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FILED

JUL - 3 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.)	LIBERTY'S REPLY BRIEF
)	IN SUPPORT OF AFFIRMATIVE
LIBERTY NORTHWEST INSURANCE CORP.,)	DEFENSE
)	
Respondent/Insurer)	

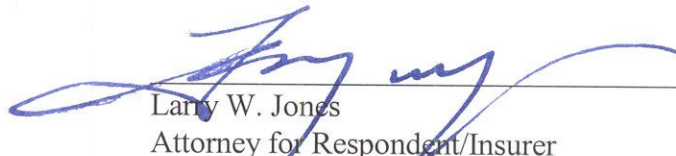
Mathews has filed his Brief in Opposition to Motion RE: Affirmative Defense. As regards the alleged procedural errors, Liberty attached to its original brief the pleadings in which it raised its affirmative defense. They comply with the procedural rules of the Workers' Compensation Court.

Secondly, Mathews claims he could not inquire into the facts in support of Liberty's contention of fraudulent inducement. He did not ask for any discovery regarding the affirmative defense and now he should not complain that he failed to investigate it.

Lastly, Mathews misses the point in the first paragraph of his brief in which he argues BJS Construction had a duty to inquire into Mathews' status. The claim of fraudulent inducement is based on what Mathews has done and not on what BJS Construction allegedly failed to do. The nature of Mathews' fraudulent conduct was to put BJS off its guard, which in fact happened, and induce BJS, which he did, to do nothing until he revealed, after his injury, that he would claim that he was an employee having previously said he was an independent contractor. That is the heart of the defense.

For the reasons stated in its pleadings, Liberty requests this Court find Mathews' claim is barred in its entirety because of his fraudulent inducement of BJS Construction.

DATED this 3 day of July, 2003.


Larry W. Jones
Attorney for Respondent/Insurer

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of July, 2003, I served the original of the foregoing LIBERTY'S REPLY BRIEF IN SUPPORT OF AFFIRMATIVE DEFENSE, by FAX (406) 44-7798 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, Coil & Bartlett
125 West Mendenhall
Bozeman, MT 59715
Via FAX (406) 585-7654 & U.S. Mail


Cindy Brown Felton