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3. Greenwich Insurance Company
4. American Economy Insurance Company
5. American States Insurance Company
6. American States Preferred
7. General Insurance Company
8. First National Insurance Company
9. American Guarantee & Liability Insurance Company
10. American Zurich Insurance Company
11. Assurance Company of America
12. Colonial American Casualty and Surety Company
13. Fidelity and Deposit Company of Maryland
14. Maryland Casualty Company
15. Northern Insurance Company of New York
16. Valiant Insurance Company
17. Zurich American Insurance Company
18. Zurich American Insurance Company of Illinois
19. Clarendon National Insurance Company
20. Centre Insurance Company
21. XL Insurance Company of New York
22. XL Reinsurance America
23. XL Specialty Insurance Company
24. Markel Insurance Company
25. Safeco Insurance Company of America
26. Safeco Insurance Company of America
27. Safeco Insurance Company of Illinois
28. Everest National Insurance Company.
29. Fairfield Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

vs.

MONTANA STATE FUND,

Respondent/Insurer.

WCC No. 2002-0676

ANSWER TO SUMMONS AND
NOTICE OF ATTORNEY FEE LIEN

Comes now Respondents, American Alternative Insurance Corp.; American Reinsurance Company; Greenwich Insurance Company; American Economy Insurance Company; American States Insurance Company; American States Preferred; General Insurance Company; First National Insurance Company; American Guarantee & Liability Insurance Company; American Zurich Insurance Company; Assurance Company of America; Colonial American Casualty and Surety Company; Fidelity and Deposit Company of Maryland; Maryland Casualty Company; Northern Insurance Company of New York; Valiant Insurance Company; Zurich American Insurance Company; Zurich American Insurance Company of Illinois; Clarendon National Insurance Company; Centre Insurance Company; XL Insurance Company of New York; XL Reinsurance America; XL Specialty Insurance Company; Markel Insurance Company; Safeco Insurance Company of America; Safeco Insurance Company of America; Safeco Insurance Company of Illinois; Everest National Insurance Company; Fairfield Insurance Company ("Respondents"), by and through counsel of record, and pursuant to this Court's *Summons and Notice of Attorney Fee Lien*, dated April 22, 2005, answers Petitioner's request for certification of a common fund and for enforcement of his purported attorney's lien in the above entitled action.

ANSWER

1. This action violates the due process rights of Respondents to the extent that this Court seeks to impose liability upon Respondents as a result of the Court's decision in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, an action in which Respondents were not a party and in which they did not have an opportunity to be heard on the merits.
2. No common fund may be certified in this case because the participating litigant, Petitioner Dale Reesor, did not through the decision in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, create, preserve or increase an identifiable monetary fund or benefit in which all non-participating beneficiaries maintain an interest.

3. A common fund may not be certified in this case because the purported non-participating beneficiaries of the decisions in this case and in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, are not ascertainable for several reasons, including but not limited to the fact that Montana law and regulations do not require the indefinite retention of claim files.
4. A common fund does not exist in this case because the decisions in this case and in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, are no more than favorable precedent to future litigants seeking permanent partial disability benefits under Montana's Workers' Compensation Act.
5. Even if a common fund were created through the efforts of Petitioner Reesor via the Court's decision in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, Petitioner's common fund attorney's lien does not and cannot extend to "every workers' compensation claim, with date of injury on or after June 30, 1987, wherein the claimant was denied . . . benefits because of the unconstitutional operation of Section 39-71-710 MCA (1987 to present)." Petitioner's purported attorney lien notice is overbroad because workers' compensation claimants whose claims were released or closed are not entitled to additional benefits. To the extent that closed claim files have not been retained, such claimants are unascertainable.
6. Even if a common fund were created through the efforts of Petitioner Reesor, neither Petitioner Reesor nor his attorney are entitled to twenty-five percent of additional benefits that may be awarded to non-participating beneficiaries with whom Reesor or his attorney have no relation. Under the common fund doctrine, non-participating beneficiaries should contribute, in proportion to the benefits actually received by them, only to the litigation costs incurred by Petitioner Reesor in *Reesor v. Montana State Fund*, 2004 MT 370, 103 P.3d 1019, 325 Mont. 1, including reasonable attorney fees.
7. In the event that a common fund is found to exist in this case, the identified beneficiaries are liable for payment of the attorneys' fees and not these answering Respondents.
8. Respondents request and reserve the right to assert additional grounds and defenses, or to adopt the grounds presented by others responding to the summons as circumstances apply and warrant.

WHEREFORE, Respondents respectfully request this court to issue an order denying the existence of a common fund in this case.

Dated this 20th day of June, 2005.

CROWLEY, HAUGHEY, HANSON,
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Insurance Corp.; American Reinsurance
Company; Greenwich Insurance
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Insurance Company; American States
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Preferred; General Insurance Company;
First National Insurance Company;
American Guarantee & Liability
Insurance Company; American Zurich
Insurance Company; Assurance
Company of America; Colonial
American Casualty and Surety
Company; Fidelity and Deposit
Company of Maryland; Maryland
Casualty Company; Northern Insurance
Company of New York; Valiant
Insurance Company; Zurich American
Insurance Company; Zurich American
Insurance Company of Illinois;
Clarendon National Insurance
Company; Centre Insurance Company;
XL Insurance Company of New York; XL
Reinsurance America; XL Specialty
Insurance Company; Markel Insurance
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Company; and Fairfield Insurance
Company.

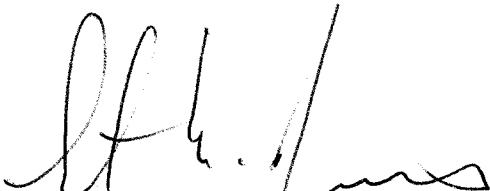
By: 

STEVEN W. JENNINGS

CERTIFICATE OF SERVICE

I, STEVEN W. JENNINGS, one of the attorneys for the law firm of Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., hereby certify that on the 20th day of June, 2005, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

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



STEVEN W. JENNINGS