

Todd A. Hammer  
 David M. Sandler  
 HAMMER, HEWITT,  
 SANDLER & JACOBS, PLLC  
 Attorneys at Law  
 P.O. Box 7310  
 Kalispell, MT 59904-0310  
 Telephone: (406) 755-2225  
 Facsimile: (406) 755-5155  
 Email: [dsandler\\_hhs@centurytel.net](mailto:dsandler_hhs@centurytel.net)

**FILED**

FEB 14 2005

OFFICE OF  
 WORKER'S COMPENSATION JUDGE  
 HELENA, MONTANA

Attorneys for F.H. Stoltze Land & Lumber Co.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

**ALEXIS RAUSCH et. al.,**  
 Petitioners,

vs.

**MONTANA STATE FUND.**  
 Respondent/Insurer,

and

**JEREMY RUHD,**  
 Petitioner,

vs.

**LIBERTY NORTHWEST INSURANCE  
 CORPORATION,**  
 Respondent/Insurer.

WCC NO. 9907-8274R1

**RESPONSE OF F.H. STOLTZE LAND &  
 LUMBER CO. TO SUMMONS DATED  
 JANUARY 10, 2005 INCLUDING  
 OBJECTIONS TO SUMMONS AND  
 MOTION TO QUASH SUMMONS**

**COMES NOW** F.H. Stoltze Land & Lumber Co. ("Stoltze"), and in response to the Court's Summons dated January 10, 2005 in the above-entitled matter, responds as follows:

1. **OBJECTIONS:** Stoltze objects to the production of the information requested by the Summons, and moves to quash the summons pursuant to 24.5.316 ARM and 24.5.352 ARM, on the following grounds and for the following reasons:
  - A. Stoltze is not a party to this case and, consequently, this Court had no jurisdiction to issue a summons to Stoltze.
  - B. This Court does not currently have jurisdiction over Stoltze because no dispute exists between Stoltze and any claimants injured or suffering occupational diseases since June 30, 1991 or any attorneys and because no dispute has been presented pursuant to the Workers' Compensation and Occupational Disease Acts and this Court's rules.
  - C. This is not a class action, and class action claims have not been asserted in this action against any of the self-insureds which have not been made parties to this action.
  - D. Stoltze has no duty to solicit claims or to advise claimants of their legal rights in regard to said claims. See *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973); see also *Dennehy v. Anaconda Mineral Company*, WCC No.: 8612-4030, 1989 WL 253344 (holding that self-insured had no trust relationship with claimants.)
  - E. While the Court's jurisdiction and authority appears to extend to "supervising enforcement of the common fund . . . from all insurers involved" in this action, it does not appear to extend to parties such as Stoltze which have not been properly made parties to this proceeding, which have not been properly joined by the assertion of class action claims, and which have no duty to solicit claims or advise claimants of their legal rights in regard to such claims. The Montana Supreme Court did not intend to do contravene such law by its statements in *Rausch et. al. v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25 and *Ruhd v. Liberty Northwest Ins. Corp.*, 2004 MT 236, 322 Mont. 478 (*Ruhd II*), decided August 31, 2004.

The above reasons are more particularly set forth in the accompanying brief which is incorporated by reference.

2. **RESPONSE:** Subject to the foregoing objections and Stoltze's Motion to Quash Summons, and without waiving its objections or Motion to Quash, Stoltze states that it is currently unable to produce the information requested by this Court for the reasons set forth in the Affidavit of Rick Davenport, which is attached as Exhibit A and by this reference incorporated herein.

**WHEREFORE**, Stoltze respectfully requests the following relief:

1. That the Court grant Stoltze's Motion to Quash Summons, and order that Stoltze is not required to answer or further respond to said Summons; or
2. Alternatively, if required to answer said summons, that Stoltze be granted until April 30, 2005 within which to provide the information requested.

