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FILED

JUN 22 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2000-0222

ROBERT FLYNN

and

CARL MILLER, Individually and on Behalf of Other Similarly Situated

vs.

MONTANA STATE FUND

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE CORPORATION

Intervenor.

**GERLING AMERICA INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

Gerling America Insurance Company (Gerling) hereby moves for summary judgment pursuant to Rule 56(b), M.R.Civ.P., based upon its memorandum filed herewith and the Affidavit of Larry A. Crotser attached thereto.

DOCKET ITEM NO. 281

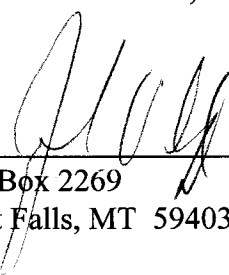
**MEMORANDUM IN SUPPORT OF GERLING AMERICA INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

The summons issued by the Workers' Compensation Court applies to insurers and other entities which were obligated to provide Workers' Compensation benefits that were subsequently offset or reduced by social security disability payments paid to the benefit recipients. Although Gerling America Insurance Company (Gerling) is named in the summons and is alleged to have been one of those Workers' Compensation benefit providers, the attached affidavit of Larry Crotser establishes that Gerling, which was incorporated in 1981, does not currently, and never has in the past, written Workers' Compensation coverage in Montana or any other state. Therefore, Gerling is not within the class of Workers' Compensation providers named in the summons. Accordingly, any claim or purported claim against Gerling arising out of the matters alleged in the summons should be dismissed with prejudice.

DATED this 20th day of June, 2005.

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By _____


P.O. Box 2269
Great Falls, MT 59403-2269

CERTIFICATE OF SERVICE

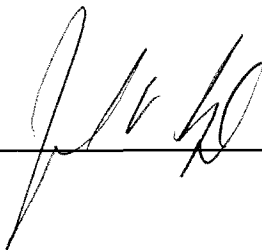
I HEREBY CERTIFY that a copy of the foregoing was served upon the following counsel by:

U.S. mail Federal Express Hand-delivery Fax

Ann Clark
State Compensation Insurance Fund
P.O. Box 4759
Helena, MT 59604-4759

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

DATED this 20th day of June, 2005.

By  _____

John D. Stephenson
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vs.

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Intervenor.

AFFIDAVIT OF LARRY A. CROTSER

STATE OF NEW YORK)
 : ss.
County of New York)

I, LARRY A. CROTSER, being first duly sworn, upon oath, depose and say:

1. I am General Counsel and Claims Manager of Gerling America Insurance Company ("Gerling").
2. I have worked at Gerling since 1995.
3. Gerling was incorporated in 1981, in the State of New York.
4. Gerling is a Property and Casualty insurer. Gerling does not currently, and never has in the past, written Workers' Compensation coverage in Montana, or any other state.
5. I have made reasonable and diligent inquiries into our books and records, and have spoken with colleagues here at Gerling in advance of preparing this affidavit.
6. I can testify competently to the contents of this affidavit, if called to do so.
7. Further affiant sayeth naught.

DATED this 14 day of June, 2005.

GERLING AMERICA INSURANCE COMPANY

By Larry A. Crotser
Larry A. Crotser
Its General Counsel and Claims Manager

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED before me by Larry A. Crotser
this 14th day of June, 2005.

(NOTARIAL SEAL)

Patricia A. Gorman
NOTARY PUBLIC for the State of New York
Printed Name of Notary: Patricia A. GORMAN
Residing at New York, N.Y.
My Commission Expires: 4-11-2006

PATRICIA A. GORMAN
Notary Public, State of New York
No. 4910250
Qualified in Nassau County
Commission Expires April 11, 2006

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& WEAVER, P.C.**

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June 20, 2005

Patricia J. Kessner
Clerk of Court
Montana Workers' Compensation Court
1625 11th Avenue
P.O. Box 537
Helena, MT 59624

Re: Robert Flynn and Carl Miller v. Montana State Fund, et al.
WCC No. 2000-0222
Our File No. 35110-00401

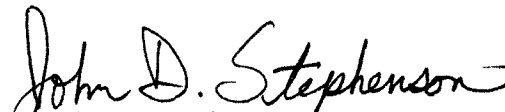
Dear Ms. Kessner:

Enclosed for filing is Gerling America Insurance Company's Motion for Summary Judgment.

Thank you.

Very truly yours,

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By 
John D. Stephenson *By JS*

JDS:ls

Enc: as noted above

cc w/enc: Ann Clark
Rex Palmer