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FILED

MAY 21 2003

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT FOR THE STATE OF MONTANA

MARK MATHEWS,)	WCC Number 2001-0294
)	
Petitioner,)	REPLY IN SUPPORT OF
)	MOTION FOR COMMON FUND/CLASS
vs.)	ACTION ATTORNEY FEE LIEN
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
)	
Respondent.)	

Liberty Northwest's brief in opposition to motion for common fund/class action attorney fee lien is identical to its motion to amend petition for hearing.

The employer controls the workers' status as an employee and therefore fraudulent inducement in this context is a factual and legal impossibility. The Notice of Affirmative Defense amended the pleading (Answer) without leave of court *after* the discovery deadline, raises an affirmative defense that was waived, pleads an affirmative defense that was denied by the Court as a matter of law when it dismissed the petition which was appealed to the Supreme Court and raises an affirmative defense that simply cannot be.


If it walks like a duck and quacks like a duck, even if god (in this context the employer) who created it says it was tricked into believing it was a goose it remains a duck.

Liberty Northwest seeks to stall this litigation by controlling the order of pleadings to have the Court adjudicate through discovery and motions the affirmative defense and then allow the amendment of the petition if Liberty Northwest is unsuccessful. The law does not support this argument. The amended petition should be granted.

For these reasons Mark Mathews asks the Court to grant the motion to notify the potential defendant insurer's of Kelly Wild and Mark Mathews claim to common fund/class action fees.

DATED this 19th day of May 2003.

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