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SENTRY SELECT INSURANCE COMPANY,
MIDDLESEX INSURANCE COMPANY, and
P P G INDUSTRIES INC.

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 SENTRY INSURANCE MUTUAL CO., SENTRY SELECT INSURANCE COMPANY, MIDDLESEX INSURANCE COMPANY, and P P G INDUSTRIES INC., ("SENTRY INSURANCE GROUP") and moves this Court for an order dismissing them from the above-entitled action. SENTRY 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. 215

BRIEF

SENTRY 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 SENTRY 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*, SENTRY INSURANCE GROUP requested its Programming Department to prepare a Montana Workers' Compensation Claim report to identify losses from July 1, 1974 to May 31, 2005, identified as medical only or indemnity. The indemnity claims included claims where temporary total, temporary partial, permanent partial, and/or permanent total benefits were either paid or reserved. Using the computer, SENTRY INSURANCE GROUP looked at individual claims to verify the type of payment made or reserved. SENTRY INSURANCE GROUP reviewed the online claim report and file diary for indicators that the claimant was receiving SSDI or that SENTRY INSURANCE GROUP was taking an offset and compared the weekly compensation rate with what was paid to determine if a SSDI offset was applied and there were none.

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

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

Dated this 17th day of June, 2005.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.
Attorneys for SENTRY 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 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