

**FILED**

JUN 20 2005

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

Oliver H. Goe  
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ATTORNEYS FOR Trinity Universal Insurance Co. of Kansas and Trinity Universal 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,

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, Trinity Universal Insurance Co. of Kansas and Trinity Universal Insurance Co. submit the following answer:

Trinity Universal Insurance Co. of Kansas and Trinity Universal Insurance Co. 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.

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

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DOCKET ITEM NO. 251

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, Trinity Universal Insurance Co. of Kansas and Trinity Universal Insurance Co. object 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 Trinity Universal Insurance Co.  
of Kansas and Trinity Universal Insurance Co.