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FILED

JUN - 6 2005

ATTORNEYS FOR Pharmacist Mutual Insurance Co.

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,)	WCC No. 2002-0676
)	
PETITIONER,)	
v.)	ANSWER TO SUMMONS AND NOTICE
)	OF ATTORNEY FEE LIEN
MONTANA STATE FUND,)	
)	
Respondent/Insurer)	

Pursuant to the Court's Summons and Notice of Attorney Fee Lien, Pharmacist Mutual Insurance Co. (Pharmacist Mutual) submits the following answer:

Pharmacist Mutual objects to common fund certification in this case and asserts the following defenses:

1. Petitioner cannot satisfy the three elements for common fund certification set forth in the *Ruhd* decision.
2. Petitioner did not request common fund certification in a timely manner.
3. The decision should not be applied retroactively because Petitioner cannot satisfy any of the three *Chevron* factors set forth in the *Dempsey* decision.
4. Application of a common fund under the facts of this case would violate provisions of the U.S. and Montana Constitutions, including but not limited to, procedural and substantive due process, freedom of contract, and taking without just compensation.


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5. All defenses raised by any and all defendants in this case or that have been asserted or could be asserted in this case or any other common fund case pending before this Court or the Montana Supreme Court.

For the reasons set forth above and asserted by other defendants, Pharmacist Mutual objects to common fund certification in this case.

DATED this 6th day of June, 2005.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

BY:  _____
Oliver S. Goe

ATTORNEYS FOR Pharmacist Mutual Insurance Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2005, a true and correct copy of the foregoing was this day deposited in the United States mail, postage prepaid, addressed to:

Thomas Murphy
Murphy Law Firm
P.O. Box 3226
619 Second Ave South
Great Falls, MT 59403-3226


BROWNING, KALECZYC, BERRY & HOVEN, P.C.