

FILED

JUN 20 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Oliver H. Goe
BROWNING, KALECZYC, BERRY & HOVEN, P.C.
139 N. Last Chance Gulch
P.O. Box 1697
Helena, MT 59624-1697
Phone: (406) 443-6820
Fax: (406) 443-6895

ATTORNEYS FOR Ohio Casualty Insurance Co., West American Insurance Co.,
American Fire and Casualty Co., Great American Insurance Co. of New York, Great
American Alliance Insurance Co., Great American Insurance Co., Great American
Assurance Co., and Ohio Security Insurance

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ROBERT FLYNN and CARL MILLER,)	WCC No. 2000-0222
Individually and on Behalf of Others)	
Similarly Situated,)	
)	ANSWER TO SUMMONS AND NOTICE
Petitioners,)	OF ATTORNEY FEE LIEN
v.)	
)	
MONTANA STATE FUND,)	
)	
Respondent/Insurer)	
)	
And)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION.)	

Pursuant to the Court's Summons and Notice of Attorney Fee Lien, Ohio Casualty Insurance Co., West American Insurance Co., American Fire and Casualty Co., Great American Insurance Co. of New York, Great American Alliance Insurance Co., Great American Insurance Co., Great American Assurance Co., and Ohio Security Insurance submit the following answer:

Ohio Casualty Insurance Co., West American Insurance Co., American Fire and Casualty Co., Great American Insurance Co. of New York, Great American Alliance Insurance Co., Great American Insurance Co., Great American Assurance Co., and

ANSWER TO SUMMONS AND NOTICE OF ATTORNEY FEE LIEN

Page 1 of 2

169445/2700.234.0000

DOCKET ITEM NO. 259

Ohio Security Insurance object to common fund certification in this case and assert 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.
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, Ohio Casualty Insurance Co., West American Insurance Co., American Fire and Casualty Co., Great American Insurance Co. of New York, Great American Alliance Insurance Co., Great American Insurance Co., Great American Assurance Co., and Ohio Security Insurance object to common fund certification in this case.

DATED this 29 day of June, 2005.

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

BY: 

Oliver S. Goe

ATTORNEYS FOR Ohio Casualty Insurance Co.,
West American Insurance Co., American Fire and
Casualty Co., Great American Insurance Co. of New
York, Great American Alliance Insurance Co., Great
American Insurance Co., Great American Assurance
Co., and Ohio Security Insurance