

Murphy Law Firm
619 Second Avenue South
P.O. Box 3226
Great Falls, MT 59403-3226
Telephone (406) 452-2345
Fax (406) 452-2999

Thomas J. Murphy, Attorney
Charla K. Tadlock, Attorney

Lou Joi Poelman, Paralegal
Sandra Gilbert, Paralegal
Peggy A. Thelen, Paralegal

November 23, 2005

FILED

DEC - 6 2005

Judge James Jeremiah Shea
Workers Compensation Court
P O Box 537
Helena, Mt 59624-0357

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Re: Comments on Common Fund Procedures

Dear Judge Shea:

At your request, I prepared a few comments that assist the Court in streamlining the common fund litigation process. Currently, the main problem obstructing progress involves hundreds of small non-responsive insurance companies.

Previously, Judge McCarter asked some insurers to appear voluntarily. Specifically, if the insurer had appeared in one common fund action, the Court asked the insurer to appear in all of the common fund actions. Judge McCarter made his request during a hearing attended by approximately twenty defense attorneys, and none of them objected. I hope those insurers appeared, and that may have solved part of this problem.

As to the remainder of the non-responsive insurers, however, I ask the Court to allow the current litigation to proceed against the insurers that have appeared. This approach allows common fund counsel to pursue relevant claims against party insurers without requiring counsel to renounce ("state that he will not pursue") future common fund actions against non-responsive insurance companies.

The non-responsive insurers are generally small companies with few if any relevant claims. I submit that it would unduly delay the common fund litigation if the Court suspends all proceedings (as is currently the case) until all of the non-responsive companies are found and served.

Judge James Shea
Re: Common Fund Issues
November 23, 2005
Page Two

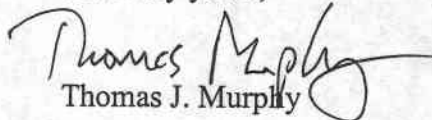
I submit that the Court may gain some insight into this problem by looking at the service of summonses in the Reesor case. The Court sent out 637 summonses to the insurers identified by the Department of Labor ("DLI"). The DLI list included those insurers that were allowed to write workers' compensation insurance in Montana from July 1, 1987 to present. Of the 637 insurers served, 285 insurance companies appeared. Eighty (80) of the companies that appeared were dismissed without prejudice, because they did not write insurance in Montana. That leaves 352 insurance companies that did not respond to the Court's summonses in Reesor.

There will not be any prejudice to parties or to the non-responsive insurance companies if the Court allows the common fund cases to proceed. Depending on the outcome of the present actions, the common fund attorneys may decide to pursue the non-responsive insurance companies later. Furthermore, the non-responsive insurance company may join the common fund case at any time. Finally, this proposal is reversible. If the Court decides that we must join the non-responsive insurance companies later, then counsel will pursue service at that time.

Therefore, I ask the Court to allow the current common fund litigation to proceed against the party insurers. This allows counsel to pursue relevant claims against party insurers without surrendering the right to pursue common fund actions against non-responsive insurance companies. Finally, such a ruling encourages all insurance companies to join the present common fund actions, and it discourages insurance companies from avoiding service.

Thank you for your consideration of this issue.

Sincerely yours,


Thomas J. Murphy

TJM/ljp