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Attorney for Wesco Insurance Company

FILED

DEC 29 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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

CASSANDRA SCHMILL,

Petitioner,

vs.

LIBERTY NORTHWEST INSURANCE
CORPORATION,

Respondent/Insurer,

and

MONTANA STATE FUND,

Intervenor.

WCC No. 2001-0300

**MOTION TO DISMISS WESCO
INSURANCE COMPANY, BRIEF IN
SUPPORT AND SUPPORTING
AFFIDAVIT**

MOTION

COMES NOW, Wesco Insurance Company (herein Wesco) and files this Motion to Dismiss, Brief in Support and Affidavit. Consistent with this Court's previous Order, Wesco requests that, if after 90 days no objection is lodged by Petitioner's counsel, the Court dismiss Wesco with prejudice from this suit.

BRIEF

Wesco is a credit, property, and casualty company. Wesco has not written any worker's compensation policies within the State of Montana during the relevant time frame. Accordingly, Wesco is not a proper party to this action and should be dismissed

**MOTION TO DISMISS WESCO INSURANCE COMPANY, BRIEF IN SUPPORT AND SUPPORTING
AFFIDAVIT - PAGE 1**

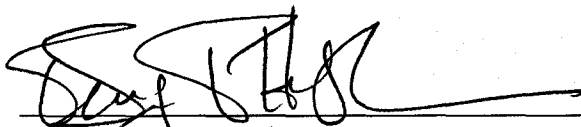
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with prejudice. Attached and incorporated into this Brief is Exhibit "A", Affidavit of Timothy J. Titus, Vice President and Chief Compliance Officer of Wesco.

DATED this 28 day of December, 2005.

CEDERBERG LAW OFFICES, PC
269 West Front, P.O. Box 8234
Missoula, Montana 59807

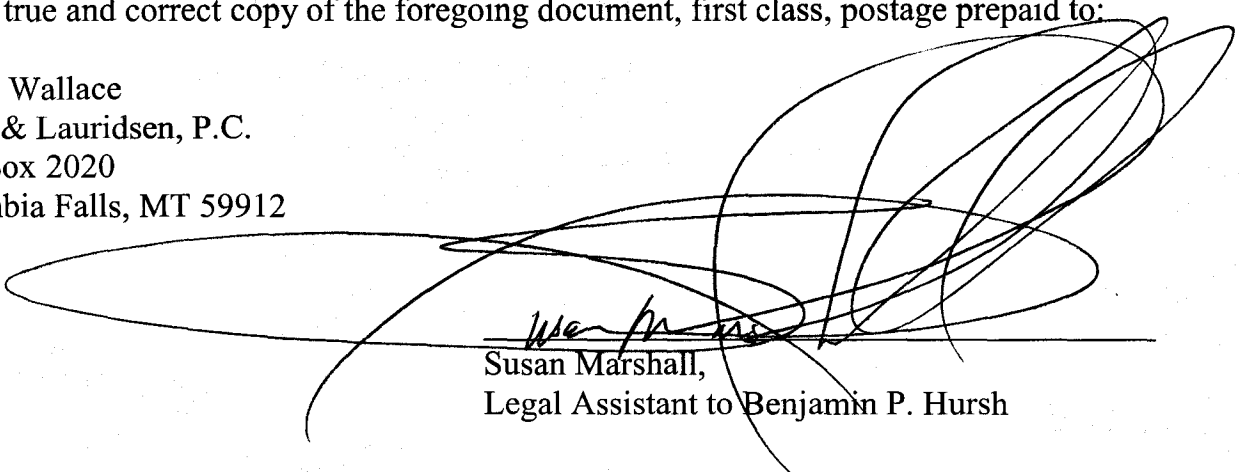
By:


Benjamin P. Hursh
Attorney for Wesco Insurance Company

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 28th day of December, 2005, I did mail a true and correct copy of the foregoing document, first class, postage prepaid to:

Laurie Wallace
Bothe & Lauridsen, P.C.
P.O. Box 2020
Columbia Falls, MT 59912


Susan Marshall,
Legal Assistant to Benjamin P. Hursh

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2001-0300

CASSANDRA SCHMILL

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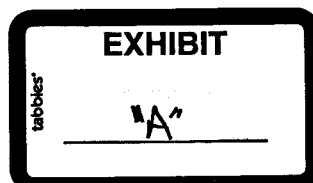
AFFIDAVIT

STATE OF NEW JERSEY)
) SS:
COUNTY OF SOMERSET)

1. I, Timothy J. Titus, am the Vice President/Chief Compliance Officer of Wesco Insurance Company. I am authorized to make the statements set forth in this affidavit on behalf of Wesco Insurance Company and to bind Wesco Insurance Company by these statements.

2. After a review of our records, I swear under oath that Wesco Insurance Company should be dismissed from the above-entitled action for any or all of the following reasons:


- Wesco Insurance Company has never written workers' compensation insurance in the state of Montana;



3. 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 Petitioners' counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of Wesco Insurance Company. After such 90 days, if no objection is lodged by the Petitioners' counsel, the Court will dismiss the insurer/self-insured from this action based on the sworn statements made by me in this affidavit.

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

DATED this 15th day of December 2005.



Timothy J. Pitus
Vice President/Chief Compliance Officer

Sworn to and subscribed before
me this 15th day of December 2005.



Brenda K. Kahlke
Notary Public

