

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

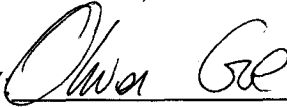
4. Application of a common fund under the facts of this case would violate provisions of the U.S. and Montana Constitutions, including but not limited to, procedural and substantive due process, freedom of contract, and taking without just compensation.

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, Pharmacist Mutual 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 Pharmacist Mutual Insurance Co.