

Larry W. Jones  
 Law Office of Jones & Garber  
 An Insurance Company Law Division  
 700 SW Higgins Avenue, Suite 108  
 Missoula, MT 59803-1489  
 (406) 543-2420  
 (406) 829-3436 (FAX)  
 Attorney for Liberty Northwest Ins. Corp.

**FILED**

**OCT 21 2004**

OFFICE OF  
 WORKERS' COMPENSATION JUDGE  
 HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,	)	WCC No. 2000-0022 <sup>0022</sup>
	)	
Petitioners,	)	
	)	
vs.	)	<b>MOTION TO INTERVENE</b>
	)	<b>AND SUPPORTING BRIEF</b>
MONTANA STATE FUND,	)	
	)	
Respondent.	)	

MOTION

COMES NOW Liberty Northwest Insurance Corporation (hereinafter "Liberty") pursuant to ARM 24.5.309 and Rule 24(a) of the Montana Rules of Civil Procedure requesting that Liberty be allowed to intervene in this matter for the reasons set forth with particularity in the brief that appears immediately below.

BRIEF

ARM 24.5.309 incorporates by reference Rule 24(a) of the Montana Rules of Civil Procedure. Pursuant to that rule a party may intervene as a matter of right "(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

The following facts are established by the attached Affidavit of Larry W. Jones.

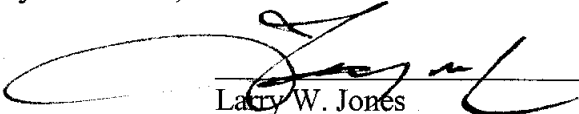
That in Ruhd v. Liberty Northwest Ins. Corp. v. Fisch, Frost & Rausch, 2004 MT 236, August 31, 2004 the Montana Supreme Court held that a common fund lien is global applying to all workers' compensation insurers and not just the named insurer in a case creating a common fund.

That Flynn's attorney has filed a lien with Liberty Northwest alleging common fund attorney fees under this Court's decision in Flynn v. Montana State Fund.

That during a recent conference call with the Court it was suggested that the appropriate procedure to get any issues regarding the perfection and enforcement of the claimed lien as regards Liberty Northwest would be a motion to intervene.

For the reasons stated above, Liberty believes it has satisfied the requirements of Rule 24(a) of the Montana Rules of Civil Procedure, incorporated by reference in ARM 24.5.309, and requests the Court to issue an order allowing Liberty to intervene and participate fully as a party in the litigation that has been initiated by the petitioner.

DATED this 20 day of October, 2004.

  
\_\_\_\_\_  
Lary W. Jones  
Attorney for Respondent/Insurer

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of October, 2004, I served the original of the foregoing MOTION TO INTERVENE AND SUPPORTING BRIEF, 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:

Rex Palmer  
Attorneys, Inc., P.C.  
301 West Spruce  
Missoula, MT 59802

Bradley J. Luck  
Garlington, Lohn & Robinson, PLLP  
P. O. Box 7909  
Missoula, MT 59807-7909

Thomas E. Martello  
Legal Counsel  
Montana State Fund  
P. O. Box 4759  
Helena, MT 59604-4759

  
Cindy Brown Felton

Larry W. Jones  
Law Office of Jones & Garber  
An Insurance Company Law Division  
700 SW Higgins Avenue, Suite 108  
Missoula, MT 59803-1489  
(406) 543-2420  
(406) 829-3436 (FAX)  
Attorney for Liberty Northwest Ins. Corp.

**FILED**

**OCT 21 2004**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,	)	WCC No. 2000-0022
	)	
Petitioners,	)	
	)	
vs.	)	<b>AFFIDAVIT OF LARRY W.</b>
	)	<b>JONES</b>
MONTANA STATE FUND,	)	
	)	
Respondent.	)	
STATE OF MONTANA	)	
	: ss.	
County of Missoula	)	

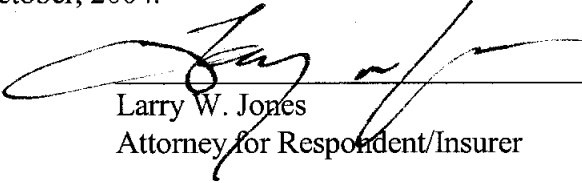
Larry W. Jones, the affiant who, upon being duly sworn, states his oath as follows:

1. That in Ruhd v. Liberty Northwest Ins. Corp. v. Fisch, Frost & Rausch, 2004 MT 236, August 31, 2004 the Montana Supreme Court held that a common fund lien is global applying to all workers' compensation insurers and not just the named insurer in a case creating a common fund.

2. That Flynn's attorney has filed a lien with Liberty Northwest alleging common fund attorney fees under this Court's decision in Flynn v. Montana State Fund.

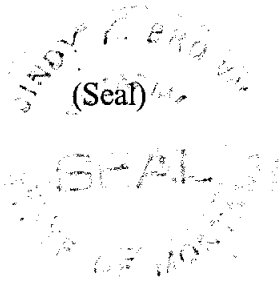
3. That during a recent conference call with the Court it was suggested that the appropriate procedure to get any issues regarding the perfection and enforcement of the claimed lien as regards Liberty Northwest would be a motion to intervene.

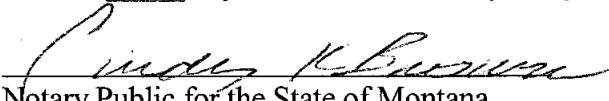
DATED this 20 day of October, 2004.

  
Larry W. Jones  
Attorney for Respondent/Insurer

STATE OF MONTANA     )  
                                      : ss.  
County of Missoula     )

Signed and sworn to before me on this 20 day of October, 2004, by Larry W. Jones.



  
Notary Public for the State of Montana  
My Commission Expires: 3-11-06