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Attorneys for GREAT AMERICAN INSURANCE CO.,  
GREAT AMERICAN INSURANCE CO. OF NY,  
GREAT AMERICAN ASSURANCE CO.,  
GREAT AMERICAN ALLIANCE INSURANCE CO.,  
GREAT AMERICAN SPIRIT INSURANCE CO., and  
REPUBLIC INDEMNITY

**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 GREAT AMERICAN INSURANCE CO., GREAT AMERICAN INSURANCE CO. OF NY, GREAT AMERICAN ASSURANCE CO., GREAT AMERICAN ALLIANCE INSURANCE CO., GREAT AMERICAN SPIRIT INSURANCE CO., and REPUBLIC INDEMNITY ("GREAT AMERICAN INSURANCE GROUP"), and moves this Court for an order dismissing them from the above-entitled action. GREAT AMERICAN INSURANCE GROUP 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.

DOCKET ITEM NO. 217

## BRIEF

GREAT AMERICAN INSURANCE GROUP 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.

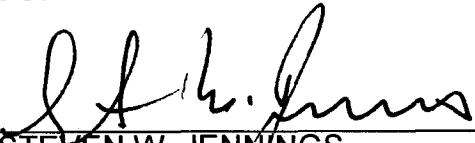
The methodology that GREAT AMERICAN INSURANCE GROUP used to determine that it had no *Flynn*-type liability was as follows: In order to identify claims fitting the criteria set forth in the *Summons*, GREAT AMERICAN INSURANCE GROUP used reports from its computerized policy and claims processing systems to identify Montana workers compensation paid losses from 1974 to 2005. Documentation of claims in their computer system only goes back to 1992. Claims resolved and closed prior to 1992 were either in storage or, depending on the age of the claim, destroyed. There were only 27 claims prior to 1992 and 26 of these claims each had significantly less than \$5,000 paid on the total claim, and the other claim had a total paid of \$8,462. As these files were not readily available and the dollars involved on each individual case did not indicate a likelihood of a *Flynn*-type claimant, GREAT AMERICAN INSURANCE GROUP did not pursue further attempts to locate the files. On the remaining claims, a review of the file notes with indemnity payments greater than \$5,000, revealed that no SSDI offset had been taken. Accordingly, GREAT AMERICAN INSURANCE GROUP has concluded that it has no liability as a result of the *Flynn* decision.

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

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

Dated this 17<sup>th</sup> day of June, 2005.


CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.  
Attorneys for GREAT AMERICAN INSURANCE  
GROUP

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 17<sup>th</sup> 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