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**FILED**

MAR - 8 2005

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

**IN THE WORKERS' COMPENSATION COURT OF THE  
STATE OF MONTANA**

<p><b>ALEXIS RAUSCH et. al.,</b>  Petitioners,  vs.  <b>MONTANA STATE FUND.</b>  Respondent/Insurer,  and  <b>JEREMY RUHD,</b>  Petitioner,  vs.  <b>LIBERTY NORTHWEST INSURANCE CORPORATION,</b>  Respondent/Insurer.</p>	<p>WCC NO. 9907-8274R1</p> <p><b>RESPONSE OF NORTHWESTERN ENERGY TO COURT SUMMONS</b></p>
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**COMES NOW NorthWestern Energy**, and in response to the Court's Summons dated January 10, 2005 in the above-entitled matter, responds as follows:

1. **GENERAL OBJECTIONS:** NorthWestern Energy objects to the production of the information requested by the Summons, and moves to quash the summons pursuant to 24.5.316 ARM and 24.5.352 ARM, on the following grounds and for the following reasons:

- a. NorthWestern Energy is not a party to this proceeding.
- b. This is not a class action, and class action claims have not been

asserted in this action against any of the self-insureds which have not been made parties to this action.

c. No dispute between NorthWestern Energy and any claimants injured or suffering occupational diseases since June 30, 1991 exists and/or has been presented within the meaning of this Court's rules and jurisdictional requirements for the resolution of disputes as set forth in Montana law.

d. NorthWestern Energy has no duty to solicit claims or to advise claimants of their legal rights in regard to said claims. See Ricks v. Teslow Consolidated, 162 Mont. 469, 512 P.2d 1304 (1973); see also Dennehy v. Anaconda Mineral Company, WCC No.: 8612-4030, 1989 WL 253344 (holding that self insured had no trust relationship with claimants.)

e. While the Court's jurisdiction and authority appears to extend to "supervising enforcement of the common fund . . . from all insurers involved" in this action, it does not appear to extend to parties such as NorthWestern Energy which have not been properly made parties to this proceeding, which have not been properly joined by the assertion of class action claims, and which have no duty to solicit claims or advise claimants of their legal rights in regard to such claims. The Montana Supreme Court did not intend to do contravene such law by its statements in Rausch et. al. v. State Compensation Ins. Fund, 2002 MT 203, 311 Mont. 210, 54 P.3d 25 and Ruhd v. Liberty Northwest Ins. Corp., 2004 MT 236, 322 Mont. 478 (Ruhd II), decided August 31, 2004.

The above reasons are more particularly set forth in the attached or accompanying brief which is incorporated by reference.

2. RESPONSE: Subject to the foregoing Objections and Motion to Quash the Summons, and without waiving its objections or Motion to Quash, NorthWestern Energy provides the following information to the Court:

a. NorthWestern Energy is unable to provide the requested information to the Court by the deadline of February 14, 2005 set forth in the Court's summons because of the following reasons:

1) A computer inspection of the files and records will not provide the Court with the information that has been requested.

2) A physical inspection of the files and records is necessary to gather the information, particularly the information subject to paragraphs 3, 4, 5, 6, 7 and 8 of paragraph 4 of the Court's Summons.

3) However, as the Court is aware, NorthWestern Energy has been auditing its files retrospectively back until 1975. In that audit NorthWestern Energy can advise, with respect to the information

sought in paragraphs 1, 2, 3 and 4, that NorthWestern Energy and its adjuster reasonably estimate that there are about 5 files that will need to be re-examined for claimants injured or suffering occupational disease since June 30, 1991 to whom it has paid PTD benefits.

4) With respect to information sought in paragraphs 5, 6, 7 and 8, NorthWestern Energy and its adjuster reasonably estimate that there are no files that need to be examined for claimants injured or suffering occupational disease since June 30, 1991 to whom it has paid TTD benefits.

5) While a physical re-inspection or re-examination of the files cannot be accomplished by February 14, 2005, NorthWestern Energy's previous examination of all of these files has given it the material needed to answer the issues in the aforementioned paragraphs 3 and 4.

6) NorthWestern Energy and its adjuster reasonably estimate that the physical re-inspection or re-examination for purposes of complying with paragraphs 1, 2, 3 and 4 could perhaps be accomplished by August, 2005, though NorthWestern Energy would argue that no re-review is necessary. For purposes of complying with paragraphs 5, 6, 7 and 8, NorthWestern Energy and its adjuster reasonably estimate that the physical inspection or examination could be accomplished by August, 2005, although, again, NorthWestern Energy does not believe any re-review is necessitated.

7) Additionally, based upon the applicable statutory law set forth in Karol Denniston's letter of February 10, 2005, NorthWestern Energy would not be subject to the attorney lien in this matter.

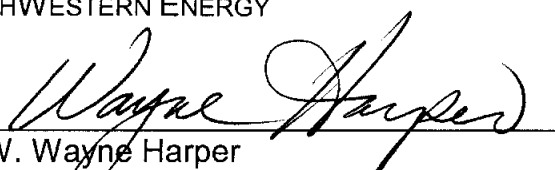
WHEREFORE, NorthWestern Energy respectfully requests the following relief:

1. That the Court sustain objections to the summons, grant its motion to quash and order that NorthWestern Energy is not required to answer said summons; or
2. Alternatively, if required to answer said summons, that NorthWestern Energy be granted until August, 2005 within which to provide the information requested, if the Court believes any further review is needed.

DATED this 7th day of March, 2005.

NORTHWESTERN ENERGY

By:

  
W. Wayne Harper

Attorney for NorthWestern Energy

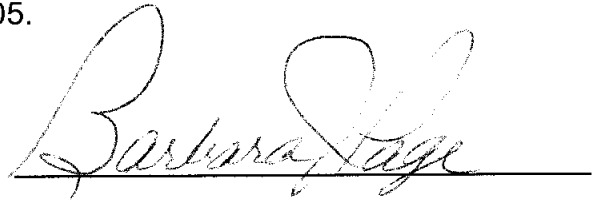
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S.

Mail, postage prepaid, addressed as follows:

The Workers Compensation Court  
1625 11<sup>th</sup> Avenue  
P.O. Box 537  
Helena, Montana 59624-0537

DATED this 7<sup>th</sup> day of March, 2005.

  
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