

FILED

JAN 3 2006

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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Attorney for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

vs.

Liberty Ins. Underwriters Inc.
Liberty Insurance Corp.
Liberty Mutual Fire Insurance Co.
Liberty Mutual Insurance Co.
Liberty Northwest Ins. Corp.
LM General Insurance Company
LM Insurance Corporation
LM Personal Insurance Company
LM Property & Casualty Ins. Co.
Wausau Business Ins. Co.
Wausau Underwriters Ins. Co.
One Beacon American Ins. Co.
One Beacon Ins. Co.

Respondents.

WCC No. 2002-0676

**LIBERTY OBJECTION TO
PETITIONER'S DISCOVERY
REQUEST TO LIBERTY
NORTHWEST AND
ASSOCIATED INSURERS
AND
MOTION FOR
PROTECTIVE ORDER
AND SUPPORTING BRIEF**

On December 12, 2005 Petitioner served on Respondent his discovery requests, a copy of which is attached.

In reviewing the Workers' Compensation Court's website on this Common Fund case, Liberty was unable to find any authorization from the Court to initiate discovery. The procedure that has been followed in other Common Fund cases

DOCKET ITEM NO. 337

is that the Court would work through what have now been termed “implementation issues”, such as whether a Common Fund exists, the scope of the Common Fund (retroactive application), the procedure to identify relevant Common Fund cases, etc.

The effect of Petitioner’s discovery is to preempt the Court’s working through the implementation issues by asking for a global evaluation of an insurer’s caseload, under criteria not reviewed and authorized by the Court, to identify claims that may fall under the holding in Reesor.

For the reasons set forth below, Liberty objects to this discovery request and moves for protective order.

MOTION FOR PROTECTIVE ORDER AND SUPPORTING BRIEF

COMES NOW the above-named Respondent, pursuant to ARM 24.5.325 and moves the Court for an order directing that a discovery petition request not be had unless and until the Court, through the procedure previously followed, expressly to declare the existence of a Common Fund and then declare how it is to be implemented.

BRIEF

Under ARM 24.5.325 the Court has broad discretion in limiting discovery, including a protective order to the effect that certain types of discovery not be had.


In the instant case, Petitioner filed his Notice of Common Fund attorney lien on January 20, 2005.

The Court in its SUMMONS AND NOTICE OF ATTORNEY FEE LIEN filed April 22, 2005 at ¶4 states "Further, each of you is made a Respondent to the Petitioner's Common Fund claims and summoned to answer the Petitioner's Request for Certification of a Common Fund and enforcement of his attorney's lien." At ¶5 the Court goes on to order "Following the deadline for filing of your answer, the Court will conduct further proceedings to determine whether a Common Fund exists, the extent of any Common Fund, and the Petitioner's entitlement to attorney fees pursuant to the Common Fund doctrine. If the Court finds there is a Common Fund, then proceedings to enforce Common Fund entitlement and the Petitioner's attorney fee lien will follow."

It is against this background that Petitioner's discovery request is premature because the Court, and only this Court, has the authority under the summons to direct that discovery be had, the scope of that discovery and what files would be relevant within the scope of discovery. Stated differently, Petitioner has jumped the gun on the procedure generally followed by this Court in Common Fund cases as well as the specific directives in its SUMMONS AND NOTICE OF ATTORNEY FEE LIEN.

For the reason stated above, Liberty requests the Court to enter an order directing that the discovery requested by Reesor against the named insurers in the attached discovery request not be had at this time. Liberty further requests that an order be issued directing Reesor not to direct any further discovery requests at the insurers in the attached pleading unless and until authorized by the Court to do so.

DATED this 30 day of December, 2005.


