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FILED

JUN 15 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF
THE STATE OF MONTANA

.....

ROBERT FLYNN and CARL MILLER,

WCC No. 2000-0222

Petitioners,

-vs-

MONTANA STATE FUND,

**RESPONSE OF LUMBER
MUTUAL INSURANCE
COMPANY**

Respondent/Insurer

.....

Comes now Lumber Mutual Insurance Company ("Lumber Mutual"), through counsel, and responds to the Court's May 4, 2005, Summons as follows:

Lumber Mutual does not fall within the scope of the common fund attorney fee lien attempted to be asserted in this matter. Lumber Mutual did not issue a workers' compensation policy nor did it pay a workers' compensation claim in Montana at any time during the time period in issue. Therefore, Lumber Mutual does not, and cannot, dispute the application of *Flynn v. State Compensation Ins. Fund* to claimants it insured because there are no such claimants. As a result, Lumber Mutual does not fall within the scope of the proposed common fund attorney fee lien and should not be subject to any such lien, should such be created or determined to exist, nor should Lumber Mutual be made a member of any class upon which liability could or should be imposed in this matter.

DATED this 14th day of June, 2005.

DAVIS, HATLEY, HAFFEMAN & TIGHE, P.C.

By  _____

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FILE NO. 6093

June 14, 2005

Workers' Compensation Court of
the State of Montana
P.O. Box 537
Helena, MT 59624-0537

Re: *Flynn v. Montana State Fund*

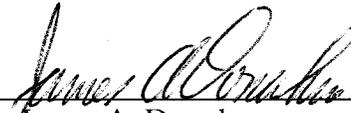
Gentlemen:

Please file the enclosed Response of Lumbar Mutual Insurance Company in the above-entitled matter.

Very truly yours,

DAVIS, HATLEY, HAFFEMAN & TIGHE P.C.

By


James A. Donahue

JAD:aab
Enclosure