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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

vs.

MONTANA STATE FUND,

Respondent.

WCC No. 2002-0676

**MONTANA STATE FUND'S FINAL
REPORT TO THE COURT**

COMES NOW Montana State Fund ("MSF") and provides its Final Report to the Court.

On March 6, 2012, MSF submitted State Fund's Status Report and Motion for Finalization of Settlement. A copy of the report is attached as Exhibit A. On March 8, 2012, the Workers' Compensation Court issued its Order Approving Settlement Implementation Process and Final Listing of Potentially Entitled Claimants. A copy of the Order is attached as Exhibit B.

On April 4, 2012, letters of notification explaining the potential entitlement and questionnaires/claim forms for information to be utilized in the review process were mailed to

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email

the 602¹ injured employees on the final mailing list. The letter invited the injured employees to submit a claim requesting review of potential entitlement.

The letter of notification indicated that the completed and executed questionnaire/claim form must be returned within 120 days of its mailing, and that those claimants not returning the completed and executed questionnaire/claim form within 120 days would be considered as having opted out from and not bound by the settlement.

Those letters that were returned as undeliverable were processed through appropriate address review software. In this case, either LexisNexis or Merlin was used. After a different address was found, a new letter and questionnaire/claim form was mailed to the new address. The date of the second mailing became the first day of the 120 day allowance for returning the questionnaire/claim form. If the second mailing was returned as undeliverable, no additional attempts were made to contact the injured employee. There were 4 claims for which a new address could not be found, even after using both LexisNexis and Merlin.

If a response to the questionnaire/claim form was not received within 120 days of the mailing date, MSF issued a denial letter relative to further entitlement under the Supreme Court decision in this matter. The denial letter also provided an option for mediation. There were 274 denials issued as a result of receiving no response.

For all questionnaires/claim forms which were received within 120 days of the mailing date, the claim was reviewed for possible entitlement. If there was an entitlement, the payment was processed within 30 days with a letter of award and an explanation of the calculation. There were 33 claims paid. If a documented overpayment existed, the entitlement was reduced to recover the overpayment. If there was no entitlement, a letter of denial was mailed to the injured employee. The letter of denial explained the reason for the denial and an option for mediation. There were 289 claims denied.

The Court's Order dated March 8, 2012 stated that upon submission of the Final Report the case would be dismissed, with prejudice. Because all claims have either been paid or denied (except for the fatality claim referenced in footnote 1 and the 4 claims for which no address could be located) MSF requests the Court to issue an order to dismiss the action, with prejudice.

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¹ In the original run to identify potential *Reesor* claims one claim which was originally included was subsequently renumbered in approximately 2006 when MSF transitioned to a new numbering system for claims. Therefore, that claim was counted twice, as it was included in the 602 claims in the "final mailing list" under both claim numbers.

Additionally, a questionnaire was not sent on one claim as it was determined prior to the mailing to be a fatality claim at the time of injury. The claim was included in the "final mailing list" as it met the age criteria for a potential *Reesor* beneficiary. However, as no entitlement exists for a fatality under *Reesor*, a questionnaire was not mailed to the widow.

DATED this 19th day of March, 2013.

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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

v.

MONTANA STATE FUND,

Respondent.

WCC No. 2002-0676

STATE FUND'S STATUS REPORT
AND MOTION FOR FINALIZATION
OF SETTLEMENT

COMES NOW the Montana State Fund ("MSF") and provides its Status Report and Motion for Approval and Finalization of Settlement in the present action along with a parallel request in *Stavenjord v. Montana State Fund*, WCC No. 2000-0207.

1. Background

The settlement of the *Stavenjord* and *Reesor* actions and the implementation of the settlements have been handled in tandem by MSF. Parallel pleadings are filed in both actions to provide a Status Report and Motion regarding finalization of settlement and dismissal.

On September 22, 2008, the parties filed their Settlement Agreement and Settlement Stipulation in *Stavenjord* (Dkt. 137) and *Reesor* (Dkt. 481). On October 15,

2008, the Court entered an Order approving the settlement in *Stavenjord*. On October 16, 2008, the Court entered an Order approving the settlements in *Reesor*.¹ The settlement implementation was stayed pending a determination of the "paid in full" retroactivity issues in *Flynn v. Montana State Fund*, WCC No. 2000-0222. (*Stavenjord* Dkt. 148, 159, *Reesor* Dkt. 493, 511.)

The Montana Supreme Court decided the *Flynn* case on November 29, 2011 (2011 MT 300). In that decision this Court was affirmed in its definition of claims considered to be settled because they were "paid in full." Paid in full claims, considered to be settled and not subject to retroactive application of judicial holdings, are defined as follows:

A claim in which all benefits to which a claimant is entitled pursuant to the statutes applicable to that claim, are paid prior to the issuance of a judicial decision. If any benefits are paid on the claim after the issuance of a judicial decision, the claim can no longer be considered "paid in full" and is subject to retroactive application of the judicial decision.

