

Steven S. Carey, Esq.
CAREY LAW FIRM
225 West Broadway • P.O. Box 8659
Missoula, MT 59807-8659
Telephone: (406) 728-0011
Attorneys for Indiana Lumberman's Mutual Insurance Company

FILED

JUN 17 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

vs.

MONTANA STATE FUND,

Respondent/Insurer.

)
)
) WCC No. 2002-0676
)
)

**RESPONSE TO PETITIONER'S
CLAIM FOR COMMON FUND
ATTORNEYS FEES**

Comes now Respondent, Indiana Lumberman's Mutual 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

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.

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.

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.

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.

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 respondent.

WHEREFORE, Indiana Lumberman's Mutual Insurance Company respectfully requests this court to issue an order denying the existence of a common fund in this case.

DATED this 17th day of June, 2005.

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Mutual Insurance Company

By: 
Steven S. Carey