

Steven W. Jennings  
Crowley, Haughey, Hanson,  
Toole & Dietrich P.L.L.P.  
P. O. Box 2529  
Billings, MT 59103-2529  
(406) 252-3441  
Attorneys for Insurance Company:  
AIG National Insurance Co.  
AIU Insurance Company  
American General Corp.  
American Home Assurance Company  
American International Insurance Co.  
American International Pacific Insurance Company  
American International Specialty Lines Insurance  
American General Corp.  
American Home Assurance Company  
Birmingham Fire Insurance Company  
Commerce & Industry Insurance Company  
Granite State Insurance Company  
Illinois National Insurance Co.  
Insurance Company of the State of Pennsylvania  
National Union Fire Insurance Company of Pittsburgh, PA  
New Hampshire Insurance Company  
Affiliated FM Insurance Company  
Factory Mutual Insurance Company  
FedEx Ground Package System, Inc.  
Hartford Accident & Indemnity Co.  
Hartford Casualty Insurance Co.  
Hartford Fire Insurance Co.  
Hartford Insurance Co. of the Midwest  
Hartford Underwriters Insurance Co.  
Property & Casualty Insurance Co. of Hartford  
Sentinel Insurance Company Ltd.  
Trumbull Insurance Co.  
Twin City Fire Insurance Co.  
Universal Underwriters Group

**FILED**

FEB - 6 2006

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

ALEXIS RAUSCH, et al.,

Petitioners,

vs.

MONTANA STATE FUND,

Respondent/Insurer,

and

JEREMY RUHD,

Petitioner,

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION,

Respondent/Insurer.

WCC No. 9907-8274R1

**ANSWER BRIEF**

COMES NOW the above listed Respondents ("Moving Respondents") and file this Answer Brief.

*Petitioners Brief in Support of Interim Attorney's Fees* proceeds under the assumption that Petitioners' attorneys have a vested right to attorneys fees once a common fund has been found. This assumption is a misstatement of the law. Under the common fund doctrine, it is the litigating plaintiff who is entitled to reimbursement for his attorneys fees.

The [common fund] doctrine entitles the party who created the fund to reimbursement of his or her reasonable attorney fees from the common fund. ...

*Flynn v. State Compensation Ins. Fund*, 2002 MT 279, ¶ 15, 312 Mont. 410, ¶ 15, 60 P.3d 397, ¶ 15. Thus, the vested right to attorneys fees belongs to the Petitioners in this case and not their attorneys. Moreover, the vested right possessed by Petitioner's is only the right to reimbursement of their *reasonable attorney fees*.

Significantly, the dollar amount of Petitioners' reasonable attorneys' fees should be readily provable. As admitted by Petitioners, their attorneys' fees are capped by regulation at 25% of their recovery. *Petitioners Brief in Support of Interim Attorney's Fees*, 1/6/2006, p. 3. Their recovery is readily ascertainable. In this case, the Montana Supreme Court held Petitioners were entitled to impairment awards and that such awards were payable upon the impairment rating rather than upon retirement. Thus, the attorneys fees are 25% of the impairment award received by Petitioners. Clearly,

until such time as Petitioners provide this Court with their amount of recovery, from which 25% can be computed, they are not entitled to their attorneys' fees nor are their attorneys entitled to assert the attorney fee lien. Moreover, the relative simplicity of Petitioners' task in demonstrating their attorneys' fees militates in favor of this Court requiring them to do so prior to awarding attorneys fees.

Likewise, as discussed in Moving Respondents' earlier brief, each non-participating beneficiary must contribute to the active litigant's attorneys' fees only in proportion to the benefits received. Of course, that proportion cannot be known until all beneficiaries are identified along with their proportional benefit. A distribution prior to that point would assuredly result in various beneficiaries contributing more towards Petitioners' attorneys' fees than required by law.

WHEREFORE, for the reasons stated above, this Court must deny Petitioners' request for interim attorneys' fees.

Dated this 6<sup>th</sup> day of January, 2006.

CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.

By: 

STEVEN W. JENNINGS  
Attorneys for Moving Respondents

**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 6<sup>th</sup> day of February, 2006, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Monte D. Beck  
Attorney at Law  
1946 Stadium Dr., Suite 1  
Bozeman, MT 59715

Stephen D. Roberts  
Attorney at Law  
1700 W. Koch St., Suite 5  
Bozeman, MT 59715

Lon J. Dale  
Attorney at Law  
PO Box 4947  
Missoula, MT 59806-4947

Larry W. Jones & Carrie L. Garber  
Attorneys at Law  
700 SW Higgins Ave., Suite 108  
Missoula, MT 59803-1489

Thomas E. Martello  
Special Assistant Attorney General  
Montana State Fund  
PO Box 4759  
Helena, MT 59604-4759

Bradley J. Luck & Thomas J. Harrington  
Attorneys at Law  
PO Box 7909  
Missoula, MT 59807-7909

