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FILED

JUN - 6 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, National Union Fire Insurance Company of Pittsburgh, Pa., 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. 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.
5. 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, National Union Fire Insurance Company of Pittsburgh, Pa. respectfully requests this court to issue an order denying the existence of a common fund in this case.

Dated this 5th day of June, 2005.

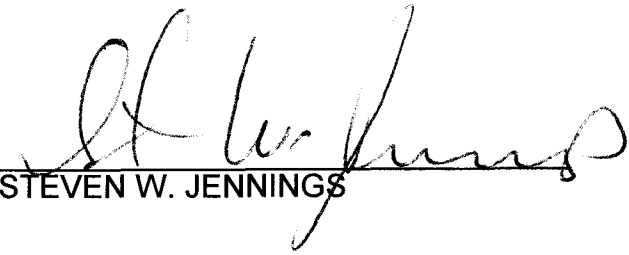
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Attorneys for National Union Fire Insurance
Company of Pittsburgh, Pa.

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 5th day of June, 2005, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Mr. Thomas J. Murphy
Murphy Law Firm
PO Box 3226
Great Falls, MT 59403-3226


STEVEN W. JENNINGS