

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 11

WCC No. 2000-0222

**ROBERT FLYNN and CARL MILLER,
Individually and on Behalf of Others Similarly Situated**

Petitioners

vs.

MONTANA STATE FUND

Respondent/Insurer

and

LIBERTY NORTHWEST INSURANCE CORPORATION

Intervenor.

ORDER CLOSING CASE

¶ 1 This Court has approved by order¹ the Joint Stipulation for Dismissal of Liberty Northwest Insurance Corporation² between Petitioners Robert Flynn and Carl Miller and Intervenor Liberty Northwest Insurance Corporation. As the sole remaining insurer/intervenor has been dismissed,

¶ 2 IT IS ORDERED that this case is **CLOSED**.

¶ 3 This closure does not in any way compromise or release any insurer, including Liberty Northwest Insurance Corporation, from its obligation to identify and pay claimants any *Flynn/Miller* benefits to which the claimants are entitled nor does it in any way compromise or diminish Rex Palmer's common fund attorney fee lien against *Flynn/Miller*

¹ Order of Dismissal of Liberty Northwest Insurance Corporation, Docket Item No. 761.

² Docket Item No. 760.

benefits paid pursuant to the *Flynn/Miller* decisions.³ A copy of Palmer's attorney lien is attached as Exhibit A. Insurers that are subject to the *Flynn/Miller* decision shall identify and pay claimants any *Flynn/Miller* benefits to which the claimants are entitled and any such payments are subject to Palmer's attorney lien. All insurers are authorized to withhold from the claimant's share of the claimant's *Flynn/Miller* benefits the amount necessary to satisfy the common fund lien and at the same time pay to Palmer without a hearing and without involving the Workers' Compensation Court, unless one of the affected individuals or entities needs the Workers' Compensation Court to decide a dispute over *Flynn/Miller* benefits and/or Palmer's attorney lien.

DATED this 18th day of October, 2022.

(SEAL)



David M. Jank
JUDGE

c: Rex Palmer
Leo S. Ward

³ *Flynn v. Montana State Fund*, 2008 MT 394, 347 Mont. 146, 197 P.3d 1007; *Flynn v. Montana State Fund*, 2011 MT 300, 363 Mont. 55, 267 P.3d 23.

EXHIBIT A

Rex Palmer
ATTORNEYS INC., P.C.
301 W Spruce
Missoula, Montana 59802
(406) 728-4514
ATTORNEYS FOR PETITIONER

FILED

JAN - 2 2004

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA
BEFORE THE WORKERS' COMPENSATION JUDGE

Robert Flynn,)	WCC No. 2000-0222
)	
and)	
)	AMENDED NOTICE of
Carl Miller, individually and on behalf)	ATTORNEY'S LIEN
of others similarly situated,)	
Petitioners,)	
v.)	
)	
Montana State Fund)	
Respondent/Insurer.)	

* * * * *

COMES NOW the undersigned, and herewith gives notice to all insures and self insurers writing or maintaining workers' compensation coverage in the State of Montana on or after July 1, 1974, of the undersigned's attorney's lien upon the common fund created and to be created which has or will directly benefit all ascertainable absent workers' compensation claimants. Those absent claimants should be required to contribute, in proportion to the benefits they receive or will

receive, to the cost of the litigation, including reasonable attorney fees allowable by law at the time of the claimants' respective industrial injury or occupational disease.

The undersigned commenced and maintained an action in the Montana Workers' Compensation Court for Robert Flynn entitled, *Flynn v. Montana State Fund*, WCC NO., 2000-0222. The legal issues in the matter were ultimately decided by the Montana Supreme Court in *Flynn v. Montana State Fund*, 2002 MT 279, 312 Mont. 410, 60 P.3d 397 ("*Flynn*"). The *Flynn* Court stated that "...equity demands that all parties receiving a benefit from the common fund share in the costs of its creation." The Court ruled that pursuant to the *common fund doctrine*, where the workers' compensation claimant incurred costs to establish entitlement to social security benefits, the workers' compensation insurer "...should contribute, in proportion to the benefits actually received, to the costs of the litigation, including reasonable attorney fees."

On remand from the Montana Supreme Court, additional issues were raised in the Workers' Compensation Court concerning the legal consequences of the *Flynn* decision. As well, the undersigned commenced and maintained another action in the Workers' Compensation Court for Carl Miller and others similarly situated entitled, *Miller, et al. v. Montana State Fund*, WCC No. 2003-0771 ("*Miller*"). The Workers' Compensation Court concluded that the appropriate way to handle the *Miller* action was within the same proceedings as the post remand *Flynn* issues and sua sponte consolidated the two actions on May 30, 2003. On August 5, 2003, the

Workers' Compensation Court Issued a ruling on many of the outstanding issues in the consolidated action ("*Flynn/Miller*").

The Workers' Compensation Court ruled in *Flynn/Miller* that (1) as a result of the *Flynn* decision, others workers' compensation claimants situated similarly with Robert Flynn became entitled to have the insurer pay a pro-rated share of the cost, including attorney fees for representation, the claimants incurred in connection with their successful effort to obtain Social Security benefits and (2) common fund fees were payable, based on the benefit received.

SCOPE OF LIEN

1. The lien is asserted against all insurers and self insurers writing or maintaining workers' compensation coverage in the State of Montana on or after July 1, 1974.
2. The lien extends to all Montana workers' compensation claimants who incurred costs or fees to obtain a Social Security award for which the entity providing workers' compensation coverage took an offset or had a policy of taking an offset without accounting for the costs incurred by the claimant to recover the award, as required by the *Flynn* decision.
3. The amount of the claimed lien is that amount granted by the attorney fee statute and the Department of Labor, more particularly;
 - A) For each claimant with an injury or occupational disease entitlement dated on or after November 11, 1988, 25% of the benefit to which each claimant is entitled as a result of the *Flynn/Miller* decision; and
 - B) For each claimant with an injury or occupational disease entitlement date prior to November 11, 1988, 33% of the benefit to which each claimant is entitled as a result of the *Flynn/Miller* decision if paid before decision on appeal and 40% if paid after decision on appeal of the pending *Flynn/Miller* action.

The undersigned claims no lien on any of the following:

1. Any Social Security offset initiated prior to July 1, 1974; and
2. Any Social Security award ordered to be paid after the date of the *Flynn/Miller* decision of August 5, 2003.

Dated this 29th day of December 2003.



Rex Palmer
ATTORNEYS INC., P.C.
301 W Spruce
Missoula, MT 59802
(406) 728-4514
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of December 2003, a true and correct copy of the foregoing was served upon the following by U.S. mail, hand-delivery, Federal Express, or facsimile:

Bradley J. Luck
Garlington, Lohn & Robinson
199 W Pine
PO Box 7909
Missoula, MT 59807-7909

{ } U.S. Mail
{X} Hand Delivered on the 30th of
{ } Federal Express December, 2003
{ } Facsimile

Larry Jones
Liberty Northwest
700 SW Higgins Avenue, Ste 108
Missoula, MT 59803-1489

{X} U.S. Mail
{ } Hand Delivered
{ } Federal Express
{ } Facsimile

