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Attorney for Petitioner

**FILED**

MAY 17 2004

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKER'S COMPENSATION COURT OF THE STATE OF MONTANA

\*\*\*\*\*

JEREMY RUHD;	)	WCC Number: 2002-0500
	)	
Petitioner,	)	
	)	MOTION TO STRIKE
vs.	)	(Brief of Intervenor State Fund)
	)	and BRIEF IN SUPPORT
LIBERTY NORTHWEST	)	
INSURANCE CORPORATION;	)	

\*\*\*\*\*

COMES NOW the petitioner Jeremy Ruhd, by and through his counsel of record Geoffrey C. Angel, and moves the Workers' Compensation Court to strike the Opening Brief of Intervenor Montana State Fund filed by its counsel Bradley Luck. State Fund filed its Opening Brief in this matter on May 3, 2004 by incorporating "by reference the arguments set forth in the briefs it filed" in:

1. *Flynn v. State Fund, WCC No. 2000-022*
2. *Stavenjord v. State Fund, WCC No. 2000-0207*
3. *Schmill v. State Fund, WCC No. 2001-0300*
4. *Rausch v. State Fund, WCC No. 9907-8274R1, WCC No. 2003-0023R1, WCC No. 2000-0030R1.*

*See Opening Brief, Exhibit A hereto.* No further identification of what "the briefs" refers to was set forth in the Opening Brief. Counsel for Ruhd requested the State Fund to serve copies of those brief it wished to incorporate by reference. The State Fund refused. *See Exhibit B.*

The State Fund refuses to provide copies of "the briefs" it wishes to incorporate by reference arguing they "are all matters of public record" available to any "interested party or practitioner." Because the State Fund failed to file and serve the briefs by the Court's deadline Jeremy Ruhd respectfully requests the Court strike the Opening Brief of the State Fund and dismiss it as an Intervenor in this matter.

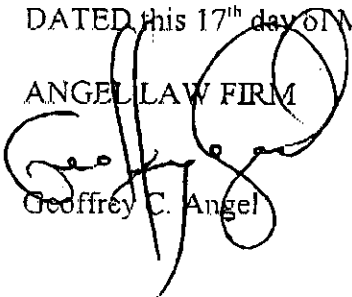
The rules of procedure require service upon all parties not filing as a matter of public record and access. State Fund's conduct violates Rule 11 and sanctions should be imposed.

The correspondence wherein Mr. Luck refuses to provide and serve copies of the briefs the State Fund seeks to rely on was carbon copied to State Fund counsel Nancy Butler, Greg E. Overturf, Thomas E. Martello, David Hawkins and Dan McGregor. This correspondence reasonably leads to the conclusion that this demonstrates a purposeful and willful refusal to file the rules of civil procedure with the knowledge and approval of all counsel for the State Fund. The Court has the attention of all counsel and should demonstrate that the letter and the spirit of the rules are to be applied and enforced in this Court.

For these reasons Jeremy Ruhd respectfully requests the Court to strike the opening brief of the Montana State Fund and impose sanctions including the assessment of attorney fees for responding to this wilful refusal to make proper service.

DATED this 17<sup>th</sup> day of May 2004.

ANGEL LAW FIRM

  
Geoffrey C. Angel

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 17<sup>th</sup> day of May 2004 a true and correct copy of the foregoing was hereby served, by depositing the same, in an envelope in the United States mail, first-class, postage pre-paid, addressed to:

Larry W. Jones  
Liberty Northwest Insurance Company  
700 S.W. Higgins Avenue, Suite 250  
Missoula, Montana 59803-3602  
**Faxed to: (406) 543-0811**

Bradley J. Luck  
199 West Pine Street  
P.O. Box 7909  
Missoula, Montana 59807  
**Faxed to: (406) 523-2595**

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Attorneys for Montana State Fund

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

JEREMY RUHD,

v.