Flynn, ¶ 7.

2. Settlements

In addition to being subject to the determination of "paid in full" settlement directions from a final decision in *Flynn*, the approved *Stavenjord* and *Reesor* settlements contain identical implementation provisions:

2. In reviewing potential entitlement under the *Reesor* and *Stavenjord* decisions of this Court and the Montana Supreme Court, the following standards, procedures and practices shall apply to the State Fund:

* * *

b. In the process of implementation, the State Fund will be allowed to take credit for any advances or overpayment on claims found entitled to *Reesor* or *Stavenjord* benefits.

c. Those claimants who died prior to the Supreme Court decision in each case will not be entitled to additional benefits. Those dying after the Supreme Court decision will only be entitled to benefit consideration if a claim is presented with proper documentation by an appointed and

¹ Supplemental Settlement Stipulations were filed on October 16, 2008 (*Stavenjord* Dkt. 143, *Reesor* Dkt. 487).

presently acting Personal Representative.

d. Claims which have been settled, by settlement petitions approved by the Department of Labor or Stipulations approved by the Workers' Compensation Court, will not be entitled to additional benefits under *Reesor* or *Stavenjord*.

e. Payments of prior occupational disease entitlement will be credited against any award under *Reesor* or *Stavenjord*.

f. The entitlement date for an occupational disease claim considered for additional benefits under *Reesor* or *Stavenjord* shall be the date the claimant's occupational disease was first diagnosed as work related.

g. The notification process for consideration of *Reesor* and *Stavenjord* benefits shall be by letter to the population identified in each claim as potentially entitled to additional benefits under the decisions. The letters shall generally explain the potential entitlement, provide a questionnaire for information to be utilized in the review process and invite the person receiving the letter to submit a claim requesting review of potential entitlement. Claims will be processed on the basis of signed and completed questionnaires providing claim information and making claim for further benefits. The completed and executed questionnaire/claim form must be returned and received by the State Fund within 120 days of its mailing. Those claimants not returning the completed and executed questionnaire/claim form within 120 days will be considered as having opted out from and not bound by the settlement. Having opted out, such claimants will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement pursuant to the terms and conditions hereof but may present their claims separately. Letters returned as undeliverable to the State Fund will be processed once through an appropriate address review software. In the event of a second mailing to a new address, the addressees will have 120 days from the date of re-mailing to respond with a completed and executed questionnaire/claim form. Those not returning the completed and executed questionnaire/claim form within such 120 days will be considered as having opted out from and not bound by the settlement. Having opted out, such claimants will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement pursuant to the terms and conditions hereof but may present their claim separately.

h. It is reasonable to establish appropriate time tables for the adjustment of claims potentially entitled to further benefits. Therefore, the State Fund may issue denial letters relative to further entitlement under the Supreme Court decision in this matter to those claimants who opt out of the

settlement. Such claimants would nevertheless retain the right to present their claims, subject to the applicable provisions of the Workers' Compensation Act.

i. The periods for returning properly completed and executed questionnaires/claim forms may be extended for good cause. For purposes of this agreement, "good cause" shall mean that the claimant to whom the notification letter was sent was unable to receive the letter because of being in the military on active duty, out of the country or was subject to a disability that made it impossible to understand the contents of the notification letter. The extension of the period for response to the notification letter with a completed and executed questionnaire and claim form shall be limited to the period of unavailability or mental disability defined above.

j. The notification letters, questionnaire/claim forms, and denial letters, referenced in the preceding two paragraphs, shall be presented to the Court and subject to Court approval before being sent to the claimants.

Dkt. 488 at 2-3. The Court also approved the process for identification and notification of persons potentially entitled to increased benefits under both the *Stavenjord* and *Reesor* decisions described during the hearing on April 26, 2007, in this action. (Transcr. & Exs. at *Stavenjord* Dkt. 111.)

3. Settlement Implementation

A. Identification

The mailing list for potentially entitled claimants assembled by the methods approved in the April 26, 2007 *Stavenjord* hearing has been updated by MSF following the *Flynn* decision, as noted above.

The master mailing lists of claimants potentially entitled to benefits under the decisions were known to be overinclusive. Additional review has determined that some claims identified involved claimants who had returned to their time of injury positions and had a 0% impairment rating, partial benefits were paid or the claims were settled. From that revised list those claims paid in full under *Flynn* were removed. (*Stavenjord* claims with no payments made of any kind after the date of the original Supreme Court benefit decision, May 21, 2001, were considered paid in full. The decision date for *Reesor* was December 22, 2004.)

