

Bockman, Jacqueline

This message was sent with High importance

From: Bockman, Jacqueline **Sent:** Tue 9/27/2005 11:46 AM
To: dli_flynn@lists.mt.gov; dli_flynn_insurers_adjusters@lists.mt.gov; dli_hiett@lists.mt.gov;
dli_hiett_insurers_adjusters@lists.mt.gov; dli_rausch@lists.mt.gov; dli_rausch_insurers_adjusters@lists.mt.gov;
dli_reesor@lists.mt.gov; dli_reesor_insurers_adjusters@lists.mt.gov; dli_satterlee@lists.mt.gov;
dli_satterlee_insurers_adjusters@lists.mt.gov; dli_schmill@lists.mt.gov
Cc: Shea, Jim; Dufrechou, Jay; Kessner, Patricia; cwilson@mt.gov; Bockman, Jacqueline
Subject: Common Fund Litigation
Attachments:  [Shea-E-MailToAllCommonFundParties.wpd\(13KB\)](#)

Common Fund Counsel and Parties:

Attached is an e-mail sent at the direction of Judge Shea. Please note the 45-day comment period.

Counsel in the *Satterlee* matter, please note the language in paragraph 10 is in response to the Court's discussion regarding the *Reesor* decision, and the Court will not be sending an additional e-mail.

We look forward to your comments. Please do not hesitate to contact the Court if you have any questions. Thank you.

Jackie Bockman
Deputy Clerk
Workers' Compensation Court

E-Mail To All Common Fund Parties

After reviewing each common fund case, Judge Shea intends to streamline the procedural process by setting forth how the various issues are to be handled as follows. There will be a comment period of **45 days**, so please notify the Court of any input you may have.

1. Service – New Litigation. The Court has in the past and will continue in the future to serve the first summons in each case. For those summonses that are returned as undeliverable or if an insurer or self-insured has not responded to the summons, the petitioners' counsel will be responsible to effect service.

2. Service – Existing Litigation. For those respondents who have not appeared in the litigation, the petitioners' counsel is responsible for effecting service.

3. Service – All Litigation. All respondents must be served or the petitioners' counsel must file with the Court a notice that they will not pursue the action against that party prior to briefing schedules being set.

4. Service - Court. Please continue to file your original pleadings/documents with the Court and the Court will continue to serve the parties via e-mail notification. It is each party's responsibility to check the Court's web site for new filings. It is each party's responsibility to update the Court with new e-mail addresses.

5. Affidavit – New Litigation. In new common fund litigation, Judge Shea has requested that a blank form affidavit be served along with the summons. The exact language of this affidavit may be revised. However, it is likely to read substantively as follows:

¶1 I, **(NAME)**, am the **(POSITION)** of **(NAME OF INSURER OR SELF-INSURED)**.

¶2 In my capacity as **(POSITION)** of **(NAME OF INSURER OR SELF-INSURED)**, I am authorized to make the statements set forth in this affidavit on behalf of **(NAME OF INSURER OR SELF-INSURED)** and to bind **(NAME OF INSURER OR SELF-INSURED)** by these statements.

¶3 After a review of our records, I swear under oath that **(NAME OF INSURER OR SELF-INSURED)** should be dismissed from the above-entitled action for any or all of the following reasons (check any or all that apply):

- (NAME OF INSURER OR SELF-INSURED)** has never written workers' compensation insurance in the state of Montana;

- (NAME OF INSURER OR SELF-INSURED)** does not have any Montana claims;
- (NAME OF INSURER OR SELF-INSURED)** has no claimants meeting the Court's criteria in this matter as set forth in the summons;
- (NAME OF INSURER OR SELF-INSURED)** was or is in liquidation during the period in question set forth in the summons served upon me.

¶4 I understand that the Montana Workers' Compensation Court may allow a period of up to 90 days from the date of filing this affidavit within which Petitioners' counsel may conduct discovery and investigation for the limited purpose of proving or disproving the foregoing statement(s) made by me on behalf of **(NAME OF INSURER OR SELF-INSURED)**. After such 90 days, if no objection is lodged by the Petitioners' counsel, the Court will dismiss the insurer/self-insured from this action based on the sworn statements made by me in this affidavit.

6. Affidavit – Existing Litigation. For those insurers or self-insureds who have previously filed affidavits stating that they (a) have never written workers' compensation insurance in the state of Montana; or (b) do not have any Montana claims; or (c) have no claimants meeting the Court's criteria; or (d) was/are in liquidation during the period in question set forth in the summons, the Court will enter an Order granting petitioners' counsel 90 days to serve discovery for the limited purpose of proving or disproving the statement(s) made in the insurers' or self-insureds' affidavits. After the expiration of the 90 days, if no objection by the petitioners' counsel is made, the Court will dismiss the insurer/self-insured from the action. If the insurer/self-insured has responded by letter or pleading and requested dismissal but has not filed an affidavit, a form affidavit will be made available to them via either e-mail or the web site simply requesting that they incorporate the statements made in their letter by sworn affidavit.

7. In Liquidation. The Court intends to use *Flynn* as a general model for determining how to proceed with insurers or self-insureds *in liquidation*. A briefing schedule will be set and all parties will have the opportunity to participate. Parties not named in *Flynn* may intervene for the limited purpose of briefing this issue.

8. Final, Closed, or Inactive. The Court intends to use *Flynn* as a general model for determining the *final, closed, or inactive issue*. A briefing schedule will be set and all parties will have the opportunity to participate. Parties not named in *Flynn* may intervene for the limited purpose of briefing this issue.

9. Tracking. The Court will continue tracking the responses to the summons in each of the common fund cases. The Court encourages the petitioners' counsel to continue tracking on their end for cross-reference purposes.

10. Issues to be Briefed. Numerous issues to be briefed in *Reesor* were discussed during the July 14, 2005 in-person conference. After service of non-responsive respondents is finalized, Judge Shea will consolidate and pare these issues down with assistance of counsel. To the extent possible, an issue decided as final by Judge Shea in any common fund litigation that is duplicated in other common fund cases will be held as binding in that case absent compelling circumstances why the issue should be revisited or why the case is distinguishable from the case in which the previous ruling was made. Consistent with this and to the extent possible, the July 20, 2005 decision in *Reesor*, 2005 MTWCC 40 will be held as precedent for all common fund litigation.

11. Interim Attorneys' Fees. Counsel in *Rausch/Ruhd* have asked for interim attorneys' fees. A briefing schedule will be set on this issue. To the extent it is appropriate, Judge Shea's decision in *Rausch/Ruhd* will be applicable to other common fund litigation.

Jackie Bockman
Deputy Clerk of Court
Workers' Compensation Court