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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

<p>ALEXIS RAUSCH et. al., Petitioners, vs. MONTANA STATE FUND. Respondent/Insurer, and JEREMY RUHD, Petitioner, vs. LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent/Insurer.</p>	<p>WCC NO. 9907-8274R1</p> <p>RESPONSE OF CRAWFORD AND COMPANY AND CONTINENTAL CASUALTY COMPANY TO SUMMONS DATED JANUARY 10, 2005 INCLUDING OBJECTIONS TO SUMMONS AND MOTION TO QUASH SUMMONS</p>
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COMES NOW Crawford and Company and Continental Casualty Company ("Crawford and Continental"), and in response to the Court's Summons dated January 10, 2005 in the above-entitled matter, responds as follows:

1. **OBJECTIONS:** Crawford and Continental objects to the production of the information requested by the Summons, and moves to quash the summons pursuant to 24.5.316 ARM and 24.5.352 ARM, on the following grounds and for the following reasons:
 - A. Crawford and Continental is not a party to this case and, consequently, this Court had no jurisdiction to issue a summons to Crawford and Continental.
 - B. This Court does not currently have jurisdiction over Crawford and Continental because no dispute exists between Crawford and Continental and any claimants injured or suffering occupational diseases since June 30, 1991 or any attorneys and because no dispute has been presented pursuant to the Workers' Compensation and Occupational Disease Acts and this Court's rules.
 - C. This is not a class action, and class action claims have not been asserted in this action against any of the self-insureds which have not been made parties to this action.
 - D. Crawford and Continental has no duty to solicit claims or to advise claimants of their legal rights in regard to said claims. See *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); see also *Dennehy v. Anaconda Mineral Company*, WCC No.: 8612-4030, 1989 WL 253344 (holding that self-insured had no trust relationship with claimants.)
 - E. While the Court's jurisdiction and authority appears to extend to "supervising enforcement of the common fund . . . from all insurers involved" in this action, it does not appear to extend to parties such as Crawford and Continental which have not been properly made parties to this proceeding, which have not been properly joined by the assertion of class action claims, and which have no duty to solicit claims or advise claimants of their legal rights in regard to such claims. The Montana Supreme Court did not intend to do contravene such law by its statements in *Rausch et. al. v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25 and *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478 (*Ruhd II*), decided August 31, 2004.

The above reasons are more particularly set forth in the accompanying brief which is incorporated by reference.

2. **RESPONSE:** Subject to the foregoing objections and Crawford and Continental's Motion to Quash Summons, and without waiving its objections or Motion to Quash, Crawford and Continental states that it is currently unable to produce the information requested by this Court for the reasons set forth in the Affidavit of Sandy Mayernik, which is attached as Exhibit A and by this reference incorporated herein.

WHEREFORE, Crawford and Continental respectfully requests the following relief:

1. That the Court grant Crawford and Continental's Motion to Quash Summons, and order that Crawford and Continental is not required to answer or further respond to said Summons; or
2. Alternatively, if required to answer said summons, that Crawford and Continental be granted until April 30, 2005 within which to provide the information requested.

DATED this 10th day of February, 2005.

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**IN THE WORKERS' COMPENSATION COURT OF THE
STATE OF MONTANA**

ALEXIS RAUSCH et. al.,

Petitioners,

vs.

MONTANA STATE FUND.

Respondent/Insurer,

and

JEREMY RUHD,

Petitioner,

vs.

**LIBERTY NORTHWEST INSURANCE
CORPORATION,**

Respondent/Insurer.

WCC NO. 9907-8274R1

**AFFIDAVIT OF
SANDY MAYERNIK IN RESPONSE OF
CONTINENTAL CASUALTY COMPANY
TO COURT SUMMONS**

STATE OF MONTANA)
 : ss
County of Cascade)

I, Sandy Mayernik, being first duly sworn upon oath, depose and say:

1. I work as a workers' compensation adjuster for Crawford & Company. I am a licensed workers' compensation adjuster, and Crawford & Company and its staff have served as the licensed workers' compensation adjuster for Continental Casualty Company for workers' compensation claims in the State of Montana.

2. Crawford and Company and its staff have adjusted workers' compensation claims for Continental Casualty Company since at least 1990. Continental Casualty Company is a CNA Company. I am making this affidavit on behalf of Crawford and Company and Continental Casualty Company in response to the Summons issued by the Court and dated January 10, 2005.

3. I am the most knowledgeable person at Crawford and Company to provide information to the Court in response to the Summons dated January 10, 2005. As an adjuster with Crawford and Company, I have acquired knowledge in regard to the type of information maintained by Crawford and Company and Continental Casualty Company in regard to claims involving (a) claimants injured or suffering occupational diseases since June 20, 1991 to whom PTD benefits were paid, and (b) claimants injured or suffering occupational diseases since June 20, 1991 to whom TTD benefits were paid. I also have acquired knowledge of the efforts which would be required to comply with or respond to the Summons, and I make this affidavit based upon the knowledge of such claims.

4. Crawford & Company, as the licensed adjuster for Continental Casualty Company, is unable to provide the requested information to the Court by the deadline of February 14, 2005 because of the following reasons:

a. A computer inspection of Continental Casualty Company files through the CNA computer system will not presently provide the Court with the information that has been requested. The overwhelming majority of these claims are purged from the computer tracking system, the ACT System. The ACT System reflects the database for the claims of Continental Casualty Company and all CNA Insurance Companies. Part of the ACT System is the ACT Purge Index. The ACT Purge Index reflects claims that have been purged and deactivated in the system but the ACT Purge Index does not and cannot differentiate from workers' compensation claims from one state to another. In other words, the ACT Purge Index is not specific as to a jurisdictional state. Therefore, in order to extract a claim from Montana, Continental Casualty Company would be required to re-load ALL purged work comp claims in the United States or on a country-wide basis. At this time, this appears to be cost-prohibitive, and it is also uncertain whether this can be done. Efforts are being undertaken to assess these issues and their feasibility.

b. A computer inspection of Crawford & Company's files will not presently provide the Court with the information that has been requested, at least insofar as Continental Casualty Company. Although Crawford & Company maintains a computer index for Continental Casualty and CNA claims, the index does not track payments, whether PTD or TTD payments in any fashion whatsoever. Closed claims are kept in an off-site storage facility, and it would be necessary to do a hands-on physical inspection of all files at the off-site storage facility to obtain this information. Closed files are

intermingled with all other files handled by Crawford Company (casualty, property, personal injury, etc). It is believed that it would be cost prohibitive to physically inspect all files.

c. Neither Crawford and Company nor Continental Casualty Company can presently estimate the number of physical files which would be necessary to physically inspect to gather the information, particularly the information subject to paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of paragraph 4 of the Court's Summons.

d. This affidavit is submitted to the Court in connection with the request of Continental Casualty Company for an extension of time to apprise the Court further of whether or not a response can be made to the Summons. In the event that the Court should not sustain the objections of Continental Casualty Company, additional time is needed in order to respond to the Court's Summons.

Dated this 10th day of February, 2005.

Sandy Mayernik
Sandy Mayernik

This instrument was acknowledged before me on this 10th day of February, 2005, by Sandy Mayernik.

(Seal)

Erin K. Hood - ERIN K. HOOD
Notary Public for the State of Montana
Residing at Great Falls, Montana
My commission expires 2/01, 2007