

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 04-012

FILED

JAN 28 2004

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ROBERT FLYNN,

Petitioner and Respondent,

v.

STATE COMPENSATION
INSURANCE FUND,

Respondent and Appellant.

ORDER

FILED

FEB - 5 2004

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

State Compensation Insurance Fund, Appellant, and Robert Flynn, Respondent, have filed a joint motion to dismiss appeal without prejudice and supporting brief.

On remand following this Court's decision in *Flynn v. State Compensation Insurance Fund*, 2002 MT 279, 312 Mont. 410, 60 P.3d 397, the Workers' Compensation Court entered its order regarding the retroactivity of our decision and attorney fees. The parties indicate that the Workers' Compensation Court's order failed to determine all of the rights and liabilities of the parties because issues remain in connection with a consolidated matter, *Miller v. State Fund*, WCC No. 2003-0771. Further, there was no indication that the Workers' Compensation Court had certified the order as final and appealable. Nonetheless, concerned about preservation of its appellate rights, the State Fund filed a notice of appeal.

Thereafter, the parties reached a settlement agreement and now seek to submit the agreement for review and approval to the Workers' Compensation Court. However, the parties desire to preserve their appellate rights following the Workers' Compensation Court's entry of a final and appealable order determining the rights and liabilities of all parties. Thus, they request that dismissal of the appeal be made without prejudice. Rule 12, M.R.App.P., indicates that the dismissal of an appeal is "in effect an affirmance of the judgment or order

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appealed, unless the dismissal is expressly made without prejudice to another appeal." Good cause appearing,

IT IS HEREBY ORDERED that the appeal herein is dismissed without prejudice.

The Clerk is directed to mail copies hereof to counsel of record for the respective parties.

DATED this 27th day of January, 2004.

Jean Rice

[Signature]

W. William Leuphart

Joni Reznick

John Warner

Justices

OFFICE OF
WORKERS COMPENSATION JUDGE
HELENA, MONTANA

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