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Attorneys for Respondent/Insurer

**FILED**

JAN 3 2006

OFFICE OF  
WORKER'S COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

v.

MONTANA STATE FUND,

Respondent.

WCC No. 2002-0676

**STATE FUND'S  
RESPONSES/OBJECTIONS TO  
PETITIONER'S DISCOVERY  
REQUESTS AND MOTION TO STAY**

COMES NOW the Montana State Fund ("State Fund") and responds to the Discovery Requests to Montana State Fund dated December 12, 2005, as follows:

**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. The name and address of the claimant;

DOCKET ITEM NO. 336

- 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 Montana State Fund 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).

\*Note: Petitioner's counsel agrees to abide by the terms of the State Fund's privacy agreement, which the parties signed in the Stavenjord case.

**RESPONSE:** Objection. The Request is premature and unduly burdensome. Pursuant to Administrative Rules of Montana 24.5.325 the State Fund moves the Court for a Protective Order directing that the discovery be stayed until (and if) such time as a common fund has been found and a review and remediation process has been established by the Court. In support of the objection and motion, the State Fund states as follows:

This Court issued a Summons to workers' compensation insurers potentially affected by the Supreme Court ruling in this case on April 22, 2005. At paragraph 5 of the Summons the Court indicated that, following the appearances of respondent parties it "will conduct further proceedings to determine whether a common fund exists . . . If the Court finds there is a common fund, then proceedings to enforce common fund entitlements . . . will follow." The Court's Minute Entry from the July 14, 2005, in-person conference indicates that it will identify issues and set a briefing schedule. Several parties have appeared and raised substantive issues regarding the common fund and

implementation of the Supreme Court ruling. The Court has not yet determined the issues to be briefed or set a schedule for such filings, although other issues that may be involved are being briefed in other common fund cases. A determination of any of several issues raised, predominately the common fund and retroactivity questions, are necessary before any remediation process or procedure may be considered.

As a result of the above, the extensive efforts required to respond to the noted discovery are premature. No finding of a common fund has been made. No remediation efforts have been directed. Most importantly, even if a common fund is established, there is no guarantee that the extensive efforts required to respond to the discovery will later be found to be sufficient by the Court and Petitioner and the entire process may have to be repeated.

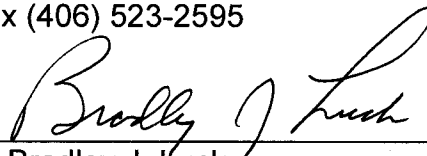
In light of the above, the Requests are overly burdensome. As the Court and counsel are well aware, the State Fund is engaged in remediation and discovery efforts in other common funds and class actions. The administrative cost and burden of such efforts is significant, severely stressing available resources. To divert such efforts to a premature and presently unnecessary project would not only be unreasonably costly in terms of labor hours and expense it would limit or preclude efforts on other projects that have been directed by the Courts or are incident to necessary litigation or claim activities.

DATED this 30 day of December, 2005.

Attorneys for Respondent/Insurer

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By

  
Bradley J. Luck

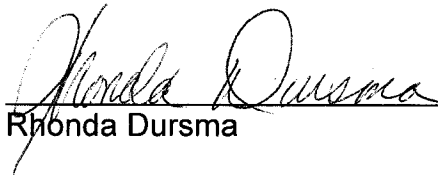
**CERTIFICATE OF MAILING**

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Respondent/Insurer, hereby certify that on this 30<sup>th</sup> day of December, 2005, I mailed a copy of the foregoing **STATE FUND'S RESPONSES/OBJECTIONS TO PETITIONER'S DISCOVERY REQUESTS AND MOTION TO STAY**, postage prepaid, to the following persons:

Mr. Thomas J. Murphy  
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\_\_\_\_\_  
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Larry E. Riley  
Susan P. Roy  
Robert E. Sheridan  
Peter J. Stokstad  
Kevin A. Twidwell  
William T. Wagner  
Kelly M. Wills

December 30, 2005

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

A. Craig Eddy, MD, JD  
OF COUNSEL - HEALTH LAW

J. C. Garlington  
1908 - 1995

Sherman V. Lohn  
(Retired)

R. H. "Ty" Robinson  
(Retired)

RE: Reesor v. Montana State Fund  
WCC No. 2002-0676

Dear Pat:

Enclosed for filing is State Fund's Responses/Objections to Petitioner's Discovery Requests and Motion to Stay in the above-captioned matter. Thank you for your assistance in this matter. If you have any questions, please feel free to call

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

Bradley J. Luck

BJL:rad

Enc.

c: Mr. Thomas J. Murphy  
Mr. Larry Jones  
Mr. James G. Hunt