  
STEVEN W. JENNINGS

**CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH P.L.L.P.**

**ATTORNEYS AT LAW**

500 TRANSWESTERN PLAZA II • 490 NORTH 31<sup>st</sup> STREET • BILLINGS, MONTANA 59101

P.O. Box 2529 • BILLINGS, MONTANA 59103-2529

TEL (406) 252-3441 • FAX (406) 252-5292

www.crowleylaw.com

STEPHEN M. BARRETT  
COLBY L. BRANCH - #  
KATY A. BRANDIS  
ALAN C. BRYAN #  
ASHLEY BURLESON  
DAVID L. CHARLBS  
PAUL C. COLLINS  
GARY M. CONNELLY  
RENEE L. COPPOCK  
MARCIA J. DAVENPORT  
JASON A. DELMUE  
MICHAEL S. DOCKERY  
JOHN B. DUDIS, JR.  
JON T. DYER #  
MARY SCRIM DYRE  
SCOTT A. FISK  
BRUCE A. FREDRICKSON #  
MICHAEL W. GREEN

ROBERT C. GRIPPIN  
PETER F. HAUGEN  
SCOTT D. HAGUL  
NATHAN S. HANBY  
KEVIN F. HEANEY  
KENNETH G. HEDGE #  
JAMES R. HINTZ  
BRIAN HOLLAND  
LARRY A. HOLLE  
STEVEN W. JENNINGS  
DANIEL D. JOHNS  
DARIN W. JOHNSON  
JOEL L. KALEVA  
ALLAN L. KARELL  
KIELY S. KEANE  
PETER M. KIRWAN  
WILLIAM D. LAMBIN III  
MICHAEL J. LANSING #

KENNETH K. LAY  
JOHN R. LEE #  
JARED M. LE FEVRE  
STEVEN J. LEHMAN  
JULIE A. LICHT  
DENISE D. LINFORD #  
JASON P. LOBLE  
CHRIS MANGEN, JR.  
WILLIAM J. MATTIX  
JOE C. MAYNARD, JR.  
JOHN H. MAYNARD  
JOSEPH P. MAZUREK  
IAN MCINTOSH  
DANIEL N. McLEAN  
MATTHEW P. McLEAN #  
ROBERT G. MICHELOTTI, JR.  
STEVEN R. MILCH  
KIMBERLY S. MORRIS

DONALD R. MURRAY, JR.  
KRISTIN L. OMVIG  
JUPPERY J. OVEN #  
SHANE D. PETERSON #  
HERBERT I. PIERCE III  
FRED C. RATHBUN #  
STEVEN P. RUFFATTO  
GINA S. SHERMAN  
SCOTT M. SINGLETON  
JAMES P. SITES  
GARTH H. SUIE #  
LEONARD H. SMITH  
CHRISTOPHER C. VOIGT #  
DAVID M. WAGNER  
NEIL G. WESTERSON  
BRYAN P. WILSON  
RONALD E. YOLDB

**RETIRED**  
JAMES M. HAUGHEY  
BRUCE R. TOOLE

**OF COUNSEL**  
GEORGE C. DALTHORP  
JOHN M. DIETRICH  
DAVID L. JOHNSON  
GARELD F. KRIEG  
ARTHUR P. LAMEY, JR.  
LOUIS R. MOORE #  
MYLES J. THOMAS  
FRED E. WHISENAND #

**OFFICES**  
100 NORTH PARK AVENUE  
SUITE 300, P.O. BOX 797  
HELENA, MT 59624-0797  
PHONE (406) 449-4105

111 EAST BROADWAY  
P.O. BOX 1206  
WILLISTON, ND 58803-1206  
PHONE (701) 572-2200

431 FIRST AVENUE WEST  
P.O. BOX 759  
KALISPELL, MT 59903-0759  
PHONE (406) 752-6644

45 DISCOVERY DRIVE  
SUITE 200, P.O. BOX 10969  
BOZEMAN, MT 59719-0969  
PHONE (406) 536-1430

700 S.W. HIGGINS  
SUITE 200  
MISSOULA, MT 59803  
PHONE (406) 829-2732

Attorneys are licensed in Montana unless otherwise noted. \* also licensed in North Dakota; # also licensed in Wyoming; \* not licensed in Montana

February 6, 2006

**VIA FAX & U.S. MAIL:**

Workers' Compensation Court  
PO Box 537  
Helena, MT 59624-0537

RE: *Rausch, et al. vs. Montana State Fund and Ruhd vs. Liberty Northwest Insurance Corporation*  
WCC No. 9907-8274R1

Dear Clerk:

On behalf of our client, enclosed please find an Answer Brief for filing in the matter referenced above. Please conform the cover sheet and return in the envelope provided. Thank you in advance for your assistance with this matter.

Sincerely yours,

*Myrna Henschel, PLS*

Myrna Henschel, Certified PLS

Legal Secretary to Steven W. Jennings

Enclosures  
c (w/encl.):

Monte D. Beck  
Stephen D. Roberts  
Lon J. Dale  
Larry W. Jones & Carrie L. Garber  
Thomas E. Martello  
Bradley J. Luck & Thomas J. Harrington