

Daniel J. Whyte  
KELLER, REYNOLDS, DRAKE,  
JOHNSON & GILLESPIE, P.C.  
50 South Last Chance Gulch  
P.O. Box 598  
Helena, MT 59624  
406/442-0230 Tele.  
406/449-2256 Fax.

Attorneys for Hortica f/k/a  
Florists' Mutual Insurance

**FILED**

**JUL 14 2005**

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,	)	
	)	<b>MOTION TO DISMISS</b>
vs.	)	
	)	
MONTANA STATE FUND,	)	
	)	
Respondent/Insurer.	)	

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COMES NOW, Hortica Insurance f/k/a Florists' Mutual Insurance Company (Florists'), and moves the Court to dismiss Florists' from the above action.

On or about April 22, 2005, this Court had served on many insurers, including Florists' Mutual, a Summons and Notice of Attorney Lien requiring each of the insurers to respond to the attorney fee lien filed by Petitioners' attorneys. The Summons required that each insurer consider which claimants' benefits have been limited as a result of the age-related limits in § 39-71-701, MCA. The Court also ordered all insurers to withhold twenty-five percent of additional benefits paid after December 22, 2004, on account of the *Reesor* decision to claimants who were injured on or after July 1, 1987, and prior to December 22, 2004.

On June 6, 2005, Florists' filed a Response to Petitioner's Request for Certification of a Common Fund and Enforcement of Attorney Lien. In that response, Florists' contended that it had no potential liability with regard to the *Reesor* claims.

Florists' Mutual has had the opportunity to complete a full review of its Montana claims files to determine what claimants may have been affected by the age-related


DOCKET ITEM NO. 261

limits under § 39-71-710, MCA. The conclusion of Florists' is that there are no cases where Florists' Mutual Insurance Company limited claimants' workers' compensation permanent partial disability benefits as a result of those claimants' reaching the age of 65. This conclusion is supported by the attached Affidavit of Brent Bates, Senior Vice President - Director of Claims and Corporate Secretary/Counsel for Hortica Insurance Company, f/k/a/ Florists' Mutual Insurance Co. (Exhibit 1).

WHEREFORE, Florists' moves this Court to dismiss with prejudice Florists' Mutual Insurance Company on the ground that no claims exist against Florists' and that Florists' is not liable for any additional benefits to be paid to claimants in this matter and Florists' is not obligated to withhold twenty-five percent on any claims for attorneys' fees.

DATED this 13<sup>th</sup> day of July, 2005.

KELLER, REYNOLDS, DRAKE,  
JOHNSON & GILLESPIE, P.C.

  
\_\_\_\_\_  
Daniel J. Whyte  
50 South Last Chance Gulch  
P.O. Box 598  
Helena, MT 59624  
Attorney for Hortica Insurance  
f/k/a Florists' Mutual Insurance Company

#### CERTIFICATE OF SERVICE

I, Daniel J. Whyte, hereby certify that I served a true and correct copy of the **MOTION TO DISMISS**, to the following:

Thomas J. Murphy, Esq.  
P.O. Box 3226  
Great Falls, MT 59403-3226

DATED this 13<sup>th</sup> day of July, 2005.

  
\_\_\_\_\_  
Daniel J. Whyte

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Attorneys for Hortica f/k/a  
Florists' Mutual Insurance

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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DALE REESOR,	)	WCC NO. 2002-0676
	)	
Petitioner,	)	
	)	
vs.	)	<b>AFFIDAVIT OF</b>
	)	<b>BRENT A. BATES</b>
	)	
MONTANA STATE FUND,	)	
	)	
Respondent/Insurer.	)	

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STATE OF ILLINOIS )  
:  
County of Madison )

Brent A. Bates, being first duly sworn upon oath, deposes and states as follows:

1. I am the Senior Vice President – Director of Claims and Corporate Secretary/Counsel Hortica Insurance Company, f/k/a Florists' Mutual Insurance Company.
2. I am familiar with the issues before the Montana Workers' Compensation Court with respect to the case of *Reesor v. Montana State Fund*, WCC No. 2002-0676, and the issues therein that affect Florists' Mutual Insurance Company.
3. Florists' Mutual has conducted an investigation of its Montana specific claims to determine whether any apply to or are effected by the issues

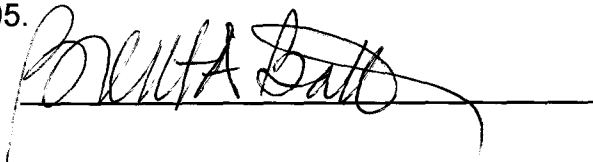
before the Workers' Compensation Court in the *Reesor* case and find that none apply.

4. Florists' Mutual therefore has not limited any claimants from receiving permanent partial disability benefits upon receipt of social security retirement benefits or eligibility for said benefits and is not obligated to pay additional benefits or any attorney fees under the Common Fund Doctrine.

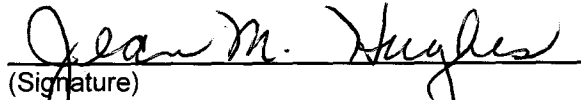
FURTHER, your affiant sayeth not.

DATED this 11<sup>th</sup> day of July, 2005.

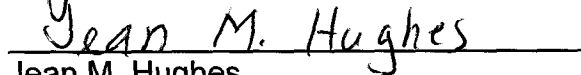
Brent A. Bates



SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of July, 2005.



(Signature)



Jean M. Hughes

Notary Public for the State of Illinois

Residing at Edwardsville.

My Commission expires: 12/13/06.



(SEAL)

**KELLER, REYNOLDS, DRAKE  
JOHNSON & GILLESPIE, P.C.**

*Guardian Building, Third Floor  
50 South Last Chance Gulch*

P. O. Box 598  
Helena, Montana 59624  
Tele. 406/442-0230  
Fax 406/449-2256  
E-Mail: [djwhyte@kellerlawmt.com](mailto:djwhyte@kellerlawmt.com)

SPEED MEMO

July 13, 2005

**RE:** *Hortica f/k/a Florists' Mutual Insurance*  
*Reesor v. Montana State Fund, WCC No. 2002-0676*  
*Flynn v. Montana State Fund, WCC No. 2000-0222*

Enclosed for filing please find the **LIMITED NOTICE OF APPEARANCE AND MOTION TO DISMISS** in the *Flynn* Case and the **MOTION TO DISMISS** in the *Reesor* Case. Thank you for your assistance in this matter.

Daniel J. Whyte

**TO:** PATRICIA KESSNER  
CLERK OF WORKERS'  
COMPENSATION COURT  
P O BOX 537  
HELENA MT 59624