

FILED

JUN 20 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Steven W. Jennings
Crowley, Haughey, Hanson,
Toole & Dietrich P.L.L.P.
P. O. Box 2529
Billings, MT 59103-2529
(406) 252-3441
Attorneys for FedEx Ground Package System, Inc.

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 Ground Package System, Inc. ("FedEx"), and moves this Court for an order dismissing it from the above-entitled action. FedEx 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 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'

compensation in Montana since January 1, 2002. A review of all Montana claims during that period reveals that there was only one claim in which an injured worker lost time from work due to injury. A review of that claim file indicates that the worker abandoned the claim by refusing to respond to correspondence sent by FedEx. Accordingly no indemnity or wage replacement benefits were paid and therefore, no Social Security Disability offset could have been taken.

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

1. dismissing FedEx from the above-entitled action or, alternatively;
2. in the event the Court denies this motion, an order permitting FedEx 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 Ground Package System, 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


STEVEN W. JENNINGS