

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:

1. Hartford Fire Insurance Company
2. Twin City Fire Insurance Company
3. Hartford Accident and Indemnity Company

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

RESPONSE TO SUMMONS

COMES NOW Hartford Financial Services Group, Inc., on behalf of its affiliated entities, Hartford Fire Insurance Company, Twin City Fire Insurance Company, and Hartford Accident and Indemnity Company, and in response to this Court's *Summons*, dated May 4, 2005, states as follows:

I. HARTFORD FINANCIAL SERVICES GROUP, INC. DISPUTES THE ENTITLEMENT OF FLYNN BENEFICIARIES TO ADDITIONAL BENEFITS

Hartford Financial Services Group, Inc. disputes the entitlement of claimants insured by it to additional benefits under the *Flynn* decision. The grounds upon which Hartford Financial Services Group, Inc. disputes said entitlements are as follows:

1. An order requiring Hartford Financial Services Group, Inc. to identify all *Flynn* beneficiaries creates an unreasonable and undue burden upon Hartford Financial Services Group, Inc.
 2. An order requiring Hartford Financial Services Group, Inc. to pay *Flynn* benefits and/or to pay or withhold the attorney lien in favor of Rex Palmer is prohibited by Article 1, Section 17 of the Montana Constitution.
 3. An order requiring Hartford Financial Services Group, Inc. to pay *Flynn* benefits and/or to pay or withhold the attorney lien in favor of Rex Palmer is prohibited by the due process clause of the 14th Amendment to the United States Constitution.
- II. **PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT *FLYNN* ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, AN ORDER REQUIRING HARTFORD FINANCIAL SERVICES GROUP, INC. TO PAY OR WITHOLD THE ATTORNEY LIEN IN FAVOR OF REX PALMER IMPERMISSABLY REQUIRES HARTFORD FINANCIAL SERVICES GROUP, INC. TO ACT AS A SURETY FOR THE INDEBTEDNESS OF *FLYNN* BENEFICIARIES TO MR. PALMER.**
- III. **FURTHER PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT *FLYNN* ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, HARTFORD FINANCIAL SERVICES GROUP, INC. IS ENTITLED TO AN OFFSET FROM SUCH ENTITLEMENTS IN AN AMOUNT EQUAL TO THE COST OF IDENTIFYING AND LOCATING EACH *FLYNN* BENEFICIARY.**
- IV. **FURTHER PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT *FLYNN* ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, MR. PALMER IS NOT ENTITLED TO AN ATTORNEY FEE LIEN IN THE AMOUNT OF TWENTY-FIVE PERCENT OF THE BENEFIT ACCRUED TO NON-PARTICIPATING *FLYNN* BENEFICIARIES.**

Neither Petitioners nor their attorney Rex Palmer are entitled to twenty-five percent of additional benefits that may be awarded to non-participating beneficiaries of the *Flynn* decision. Under the common fund doctrine, the maximum amount of costs and attorneys fees recoverable by the participating litigant and/or his attorney is limited to those costs and attorneys fees actually incurred in creating the benefit for the non-participating beneficiaries. As twenty-five percent of the collective value of the benefits accrued to non-participating beneficiaries in this case would likely exceed the actual costs and fees incurred by Petitioners, neither they nor their attorney are entitled to that percentage. Rather, the costs and attorneys fees for which each beneficiary is liable is determined by dividing Petitioners' actual costs and fees by the number of beneficiaries

and then adjusting each beneficiaries liability to a figure above or below the average based upon the greater than average or lesser than average benefit received. Accordingly, neither Petitioners nor their attorney are entitled to twenty-five percent of each non-participating beneficiary's monetary benefit. Likewise, neither Petitioners nor their attorney are entitled to any costs or fees until such time as they demonstrate an accurate percentage to be withheld from each beneficiary's monetary benefit.

III. FURTHER PLEADING IN THE ALTERNATIVE, IN THE EVENT THAT FLYNN ENTITLEMENTS ARE NOT BARRED FOR THE REASONS ENUMERATED ABOVE, HARTFORD FINANCIAL SERVICES GROUP, INC. PROVIDES THE FOLLOWING INFORMATION REQUESTED IN PARAGRAPH 5 OF THE SUMMONS.

Responding to paragraph 5 of the *Summons*, Hartford Financial Services Group, Inc. states as follows:

On behalf of the above listed affiliated entities Hartford is currently reviewing its files to identify *Flynn*-type claims. The methodology used for this as follows:

Two computer queries were performed in Hartford's database, which contains over 200,000,000 files. The first query was based upon Social Security offset transactions which are very rare in the database. This query returned no Montana claims in which a social security offset had been taken. Due to the absence of any claims revealed by the first query, Hartford suspected that this query may have missed some claims that had been improperly coded as PPD claims (as opposed to PTD). Hartford then ran a second query using the computer code related to PPD claims. This query revealed fourteen Montana PPD claims. Hartford is currently attempting to locate these files and review them for potential *Flynn*-type claims. Upon completion of this review Hartford will supplement this Response.

Hartford Financial Services Group, Inc. notes that in conducting its search of the database, it searched only those files which were open files. A full search of all 200,000,000 files in its database would be quite extensive, time consuming, and maybe impossible due to the sheer volume of the database. Accordingly, in order to limit the search to a feasible volume, Hartford proceeded under the assumption that closed files would not reveal *Flynn*-type claims because in the case of permanent total disability, a file would only be closed in the event of settlement or the claimant's death. Of course, in the case of settlement, the *Flynn* decision does not apply and in the case of death there would be no benefit due the claimant.

WHEREFORE, Hartford Financial Services Group, Inc. respectfully requests the following relief:

1. an order dismissing this action on the grounds that the *Flynn* entitlement does not exist for any of the reasons enumerated in paragraph I above, or alternatively;
2. an order declaring the described search methodology as sufficient to identify *Flynn*-type claims and permitting the above listed affiliated entities to supplement this *Response* by July 20, 2005.

Dated this 17th day of June, 2005.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.
Attorneys for Hartford Fire Insurance Company,
Twin City Fire Insurance Company, and Hartford
Accident and Indemnity Company

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