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FILED

JUN 20 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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.

WCC No. 2000-0222

MOTION TO DISMISS AND
SUPPORTING BRIEF

MOTION

COMES NOW FedEx Express, Inc., and moves this Court for an order dismissing it from the above-entitled action. FedEx Express advises that it attempted to contact Petitioners' counsel regarding this motion and was advised by his office that Petitioner neither opposes nor stipulates to this motion but will defer to the Court's decision.

BRIEF

FedEx Express states that a review of its files and records reveals that it has not taken a social security offset for any workers' compensation benefits paid or payable to Montana claimants and thus is not liable for any claims that meet the criteria set forth in the *Summons* dated May 4, 2005. FedEx has been self-insured for workers'

DOCKET ITEM NO. 214

compensation in Montana since December 12, 1990. A review of all Montana claims since that date reveals that FedEx did not take a Social Security Disability offset for any claim during that period. The methodology employed to make this determination was as follows: Sedgwick Claims Management Services, Inc., the third party claims administrator for FedEx Express, ran a query in their claims database to identify all Federal Express workers' compensation claims in Montana with dates of injury for the period of 12/1/90 through 8/5/03 on which any permanent disability benefits have been paid as of May 31, 2005. The query revealed that no permanent total disability benefit payments have been made on those claims. Due to the absence of permanent total disability payments, FedEx Express has concluded that no SSDI benefit offset has been or could have been taken on any of its Montana claims and therefore, that FedEx Express has no liability for *Flynn*-type benefits.

WHEREFORE, because it has in good faith and with due diligence searched its records and found no *Flynn*-type claimants, FedEx Express requests that this Court issue an order;

1. dismissing FedEx Express from the above-entitled action or, alternatively;
2. in the event the Court denies this motion, an order permitting FedEx Express to file a *Response* within 30 days of said denial.

Dated this 17th day of June, 2005.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.
Attorneys for FedEx Express, Inc.

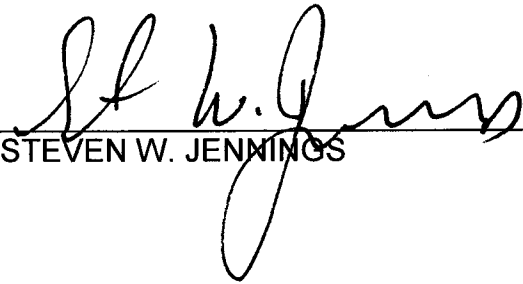
By:


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 17th 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



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Attorneys are licensed in Montana unless otherwise noted; * also licensed in North Dakota; # also licensed in Wyoming; + not licensed in Montana

June 17, 2005

Workers' Compensation Court
PO Box 537
Helena, MT 59624-0537

RE: *Robert Flynn and Carl Miller vs. Montana State Fund, et al.*
WCC No. 2000-0222

Dear Clerk:

Enclosed please find Motions to Dismiss with Supporting Briefs, and Responses to Summons in the matter referenced above on behalf of our client insurance companies. Thank you in advance for your assistance with this matter.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

Myrna Henschel, PLS

Myrna Henschel, Certified PLS
Legal Secretary to Steven W. Jennings

mlh
Enclosure
c (w/encls.): Rex Palmer, Esq.