**DATED** this 14<sup>th</sup> day of February, 2005.

HAMMER, HEWITT, SANDLER & JACOBS, PLLC



Todd A. Hammer  
David M. Sandler  
P.O. Box 7310  
Kalispell, MT 59904-0310  
Attorneys for Respondent

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 HAMMER, HEWITT,  
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Respondent/Insurer,

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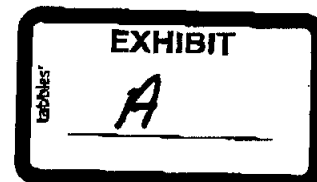
vs.

**LIBERTY NORTHWEST INSURANCE CORPORATION,**

Respondent/Insurer.

WCC NO. 9907-8274R1

**AFFIDAVIT OF  
 RICK DAVENPORT**




STATE OF MONTANA                    )  
   : ss  
 County of Flathead                    )

I, Rick Davenport, being first duly sworn upon oath, depose and say:

1. I work as a workers' compensation adjuster for Putman & Associates, Inc., a licensed third-party administrator of workers compensation claims in the State of Montana.
  
2. Putman & Associates has been a licensed third-party administrator since at least 1990. I have adjusting workers' compensation claims in Montana since June of 1995, but have been adjusting workers compensation claims in other states since 1977. I am making this affidavit on behalf of Stoltze Land & Timber Co. (hereinafter "Stoltze") and in response to the Summons issued by the Court on January 10, 2005.
  
3. Since 1991, we have adjusted claims for Stoltze, one of the Insurers or Self-Insureds to which the Summons dated January 10, 2005 was directed by this Court. As an adjuster for Stoltze, I have personal knowledge of the type of information maintained by Stoltze in regard to claims involving (a) claimants injured or suffering occupational diseases since June 20, 1991 to whom PTD benefits were paid, and (b) claimants injured or suffering occupational diseases since June 20, 1991 to whom TTD benefits were paid. I also have knowledge of the efforts which would be required to comply with or respond to the Summons, and I make this affidavit based upon my personal knowledge of such claims.
  
4. Stoltze is unable to provide the requested information to the Court by the deadline of February 14, 2005 because of the following reasons:
  - A. A computer inspection of the files and records will not provide the Court with the information that has been requested.
  
  - B. A physical inspection of the files and records is necessary to gather the information, particularly the information requested in subparagraphs 3, 4, 5, 6, 7 and 8 of paragraph 4 of the Court's Summons.

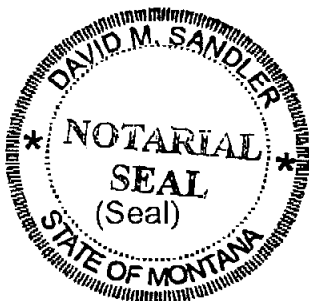
- C. With respect to the information sought in paragraph 4 of the Summons, Stoltze and I estimate that there are approximately 322 files that will need to be physically examined for claimants injured or suffering occupational disease since June 30, 1991 to whom PTD and/or TTD benefits may have been paid.
- D. A physical inspection or examination of these files cannot be accomplished by February 14, 2005, particularly since Putman & Associates also adjusts claims for several other of the insurers and self-insureds named in the Summons. In addition to our regular adjusting duties, I estimate that either myself or other adjusters at Putman & Associates will have to physically examine more than 1,000 files to comply with the Summons.
- E. Stoltze and I reasonably estimate that the physical inspection of the files necessary to comply with the Summons could not be completed until April 30, 2005.


DATED this 10 day of February, 2005.

  
 \_\_\_\_\_  
 RICK DAVENPORT

STATE OF MONTANA            )  
   : ss  
 County of Flathead         )

This instrument was acknowledged before me on this 10th day of February, 2005, by Rick Davenport



  
 \_\_\_\_\_  
 DAVID M. SANDLER  
 [Type, Stamp or Print Name]  
 Notary Public for the State of Montana  
 Residing at KALISPELL, Montana  
 My commission expires OCTOBER 5, 2008.

DATED this 10th day of February, 2005.

HAMMER, HEWITT, SANDLER & JACOBS, PLLC

A handwritten signature in cursive script, appearing to read "David M. Sandler", written over a horizontal line.

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