

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.

**FILED**

AUG 30 2005

Attorneys for Hortica f/k/a  
Florist Mutual Insurance

OFFICE OF  
WORKER'S 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,	)	
	)	
vs.	)	<b>REPLY TO PETITIONER'S</b>
	)	<b>RESPONSE TO MOTION</b>
	)	<b>TO DISMISS FROM</b>
MONTANA STATE FUND,	)	<b>HORTICA INSURANCE</b>
	)	
Respondent/Insurer.	)	

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COMES NOW Florists' Mutual Insurance Company and replies to Petitioner's Response to Florists' Mutual's Motion to Dismiss.

On July 13, 2005, Hortica f/k/a Florists' Mutual Insurance Company (Florists') moves for the Court to dismiss Florists' from the above action for the reason that after review of its claims files specific to Montana, Florists' found that none of the 17 claims applied to the issues before the Court in this case. Petitioner Reesor responded by requesting additional information from Florists' as follows:

1. Please described the procedure that your company used to determine if it had a "qualifying claim."
2. Please indicate the number of claims that your company had in Montana between 7/1/1987 and 12/22/2004.
3. Please indicate how many of these claims (identified in no. 2) involved injured workers over age 65 (either

DOCKET ITEM NO. 302

at the time of injury or at the time of maximum medical improvement).

Response to Motion to Dismiss from Hortica Insurance.

This is a reply to that response.

When it filed its response, Florists' also filed the Affidavit of Brent Bates, the Senior Vice President-Director of Claims and Corporate Secretary/Counsel for Hortica Insurance Company who indicated in that Affidavit that he completed an investigation of its Montana-specific claims to determine whether they apply and found that none applied. As indicated in the attached Supplemental Affidavit by Brent Bates, during the time in question between 1987 and 2004, Florists' Mutual adjusted 16 claims, all but three of which were claims on which only medical benefits were paid. As can be seen from the Supplemental Affidavit of Brent Bates, none of the claimants were 65 years or older or on social security during the time of the claim or at the time of maximum medical improvement.

Therefore, in reply to Mr. Reesor's questions in his Response to Motion to Dismiss from Hortica Insurance, Florists' did not limit its investigation to "qualifying claims." It reviewed all 16 claims that were filed during the time that Florists' wrote workers' compensation insurance in Montana. During the time period in question, between January 1, 1995 and June 20, 2005, there were 16 claims filed by employees for employer's insured by Florists'. Of those claims, only three produced more than payments for medical bills, and none of the claims including the medical only claims involved injured workers over the age of 65 at the time of injury or at the time of maximum medical improvement. Furthermore, none of these claimants were receiving social security benefits during the life of the claim.

WHEREFORE, based upon its Motion to Dismiss and this Reply, and supported by the Affidavits of Brent Bates, Florists' Mutual respectfully requests that it be dismissed from the above action.

DATED this 29<sup>th</sup> day of August, 2005.

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



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Helena, MT 59624

**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

August 29, 2005

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

Enclosed for filing please find the **REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS FROM HORTICA INSURANCE**. 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**