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**FILED**

**JAN 27 2006**

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

COMES NOW the above listed respondents ("Respondents") and move this Court to dismiss them from the above-entitled action. Pursuant to this Court's *Memo* of December 6, 2005, this motion is supported by the attached affidavit.

Dated this 26<sup>th</sup> day of January, 2006.

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

By: 

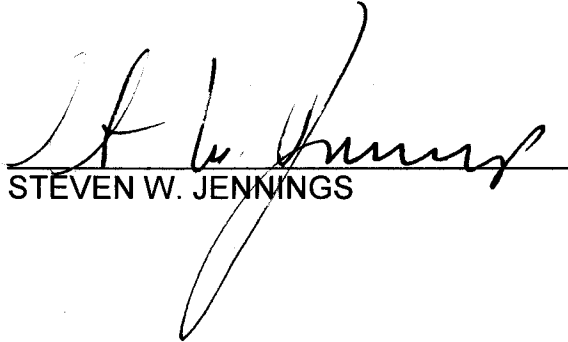
STEVEN W. JENNINGS

DOCKET ITEM NO. 439

**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 26<sup>th</sup> day of January, 2006, 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

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF  
MONTANA

WCC No. 2000-0222

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ROBERT FLYNN and CARL MILLER, Individually  
and on Behalf of Others Similarly Situated,

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LIBERTY NORTHWEST INSURANCE CORPORATION,

Intervenor.

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AFFIDAVIT

STATE OF RHODE ISLAND)

: ss.

County of Providence )

¶1 I, William H. Dunn, III, being first duly sworn upon oath, depose and say:

¶2 I, William H. Dunn, III, am the Senior Claims Examiner for Affiliated FM Insurance Company and Factory Mutual Insurance Company (collectively "FM Global").

¶3 In my capacity as Senior Claims Examiner of FM Global, I am authorized to make the statements set forth in this affidavit on behalf of FM Global and to bind FM Global by these statements.

¶4 After a review of our records, I swear under oath that FM Global should be dismissed from the above-entitled action for any or all of the following reasons (check any or all that apply):

FM Global has never written workers' compensation insurance in the state of Montana;

FM Global does not have any Montana claims;

FM Global has no claimants meeting the Court's criteria in this matter as set forth in the summons;

\_\_\_\_\_ (NAME OF INSURER OR SELF-INSURER) was or is in liquidation during the period in question set forth in the amended summons served upon me.

¶15 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 counsel for Petitioner[s] may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of FM Global. After such 90 days, if no objection is lodged by counsel for Petitioner[s], the Court will dismiss the insurer/self-insurer from this action based on the sworn statements made by me in this affidavit.

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

DATED this 25th day of JANUARY, 2006.

William A. Kennedy  
(Name)

Sr. Claims Examiner  
(Title)

Signed and sworn to before me this 25TH day of JANUARY, 2006.

John A. Soares III  
[Signature of Notary]

JOHN A. SOARES III  
[Typed, stamped, or printed Name of Notary]

Notary Public for the State of RHODE ISLAND,  
Residing at JOHNSTON

[City of Residence]

My commission expires: JULY 5 2009  
[Month Day Year]

(NOTARIAL SEAL)