

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 40

WCC No. 2002-0676

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DALE REESOR

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

**FILED**

JUL 20 2005

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

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ORDER REGARDING APPLICABILITY OF RULINGS ON LEGAL ISSUES

**Summary:** In a conference with counsel on July 14, 2005, questions arose as to whether rulings of the Court on defenses raised by some insurers would apply to other insurers.

**Held:** All legal rulings will apply globally to all insurers and self-insurers whether or not they have specifically raised the issues which are decided.

**Topics:**

**Common Fund: Jurisdiction.** If the petitioner's attorney is not entitled to common fund fees because no common fund exists or application of the common fund doctrine would be unconstitutional, the Court has no further jurisdiction to order payment of benefits to claimants not involved in the main litigation or to order payment of common fund attorney fees. Thus, all legal rulings regarding absolute defenses to a claim of a common fund must be applied to all insurers and self-insurers whether or not they raised the legal defenses which are successful.

**Common Fund: Insurers.** If the petitioner's attorney is not entitled to common fund fees because no common fund exists or application of the common fund doctrine would be unconstitutional, the Court has no further jurisdiction to order payment of benefits to claimants not involved in the main litigation or to order payment of common fund attorney fees. Thus, all legal rulings regarding absolute defenses to a claim of a common fund must be applied to all insurers and self-insurers whether or not they raised the legal defenses which are successful.

DOCKET ITEM NO. 268

**Common Fund: Generally.** Since determination of the petitioner's attorney to common fund fees depends on identification and payment of benefits, legal rulings affecting such identification and payment must be applied across the board irrespective of the insurer.

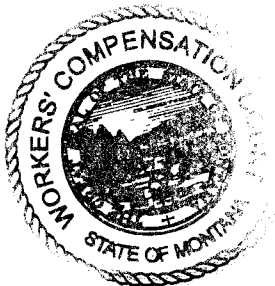
¶1 Following extensive discussion at the July 14, 2005 conference regarding the applicability of rulings on legal issues raised by various parties, this Court has concluded that all legal rulings henceforth made in this case shall, unless otherwise ordered, apply globally to each and every insurer and self-insurer irrespective of the nature of responses it filed or the specific defenses, if any, it raised. My conclusion in this regard is compelled by the nature of these proceedings. The proceedings are to enforce a common fund attorney fee lien claimed by the petitioner's attorney following successful litigation which may establish the entitlement of similarly situated claimants to additional workers' compensation benefits. If, as some insurers urge, there is no common fund, or application of the common fund doctrine is unconstitutional, then the petitioner's attorney is not entitled to fees and the Court lacks jurisdiction to proceed further. In that event, the request for common fund fees would have to be dismissed in its entirety, and it would matter not that some insurers did not raise or join in the successful legal defenses.

¶3 With respect to other legal issues which do not entirely defeat the claim for common fund attorney fees, those issues involve determinations as to which claimants are entitled to further benefits as a result of the Supreme Court's decision in this case, *Reesor v. Montana State Fund*, 2004 MT 370. Since common fund attorney fees are payable only with respect to benefits paid as a result of the *Reesor* decision, those determinations must similarly be applied across the board

¶4 This Order should clear up any confusion or uncertainty that arose as a result of the discussion at the July 14, 2005 conference.

DATED in Helena, Montana, this 20<sup>th</sup> day of July, 2005.

(SEAL)



JUDGE

c: E-Mailed to Reesor Distribution List (July 20, 2005)

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## Workers' Compensation Court

Mike McCarter  
Judge

TO: Counsel and Other Interested Parties in *Reesor* and Other Common Fund Proceedings

FROM: Hon. Mike McCarter 

DATE: July 20, 2005

RE: Applicability of Legal Rulings

Following the discussion we had in *Reesor* on July 14, 2005, regarding which insurers will be affected by rulings on legal defenses and issues raised by some but not all insurers, I further reflected on the matter and realized that all legal rulings must be applied globally to all insurers whether or not the insurers specifically raised or joined in the defenses and issues. My conclusion is compelled by the extraordinary nature of the common fund proceedings. Therefore, to avoid any further confusion, I have issued an Order Regarding Applicability of Rulings on Legal Issues. That Order alleviates any need for insurers who have not heretofore raised specific defenses or legal issues from moving the Court to amend their responses, and avoids the bizarre scenario which would ensue if claimants of some insurers benefitted from the *Reesor* decision merely because their insurers failed to raise a defense, while claimants of insurers raising the defense would receive nothing.

MM:jb