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OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ALEXIS RAUSCH, et al.,

Petitioners,

v.

MONTANA STATE FUND,

Respondent/Insurer,

and

v.

JEREMY RUHD,

Petitioner,

v.

LIBERTY NORTHWEST INSURANCE  
CORPORATION,

Respondent/Insurer.

WCC No. 9907-8274R1

*(Western Guaranty Fund -)*

**MONTANA INSURANCE GUARANTY  
ASSOCIATION'S RESPONSE TO  
SUMMONS**

COMES NOW the Montana Insurance Guaranty Association, by and through counsel, and hereby responds to the Summons issued by this Court on January 10, 2005.

In this Court's cover letter dated January 10, 2005, this Court served Summonses on the Western Guaranty Fund for the following insolvent insurers: Reliance National

Indemnity Company, Legion Insurance Company, Fremont Indemnity Company, and Credit General Insurance Company. The Western Guaranty Fund is a non-profit, unincorporated entity which provides administrative services, including claims adjusting, for the Montana Insurance Guaranty Association. However, the real party in interest is the Montana Insurance Guaranty Association, which is a non-profit association. See Mont. Code Ann. § 33-10-101 *et seq.* (2003). For ease of reference, the Montana Insurance Guaranty Association and the Western Guaranty Fund are hereinafter referred to as the Respondent.

In response to Paragraph 1 of the Summons, the Respondent notes that its records do not indicate that it received a copy of the Lien Notice which was sent to other insurers on January 23, 2003.

In response to Paragraph 2 of the Summons, absent a manual review of each open and closed file, the Respondent has no way of immediately identifying the claimants who received PTD benefits from it or one of the insolvent insurers. Further, the closed files of Credit General Insurance Company may have been destroyed.

In response to Paragraph 3 of the Summons, the Respondent agrees to withhold the attorneys' fees claimed in the Lien Notice after it receives a copy of the document.

In response to Paragraph 4 of the Summons, the Respondent states that it does not have a method by which it can immediately identify claimants who have received PTD benefits. The Respondent does not track this type of information, nor does its computer system have the capability of performing electronic search queries which identify claimants according to their classification as PTD, TTD or PPD.

The Summons seeks information dating back to July 1, 1991. However, this date pre-dates the insolvency of Reliance National Indemnity Company on October 31, 2001, the insolvency of Legion Insurance Company on July 25, 2003, the insolvency of Fremont Indemnity Company on July 2, 2003, and the insolvency of Credit General Insurance Company on January 1, 2001. For claims information prior to the insolvency dates, the liquidation estates will need to be contacted.

The Respondent recognizes that this Court has stated that insurers have a duty to identify claimants and notify them of their increased entitlement. However, the Respondent is not an insurance company and is uncertain if that obligation extends to it. Accordingly, it objects to the furnishing of the requested information on the basis that the information is not normally maintained in its usual course of business. Most of the files on which payments were made have been closed, and all closed files have been returned to the liquidators. Therefore, the information is no longer available locally and must be obtained through the liquidation estates. Because the Respondent has no physical files to review or examine, it is unable to identify which files to request from the liquidators. In addition, Respondent does not believe it is obligated to pay any portion of

an impairment award which accrued in full or in part prior to the date of an insurer's insolvency.

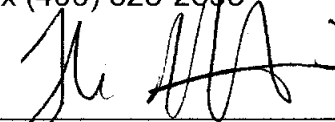
Given the uniqueness of the Respondent and the files it is currently adjusting as a result of the above-referenced insolvencies, the Respondent requests guidance from this Court with respect to its identification duties. If the Court orders the Respondent to manually review each of its open files, then the Respondent requests additional time to conduct that manual review, and the Respondent also requests Mr. Dale, Mr. Beck and Mr. Roberts to bear the financial burden of producing such information. Because the Respondent has no administrative procedures currently in place to gather this information, if the Court orders Respondent to conduct a manual review, then the Respondent requests the Court to allow it to file a Status Report in 90 days which outlines the progress and difficulties the Respondent is experiencing with its information-gathering. However, even if the Court orders a manual review, the Respondent asserts that the liquidation estates of the insolvent insurers will need to be contacted for information on closed claims and claims with injury or onset dates occurring prior to the date of the respective insurer's insolvency.

DATED this 14 day of February, 2005.

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