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FILED

JUN 30 2005

Attorneys for ASARCO, Inc., Benefis,
 Continental Casualty Company,
 Golden Sunlight Mines, Northwest Healthcare,
 Corp., Northwestern Energy, LLC, Plum Creek Timber Co.,
 F.H. Stoltze Land & Lumber Co., and Safeway

OFFICE OF
 WORKERS' COMPENSATION JUDGE
 HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

<p>DALE REESOR,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">and</p> <p>MONTANA STATE FUND</p> <p style="text-align: center;">Respondent/Insurers.</p>	<p style="text-align: center;">WCC NO. 2002-0676</p> <p style="text-align: center;">RESPONSE TO PETITIONER'S CLAIM FOR COMMON FUND ATTORNEYS FEES</p>
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Come Now Respondents, ASARCO, Inc., Benefis, Continental Casualty Company, Golden Sunlight Mines, Northwest Healthcare, Corp., Northwestern Energy, LLC, Plum Creek Timber Co., F.H. Stoltze Land & Lumber Co., and Safeway by and through counsel of record, and pursuant to this Court's Summons and Notice of Attorney Fee Lien of April 22, 2005, answer Petitioner's claim that a common fund exists in the above-entitled action.

ANSWER

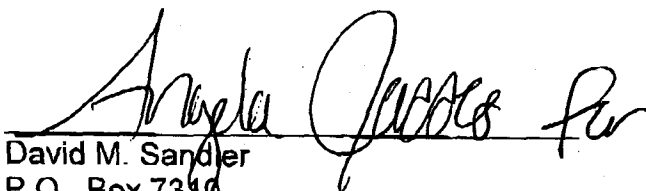
1. A common fund does not exist in this case because the purported non-participating beneficiaries of the decisions in this case and in *Reesor v. Montana State Fund*, 2004 MT 370, 130 P.3d 1019, 325 Mont. 1, are not ascertainable.

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2. 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, 130 P.3d 1019, 325 Mont. 1, are not more than favorable precedent to future litigants seeking permanent partial disability benefits under Montana's Worker's Compensation Act.
3. A common fund does not exist in this case because the process of identifying unascertainable beneficiaries places an impermissible and undue burden on insurance companies who wrote worker's compensation policies in Montana.
4. A common fund does not exist in this case because the participating litigant, Dale Reesor, did not create, preserve or increase an identifiable monetary fund or benefit in which all non-participating beneficiaries maintain an interest.
5. 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.

DATED this 30 day of June, 2005.

HAMMER, HEWITT, SANDLER & JACOBS, PLLC


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Attorneys for ASARCO, Inc., Benefis, Continental
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CERTIFICATE OF SERVICE

This is to certify that I, David M. Sandler sent on this 30 day of June, 2005, the forgoing attached Response to Petitioner's Common Fund Attorneys Fees was duly serviced upon the following attorneys of record, by depositing a true copy thereof in the United States mail, postage paid, addressed as:

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