Larry W. Jones
Attorney for Respondent
Liberty Northwest Ins. Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day December, 2005, I served the original of the foregoing LIBERTY NORTHWEST'S RESPONSE TO PETITION FOR HEARING, by first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
PO Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

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


Sharon S. Delaney

THOMAS J. MURPHY
Murphy Law Firm
P.O. Box 3226
Great Falls, MT 59403-3226
Phone: 406-452-2345
Fax: 406-452-2999
Attorneys for Petitioner

RECEIVED

DATE 2-14-05

*Due 1/20/05 w/0
3day
mail*

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,)	
Petitioner,)	WCC No. 2002-0676
)	
vs.)	Discovery Requests to
)	Liberty Northwest
Liberty Ins. Underwriters Inc.)	and Associated Insurers
Liberty Insurance Corp)	
Liberty Mutual Fire Insurance Co.)	
Liberty Mutual Insurance Co.)	
Liberty Northwest Ins. Corp)	
LM General Insurance Company)	
LM Insurance Corporation)	
LM Personal Insurance Company)	
LM Property & Casualty Ins. Co.)	
Wausau Business Ins. Co.)	
Wausau Underwriters Ins. Co.)	
One Beacon American Ins. Co.)	
One Beacon Ins. Co)	
Respondents/Insurers)	

TO: Larry Jones, Attorney for the Respondents/Insurers.

COMES NOW the petitioner, pursuant to Rule 24.5.323 and 24.5.324 of the Procedural Rules of the Workers' Compensation Court, and hereby asks the named insurance companies to answer the following interrogatories in writing and under oath, within twenty (20) days after receipt.

The information requested herein is not restricted to your personal knowledge, but includes information in the possession of your insurance

company employees, officers, agents, representatives, and attorneys, and extends to information which you or your attorneys can obtain upon reasonable inquiry.

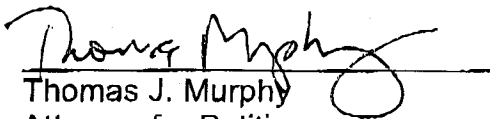
These interrogatories are continuing in nature, and the petitioner hereby asks that any additional information coming into the possession of the respondent/insurer or its counsel that would change the answer or answers in any way be promptly furnished to counsel for the petitioner no later than fifteen (15) days after receiving such information.

INTERROGATORY NO. 1:

Please identify all workers compensation claimants that may be entitled to additional PPD benefits pursuant to Reesor v. State Fund. Please consider this a request for the identities of potential Reesor claimants from 7/1/1987 through 12/22/2004. For each claimant identified please state:

- A. State the name and address of the claimant;
- B. State the date of injury;
- C. State the date of birth of the claimant.
- D. State the total amount of any payment made to that claimant;
- E. State the total amount of any additional Reesor benefit entitlement that is due to that claimant (if known);
- F. If you do not know the amount of the additional Reesor benefit entitlement due to the claimant, please state the PPD element(s) that is/are known and those that are not known;
- G. State the claim number;
- H. State whether you contend that the claimant's case is closed or final; and if the answer is yes, please state the rationale supporting your contention.
- I. Please describe the procedure(s) that the Liberty Northwest Insurance Group used to identify each of the listed claimants in response to this interrogatory. (For instance, if computer searches were used, please identify the database and query(ies); or if manual searches were used, please identify the location of the files and the search criteria).
- J. State the name of the Insurer for each claim

DATED this 12th day of December, 2005.

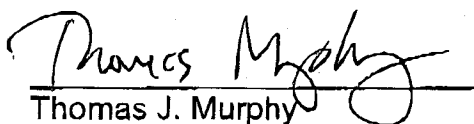

Thomas J. Murphy
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2005, a copy of the foregoing **Discovery Requests to Liberty Northwest Insurance Group** was served by mailing a true and correct copy of said document via first class mail to the attorneys at the address listed below:

Larry Jones
Jones & Garber Law Office
700 SW Higgins Ave #108
Missoula, MT 59803-1489

Attorney for Respondents/Insurers


Thomas J. Murphy

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Larry W. Jones

406-543-2420

LarryW.Jones@llawoffice.com

Carrie L. Garber

406-543-2434

Carrie.Garber@llawoffice.com

TO: Jackie Bockman, Deputy Clerk

FROM: Sharon Delaney

DATE: January 4, 2006

RE: Reesor, Case No. WCC No. 2002-0676

PAGES: 4 pages including transmittal sheet

FAX #: 406/444-7798

Jackie, attached is the copy of Discovery Requests in the captioned matter to be attached to our Discovery Objections.

Thank you for calling -- Sharon

This fax, and any attachments thereto, is intended only for the use of the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this fax, you are hereby notified that any dissemination, distribution or copying of this fax, and any attachments thereto, is strictly prohibited. If you have received this fax in error, please notify the sender via telephone at (406) 543-2446.