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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

**IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA
WC COURT NO. 2003-0840**

CATHERINE E. SATTERLEE, Petitioner, vs. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer for BUTTREY FOOD & DRUG, Employer.	WC Claim No.: 788CU041791
JAMES ZENAHLIK, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for EAGLE ELECTRIC, Employer.	WC Claim No.: 03-1997-06362-9
JOSEPH FOSTER, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for ALLEN ELECTRIC, Employer.	WC Claim No.: 3-95-17425-3
DORIS BOWERS, Petitioner, vs. PUTMAN & ASSOCIATES, Adjusters for ROYAL & SUNALLIANCE, Respondent/Insurer for TIDYMANS, Employer.	WC Claim No.: 290044312000

DOCKET ITEM NO. 255

INTRODUCTION

Catherine Satterlee, James Zenahlik, Joseph Foster, and Doris Bowers (hereafter Satterlee) are all older similarly situated workers who are denied PTD benefits because of their age. The Satterlee petitioners were denied ongoing PTD benefits because §39-71-710, MCA, terminates PTD entitlement at the age of Social Security Retirement Income (hereafter SSRI) eligibility. However, §39-71-710, MCA, was found unconstitutional in *Reesor v. State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (2004). Based on *Reesor*, this Court should hold that §39-71-710, MCA, violates Satterlee's right to equal protection. Age alone should not eliminate Satterlee's right to receive PTD benefits.

ARGUMENT

Reesor held that §39-71-710, MCA, was unconstitutional because it denied equal PPD benefits to elderly claimants. Here, Satterlee submits §39-71-710 is unconstitutional because it denies equal PTD benefits to elderly claimants. PPD and PTD benefits are legally indistinguishable in the statute:

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of *permanent partial disability benefits* other than the impairment award, payment of *permanent total disability benefits*, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

[Emphasis added].

The denial of PTD benefits to Satterlee and other elderly claimants because of age is a violation of the equal protection clause of the Montana Constitution. Article II, Section 4, of the Montana Constitution provides:

The dignity of the human being is inviolable. No person shall be denied equal protection of the laws.

Fundamental fairness and the Montana Supreme Court holding in *Reesor* leave no doubt that §39-71-710, MCA, expressly denies equal PTD benefits to older workers. The resulting

inequity is severe and indefensible. If Ms. Satterlee were younger, she would receive full PTD benefits. Therefore, Ms. Satterlee submits that §39-71-710, MCA, violates the Equal Protection Clause of the Montana Constitution.

The two classes involved here are virtually identical to *Reesor*: PTD eligible claimants who receive SSRI versus PTD eligible claimants who do not receive SSRI. Respondents do not address these classes. Rather, in an end run, they attempt to redefine the classes. Respondents' avoidance of the issue shows clearly that Respondents cannot justify the disparate treatment mandated by the statute. This Court should find that *Reesor* defines the classes, agrees they are similarly situated, and holds such disparate treatment unconstitutional.

For equal protection purposes, the *Reesor* classes and the Satterlee classes are identical. These classes are similarly situated for the following reasons: both classes have suffered work-related injuries, both classes are unable to return to work, both classes have injury-related wage loss, both classes have permanent physical restrictions, and both classes have §39-71-702, MCA, as their exclusive remedy under Montana law. *Reesor* at ¶12. Therefore, the classes presented in Satterlee are similarly situated, as were the classes in *Reesor*. The age of the claimant is the only difference between the classes.

There is no reasonable rationale provided by any of the Respondents for denying equal protection. The single discriminating factor between the classes is age, yet Respondents argue there is a constitutional basis for this discrimination – economics. When it is distilled down, it is all about money. However, the issue before this Court is whether §39-71-710, MCA, denies equal protection and is therefore unconstitutional.

This question should be decided with little regard to economics. No Respondent presents any economic information that is legally and factually sufficient to be considered by this Court. Further, if the economic information is considered, it appears overstated.

THERE ARE ONLY TWO CLASSES

Here, there are only two classes: (1) PTD claimants who receive SSRI; and (2) PTD claimants who do not receive SSRI. The two classes at bar are legally identical to the classes identified in *Reesor*:

Reesor maintains the two classes involved in this appeal are: (1) PPD eligible claimants who receive or are eligible to receive social security retirement benefits; and (2) PPD claimants who do not receive and are not eligible to receive social security retirement benefits.

Reesor at ¶10.

Frustrated by their inability to defend the inequitable treatment of these two classes, Respondents have tried in various ways to redefine more than two classes. Respondents argue against the obvious, because that is the only way they can derail the equal protection analysis established in *Reesor*. This is not a new tactic. Respondents also tried to redefine the classes in *Reesor*:

The State Fund initially challenges *Reesor*'s classification scheme contending these classes are not similarly situated because the added benefit of social security

serves the same purpose as replacing lost wages, and specifically, Reesor only suffers a partial wage loss yet receives full social security retirement benefits. Corollary to this argument is the State Fund's assertion that workers' compensation benefits and social security retirement benefits are part of an integrated system of wage loss benefits, and both benefits serve the same purpose to restore earnings due to wage loss, the cause of wage loss being irrelevant. Relying upon *Watson v. Seekins* (1988), 234 Mont. 309, 763 P.2d 328, it contends workers' compensation offset statutes prevent double dipping, and receiving both social security retirement benefits *and* disability benefits is, in essence, double dipping.

Reesor at ¶11.

The Supreme Court in *Reesor* rejected the Respondent's attempt to redefine the classes, and more importantly found that the two classes, as proposed here, are similarly situated:

We agree with Reesor, however, when he asserts that both classes are similarly situated because both classes have suffered work-related injuries, are unable to return to their time of injury jobs, have permanent physical impairment ratings and must rely on § 39-71-703, MCA, as their exclusive remedy under Montana law. The claimant's age, as a result of eligibility to receive social security retirement benefits, is the only identifiable distinguishing factor between the two classes. Furthermore, chronological age and the corresponding eligibility for social security retirement benefits is unrelated to a person's ability to engage in meaningful employment. Therefore, we conclude the classes are similarly situated for equal protection purposes.

Reesor at ¶12.

In the case at bar, both classes of PTD claimants are similarly situated because both classes have suffered work-related injury, both are unable to return to work, both have permanent physical impairment, and both must rely on §39-71-702, MCA, as their exclusive remedy under Montana law. Therefore, the equal protection analysis here is legally identical to *Reesor*.

A MIDDLE-TIER ANALYSIS SHOULD BE APPLIED

After the Court determines that the classes are similarly situated, the Court decides which of three levels of scrutiny to apply. The Montana Supreme Court has recognized three levels of scrutiny: strict scrutiny, middle-tier scrutiny, and rational basis. Strict scrutiny applies when a law affects a suspect class or threatens a fundamental right. Middle-tier scrutiny applies when the law affects a right conferred by the Montana Constitution but is not found in the Constitution's Declaration of Rights. Middle-tier scrutiny requires the State to demonstrate that its interest in the classification outweighs the value of the right to an individual. The rational basis test applies in the absence of strict or middle-tier scrutiny. Under the rational basis test, the government must show that the objective of the statute is legitimate and that the objective is rationally related to the classification used by the Legislature. *Reesor* ¶13.

