

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2000-0222

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.

FILED

JAN 18 2006

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

AFFIDAVIT

STATE OF NEBRASKA)
 : ss.
COUNTY OF DOUGLAS)

I, Rod Rathbun, being first duly sworn upon oath, depose and say:

I, Rod Rathbun, am Assistant Vice-President of Financial Information Systems at National Indemnity Company.

In my capacity as Assistant Vice-President of Financial Information Systems of National Indemnity Company, I am authorized to make the statements set forth in this affidavit on behalf of National Indemnity Company and to bind National Indemnity Company by these statements.

After a review of our records, I swear under oath that National Indemnity Company should be dismissed for the following reason: National Indemnity Company wrote workers' compensation coverage in Montana for only one company from July 1, 1974 through the present. Moreover, only one claim was made in Montana during that time period, and that claim was denied by National Indemnity Company. National Indemnity Company therefore paid no workers' compensation benefits in Montana during the relevant time period.

I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing this affidavit within which Petitioner's counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statements made by me on behalf of National Indemnity Company. After such 90 days, if no objection is lodged by the Petitioner's counsel, the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

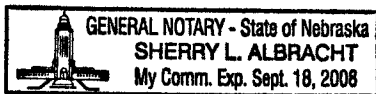
I declare under the penalty of perjury that the foregoing is correct.

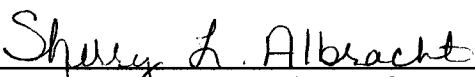
DATED this 12th day of January, 2006.



Rod Rathbun
Assistant Vice-President of Financial
Information Systems,
National Indemnity Company

Signed and sworn to before me this 12th day of January, 2006.




Notary Public for the State of Nebraska
Residing at: Sarpy County
My Commission expires: Sept. 18, 2008



National Indemnity Company

A member of the Berkshire Hathaway group of insurance companies

January 13, 2006

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Ms. Jackie Bockman
Deputy Clerk of Court
Workers' Compensation Court
1625 11th Avenue
P.O. Box 537
Helena, Montana 59624-0537

Re: *Flynn v. Montana State Fund*, WCC No. 2000-0222

Dear Ms. Bockman:

Enclosed for filing in the above-referenced matter is an affidavit by National Indemnity Company.

Thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nancy F. Peters', with a stylized flourish at the end.

Nancy F. Peters
Associate General Counsel



National Indemnity Company

Page 2

January 13, 2006

cc: Rex Palmer
Attorneys, Inc., P.C.
301 W Spruce
Missoula, Montana 59802
VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED