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FILED

JUN 16 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,)	
)	
Petitioner,)	WCC No. 2002-0676
)	
vs.)	
)	
MONTANA STATE FUND,)	RESPONSE TO PETITIONER'S
)	CLAIM FOR COMMON FUND
Respondent/Insurer.)	ATTORNEYS FEES

Comes now Respondent, GREAT AMERICAN SPIRIT INSURANCE COMPANY, by and through counsel of record, and pursuant to this Court's *Summons and Notice of Attorney Fee Lien* of April 22, 2005, answers 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, 103 P.3d 1019, 325 Mont. 1, are not ascertainable.
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, 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.

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 workers' compensation policies in Montana.
4. 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 this answering defendant.

WHEREFORE, GREAT AMERICAN SPIRIT INSURANCE COMPANY respectfully requests this court to issue an order denying the existence of a common fund in this case.

Dated this 16th day of June, 2005.


CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.
Attorneys for GREAT AMERICAN SPIRIT 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 16th day of June, 2005, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

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Attorneys are licensed in Montana unless otherwise noted; * also licensed in North Dakota; # also licensed in Wyoming; + not licensed in Montana

June 16, 2005

Workers' Compensation Court
PO Box 537
Helena, MT 59624-0537

VIA FAX & U.S. MAIL:

RE: *Dale Reesor vs. Montana State Fund*
WCC No. 2002-0676

Dear Clerk:

On behalf of our client Great American Spirit Insurance Company, please find a Motion Requesting Leave to Permit Late Filing, as well as the Response to Petitioner's Claim for Common Fund Attorneys Fees, in the matter referenced above, for filing.

Thank you in advance for your assistance with this matter.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

Myrna Henschel, PLS

Myrna Henschel, Certified PLS
Legal Secretary to Steven W. Jennings

mlh
Enclosures
c (w/encls.): Thomas Murphy, Esq.