Satterlee acknowledges that historically the Court applies the rational basis test to workers' compensation statutes. *Henry v. State Compensation Insurance Fund*, 294 Mont. 449, 456, 982 P.2d 456, 461, (1999). However, given the rare combination of age discrimination and

the loss of workers' compensation benefits found in the present statute, Satterlee submits that the middle-tier analysis applies. The middle-tier analysis requires the State show the law is reasonable and its interest in the resulting classification outweighs the value of the right of the individual. Montana is very diligent in its protection against age discrimination in the employment context. Therefore, Satterlee believes the same diligence (scrutiny) should apply when protecting older workers who lose their employment to work-related accidents.

The Montana Legislature has repeatedly and fully protected age in virtually the same manner as it protects suspect classes. Because of statutes like §49-1-102, MCA, §49-2-303, MCA, §49-2-403, MCA, and §49-2-308, MCA, Satterlee submits that Montana does treat the rights of the elderly as "significantly important." Specifically, §49-2-303(1)(a), MCA, prohibits an employer from discriminating against a "person or in a term, condition, or privilege of employment because of . . . age. . . ." The Montana Supreme Court has even held that workers have a fundamental right to employment and any infringement on that right is reviewed under a strict scrutiny standard to determine if a compelling state interest justifies the infringement. *Wadsworth v. Dept. of Revenue*, 275 Mont. 287, 911 P.2d 1165, 1174 (1996). When Montana's statutes and case law are considered together, it makes no sense to fully protect the constitutional rights of an older employee entering the workforce, but then to deny the older employee a similar constitutional protection when she is unable to work because of an accident.

Thus, because the right to PTD and rehabilitation must arise out of an employment relationship, and because §39-71-710, MCA, discriminates because of age, a middle-tier scrutiny test should apply. However, even if the Court determines that a rational basis test applies, there is no rational basis for terminating PTD or rehabilitation benefits because of age as held in *Reesor*.

Particularly instructive, *Butte Community Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986), held that the government was not reasonable when it picked age as the determinative classification to deny welfare benefits. This Court held it was arbitrary for the Montana Legislature to use age as the determinative factor to deny welfare benefits:

The State has failed to show that misfortunate people under the age of 50 are more capable of surviving without assistance than people over the age of 50. Broad generalizations, concluding that those who are 49 years of age can retrain or relocate while those who are days older cannot, are arbitrary.

Butte Community Union, 219 Mont. at 434, 712 P.2d at 1314.

THE STIPULATION

As pointed out in Satterlee's Brief, the State Fund entered into a stipulation agreeing that *Reesor* "will likely determine whether Petitioners are entitled to receive additional benefits in this matter." (Satterlee's Brief at p. 4). The State Fund's lawyers proposed the Stipulation and they drafted the document. Now the State Fund tries to backpedal out of the Stipulation by stating that *Reesor* "may control the legal issue presented in Satterlee." (State Fund Brief at p. 22). However, Satterlee submits that the State Fund gave an honest evaluation when it proposed the Stipulation the first time. The fact that the State Fund now wants to retreat from a Stipulation that it drafted sheds light on the Respondents' newly contrived arguments asserted in their response briefs.

It is compelling that Respondents J.H. Kelly, LLC, and Louisiana Pacific Corporation (hereafter Kelly) initially agreed with the State Fund's first and honest evaluation. In its response brief, Kelly posed the question of whether *Reesor* compels a conclusion of unconstitutionality when PTD and rehabilitation benefits were terminated upon petitioners reaching retirement age. Kelly recognized the "response is yes." Kelly correctly reasoned:

The main factual difference is that *Reesor* involved termination of PPD benefits, whereas this case involves termination of PTD/rehabilitation benefits. That, however, is a distinction without a difference, especially since the three benefits that ostensibly may be terminated upon a claimant's retirement are contained within the same statute, a statute already found to violate equal protection guarantees.

Thus, Respondents would concede that Petitioner's motion for partial summary judgment should be granted on the issue of the unconstitutionality of Section 39-71-710, MCA.

[Emphasis original]. (Kelly Brief, p. 3).

Understandably, the State Fund and Kelly are attempting to reverse their initial assessments, but these assessments are more accurate than the incongruous arguments they now propose.

**THERE IS NO RATIONAL BASIS TO DISCRIMINATE
BETWEEN THE TWO CLASSES BASED UPON AGE**

Whether a rational basis test or a middle-tier test applies, it is a violation of equal protection to discriminate against PTD claimants because of age. Although Respondents attempt to explain their reasoning otherwise, the reasons were dismissed in *Reesor*.

When determining whether there is a rational basis to discriminate against PTD claimants solely because of age, this Court should follow the reasoning and holding of the Montana Supreme Court in *Reesor*:

We said in *Henry* that "[a] classification that is patently arbitrary and bears no rational relationship to a legitimate governmental interest offends equal protection of the laws. As we have previously held, equal protection of the laws requires that all persons be treated alike under like circumstances." *Henry*, ¶ 36 (quoting *Davis v. Union Pacific R. Co.* (1997), 282 Mont. 233, 242-43, 937 P.2d 27, 32).

Montana's public policy and objective of workers' compensation act is articulated in §39-71-105, MCA, which states in pertinent part:

For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at

a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

If PTD benefits automatically terminate at a specific age, and workers do not retire at a specific age, then PTD wage-loss benefits cannot bear a reasonable relationship to actual lost wages.

In *Reesor*, the Respondents made many of the same arguments as here. Ultimately, all of these arguments were economic and rejected by the Court. The Court recognized that SSRI and workers' compensation benefits are not the same type of benefits and therefore are not duplicate payments:

[T]he State Fund urges that social security retirement benefits and state disability benefits serve the same purpose of restoring earnings due to wage loss. . . . [I]t asserts the purpose of §39-71-710, MCA, is to coordinate wage replacement benefits and avoid duplicity in the award of benefits.

...
The issue in this case is whether it is fair to deny men and women full PPD benefits simply because their age makes them eligible to receive social security retirement or similar benefits. We conclude that the disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to that legitimate governmental interest.

The State Fund reasons §39-71-710, MCA, is rationally related to a legitimate government goal because the Legislature is simply attempting to coordinate the wage loss benefits provided by social security retirement with PPD benefits provided by workers' compensation.

Reesor then explained why workers' compensation benefits and SSRI benefits are not comparable. Workers' compensation is a wage loss replacement and available only if a worker is injured. SSRI is not a wage loss system and is triggered by reaching a certain age:

[T]he WCA is an exclusive statutory remedy whereby an injured worker gives up the right to sue in tort in exchange for guaranteed wage loss compensation for his injuries. The WCA contemplates only wage loss due to injury; it is not a need based system. While workers' compensation and social security retirement may be similar in that both are social programs, social security retirement benefits, unlike workers' compensation, provide the recipient with supplemental income after he contributes to the program throughout his working life. Once a recipient qualifies to receive social security retirement by working the requisite number of quarters, the triggering event to receive benefits is reaching the retirement age as specified by the federal statute. This is in direct contrast to workers' compensation benefits which are available only if a worker is injured while in the course and scope of employment and experiences wage loss as a result of such injury.

Respondents have attempted to distinguish *Reesor* from this case relying upon other case law. However, the *Reesor* Court distinguished these other cases recognizing there is no rational basis for denying older workers' compensation benefits to a similarly situated worker with an

identical injury as a younger worker. To do so is a violation of equal protection and unconstitutional:

We also conclude that the *Flynn* and *Watson* cases are distinguishable. Both cases addressed reduction of disability benefits through the offset provisions of the WCA. As we said earlier, social security retirement benefits and social security disability benefits are two distinct programs and cannot offset one another due to the fact that both programs are based on completely different concepts. We see no reason why a forty-year-old injured worker should receive full PPD benefits pursuant to §39-71-703, MCA, and a sixty-five-year-old worker with an identical injury should receive only an impairment award due to the fact he has reached social security retirement age. There is no rational basis to deny a class of injured workers a category of benefits based upon their age.

...
Therefore, we conclude that providing PPD benefits to a younger person in Reesor's situation in the amount of \$23,056.25 under the WCA, but limiting Reesor's benefit, based on his age, to only \$2,975 pursuant to §39-71-710, MCA, violates the Equal Protection Clause found in Article II, Section 4 of the Montana Constitution. There has been a failure to demonstrate a rational basis for the infringement of such a constitutionally protected right, therefore, we hold that §39-71-710, MCA, is unconstitutional.

Reesor at ¶¶15-25.

In is brief, Respondent Putman recognizes that equal protection "keeps the government from treating differently persons who are alike in all respects." Putman concedes that *Reesor* held that "chronological age and the corresponding eligibility for social security retirement benefits is unrelated to a person's ability to engage in meaningful employment." (Putman & Associates Brief at p. 5). This logic can lead to only one conclusion under an equal protection analysis; that distinguishing between the two PTD classes is a violation of equal protection because it was based solely upon chronological age.

Here, as in *Reesor*, the arbitrary elimination of PTD benefits for elderly injured workers runs contrary to the Legislature's stated goal to provide reasonable wage loss benefits based on "a reasonable relationship to actual wages lost" to both classes of injured worker. Therefore, this Court should hold that there is no rational basis to support the elimination of PTD benefits for elderly injured workers. Montana public policy does not allow disparate PTD entitlement between similar classes of injured workers.

At its inception, workers' compensation was developed as a no fault system to replace common law tort actions by employees against employers. Obviously, there never was, nor could there ever be, an age limitation that would prohibit an elderly injured person from suing for negligence and full damages in tort law. There could be no recognized public policy that would be served by allowing such an arbitrary age limitation; nevertheless, an arbitrary age limitation has crept into workers' compensation law, and this Court should declare it unconstitutional. If it is allowed to stand, should the exclusive remedy protect employers for negligence after a worker reaches a certain age?

Satterlee contends that there is no rational relationship for the State to provide disparate PTD benefits to persons harmed at work whether they are old or young. Workers in both classes

have been harmed, both are unable to return to work, so both classes have incurred loss of earning capability. There is no rational reason to pay PTD benefits to one group of workers in these different but equal classes.

The emphasis of Montana's public policy is focused on the losses suffered by the injured worker. Thus, Montana policy is not served by eliminating PTD because of other benefits. Likewise, there is no rational basis to deny PTD benefits because the worker has passive income. PTD benefits are need-based, SSRI benefits are not. Montana does not deny PTD benefits to younger claimants who have passive income from other sources. Yet, that is what §39-71-710, MCA, does to older workers when it denies PTD benefits to SSRI recipients.

Montana public policy is not served by denying reasonable wage loss benefits to an older woman simply because she has other assets. Clearly, Montana law provides the same wage-loss benefit to a younger woman whether she is rich or poor. This is the law because Montana public policy requires the State to furnish reasonable wage loss benefits "that bear a reasonable relationship to the actual wage lost." Nothing in Montana's public policy suggests that a workers' compensation insurance company should reduce the claimant's benefits if the claimant has other assets.

Other recent Montana Supreme Court cases support Satterlee's argument that termination of PTD benefits based on age is a violation of equal protection. In *Stavenjord*, the Court followed the *Henry* precedent when it held that equal PPD benefits should be paid to similarly situated claimants under the Workers Compensation Act and the Occupational Disease Act. *Stavenjord v. Montana State Fund*, 314 Mont. 466, 477, 67 P.3d 229, 237 (2003). In so holding, the Court recognized Montana's public policy is not served by disparate PPD benefits between two similar classes of disabled workers; therefore, *Stavenjord* held the denial of equal benefits to be unconstitutional because it was not rationally related to Montana's governmental interest. *Stavenjord*, 314 Mont. at 477, 67 P.3d at 237.

In *Schmill*, the Montana Supreme Court again disapproved disparate treatment of two classes of disabled workers when it held that apportioning compensation for one class of disabled worker (occupational disease) and not for another class of disabled worker (workers' compensation) violates equal protection. *Schmill v. Liberty Northwest Ins. Corp.*, 315 Mont. 51, 67 P.3d 290 (2003).

As this Court struck down arbitrary limitations in *Reesor*, *Stavenjord* and *Schmill*, the age limitation on PTD benefits required by §39-71-710, MCA, must be struck down in this case as well.

PTD benefits are provided in exchange for the worker relinquishing her right to sue in common law tort. If a statute were enacted to prevent a common law tort because an injured worker received SSRI benefits, that statute would be legally repulsive. Here, the practical effect is the same. Satterlee is stripped of her full PTD benefits because she receives SSRI benefits because of her age. SSRI benefits "are not designed or intended to compensate for workplace injury or replace elements of damage that might be recovered in a common law action for such an injury." *State ex. rel. Boan v. Richardson*, 482 S.E.2d 162, 166 (W.Va.1996). In fact, the Social Security Administration has recognized that SSRI was never intended to be a worker's sole retirement income:

But Social Security was never meant to be the only source of income for people when they retire. Social Security replaces about 40 percent of an average wage earner's income after retiring, and most financial advisors say retirees will need about 70-80 percent of their work income to live comfortably in retirement. To have a comfortable retirement, Americans need much more than just Social Security.

Introductory letter from Commissioner of Social Security, SSA Publication No. 05-10024, January 2005.

Not only were SSRI benefits not intended to be a sole source for retirement, when PTD benefits are terminated, the economic consequences are often compounded. For example, a claimant who is PTD at age 50 will receive SSDI benefits and PTD benefits from workers' compensation until social security retirement age. During the period of time from age 50 to eligibility for retirement age, the injured worker does not contribute any additional money to social security. SSRI is based upon contributions from the employee, so the worker's SSRI is likely much less than it would have been had the claimant worked from age 50 until retirement. See SSA Publication No. 05-10055, ICN 462560, March 2005.

Another problem likely faces the 50-year-old worker at retirement. PTD claimants will not have any extra money income for retirement accounts. For example, a state employee would lose the opportunity to contribute to the public employees' retirement system. Further, because the employee is likely to have less money, she will lose health insurance and cannot contribute to other retirement accounts.

Thus, reaching retirement age leaves her with a lower amount of social security retirement benefits because of the injury, the reduced likelihood of having any private or individual retirement accounts, and suddenly without any PTD benefits. With the loss of PTD benefits, many slip into poverty.

**ECONOMIC IMPACT TO INSURERS IS NOT A RATIONAL BASIS FOR
DISCRIMINATING AGAINST PTD CLAIMANTS BASED ON AGE**

Respondents disregard *Reesor*. Respondents argue if Petitioners prevail, the cost will be prohibitive and too much of a burden on the businesses of Montana. Therefore, Respondents argue that this Court should find §39-71-710, MCA, constitutional as it applies to PTD and rehabilitation claimants, despite *Reesor's* holding that found §39-71-710, MCA, unconstitutional as it applied to PPD claimants.

Although couched in different language, all of Respondents arguments are about money and cost. There are three reasons these economic arguments should not be adopted.

- First, the Montana Supreme Court has held that cost alone cannot justify violation of equal protection.
- Second, none of the affidavits provided by Respondents provides legally sufficient facts that this Court can consider.
- Third, although Respondents have not provided sufficient facts to determine cost, the costs presented by Respondents are not supported by the evidence and appear significantly overstated and are therefore not "uncontroverted."

The issue before this Court is whether §39-71-710, MCA, violates the constitutionally mandated equal protection rights of Catherine Satterlee, James Zenahlik, Joseph Foster, and Doris Bowers. It is not the retroactive application of Satterlee. Although Satterlee pleaded common fund in her petition, her motion does not address retroactivity or cost. If the Court limits its decision to the motion and these four claimants, then economics should not be an issue in this decision.

Thus, Satterlee's motion should be granted. Respondents have generally conceded that Petitioners' facts as alleged are accurate. These facts create two similarly situated classes which are legally identical to *Reesor*. Therefore, this Court has sufficient undisputed facts to grant Satterlee's Motion for Partial Summary Judgment and should do so.

In the event this Court entertains the economic issue raised by Respondents, it should conclude that these money saving arguments cannot be used to justify a denial of equal protection of older workers. Many decisions made by this Court and the Montana Supreme Court affect the cost of workers' compensation premiums. The Supreme Court has held that, "[c]ost-control alone cannot justify disparate treatment which violates an individual's right to equal protection of the law." *Heisler v. Hines Motor Company*, 282 Mont. 270, 283, 937 P.2d 45, 52 (1997). Boiled down to their essence, all arguments set forth by Respondents are about economics. As with *Reesor*, economics cannot justify unconstitutional disparity based on age.

However, if this Court decides it appropriate to consider economic arguments, none of the Respondents presents legally sufficient facts for this Court to consider. None of the affidavits provide a sufficient factual basis for the conclusory economic figures presented nor do they meet the criteria for expert witness testimony. Although the State Fund argues that the "financial impact of Satterlee is an issue that cannot be ignored in this litigation because Satterlee has the very real potential to destroy the viability" of workers' compensation, the Respondents' own affidavits show they have not done the necessary claims research to have the factual basis to calculate these figures.

Rule 24.5.329(7), MWCCR, requires summary judgment affidavits to meet the same elements as Rule 56(e), M.R.Civ.P. With respect to summary judgment affidavits, the Montana Supreme Court has held:

Rule 56(e), M.R.Civ.P., requires a summary judgment affidavit to contain certain elements: Affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. . . . An adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits . . . must set forth specific facts showing that there is a genuine issue for trial.

. . . Since Cooper's compound affidavit does not comply with the requirements of Rule 56(e), M.R.Civ.P., we conclude, as a matter of law, that Cooper's affidavit does not raise a genuine issue of material fact.

Cooper v. Sisters of Charity, 265 Mont. 205, 208-209, 875 P.2d 352, 354 (1994). *See also*, *Thornton v. Niswanger*, 263 Mont. 390, 868 P.2d 633 (1994).

The affidavits presented here do not satisfy evidentiary admissibility, competency and foundation standards and, therefore, cannot sustain Respondents' argument. They do not show a genuine issue for trial. Further, as set forth in the attached Affidavits of David K. Johnson (Exhibits A and B), these affidavits likely fail to meet the minimal professional requirements for economists. Mr. Johnson reviewed the State Fund's "Statement of Additional Uncontroverted Facts" as well as the affidavits of Daniel Gengler, David Ogan, Christine E. McCoy, Mark Kraft, Robert Worthington and Shawn Bubb provided by the Respondents. After reviewing these documents, Mr. Johnson states in his affidavit:

5. The purpose of providing expert testimony is to assist the finder of fact. The Statement of Ethical Principles and Professional Practice of the National Association of Forensic Economists state in part:

Practitioners of economics should stand ready to provide sufficient detail to allow the replication of all numerical calculations, with reasonable effort, by other competent forensic economic experts, and be prepared to provide sufficient disclosure of the sources of information and assumptions underpinning their opinions to make them understandable to others.

Thus, Respondents should have sufficient information available and be prepared to provide it. To date, Respondents have not done so. The affidavits submitted by the Respondents have simply provided unsubstantiated numbers without the Respondents' sources of information or assumptions. Hence, the Respondents' affidavit conclusions cannot be tested or relied upon for determining the economic cost of Satterlee.

6. If sufficient information had been available, I would have prepared an expert report in conformity with Rule 26(b) (4) of the Montana Rules of Civil Procedure and requirements of the preceding section of this affidavit. My report would have evaluated the Respondents' Rule 26 (b) (4) report, had one existed.
7. As a result of the foregoing, it is my opinion that the damages claimed by the Respondents in their affidavits are not supported by sufficient facts or known assumptions, may be materially incorrect and should not be used to form the basis of any opinion regarding the economic cost of Satterlee.

Although these are affidavits and not expert witness reports, in order to be admissible, expert testimony must meet the requirements of Rule 26(b)(4), M.R.Civ.P., including the factual foundation requirements. In order to be considered, affidavits must "justify" the Respondents' "opposition" pursuant to Rule 24.5.329(8), MWCCR, as observed by Mr. Johnson:

From the "Uncontroverted Facts" I attempted to verify damages claimed in the "Uncontroverted Facts" and was unable to do so. This was the result of having insufficient information. In order to evaluate the damages claimed in the "Uncontroverted Facts", additional information would be needed. Examples of additional information include the number of claimants included in each year of the historical computation, the date at which the claimant became eligible for payments, where applicable, the date of death of the claimant, the age and sex of

each claimant, estimated wage growth rates and the discount rates, etc. Lacking this information, one can only speculate as to what actual damages might be.

A review of these affidavits shows Mr. Johnson is correct. For example, none of them provide the number of PTD claimants over 65 years old upon which the figures are based. None of them provide any basis for calculating the value of any of the claims. Only conclusory numbers are provided. Obviously, the basis of these numbers is critical to any Satterlee analysis.

Not only do the affidavits fail to provide legally sufficient facts which support the "Uncontroverted Facts," the State Fund admits it has not done the fact-finding research to obtain the necessary information to determine the PTD claimants. In his affidavit, Mr. Johnson confirms this:

Christine E. McCoy indicated that a Satterlee review will have to identify claimants who may be affected by the decision and may include the review of a claim file with information stored on all media types. According to Ms. McCoy, claimants can be substantially identified by using complex computer queries to search the CMS and DB02 systems and that manually reviewing each file may be the only way of identifying affected claims. It is my opinion that these admissions by Ms. McCoy probably show that some or all of the damages claimed by the State Fund are based solely on estimates without a sufficient factual basis.

If the claimants have not been identified, then it is doubtful if the number of claimants or the value of claims has been identified. This is consistent with State Fund past cost estimates. This Court previously observed:

The State Fund estimates its "hard costs" associated with retroactive application of Stavenjard at \$7.5 million. . . . On its face, the State Fund's estimate is a worst case scenario, not a realistic estimate of actual costs. It is highly unlikely that every file will require the degree of work-up suggested by the State Fund.

Stavenjard v. State Fund, 2004 MTWCC 62, ¶ 30.

The State Fund has provided inconsistent and unsupported data. In the "Montana State Fund's Statement of Additional Uncontroverted Facts," it recognizes the National Council on Compensation Insurance provided estimates of prospective application of Satterlee. NCCI estimates a rate increase of 5% to 11%. (Fact 10c.) The State Fund's estimate is 11% to 21%. (Fact 10d.). This difference is explained away by the State Fund as "the assumption of discounting" but no explanation is given about the rate or application of the discount.

It is important to know what other factors have been considered by the State Fund. The State Fund claims that if Satterlee is retroactive, the Old Fund liability will be approximately \$93 million to \$116 million. Several facts are absent in the affidavits with respect to this figure. The number of claimants is not given and it is doubtful they are known given the affidavit of Ms. McCoy. What is the value given each claim? Does this include settled claims?

Another unknown fact is whether the Old Fund figure includes the 500 week PPD benefit to which PTD claimants during some of the Old Fund years. When the legislature terminated lifetime PTD benefits in 1981, a PTD claimant was still entitled to 500 weeks of PPD benefits. This benefit ended before 1990. This 500 week amount should already be a liability and

included in the current Old Fund figure of \$7.4 million claimed by the State Fund because it is a current liability. The State Fund does not state whether it is included. Because the Respondents' facts are insufficient, these questions cannot be answered from the information provided.

Although the factual basis in Respondents' affidavits is significantly lacking, there is some information available which shows the State Fund's figures are likely exaggerated. These facts include:

- In 1981, there were 85 claimants who were receiving both PTD benefits and SSRI. (See Exhibit 1 attached to Lumberman's Brief, State Administration hearing notes, March 10, 1981, pp. 3 and 4).
- The State Fund paid 44.2% of total benefits over a four year period ending in fiscal year 2004. (Exhibits A and B, Affidavits of David Johnson, CPA).
- The 2004 Workers' Compensation Annual Report from the State of Montana tracked information, including the number of PTD claimants being paid from injuries suffered in 1999 through 2004. Table 6 of the Annual Report shows that 118 PTD claims existed in 2004 from workers' compensation injuries between 1999 and 2004. This figure is the sum of the cumulative claims from each year. (Exhibit C, Table 6, p. 35 of 2004 Governor's Report, is attached. The entire 2004 Annual Report can be found on-line).
- If the State Fund paid 44.2% of the benefits as stated above, then a reasonable assumption could be made that the State Fund would have approximately 44% of the 118 PTD claims (approximately 52) in 2004 from workers injured over this five year period. Satterlee recognizes this figure (52) is deduced from assumptions. However, this is because the State Fund failed to produce necessary facts.

The State Fund calculates that the total retroactive cost of Satterlee to the Old Fund and the New Fund will be between \$228 million and \$302 million. (Exhibit B, Schedule 2 attached to Mr. Johnson's second Affidavit). According to Mr. Johnson, if the liability is \$228 million, then an average of 531 PTD claimants over 65 years must be paid each year beginning October 1, 1981, and ending December 22, 2004. In order to support a \$302 million liability, an average of 703 claimants would have to be paid PTD benefits each year.

Thus, if Mr. Johnson is correct, the State Fund's numbers purport to show an increase from 85 PTD claimants over 65 years in 1981 to an average of between 531 PTD claimants and 703 PTD claimants paid each year since 1981. This seems unlikely. Further, the number of PTD claims from the 2004 Annual Report from 1999 to 2004 appear consistent with the 85 PTD claimants in 1981. Thus, the State Fund's figures appear overstated.

After failing to provide sufficient facts, then admitting it has not identified the claimants, the State Fund then admits that it has resorted to supplying financial information which is self-described as representing the "highly likely range." (Affidavit of Daniel Gengler, p. 2). Not only did the State Fund not provide legally sufficient facts, it appears to admit it does not know the facts. This Court cannot take seriously the State Fund's claims on the economic impact of this case without more information.

In keeping with the State Fund, none of the affidavits from other Respondents provide sufficient factual information. For example, the affidavit of Robert Worthington attached to the

MMIA brief does not give any basis for the conclusory figures provided. Therefore, all Respondents' economic evidence set forth in the affidavits should be disregarded because it is legally insufficient.

The fact that Respondents have not provided sufficient facts should not deter this Court from recognizing that Satterlee has provided sufficient unchallenged facts for partial summary judgment. Satterlee asks this Court to grant summary judgment in her favor based upon the evidence before it at this time.

If the Court determines it should examine the Respondents' affidavits at this time, this evidence needs to be placed in context. The State Fund believes it will have accrued a surplus of \$141 million by June 30, 2005. (Affidavit of Daniel Gengler, p. 4). The State Fund's total "admitted assets" are \$750 million and its net premium earned is \$140 million as of June 30, 2004. (See Exhibit D, p. 9).

The amount of the legally required surplus and its purpose is described in §39-71-2330(2), MCA. As the statute states, the purpose of the surplus is for cases like Satterlee:

[T]he board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

The 25% minimum surplus is approximately \$35 million (25% of \$140 million). The State Fund declared a \$5 million dividend payment to policyholders and has returned \$38 million in dividend payments since 1998. (Exhibit E – the article is also found on the State Fund's website and is dated April 15, 2005).

However, if this Court is going to consider the "sky is falling" economic argument set forth by the Respondents, then Petitioners request this Court allow them to discover the basis of Respondents' claims about the financial impact of Satterlee. See Rule 56(d), M.R.Civ.P., and Rule, 24.5.328(8), MWCCR. Petitioners moved for summary judgment without discovery because Petitioners' facts cannot be reasonably controverted, and *Reesor* is clear that PTD benefits and rehabilitation benefits cannot be distinguished from PPD benefits in §39-71-710, MCA. However, if the Court intends to consider the economic impact of this case, Petitioners' will challenge the "uncontroverted facts" because Petitioners cannot agree they are accurate. Therefore, the State Fund's Cross-Motion for Partial Summary Judgment should not be granted without discovery being undertaken.

**SIMULTANEOUS PAYMENT OF SSRI AND PTD IS NOT
DOUBLE PAYMENT FROM EMPLOYER FUNDED PROGRAMS**

Respondents argue here, as in *Reesor*, that the Legislature's purpose in §39-71-710, MCA, is to prevent double payment to an employee out of two different government programs, both of which are funded by the employer. This is an inaccurate statement of these two programs. First, when employers pay into social security and pay a workers' compensation premium, they have less disposable income with which to pay their employees. Thus, it stands to reason that employees receive less pay than they would otherwise.

Second, employees pay 50% of the social security contribution directly from their wages. Therefore, to characterize SSRI as fully funded by the employer is wrong. If the Court were to agree that benefits should be coordinated because SSRI is an employer funded program, then PTD benefits should be reduced by 50%, the contribution of the employer. Satterlee does not agree that this 50% reduction should apply. However, if the Court accepts a coordination of benefits argument, then 50% should be the maximum reduction.