The updated "final mailing list" for *Stavenjord* contains 543 claims. The updated "final mailing list" for *Reesor* list contains 602 claims. These claims will be included in the notice/questionnaire mailing.

B. Notice

MSF will mail approved letters to all claimants on the revised mailing list within 30 days of the Court approving the finalization process. Copies of such letters are attached as Exhibits 1 and 2.² Each letter will contain a questionnaire, attached as Exhibits 3 and 4. Deceased claimant letters are attached as Exhibits 5 and 6. Deceased claimant questionnaires are attached as Exhibits 7 and 8.

C. Review

All questionnaires timely received by MSF will be reviewed pursuant to the terms and conditions of the approved settlements and entitlement decisions. Every claimant will be notified of the determination of entitlement made after the review. Copies of letters to be sent on each claim after review are attached as Exhibit 9 (award notice) and Exhibit 10 (no entitlement notice).

D. Opt Out

Those claimants who do not return questionnaires will receive a denial letter. See Ex. 11.

E. Returned Letters

Letters returned as undeliverable to the State Fund will be processed once through appropriate address review software. The software to be utilized is Lexis/Nexis and/or Merlin Information Services. Second letters will be sent upon securing a new address through the software.

F. Payment

Claimants entitled to additional benefits shall be paid within 30 days of MSF's calculation of further entitlement.

G. Final Report

MSF will provide the Court a Final Report upon completion of the settlement implementation process.

² The letters and questionnaires are the same as reviewed at and approved following the 2007 hearing in *Stavenjord* with a few minor, non substantive edits.

4. Motions

MSF moves the Court for the entry of an Order approving the described identification and notice process and the settlement implementation process. MSF further moves the Court for an Order finalizing the list of those entitled to review and potential payment under the approved settlements to those claimants on the final mailing list for each case.

DATED this 6th day of March, 2012.

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DALE REESOR,

Petitioner,

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MONTANA STATE FUND,

Respondent.

WCC No. 2002-0676

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

ORDER APPROVING SETTLEMENT
IMPLEMENTATION PROCESS AND
FINAL LISTING OF POTENTIALLY
ENTITLED CLAIMANTS

The Montana State Fund ("MSF") has reported to the Court regarding its plan for final implementation of the settlements it reached in two actions: *Stavenjord v. Montana State Fund*, WCC. No. 2000-0207 and *Reesor v. Montana State Fund*, WCC No. 2002-0676. MSF requests the Court approve the identification and implementation process emanating from the settlements and to issue an Order finalizing the list of those entitled to review for potential payments under the settlements. Good cause appearing therefore,

IT IS HEREBY ORDERED that the identification and settlement review process outlined by MSF in its Status Report and Motion for Finalization of Settlement is hereby approved. The final mailing list described in the Status Report and Motion shall encompass the final list of those claimants entitled to review for consideration of payments under the settlements.

Those claimants who return questionnaires sent by MSF shall receive from MSF a letter explaining its determination of final entitlement. Claimants receiving such letters shall have all rights under the Montana Workers' Compensation Act regarding review of entitlement.

Those claimants who return questionnaires sent by MSF who are determined by MSF not to be entitled to further entitlement shall receive a notification letter outlining the basis for such decision. Claimants receiving such letters shall have all rights under the Montana Workers' Compensation Act regarding review of entitlement.

Those claimants who do not return questionnaires are considered to have opted out of the settlements. MSF shall send denial letters to such claimants. Claimants receiving such letters shall have all rights under the Montana Workers' Compensation Act regarding review of entitlement.

The notice letters and questionnaires provided for review by MSF with its Status Report are approved for use in implementing the settlement.

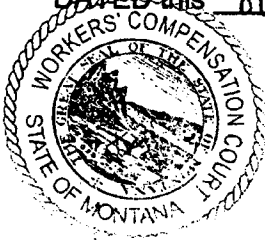
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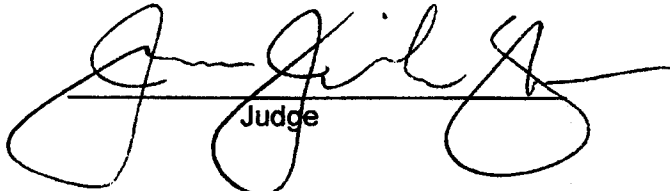
The Court retains jurisdiction of the matter during the settlement implementation process.

MSF shall file a Final Report with the Court upon completion of the settlement implementation process. At that time, the Court will dismiss the action, with prejudice.

Parallel Orders are being issued in both the *Stavenjord* and *Reesor* actions.

DATED this 8th day of March, 2012.




Judge

c: Bradley J. Luck
Thomas E. Martello
Common Fund Distribution List