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**FILED**

**MAY 14 2003**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

MARK MATHEWS,	)	WCC No. 2001-0294
	)	
Petitioner,	)	
	)	
vs.	)	<b>BRIEF IN OPPOSITION TO</b>
	)	<b>MOTION TO FILE AMENDED</b>
LIBERTY NORTHWEST INSURANCE CORP.,	)	<b>PETITION FOR HEARING</b>
	)	
Respondent/Insurer	)	

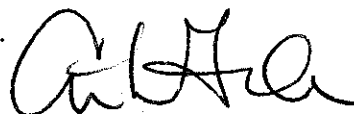
Attached as Exhibit A is Liberty's Notice of Affirmative Defense in which Liberty has raised as an affirmative defense fraudulent inducement by Mathews.

Mathews' Motion to File Amended Petition for Hearing is premature because there has been no ruling on this affirmative defense. If Liberty were to prevail on it then there would be no basis for a common fund/class action attorney fee lien.

Liberty has additional objections to the motion, but given that Mathews cannot claim to have prevailed unless and until he overcomes this affirmative defense, it would be premature to raise any additional objections.

For the reasons stated above, Liberty requests that Mathews' motion be denied pending resolution of the fraudulent inducement affirmative defense.

DATED this 13<sup>th</sup> day of May, 2003.



Larry W. Jones  
Attorney for Respondent/Insurer

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of May, 2003, I served the original of the foregoing BRIEF IN OPPOSITION TO MOTION TO FILE AMENDED PETITION FOR HEARING, first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner  
Clerk of Court  
Workers' Compensation Court  
P. O. Box 537  
Helena, MT 59624-0537

and a copy of the same to the following:

Geoffrey C. Angel  
Angel Law Firm  
125 West Mendenhall  
Bozeman, MT 59715

Lucas J. Foust  
Foust Law Office  
2135 Charlotte Street, Suite 1A  
Bozeman, MT 59715

James G. Hunt  
Hunt & Malloy Law Firm  
310 Broadway Avenue  
Helena, MT 59601

  
Cindy Brown Felton

Larry W. Jones  
Senior Attorney  
Liberty Northwest Insurance Corp.  
700 SW Higgins Avenue, Suite 250  
Missoula, MT 59803-1429  
(406) 543-4933, ext. 140  
Attorney for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

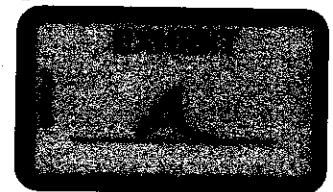
MARK MATHEWS,	)	WCC No. 2001-0294
	)	
Petitioner,	)	
	)	
vs.	)	
	)	<b>NOTICE OF AFFIRMATIVE</b>
LIBERTY NORTHWEST INSURANCE CORP.,	)	<b>DEFENSE</b>
	)	
Respondent/Insurer for	)	
	)	
BJS CONSTRUCTION, INC.,	)	
a Montana corporation,	)	
	)	
Employer.	)	

COMES NOW the above-named respondent and gives notice of its intent to raise the affirmative defense of FRAUDULENT INDUCEMENT, as specifically set forth below.

As previously set forth in Respondent's First Notice Of Additional Contentions, Witnesses & Exhibits, dated March 20, 2001, Respondent asserts that the claimant negligently and/or intentionally misrepresented his employment status to his employer and/or Liberty Northwest. Claimant's misrepresentation supports Respondent's affirmative defense of fraudulent inducement.

Respondent contends that the following nine elements of fraudulent inducement (as set forth in Pare v. Morrison, 241 Mont. 218, 221-222, 786 P.2d 655 (1990) have been proved by the claimant's deposition and Brian Schroeder's affidavits:

1. a representation;
2. the falsity of the representation;



TRANSMITTED TO  
CLAIMANT  
7-11-01

3. the materiality of the representation;
4. the speaker's knowledge of the falsity of the representation or the speaker's ignorance of its truth;
5. the speaker's intent that the false representation should be relied upon;
6. the hearer's ignorance of the falsity of the representation;
7. the hearer's reliance on the false representation;
8. the hearer's right to rely on the false representation; and
9. the consequent and proximate injury caused by the reliance on the false representation.

Pare v. Morrison, 241 Mont. 218, 221-22 (1990).

The following affirmative defense is raised only to preserve it if the Court does not grant judgment in Liberty's favor based on the other defenses previously raised.

DATED this 16 day of July, 2001.

  
\_\_\_\_\_  
Larry W. Jones  
Senior Attorney

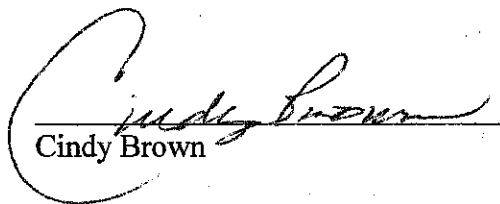
CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of July, 2001, I served the original of the foregoing NOTICE OF AFFIRMATIVE DEFENSE, by FAX (406) 444-7798 and first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner  
Clerk of Court  
Workers' Compensation Court  
P. O. Box 537  
Helena, MT 59624-0537

and a copy of the same to the following:

Geoffrey C. Angel  
Angel Law Firm  
125 West Mendenhall  
Bozeman, MT 59715  
*via FAX (406) 585-7654*

  
Cindy Brown