RESPONDENT'S DID NOT ADDRESS REHABILITATION BENEFITS IN THEIR ARGUMENTS

Except in passing, none of the Respondents addressed whether *Reesor* should apply to rehabilitation benefits. Petitioner Doris Bowers seeks PTD and rehabilitation benefits in the alternative. Rehabilitation benefits were ignored by Respondents because none of the arguments presented apply.

This is a twofold admission by Respondents. First, rehabilitation benefits are legally identical to PPD benefits in *Reesor*. Thus, denial of rehabilitation benefits because of age is a violation of equal protection.

Second, and more importantly, by ignoring rehabilitation benefits in their arguments, Respondents admit all of their arguments directed at PTD benefits are economic. Respondents recognize that because of *Reesor*, they cannot successfully argue there is a rational basis for denying rehabilitation benefits because none of their economic arguments apply.

Therefore, this Court should find that §39-71-710, MCA, violates equal protection when it denies rehabilitation benefits to PTD claimants receiving SSRI. This Court should also recognize that Respondents' failure to address rehabilitation benefits is an implicit admission that all their arguments are economic.

SATTERLEE DID NOT WAIVE HER RIGHT TO A CONSTITUTIONAL CHALLENGE OF §39-71-710, MCA

Lumberman's argues that Satterlee failed to raise her constitutional argument at the "earliest opportunity" and, therefore, she has waived that argument and her claim should be dismissed. This argument fails. Although the Supreme Court has announced its preference that constitutional arguments should be raised first at the trial court level and at the "first opportunity," no case law flatly bars Satterlee from raising her constitutional challenge in this forum under these facts.

As is clear from the Petition and as is acknowledged in Lumberman's brief, Satterlee was injured on July 25, 1992. Lumberman's denied payment of PTD benefits. In January of 1996, this Court ruled that, though Satterlee was totally disabled for other reasons, she was not PTD as a result of her July 25, 1992, industrial accident. In December of 1996, the Montana Supreme Court reversed this Court's denial of Satterlee's claims for PTD benefits and remanded the case for entry of judgment in Satterlee's favor. *Satterlee v. Lumberman's Mutual Casualty Company*, 280 Mont. 85, 929 P.2d 212 (1996).

After the Supreme Court decision, Satterlee turned age 65 on September 30, 1999, and Lumberman's ceased paying permanent total disability payments in the amount of \$235.55

pursuant to the statute now at issue, §39-71-710, MCA. Satterlee then, in this case, petitioned for the Court's ruling that §39-71-710, MCA, is unconstitutional.

At the time Satterlee was injured, the Workers' Compensation Act contained no time limit in §39-71-2905, MCA, for filing a petition with the Workers' Compensation Court for determination of a dispute between a claimant and an insurer. The policy of the law and the practice of the Court and bar has always been to accept petitions without procedural restrictions that may found in other practice areas. That practice should hold true in this case as well because Lumberman's is unable to articulate any black letter law that absolutely prohibits Satterlee from raising her constitutional claim.

Where it is contended that an act invades constitutional rights, a person affected should raise the question of the invalidity of the act at the earliest opportunity, and failing to do so *may* constitute a waiver of the right." Conversely, there is no valid reason why a court, if it has jurisdiction of a constitutional question, should refuse to do so merely because of discretion.

Union Interchange, Inc. v. Allen, 140 Mont. 227, 234-34, 370 P.2d 492, 496 (1962) quoting *State ex rel. Powell v. State Bank of Moore*, 90 Mont. 539, 4 P.2d 717. (emphasis added). *Accord In re Authority to Conduct Sav. & Loan Activities*, 182 Mont. 361, 597 P.2d 84 (1979) ("Constitutional issues *should generally* be raised at the earliest opportunity.") The Montana Supreme Court has expressed a reluctance to hear constitutional claims which have not been raised at the district court level. However, the Court has stopped short of barring such claims altogether.

In any case, Satterlee did raise her constitutional challenge at the earliest opportunity. In her first litigation the constitutionality of §39-71-710, MCA, was not at issue. The question in 1996 was a factual/legal issue of whether Satterlee was permanently totally disabled. Not until her 65th birthday in 1999 and Lumberman's termination of her benefits did the constitutionality of §39-71-710, MCA, become an issue. It was after this termination of PTD benefits that Satterlee then petitioned this Court for relief from an unconstitutional statute, §39-71-710.

Satterlee has not waived her constitutional challenge. Once she was denied benefits under §39-71-710, she filed her petition challenging that statute. Consistent with the Supreme Court's preference for developing constitutional arguments at the trial court level, Satterlee attacked the constitutionality of §39-71-710 before this Court. Therefore, this Court should reject Lumberman's argument that Satterlee waived her right to present this claim.

CONCLUSION

Section 39-71-710, MCA, was found unconstitutional in *Reesor v. State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (2004). Based on *Reesor*, this Court should hold that §39-71-710, MCA, violates the equal protection rights of Catherine Satterlee, James Zenahlik, Joseph Foster, and Doris Bowers because age alone eliminates their right to receive PTD benefits. Respondents' arguments are much the same as in *Reesor* and should be disregarded. Their economic arguments should also be disregarded as unsubstantiated.

The Court should hold in favor of Satterlee and award her PTD benefits after retirement age.

DATED this 22nd day of September, 2005.

HUNT LAW FIRM

BY: 

JAMES G. HUNT
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of September, 2005, I hand delivered the original of the foregoing **PETITIONERS' REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** on the following:

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

See Court's website for copy of Petitioners' Reply Brief in Support of Motion for Partial Summary Judgment.




EXHIBIT A

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Attorneys for Petitioners

**IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA
WC COURT NO. 2003-0840**

CATHERINE E. SATTERLEE, Petitioner, vs. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer for BUTTREY FOOD & DRUG, Employer.	WC Claim No.: 788CU041791
JAMES ZENAHLIK, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for EAGLE ELECTRIC, Employer.	WC Claim No.: 03-1997-06362-9
JOSEPH FOSTER, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for ALLEN ELECTRIC, Employer.	WC Claim No.: 3-95-17425-3
DORIS BOWERS, Petitioner, vs. PUTMAN & ASSOCIATES, Adjusters for ROYAL & SUNALLIANCE, Respondent/Insurer for TIDYMANS, Employer.	WC Claim No.: 290044312000

AFFIDAVIT OF DAVID JOHNSON, CPA

STATE OF MONTANA)
 :
County of Lewis & Clark) ss.

