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FILED

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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA
Lou Joi Poelman, Paralegal
Sandra Lee Gilbert, Paralegal

Thomas J. Murphy, Attorney
Charla K. Tadlock, Attorney

March 2, 2005

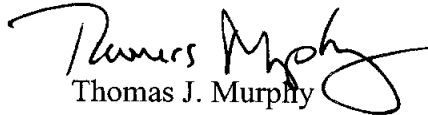
Honorable Mike McCarter
Workers Compensation Court
P O Box 537
Helena, Mt 59624-0357

Re: Reesor v. State Fund & Satterlee v. Zenahlik, et. al.
Cause # 2002-0676 Cause # 2003-0840

Dear Judge McCarter:

Pursuant to your request during the Satterlee hearing yesterday, I enclose my current drafts of the proposed Summons to Appear and the proposed Notice of Claim for Attorney Lien. I also enclose a copy of Brad Luck's letter, dated 2/23/05, which commented on earlier versions of these documents. Unfortunately, Mr. Luck's letter has little relevance now, because I changed these documents significantly after reviewing similar pleadings in Hiatt. Obviously, I am sending copies of these proposed pleadings to all counsel listed below, so I would not object if defense counsel offers additional comments to the Court. Thank you.

Sincerely yours,


Thomas J. Murphy

TJM/ljp

encs. Proposed Summons to Appear
Proposed Notice of Claim for Attorney Lien
Luck letter to Murphy - 2/23/05
cc: Dale Reesor
Thomas E. Martello w/encs.
Bradley J. Luck w/encs.
Jim Hunt w/encs.
David Sandler w/encs.
Michael Heringer w/encs.

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,
Petitioner,

vs.

MONTANA STATE FUND
Respondent/Insurer

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WCC No. 2002-0676

SUMMONS TO APPEAR

The State of Montana to the Workers' Compensation Insurers and Self-Insurers listed below

[Insert List of Insurers Here]

Your company is hereby summoned to appear in the above-captioned case. This common fund action will determine if your company owes additional workers' compensation benefits to certain claimants that were injured or developed occupational diseases between July 1, 1987 and December 22, 2004. This summons is being sent to every workers' compensation insurance company, self-insurer, or guaranty association that extended workers' compensation insurance in Montana between July 1, 1987 and December 22, 2004. A failure to appear in this case by any such company will constitute a waiver of that entity's right to contest this Court's rulings and monetary judgments.

In Reesor v. State Fund, 2004 MT 370 (12/22/04), the Montana Supreme Court held that §39-71-710 MCA was unconstitutional, because the statute denied equal indemnity benefits to injured and diseased elderly workers. Following the Reesor decision, the petitioner's attorney, Thomas J. Murphy, filed a notice of common fund action, which asked this Court to order all insurers and self-insurers to pay additional Reesor benefits to injured and diseased elderly workers with claims that arose between July 1, 1987 and December 22, 2004. In addition, the petitioner's attorney claims an attorney fee lien on all such Reesor benefits. Attached to this summons, the Court provides a Notice of Attorney Fee Lien.

The Montana Supreme Court determined that a common fund attorney fee lien extends to all payable common fund benefits. Rausch, Fisch, and Frost v. State Comp. Ins. Fund, 2002 MT 203, 311 Mont. 210, 54 P.3d 25. Furthermore, the Montana Supreme Court held that the common fund attorney fee lien extends "globally" to all insurers and self-insurers in Montana. Ruhd v. Liberty Northwest Ins. Corp. 2004 MT 236, 322 Mont. 478, 97 P.3d 561. Therefore, the Reesor common fund claim and attorney fee lien applies to all insurers and self-insureds that owe Reesor benefits to injured and diseased elderly workers with claims that arose between July 1, 1987 and December 22, 2004. In accordance with these legal precedents stated above, petitioner's counsel requested certification of this case as a common fund case and enforcement of his claimed attorney fee lien. On February 3, 2005, this Court held an in-person conference with counsel to discuss several legal issues. The Court will conduct further proceedings to determine whether a common fund exists and the extent of the common fund. **Resolution of these legal issues will govern this case and establish precedents which will apply to your company as well as all other insurers and self-insurers.**

If your company wishes to be heard concerning the Reesor common fund certification and the enforcement of the common fund attorney fee lien, your company must cause its attorneys to file a Notice of Appearance in this Court on or before the 7th day of April, 2005. Your company will then be provided an opportunity to participate in the legal resolution of this case. A failure to timely file a Notice of Appearance will constitute an express waiver of your company's right to contest this Court's decisions in the Reesor post-remand proceedings.

The Notice of Appearance should be mailed to the Workers' Compensation Court at P.O. Box 537, Helena, Montana 59624-0537, or delivered to its offices at 1625 11th Avenue, Helena, Montana, 59601.

Copies of minutes of conferences and hearings, additional information about the Reesor common fund case, and additional information about other related common fund actions, is available in the "Common Fund" section of the Montana Workers' Compensation Court's web site found at the following e-mail address: www.wcc.dli.mt.gov.

DATED this ____ day of March, 2005.

Judge Mike McCarter

Attachment: Notice of Attorney Lien

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,
Petitioner,

vs.

MONTANA STATE FUND
Respondent/Insurer

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WCC No. 2002-0676

NOTICE OF CLAIM OF ATTORNEY LIEN

To: All workers' compensation insurers and self-insurers that provided workers' compensation insurance coverage in the State of Montana from July 1, 1987 to December 22, 2004:

Please take notice that, pursuant to the common fund doctrine, and the decision of the Montana Supreme Court in Reesor v. State Fund, 2004 MT 370 (12/22/04), the petitioner's attorney in the above-entitled matter claims an attorney fee lien with regard to every workers' compensation or occupational disease claim, which arose on or after July 1, 1987, wherein the claimant was denied full and equal indemnity benefits because of the unconstitutional operation of Section 39-71-710 MCA (1987 to present). The subject attorney fee lien is for twenty-five percent (25%) of the additional Reesor benefits owed. This attorney fee lien does not apply to claims arising after December 22, 2004.

DATED this _____ day of March, 2005.

Judge Mike McCarter