notice of Attorney Fee Lien.
- 13 Affiant further sayeth not.

DATED this 30th day of June, 2005.

By: _____

James N. Cross



SUBSCRIBED AND SWORN TO before me, a Notary Public for the State of Oklahoma, this 30th day of June, 2005.



Marlene Patterson
NOTARY PUBLIC FOR THE STATE OF OKLAHOMA
Printed/Typed Name of Notary: Marlene Patterson
Residing at: OKLA. CITY, OK
My commission expires: 2-12-06

