

FILED

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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

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IN THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

WCC. No. 2002-0676

DALE REESOR,)	
)	
Petitioner,)	
)	
v.)	
)	MONTANA RESOURCES, L.L.P.'s
MONTANA STATE FUND,)	RESPONSE TO SUMMONS
)	
Respondent/Insurer)	
_____)	

COMES NOW Montana Resources, L.L.P. ("Montana Resources") through its counsel, Rebecca L. Summerville of Datsopoulos, MacDonald & Lind, P.C., and pursuant to the Summons issued by this Court on April 22, 2005, hereby sets forth the following defenses to Petitioner's attorney's request for certification of a common fund and enforcement of his attorney fee lien.

The plain language of Petitioner's attorney fee lien indicates he is seeking common fund attorney fees on every workers' compensation claim with a date of injury occurring on or after July 1, 1987 through December 22, 2004, wherein a claimant was denied workers' compensation benefits as a result of the operation of Montana Code Annotated § 39-71-710. With respect to the common fund request of Petitioner's counsel, Montana Resources asserts the following:

1. The decision in *Reesor v. Montana State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019, does not create a common fund;

2. The failure to Petitioner's counsel to plead *ab initio* an entitlement to common fund attorney fees or class certification in the pre-remand proceedings bars his post-remand request for common fund fees;

3. The issue in *Reesor* was limited to whether the age limitation on permanent, partial disability benefits set forth in Montana Code Annotated § 39-71-710 violated the Equal Protection Clause of the Montana Constitution. However, the attorney fee lien of Petitioner's counsel improperly seeks to expand the scope of the *Reesor* decision by applying it to all classes of claimants;

4. The decision in *Reesor* applies prospectively only pursuant to the *Chevron Oil* test of non-retroactivity, which was most recently modified by the Montana Supreme Court in *Dempsey v. Allstate Ins. Co.*, 2004 MT 391, 325 Mont. 207, 104 P.3d 483;

5. The decision in *Reesor* cannot be applied retroactively because retroactive application would constitute an unconstitutional impairment of contract;

6. If *Reesor* applies retroactively, the common fund attorney fee lien of Petitioner's counsel has no applicability to claims occurring on or after April 21, 2003 because of the legislative prohibition on common fund attorney fees set forth in Montana Code Annotated § 39-71-611(3) (2003) and Montana Code Annotated § 39-71-612(4) (2003);

7. If *Reesor* applies retroactively, the common fund attorney fee lien of Petitioner's counsel has no applicability to claims occurring on or after July 1, 1991 through June 30, 1995 because the language of Montana Code Annotated § 39-71-710 (1991 & 1993) did not provide for termination of partial disability benefits upon the receipt of social security retirement benefits, according to the Montana Supreme Court's decision in *Russette v. Chippewa Cree Housing Authority* (1994), 265 Mont. 90, 92-93, 874 P.2d 1217, 1218. Although Montana Code Annotated § 39-71-710 was

amended in 1995 in response to *Russette*, PPD benefits were paid after retirement age under the 1991 and 1993 version of the Workers' Compensation Act;

8. If *Reesor* applies retroactively, settled files or files which were adjudicated are excluded from the implementation process;

9. If *Reesor* applies retroactively, the files of deceased claimants are excluded from the implementation process;

10. If *Reesor* applies retroactively, the doctrine of laches and/or the statute of limitations serve to bar any additional entitlement on claims which failed to timely present a challenge to Montana Code Annotated § 39-71-710.

11. If *Reesor* applies retroactively, Petitioner's counsel should be required to bear the financial burden of the identification and entitlement determination process, which includes the administrative and claims-related costs associated with obtaining sufficient medical and vocational information; and

12. Montana Resources incorporates the defenses raised by the other insurers named in the global Summons and requests the right to add additional defenses throughout the duration of the post-remand proceedings, especially since many of the implementation issues will not be discovered unless *Reesor* is applied retroactively and the parties actually begin the implementation process.

Respectfully submitted this 20th day of June, 2005.

DATSOPOULOS, MacDONALD & LIND, P.C.

By: 

Rebecca L. Summerville

Attorneys for Montana Resources, L.L.P.

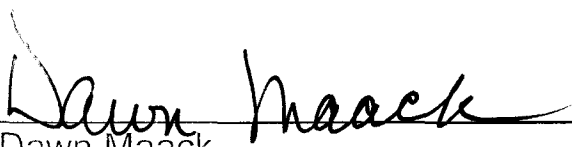
CERTIFICATE OF SERVICE

I hereby certify that I served the original Montana Resources, L.L.P.'s Response to Summons causing it to be faxed and mailed via U.S. Mail (postage prepaid) on the 20th day of June, 2005, with postage thereupon prepaid, addressed to:

Workers' Compensation Court (*Via Fax: 406-444-7798*)
P.O. Box 537
Helena, MT 59624-0537

I further certify that I have made service of a true copy of the foregoing Montana Resources, L.L.P.'s Response to Summons upon the parties hereto via U.S. Mail on the 20th day of June, 2005, with postage thereupon prepaid, addressed to:

Mr. Thomas J. Murphy
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Great Falls, MT 59403-3226

By: 
Dawn Maack

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June 20, 2005

Sent via fax: 406-444-7798 and U.S. Mail

Clerk of Court
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537

Re: Dale Reesor v. Montana State Fund
WCC No. 2002-0676

Dear Clerk:

Enclosed please find for filing Montana Resources, L.L.P.'s Response to Summons with regard to the above-entitled matter. An extra copy of the Response is enclosed to be conformed and returned to this office.

Thank you.

Very truly yours,

DATSOPOULOS, MacDONALD & LIND, P.C.


Dawn Maack, Legal Assistant to
Rebecca L. Summerville

Enclosures: As stated
cc: Mr. Thomas J. Murphy (w/enclosure)