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FILED

JUN 20 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

ATTORNEYS FOR American Hardware Mutual Insurance Co.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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

Petitioner,

v.

MONTANA STATE FUND,

Respondent/Insurer

And

LIBERTY NORTHWEST INSURANCE
CORPORATION.

WCC No. 2000-0222

**ANSWER TO SUMMONS AND NOTICE
OF ATTORNEY FEE LIEN**

Pursuant to the Court's Summons and Notice of Attorney Fee Lien, American Hardware Mutual Insurance Co. (American Hardware) submits the following answer:

American Hardware objects to common fund certification in this case and asserts the following defenses:

1. Petitioner cannot satisfy the three elements for common fund certification set forth in the *Ruhd* decision.
2. Petitioner did not request common fund certification in a timely manner.

ANSWER TO SUMMONS AND NOTICE OF ATTORNEY FEE LIEN

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DOCKET ITEM NO. 260

3. The decision should not be applied retroactively because Petitioner cannot satisfy any of the three *Chevron* factors set forth in the *Dempsey* decision.

4. Application of a common fund under the facts of this case would violate provisions of the U.S. and Montana Constitutions, including but not limited to, procedural and substantive due process, freedom of contract, and taking without just compensation.

5. All defenses raised by any and all defendants in this case or that have been asserted or could be asserted in this case or any other common fund case pending before this Court or the Montana Supreme Court.

For the reasons set forth above and asserted by other defendants, American Hardware objects to common fund certification in this case.

DATED this 20 day of June, 2005.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

BY:  _____

Oliver S. Goe

ATTORNEYS FOR American Hardware Mutual
Insurance Co.