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**FILED**

JUN - 6 2005

ATTORNEYS FOR COSTCO WHOLESALE CORP.

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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DALE REESOR,	)	WCC No. 2002-0676
	)	
PETITIONER,	)	
v.	)	<b>ANSWER TO SUMMONS AND NOTICE</b>
	)	<b>OF ATTORNEY FEE LIEN</b>
MONTANA STATE FUND,	)	
	)	
Respondent/Insurer	)	

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Pursuant to the Court's Summons and Notice of Attorney Fee Lien, Costco Wholesale Corp. (Costco) submits the following Answer:

Costco objects to common fund certification in this case and asserts the following defenses:

1. Petitioner cannot satisfy the three elements for common fund certification set forth in the *Ruhd* decision.
2. Petitioner did not request common fund certification in a timely manner.
3. The decision should not be applied retroactively because Petitioner cannot satisfy any of the three *Chevron* factors set forth in the *Dempsey* decision.
4. Application of a common fund under the facts of this case would violate provisions of the U.S. and Montana Constitutions, including but not limited to, procedural and substantive due process, freedom of contract, and taking without just compensation.

5. All defenses raised by any and all defendants in this case or that have been asserted or could be asserted in this case or any other common fund case pending before this Court or the Montana Supreme Court.

For the reasons set forth above and asserted by other defendants, Costco objects to common fund certification in this case.

DATED this 6<sup>th</sup> day of June, 2005.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

BY:   
G. Andrew Adamek

ATTORNEYS FOR COSTCO WHOLESALE CORP.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of June, 2005, a true and correct copy of the foregoing was this day deposited in the United States mail, postage prepaid, addressed to:

Thomas Murphy  
Murphy Law Firm  
P.O. Box 3226  
619 Second Ave South  
Great Falls, MT 59403-3226

  
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BROWNING, KALECZYC, BERRY & HOVEN, P.C.