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Attorney for Wesco Insurance Company

FILED

OCT 17 2005

OFFICE OF
WORKERS' COMPENSATION JUDGES
HELENA, MONTANA

IN THE WORKER'S 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 INS.
CORPORATION,

Intervenor.

WCC No. 2000-0222

**AMENDED MOTION TO DISMISS
WESCO INSURANCE COMPANY,
BRIEF IN SUPPORT AND SUPPORTING
AFFIDAVIT**

MOTION

COMES NOW, Wesco Insurance Company (herein Wesco) and files this Amended Motion to Dismiss, Brief in Support and Affidavit. Consistent with this Court's previous Order, Wesco requests that, if after 90 days no objection is lodged by Petitioner's counsel, the Court dismiss Wesco with prejudice from this suit.

BRIEF

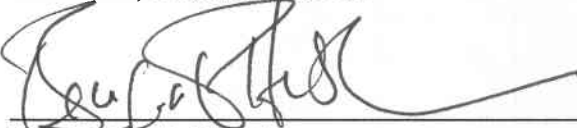
Wesco is a credit, property, and casualty company. Wesco has not written any

worker's compensation policies within the State of Montana during the relevant time frame. Accordingly, Wesco is not a proper party to this action and should be dismissed with prejudice. Attached and incorporated into this Brief is attached Exhibit A, Affidavit of Timothy J. Titus, Vice President and Chief Compliance Officer of Wesco.

DATED this 14 day of October, 2005.

CEDERBERG LAW OFFICES, PC
269 West Front, P.O. Box 8234
Missoula, Montana 59807

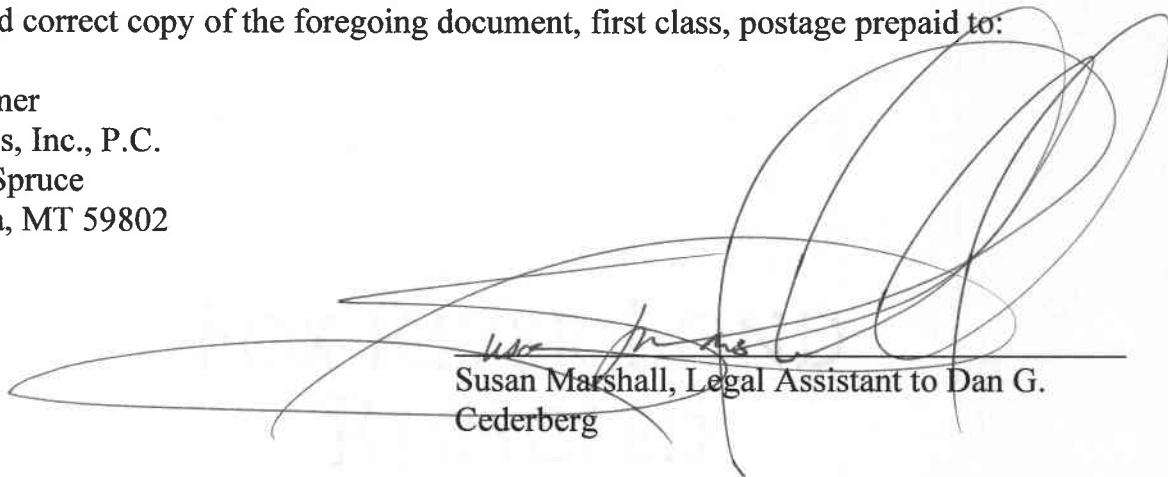
By:


Benjamin P. Hursh
Attorney for Wesco Insurance Company

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 14th day of October, 2005, I did mail a true and correct copy of the foregoing document, first class, postage prepaid to:

Rex Palmer
Attorneys, Inc., P.C.
301 W. Spruce
Missoula, MT 59802


Susan Marshall, Legal Assistant to Dan G.
Cederberg

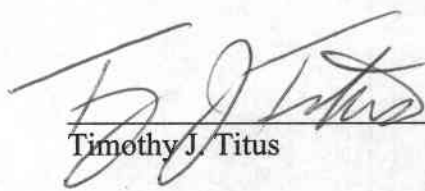
AFFIDAVIT

STATE OF NEW JERSEY)
) SS:
COUNTY OF SOMERSET)

1. I, Timothy J. Titus, am the Vice President/Chief Compliance Officer of Wesco Insurance Company. I am authorized to make the statements set forth in this affidavit on behalf of Wesco Insurance Company and to bind Wesco Insurance Company by these statements.

2. After a review of our records, I swear under oath that Wesco Insurance Company should be dismissed from the above-entitled action for any or all of the following reasons:
 - Wesco Insurance Company has never written workers' compensation insurance in the state of Montana;

3. 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 Petitioners' counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Wesco Insurance Company. After such 90 days, if no objection is lodged by the Petitioners' counsel, the Court will dismiss the insurer/self-insured from this action based on the sworn statements made by me in this affidavit.



Timothy J. Titus

Sworn to and subscribed before
me this 10th day of October 2005.



Notary Public

**BRENDA L. FABULA
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEBRUARY 2, 2010**

