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FILED

JUN 16 2005

OFFICE OF
WORKERS' 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 Millers First Insurance Company, and moves this Court for an order dismissing it from the above-entitled action. Millers First Insurance Company 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

Millers First Insurance Company 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 Millers First Insurance Company used to determine that it had no *Flynn*-type liability was as follows: Millers First Insurance Company was licensed in Montana in 1986. In order to identify claims fitting the criteria set forth in the *Summons*, Millers First Insurance Company used reports from its computerized policy and claims processing systems to identify Montana workers compensation paid losses from 1986 to 2005. This search included reports from our State 2 Financials, listings of workers' compensation claims with an accident in the State of Montana, policy listing for policyholders with an address in Montana, and a policy listing of policies with a location or site in Montana. Millers First Insurance Company then did a manual search against each policy to verify whether a claim was reported.

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

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

Dated this 16th day of June, 2005.

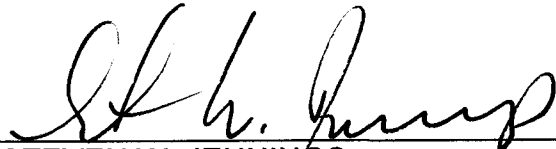
CROWLEY, HAUGHEY, HANSON,
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Attorneys for Millers First Insurance Company

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 16th 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
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Missoula, MT 59802


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Attorneys are licensed in Montana unless otherwise noted; * also licensed in North Dakota; # also licensed in Wyoming; + not licensed in Montana

June 16, 2005

Workers' Compensation Court
PO Box 537
Helena, MT 59624-0537

RE: *Robert Flynn and Carl Miller vs. Montana State Fund, et al.*
WCC No. 2000-0222

Dear Clerk:

Enclosed please find Motions to Dismiss with Supporting Briefs in the matter referenced above on behalf of our client insurance companies. Thank you in advance for your assistance with this matter.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

Myrna Henschel, PLS

Myrna Henschel, Certified PLS
Legal Secretary to Steven W. Jennings

mlh
Enclosure
c (w/encls.): Rex Palmer, Esq.