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FILED

MAR 10 2006

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

COMES NOW the above listed respondent ("Respondent") 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 9th day of March, 2006.

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

By: 

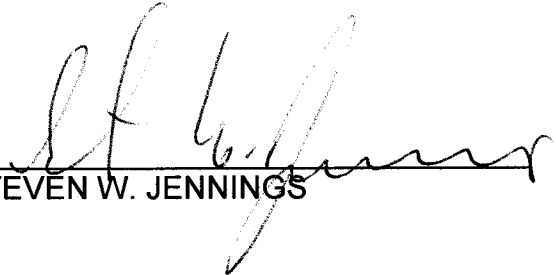
STEVEN W. JENNINGS
Attorneys for FedEx Ground Package
System, Inc.

DOCKET ITEM NO. 197

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 9th day of March, 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

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.

AFFIDAVIT

STATE OF Ohio)
 : ss.
County of Summit)

¶1 I, Robert M. Milane, being first duly sworn upon oath, depose and say:

¶2 I, Robert M. Milane, am the Managing Director, Risk Management
for FedEx Ground Package System, Inc. ("FedEx").

¶3 In my capacity as Managing Director, Risk Management of FedEx Ground Package System, Inc. ("FedEx"), I am authorized to make the statements set forth in this affidavit on behalf of FedEx Ground Package System, Inc. ("FedEx") and to bind FedEx Ground Package System, Inc. ("FedEx") by these statements.

¶4 After a review of our records, I swear under oath that FedEx Ground Package System, Inc. ("FedEx") should be dismissed from the above-entitled action for any or all of the following reasons (check any or all that apply):

_____ (NAME OF INSURER OR SELF-INSURER) has never written workers' compensation insurance in the state of Montana;

_____ (NAME OF INSURER OR SELF-INSURER) does not have any Montana claims;

FedEx Ground Package System, Inc. ("FedEx") 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.

¶5 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 FedEx Ground Package System, Inc. ("FedEx"). 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.

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

DATED this 6th day of March, 2006.

Robert M. Milane

(Name) Robert M. Milane

Managing Director, Risk Management

(Title)

Signed and sworn to before me this 6th day of March, 2006.

Laura P. Detwiler

[Signature of Notary]

[Typed, stamped, or printed Name of Notary]

Notary Public for the State of OHIO,

Residing at AKRON

[City of Residence]

My commission expires: 1/18 2010

[Month Day Year]

(NOTARIAL SEAL)

LAURA P. DETWILER
Notary Public - State of Ohio
My Commission Expires Jan. 18, 2010