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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Judge James Jeremiah Shea
Workers Compensation Court
P O Box 537
Helena, Mt 59624-0357

Re: Comments on Common Fund Procedures

Dear Judge Shea:

At your request, I prepared a few comments that assist the Court in streamlining the common fund litigation process. Currently, the main problem obstructing progress involves hundreds of small non-responsive insurance companies.

Previously, Judge McCarter asked some insurers to appear voluntarily. Specifically, if the insurer had appeared in one common fund action, the Court asked the insurer to appear in all of the common fund actions. Judge McCarter made his request during a hearing attended by approximately twenty defense attorneys, and none of them objected. I hope those insurers appeared, and that may have solved part of this problem.

As to the remainder of the non-responsive insurers, however, I ask the Court to allow the current litigation to proceed against the insurers that have appeared. This approach allows common fund counsel to pursue relevant claims against party insurers without requiring counsel to renounce ("state that he will not pursue") future common fund actions against non-responsive insurance companies.

The non-responsive insurers are generally small companies with few if any relevant claims. I submit that it would unduly delay the common fund litigation if the Court suspends all proceedings (as is currently the case) until all of the non-responsive companies are found and served.

DOCKET ITEM NO. 316