DAVID JOHNSON, being first duly sworn upon his oath, deposes and says:

1. I am a CPA with the firm of Anderson ZurMuehlen & Co., P.C. located in Helena, Montana. Since 1985 I have worked on approximately 1,500 cases involving forensic accounting and economic damages. My Resume is attached.
2. I have read the State Fund's "Statement of Additional Uncontroverted Facts" as well as the affidavits of Daniel Gengler, David Ogan, Christine E. McCoy, Mark Kraft, Robert Worthington and Shawn Bubb. The "Uncontroverted Facts" and the Worthington and Bubb affidavits provide unsupported quantification of what the economic impact of a decision favorable to the Petitioner would be in *Satterlee*. I have attempted to evaluate the reasonableness of the amounts cited by the Respondents. It is my opinion that none of parties submitting quantified damages have provided enough information to replicate the range of damages proposed in their various briefs and affidavits, that stated damages are unclear and that historical damages lack a factual basis.
 - a. From the "Uncontroverted Facts" I attempted to verify damages claimed in the "Uncontroverted Facts" and was unable to do so. This was the result of having insufficient information. In order to evaluate the damages claimed in the "Uncontroverted Facts", additional information would be needed. Examples of additional information include the number of claimants included in each year of the historical computation, the date at which the claimant became eligible for payments, where applicable, the date of death of the claimant, the age and sex of each claimant, estimated wage growth rates and the discount rates, etc.¹ Lacking this information, one can only speculate as to what actual damages might be.
 - b. The Respondents' damages for the period July 1, 1990 to December 22, 2004 and future damages are unclear. One cannot determine if post-December 22, 2004 payments to claimants included in the July 1, 1990 to December 22, 2004 group are included in the damages for that period or are included in the future damages.
 - c. Christine E. McCoy indicated that a *Satterlee* review will have to identify claimants who may be affected by the decision and may include the review of a claim file with information stored on all media types. According to Ms. McCoy, claimants can be substantially identified by using complex computer queries to search the CMS and DB02 systems and that manually

¹ These are only the types of information that would be needed and should not be considered a comprehensive listing of all information required.

reviewing each file may be the only way of identifying affected claims. It is my opinion that these admissions by Ms. McCoy probably show that some or all of the damages claimed by the State Fund are based solely on estimates without a sufficient factual basis.

3. I attempted to perform analytical review procedures to test the reasonableness of the damage range provided by the Respondents. I knew the time period of each classification of damages and the maximum weekly payment for the historical losses. I made a number of assumptions regarding the timing and amount of payments. The lack of necessary information prevented me from forming a professional opinion that the damage range provided by the Respondents was materially correct.
4. I looked at the internal growth rates of benefits for the 1981-2005 period. The average growth rate for the period was 3.6%. However, this growth rate included some years from the early 1980s which are considered aberrational. The internal growth rate for the 1990-2005 period was 3.1%. These computations are shown at Schedule 1.
5. The purpose of providing expert testimony is to assist the finder of fact. The Statement of Ethical Principles and Professional Practice of the National Association of Forensic Economist state in part:

Practitioners of economics should stand ready to provide sufficient detail to allow the replication of all numerical calculations, with reasonable effort, by other competent forensic economic experts, and be prepared to provide sufficient disclosure of the sources of information and assumptions underpinning their opinions to make them understandable to others.

Thus, Respondents should have sufficient information available and be prepared to provide it. To date, Respondents have not done so. The affidavits submitted by the Respondents have simply provided unsubstantiated numbers without the Respondents' sources of information or assumptions. Hence, the Respondents' affidavit conclusions cannot be tested or relied upon for determining the economic cost of *Satterlee*.

6. If sufficient information had been available, I would have prepared an expert report in conformity with Rule 26(b) (4) of the Montana Rules of Civil Procedure and requirements of the preceding section of this affidavit. My report would have evaluated the Respondents' Rule 26 (b) (4) report, had one existed.
7. As a result of the foregoing, it is my opinion that the damages claimed by the Respondents in their affidavits are not supported by sufficient facts or known assumptions, may be materially incorrect and should not be used to form the basis of any opinion regarding the economic cost of *Satterlee*.

I declare under the penalty of perjury that the foregoing is a true and correct statement to the best of my knowledge.

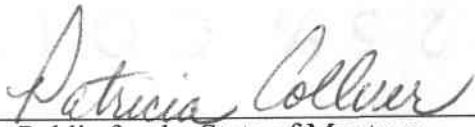
DATED this 19th day of September, 2005.

ANDERSON ZURMUEHLEN & CO., P.C.

BY: 
DAVID JOHNSON, CPA

SUBSCRIBED AND SWORN TO before me this 19th day of September, 2005.

(NOTARIAL SEAL)


Notary Public for the State of Montana
Residing at Helena, Montana
My Commission Expires: 12-22-06

Schedule 1

Satterlee v. Montana State Fund, et al.
Internal Growth Rates of State Fund Benefits

Year Ended <u>June 30,</u>	TTD <u>Rate</u>	Percent <u>Increase</u>	Running <u>Average</u>	Constant <u>Rate</u>	Constant Rate (3.534%) <u>Amount</u>	1990-2005 Percent <u>Increase</u>
1981	\$ 219.00				\$ 219.00	-
1982	\$ 241.00	10.0%	10.0%	3.534%	\$ 226.74	-
1983	\$ 263.00	9.1%	9.6%	3.534%	\$ 234.75	-
1984	\$ 277.00	5.3%	8.2%	3.534%	\$ 243.05	-
1985	\$ 286.00	3.2%	6.9%	3.534%	\$ 251.64	-
1986	\$ 293.00	2.4%	6.0%	3.534%	\$ 260.53	-
1987	\$ 299.00	2.0%	5.4%	3.534%	\$ 269.74	-
1988	\$ 302.00	1.0%	4.7%	3.534%	\$ 279.27	-
1989	\$ 308.00	2.0%	4.4%	3.534%	\$ 289.14	-
1990	\$ 318.00	3.2%	4.3%	3.534%	\$ 299.36	3.2%
1991	\$ 323.00	1.6%	4.0%	3.534%	\$ 309.94	1.6%
1992	\$ 336.00	4.0%	4.0%	3.534%	\$ 320.89	4.0%
1993	\$ 349.00	3.9%	4.0%	3.534%	\$ 332.23	3.9%
1994	\$ 363.00	4.0%	4.0%	3.534%	\$ 343.97	4.0%
1995	\$ 373.00	2.8%	3.9%	3.534%	\$ 356.13	2.8%
1996	\$ 380.00	1.9%	3.8%	3.534%	\$ 368.71	1.9%
1997	\$ 384.00	1.1%	3.6%	3.534%	\$ 381.74	1.1%
1998	\$ 396.00	3.1%	3.6%	3.534%	\$ 395.23	3.1%
1999	\$ 411.00	3.8%	3.6%	3.534%	\$ 409.20	3.8%
2000	\$ 425.00	3.4%	3.6%	3.534%	\$ 423.66	3.4%
2001	\$ 439.00	3.3%	3.6%	3.534%	\$ 438.63	3.3%
2002	\$ 454.00	3.4%	3.6%	3.534%	\$ 454.13	3.4%
2003	\$ 473.00	4.2%	3.6%	3.534%	\$ 470.18	4.2%
2004	\$ 487.00	3.0%	3.6%	3.534%	\$ 486.80	3.0%
2005	\$ 504.00	3.5%	3.6%	3.534%	\$ 504.00	3.5%
Average		<u>3.6%</u>				<u>3.1%</u>

EXHIBIT B

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Attorneys for Petitioners

**IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA
WC COURT NO. 2003-0840**

CATHERINE E. SATTERLEE, Petitioner, vs. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer for BUTTREY FOOD & DRUG, Employer.	WC Claim No.: 788CU041791
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JOSEPH FOSTER, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for ALLEN ELECTRIC, Employer.	WC Claim No.: 3-95-17425-3
DORIS BOWERS, Petitioner, vs. PUTMAN & ASSOCIATES, Adjusters for ROYAL & SUNALLIANCE, Respondent/Insurer for TIDYMAN'S, Employer.	WC Claim No.: 290044312000

AFFIDAVIT OF DAVID JOHNSON, CPA

STATE OF MONTANA)
 :
County of Lewis & Clark) ss.

