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FILED

MAY 28 2003

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
Petitioner,)	
v.)	
)	PETITIONER'S BRIEF REGARDING
State Compensation Ins. Fund,)	JURISDICTION TO DETERMINE AN
Respondent/Insurer for)	ENTITLEMENT DATE
)	
Salish Kootenai College,)	
Employer.)	

* * * * *

The State Fund continues to urge this Court to render advisory opinions. Apparently recognizing that advisory opinions are patently improper, the State Fund tries to obscure the issue by claiming to seek only "guidance" rather than an advisory opinion. It makes no attempt to explain how such "guidance" differs from an advisory opinion.

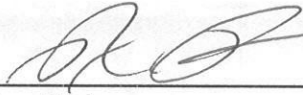
The State Fund argues that this Court should provide "guidance" for determining an entitlement date for prospective application of the *Flynn* decision. Its argument is based on the premise that this Court has jurisdiction of all disputes arising under the Workers' Compensation Act. While this premise may be hypothetically true, it does not, in itself, create a justiciable case or controversy in every case where the Court might hypothetically have jurisdiction.

Hypothetical jurisdiction produces nothing more than a hypothetical judgment - which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning. [Citations omitted.] Much more than legal niceties are at stake here. The statutory and

(especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subject. [Citations omitted.]¹

Flynn's counsel would be willing to consider representing the interests of those claimants to whom the State Fund currently refuses to apply *Flynn* without further guidance from the Court. Such representation would require, at the very least, a representative claimant. Perhaps the State Fund could identify a representative claimant and in this way help to create the justiciable controversy for which it seeks this Court's opinion.

Dated this 27th day of May 2003.



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¹ *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 (1998) (quoting *Ex parte McCordle*, 7 Wall. 506, 514 (U.S. 1869)).

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May 2003, a true and correct copy of the foregoing was served upon the following by U.S. mail, hand-delivery, Federal Express, or facsimile:

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