LIBERTY NORTHWEST INSURANCE  
CORPORATION

WCC No. 2002-0500

**STATE FUND'S OPENING BRIEF  
REGARDING RETROACTIVITY AND  
COMMON FUND ISSUES**

COMES NOW the Montana State Fund ("State Fund") and hereby files its Opening Brief Regarding Retroactivity and Common Fund Issues. Pursuant to this Court's Minute Entry of March 29, 2004, this Court permitted the State Fund to file a brief as an interested party regarding the issues of retroactivity and common fund entitlement. The State Fund had no involvement in the development of a factual record between Ruhd and Liberty. However, the arguments set forth by the State Fund on the same issues in other proceedings are relevant to this litigation. The State Fund's position regarding those issues remains unchanged. Therefore, to avoid repetitiveness, for the sake of brevity and in the interests of judicial economy, the State Fund incorporates by reference the arguments set forth in the briefs it filed in *Flynn v. State Fund*, WCC No. 2000-022, *Stavenjord v. State Fund*, WCC No. 2000-0207, *Schmill v. State Fund*, WCC No. 2001-0300, and *Rausch v. State Fund*, WCC No. 9907-8274R1, WCC No. 2000-0023R1, WCC No. 2000-0030R1. Because Ruhd may raise new arguments in his Answer Brief, the State Fund reserves its right to file a responsive brief on or before June 7, 2004.

DATED this 3 day of May, 2004.

Attorneys for Montana State Fund

GARLINGTON, LOHN & ROBINSON, PLLP

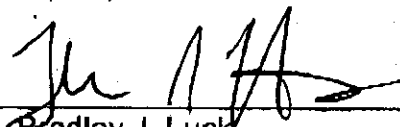
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Missoula, MT 59807-7909

Telephone: (406) 523-2500

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By

  
for Bradley J. Luck

**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Montana State Fund, hereby certifies that on this 3<sup>rd</sup> day of May, 2004, a true copy of the foregoing *State Fund's Opening Brief Regarding Retroactivity and Common Fund Issues* was mailed, postage prepaid, to the following:

Geoffrey C. Angel, Esq.  
125 West Mendenhall  
Bozeman, MT 59715

Larry W. Jones, Esq.  
700 S.W. Higgins Ave., Ste. 250  
Missoula, MT 59803-3602

  
\_\_\_\_\_

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SHERMAN V. LOHN  
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R. H. "TY" RITSBOSCH  
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May 10, 2004

## VIA TELEFAX AND U.S. MAIL

Geoffrey C. Angel, Esq.  
125 W. Mendenhall  
Bozeman, MT 59715-3500

Re: *Ruhd v. Liberty*

Dear Geoff:

We have received your letter of May 8, 2004, wherein you request us to provide you with copies of all the briefs we incorporated by reference into our Opening Brief in *Ruhd*. As you know, the State Fund's briefs from all the cases we referred to are matters of public record. Judge McCarter has stated on several occasions that all the common fund pleadings are available to any interested party or practitioner via the Court's website at <http://wcc.dli.state.mt.us>, under the "common fund" link. Further, the State Fund's Montana Supreme Court briefs are available at <http://www.lawlibrary.state.mt.us/dscgi/ds.py/View/Collection-36>. Therefore, the briefs we incorporated by reference have been available to you since the date they were posted on the respective websites.

Your letter also indicates that you are going to request an extension from the Court to file your Answer Brief based on our failure to provide you with copies of our prior briefs. Even though the briefs have always been available to you, as a matter of professional courtesy, we will not object to your request for an extension. If you have any questions, please do not hesitate to contact us.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

By

  
Bradley J. Luck

BJL:sec

Geoffrey C. Angel, Esq.

*Re: Ruhd v. Liberty*

May 10, 2004

Page 2

c: Larry Jones (via telefax and U.S. Mail)

Nancy Butler

Greg E. Overturf

Thomas E. Martello

David Hawkins

Dan McGregor