

Bryce R. Floch
HAMMER, HEWITT & JACOBS, PLLC
Attorneys at Law
P.O. Box 7310
Kalispell, MT 59904-0310
Telephone: (406) 755-2225
Facsimile: (406) 755-5155
Email: brycefloch@attorneysmontana.com

FILED

MAY - 8 2006

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Attorneys for, Lumberman's Underwriting Alliance,
ASARCO, Inc., Benefis Healthcare, Continental Casualty Co.,
Golden Sunlight Mines, Northwest Healthcare, Corp.,
Northwestern Energy, LLC, F.H. Stoltze Land &
Lumber Co., Plum Creek Timber Co. Inc, Rosauers,
and Safeway. Delineated

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

v.

MONTANA STATE FUND,

Respondent/Insurer,

WCC NO. 2002-0676

**BRIEF REGARDING ISSUES
DELINEATED BY THE WORKERS'
COMPENSATION COURT**

COMES NOW the above-referenced Intervenor, by and through their attorneys of record, and joins in the briefs of the named Respondent and Intervenor in this action. Notwithstanding the arguments set forth in the named Respondent's and Intervenor's briefs, and without waiving the same, the process undertaken by the Petitioner, and condoned by this Court, effectively establishes the practice requiring the Respondent and Intervenor to conduct expensive and unduly burdensome discovery upon themselves. As reflected in the affidavits attached to and filed with AIG's brief, the expense and effort to locate claims files which meet the *Reesor* criteria over a seventeen year period is mammoth in nature. The mammoth nature of identifying claims which meet the *Reesor* criteria is further complicated by the unresolved issue of closed, settled, inactive or final

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claims which has been briefed in *Flynn*.

As such, this Court should allow the Insurers a dollar for dollar deduction from the global common fund for the reasonable expense associated with locating claims which meet the *Reesor* criteria. This Court has inherent authority to allow for a deduction for the reasonable expense incurred by Insurers to identify claims which meet the *Reesor* criteria. A.R.M. §24.5.325(1)(b); *Worts v. Hardy Construction*, WCC No. 8701-4199, 1990 WL 304042; *Dietrich v. Liberty Mutual Insurance Company*, 2003 MTWCC 42. Ordinarily, it is the Petitioner's responsibility to conduct his/her own discovery, not the sole responsibility of the Insurer. When discovery is unduly burdensome and will cause great expense upon an Insurer it is the duty of the Court to level the playing field.

DATED this 5th day of May, 2006.

HAMMER, HEWITT & JACOBS, PLLC



Bryce R. Floch
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Kalispell, MT 59904-0310

CERTIFICATE OF SERVICE

This is to certify that I, Bryce R. Floch sent on this 5th day of May, 2006, the forgoing attached **BRIEF REGARDING ISSUES DELINEATED BY THE WORKERS' COMPENSATION COURT** was duly serviced upon the following attorneys of record, by depositing a true copy thereof in the United States mail, postage paid, addressed as:

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



Bryce R. Floch

BRIEF REGARDING ISSUES DELINEATED BY THE WORKERS' COMPENSATION COURT

HAMMER, HEWITT & JACOBS, PLLC

TODD A. HAMMER, ATTORNEY
LINDA HEWITT CONNERS, ATTORNEY
ANGELA K. JACOBS, ATTORNEY
BRYCE R. FLOCH, ATTORNEY

100 FINANCIAL DRIVE, SUITE 100
P.O. Box 7310
KALISPELL, MT 59904
TELEPHONE (406) 755-2225
FAX (406) 755-1155
WEBSITE: WWW.ATTORNEYSMONTANA.COM

ROBERT BROWN, PARALEGAL
PAM WARBURTON, PARALEGAL
JARA STANFORD, PARALEGAL

May 5, 2006

Patricia J. Kessner
Clerk of Court
Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

Re: Reesor v. Montana State Fund, et al
WCC No. 2001-0278

Dear Pat:

Enclosed please find our Brief Regarding Issues Delineated By The Workers' Compensation Court. Please file accordingly.

If you have any questions please do not hesitate to contact me.

Very truly yours,



Jara Stanford, Paralegal to
Bryce R. Floch

Enclosure