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FILED

JUL 14 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN,)	WCC NO. 2000-0222
)	
and)	
)	
CARL MILLER)	LIMITED NOTICE OF
)	APPEARANCE AND
Petitioners,)	MOTION TO DISMISS
vs.)	
)	
MONTANA STATE FUND,)	
)	
)	
Respondent/Insurer)	
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
)	
)	
Intervenor.)	

COMES NOW, Hortica Insurance f/k/a Florists' Mutual Insurance Company (Florists'), and appears for the purpose of moving the Court to dismiss Florists' from the above action.

On May 4, 2005, this Court had served on many insurers, including Florists' Mutual, a Summons requiring each of the insurers to respond to the attorney fee lien filed by Petitioners' attorneys. The Summons required that each insurer provide the

DOCKET ITEM NO. 321

Court those claimants whose benefits were offset on account of Social Security benefits at any time since June 30, 1974.

On June 17, 2005, Florists' filed a Motion for Extension of Time allowing Florists' the opportunity to fully review its files to determine which claimants, if any, were affected by Social Security benefits offsets. That Motion was subsequently granted by this Court on June 17, 2005.

Florists' Mutual has since had the opportunity to complete a full review of its Montana claims files to determine what claimants may have been affected by Social security offsets. The conclusion of Florists' is that there are no cases where Florists' Mutual Insurance Company offset claimants' workers' compensation benefits as a result of those claimants' receipt of Social Security Retirement benefits. This conclusion is supported by the attached Affidavit of Brent Bates, Senior Vice President - Director of Claims and Corporate Secretary/Counsel for Hortica Insurance Company, f/k/a/ Florists' Mutual Insurance Co. (Exhibit 1).

WHEREFORE, Florists' moves this Court to dismiss with prejudice Florists' Mutual Insurance Company on the ground that no claims exist against Florists' and that Florists' is not liable for any additional benefits to be paid to claimants in this matter or for attorneys' fees.

DATED this 13th day of July, 2005.

KELLER, REYNOLDS, DRAKE,
JOHNSON & GILLESPIE, P.C.



Daniel J. Whyte
50 South Last Chance Gulch
P.O. Box 598
Helena, MT 59624
Attorney for Hortica Insurance
f/k/a Florists' Mutual Insurance Company

1. I am the Senior Vice President – Director of Claims and Corporate Secretary/Counsel Hortica Insurance Company, f/k/a Florists' Mutual Insurance Company.
2. I am familiar with the issues before the Montana Workers' Compensation Court with respect to the case of *Flynn/Miller v. Montana State Fund*, WCC No. 2000-0222, and the issues therein that affect Florists' Mutual Insurance Company.
3. Florists' Mutual has conducted an investigation of its Montana specific claims to determine whether any apply to or are effected by the issues before the Workers' Compensation Court in the *Flynn/Miller* case and find that none apply.
4. Florists' Mutual therefore has not limited any claimants from receiving social security benefits and is not obligated to pay any attorney fees under the Common Fund Doctrine.

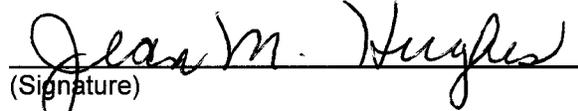
FURTHER, your affiant sayeth not.

DATED this 11th day of July, 2005.

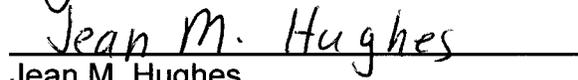
Brent A. Bates



SUBSCRIBED AND SWORN TO before me this 11th day of July, 2005.



(Signature)



Jean M. Hughes
Notary Public for the State of Illinois
Residing at Edwardsville.
My Commission expires: 12/13/06.

(SEAL)

