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February 23, 2005

VIA TELEFAX AND U.S. MAIL

Thomas J. Murphy, Esq.
Murphy Law Firm
P.O. Box 3226
Great Falls, MT 59403-3226

Re: *Reesor v. State Fund*

FILED

MAR 03 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Dear Tom:

Enclosed is a copy of the Summons from *Hiett*, which we received in today's mail. As we mentioned in our letter to you of February 17, 2005, we are uncertain if the WCC wants to send a general Summons in this case, similar to the one it sent in *Hiett*. We may need to solicit the WCC's input regarding this issue before we finalize a proposed Summons for the WCC's review and consideration.

In *Stavenjord*, because we were responsible for drafting the Joint Stipulation of Facts, we incorporated many of your suggested changes into a revised version of the factual stipulation and then sent the revised document to you for review and approval. We assumed we were following a similar approach with respect to the Summons in *Reesor*, but apparently we are not. Assuming the WCC prefers the Summons to identify specific issues, we would like you to modify the Summons in a manner consistent with the suggestions requested in our letter of February 17, 2005. Earlier this morning, you asked us to provide you with specific language. Therefore, we request the following specific changes:

1. In your first identified issue, after the word "unconstitutional," we would like to insert the phrase "as applied to PPD claimants";
2. As a second legal issue, we would like to add the following: "As a result of *Russette v. Chippewa Cree Housing Authority* (1994), 265 Mont. 90, 874 P.2d 1217, which held that PPD benefits did not terminate upon retirement under §39-71-710 MCA (1991 & 1993), does the common fund attorney fee lien in

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this matter extend to claims occurring under the 1991 and 1993 versions of the WCA or ODA?;

3. In your second identified issue, please insert "if one exists" at the end of the sentence;
4. In your third identified legal issue, please change it so that it begins: "Do the 2003 amendments to Montana's attorney fee statutes, §39-71-611(3) MCA (2003) and §39-71-612(4) MCA (2003), which became effective on April 21, 2003,"
5. As a fifth legal issue, we would like to add the following: "Is the decision in *Reesor* entitled to retroactive application, as discussed most recently in *Dempsey v. Allstate Ins. Co.*, 2004 MT 391, 325 Mont. 207, 104 P.3d 483."

Lastly, in your second-to-last paragraph on page two, please insert the underlined material: ". . . appear and participate in the *Reesor* common fund post-remand proceedings, which will include the development of a factual record to use for purposes of analyzing the retroactivity issue.".

Please incorporate these changes and send us a revised version of your Summons so that we can examine it prior to its submission to the WCC.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

By


Bradley J. Luck

BJL:sec

Enc.

c: James Hunt (via fax and mail) (w/enc.)
Nancy Butler, Esq. (w/enc.)
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