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FILED

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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Attorneys for, Lumberman's Underwriting Alliance,
ASARCO, Inc., Benefis Healthcare, Continental Casualty Co.,
Golden Sunlight Mines, Northwest Healthcare, Corp.,
Northwestern Energy, LLC, F.H. Stoltze Land &
Lumber Co., Plum Creek Timber Co. Inc, Rosauers,
and Safeway. Delineated

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

<p>DALE REESOR, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer,</p>	<p>WCC NO. 2002-0676 BRIEF REGARDING ISSUES DELINEATED BY THE WORKERS' COMPENSATION COURT</p>
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COMES NOW the above-referenced Intervenors, by and through their attorneys of record, and joins in the briefs of the named Respondent and Intervenors in this action. Notwithstanding the arguments set forth in the named Respondent's and Intervenors' briefs, and without waiving the same, the process undertaken by the Petitioner, and condoned by this Court, effectively establishes the practice requiring the Respondent and Intervenors to conduct expensive and unduly burdensome discovery upon themselves. As reflected in the affidavits attached to and filed with AIG's brief, the expense and effort to locate claims files which meet the *Reesor* criteria over a seventeen year period is mammoth in nature. The mammoth nature of identifying claims which meet the *Reesor* criteria is further complicated by the unresolved issue of closed, settled, inactive or final

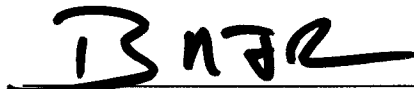
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claims which has been briefed in *Flynn*.

As such, this Court should allow the Insurers a dollar for dollar deduction from the global common fund for the reasonable expense associated with locating claims which meet the *Reesor* criteria. This Court has inherent authority to allow for a deduction for the reasonable expense incurred by Insurers to identify claims which meet the *Reesor* criteria. A.R.M. §24.5.325(1)(b); *Worts v. Hardy Construction*, WCC No. 8701-4199, 1990 WL 304042; *Dietrich v. Liberty Mutual Insurance Company*, 2003 MTWCC 42. Ordinarily, it is the Petitioner's responsibility to conduct his/her own discovery, not the sole responsibility of the Insurer. When discovery is unduly burdensome and will cause great expense upon an Insurer it is the duty of the Court to level the playing field.

DATED this 5th day of May, 2006.

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CERTIFICATE OF SERVICE

This is to certify that I, Bryce R. Floch sent on this 5th day of May, 2006, the forgoing attached **BRIEF REGARDING ISSUES DELINEATED BY THE WORKERS' COMPENSATION COURT** was duly serviced upon the following attorneys of record, by depositing a true copy thereof in the United States mail, postage paid, addressed as:

Thomas Murphy
Murphy Law Firm
PO Box 3226
Great Falls, MT 59403-3226



Bryce R. Floch