

G. Andrew Adamek  
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

**FILED**

JUN 20 2005

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

ATTORNEYS FOR SAFETY NATIONAL CASUALTY CORP.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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

Petitioners,

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, Safety National Casualty Corp. (Safety National) submits the following Answer:

Safety National 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.

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, 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, Safety National objects to common fund certification in this case.

DATED this 20th day of June, 2005.

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

BY: *G. Andrew Adamek*  
G. Andrew Adamek

ATTORNEYS FOR SAFETY NATIONAL CASUALTY  
CORP.