DAVID JOHNSON, being first duly sworn upon his oath, deposes and says:

1. I am a CPA with the firm of Anderson ZurMuehlen & Co., P.C. located in Helena. Since 1985 I have worked on approximately 1,500 cases involving forensic accounting and economic damages. My Resume is attached.
2. Petitioners' Counsel requested that I prepare sample computations of the estimated value per claimant based on a single individual (Schedule 1) and an average for the 1981-2004 period (Schedule 2). These computations show that the maximum value of a claimant ending currently is approximately \$337,000 (under the assumptions utilized), as shown at Schedule 1. Schedule 2 shows that the average maximum value of a claimant during the 1981-2004 period was \$290,000 (again based on the assumptions made). It was assumed that all post-December 22, 2004 costs are included in the additional rate changes set forth by State Fund.
3. We were provided FY04 benefit data published by Montana DLI. During the four years ended FY04, State Fund paid 44.2% of total benefits (the balance paid by self-insured and private insurance companies). I looked at the internal growth rates of benefits for the 1981-2005 period. The average growth rate for the period was 3.6%. However, this growth rate included some years from the early 1980s which are considered aberrational. The internal growth rate for the 1990-2005 period was 3.1%. These computations are shown at Schedule 3.

I declare under the penalty of perjury that the foregoing is a true and correct statement to the best of my knowledge.

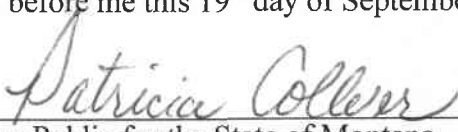
DATED this 19th day of September, 2005.

ANDERSON ZURMUEHLEN & CO., P.C.

BY: 
DAVID JOHNSON, CPA

SUBSCRIBED AND SWORN TO before me this 19th day of September, 2005.

(NOTARIAL SEAL)


Notary Public for the State of Montana
Residing at Helena, Montana
My Commission Expires: 12-22-06

Satterlee v. Montana State Fund, et al.
 Estimated Maximum Cost, Post-June 30, 1990 Case

Sample Computation 1 Assumptions:

Male
 Age 65 on July 1, 1990
 Life expectancy male age 65 is 15.7 years
 Receiving maximum weekly PTD payment

Year ended June 30,	Periods	Max Weekly PTD Payment	Weeks per Year	Estimated Value
1991	1.0	\$ 323	52.14	\$ 16,841
1992	1.0	336	52.14	17,519
1993	1.0	349	52.14	18,197
1994	1.0	363	52.14	18,927
1995	1.0	373	52.14	19,448
1996	1.0	380	52.14	19,813
1997	1.0	384	52.14	20,022
1998	1.0	396	52.14	20,647
1999	1.0	411	52.14	21,430
2000	1.0	425	52.14	22,160
2001	1.0	439	52.14	22,889
2002	1.0	454	52.14	23,672
2003	1.0	473	52.14	24,662
2004	1.0	487	52.14	25,392
2005	1.0	504	52.14	26,279
2006	0.7	519	52.14	18,947
Total	15.7			\$ 336,844 (A)

(A) 2006 rate computed at 103% of 2005 rate and post-12/22/04 amounts not discounted to present value.

Satterlee v. Montana State Fund, et al.
Estimated Maximum Cost, Mid-Period Case

Sample Computation 2 Assumptions:

Beginning of period	10/1/1981
End of period	12/22/2004
Duration of Period	23.23 Years
Approximate mid-point of period	7/1/1993
Average start of 15.7 year period	7/1/1985

Year ended June 30.	Periods	Max Weekly PTD Payment	Weeks per Year	Estimated Value
1986	1.0	\$ 293	52.14	\$ 15,277
1987	1.0	299	52.14	15,590
1988	1.0	302	52.14	15,746
1989	1.0	308	52.14	16,059
1990	1.0	318	52.14	16,581
1991	1.0	323	52.14	16,841
1992	1.0	336	52.14	17,519
1993	1.0	349	52.14	18,197
1994	1.0	363	52.14	18,927
1995	1.0	373	52.14	19,448
1996	1.0	380	52.14	19,813
1997	1.0	384	52.14	20,022
1998	1.0	396	52.14	20,647
1999	1.0	411	52.14	21,430
2000	1.0	425	52.14	22,160
2001	0.7	439	52.14	16,023
Total	<u>15.7</u>			<u>\$ 290,279</u>
Average per year (\$290,279 divided by 15.7)				<u>\$ 18,489</u>

Damages per SF, 1981-2004	Minimum	Average	Maximum
Old Fund	\$ 93,000,000	\$ 104,500,000	\$ 116,000,000
State Fund	135,000,000	160,500,000	186,000,000
Total	228,000,000	265,000,000	302,000,000
Years in period	23.23	23.23	\$ 23.23
Average per year	\$ 9,816,928	\$ 11,410,026	\$ 13,003,124
Average value per case	\$ 18,489	\$ 18,489	\$ 18,489 (A)
Average number of cases per year	531	617	703

(A) Excludes any provision for cases that may include post-12/22/04 payments.

Schedule 3

Satterlee v. Montana State Fund, et al.
Internal Growth Rates of State Fund Benefits

Year Ended <u>June 30,</u>	TTD <u>Rate</u>	Percent <u>Increase</u>	Running <u>Average</u>	Constant <u>Rate</u>	Constant Rate (3.534%) <u>Amount</u>	1990-2005 Percent <u>Increase</u>
1981	\$ 219.00				\$ 219.00	-
1982	\$ 241.00	10.0%	10.0%	3.534%	\$ 226.74	-
1983	\$ 263.00	9.1%	9.6%	3.534%	\$ 234.75	-
1984	\$ 277.00	5.3%	8.2%	3.534%	\$ 243.05	-
1985	\$ 286.00	3.2%	6.9%	3.534%	\$ 251.64	-
1986	\$ 293.00	2.4%	6.0%	3.534%	\$ 260.53	-
1987	\$ 299.00	2.0%	5.4%	3.534%	\$ 269.74	-
1988	\$ 302.00	1.0%	4.7%	3.534%	\$ 279.27	-
1989	\$ 308.00	2.0%	4.4%	3.534%	\$ 289.14	-
1990	\$ 318.00	3.2%	4.3%	3.534%	\$ 299.36	3.2%
1991	\$ 323.00	1.6%	4.0%	3.534%	\$ 309.94	1.6%
1992	\$ 336.00	4.0%	4.0%	3.534%	\$ 320.89	4.0%
1993	\$ 349.00	3.9%	4.0%	3.534%	\$ 332.23	3.9%
1994	\$ 363.00	4.0%	4.0%	3.534%	\$ 343.97	4.0%
1995	\$ 373.00	2.8%	3.9%	3.534%	\$ 356.13	2.8%
1996	\$ 380.00	1.9%	3.8%	3.534%	\$ 368.71	1.9%
1997	\$ 384.00	1.1%	3.6%	3.534%	\$ 381.74	1.1%
1998	\$ 396.00	3.1%	3.6%	3.534%	\$ 395.23	3.1%
1999	\$ 411.00	3.8%	3.6%	3.534%	\$ 409.20	3.8%
2000	\$ 425.00	3.4%	3.6%	3.534%	\$ 423.66	3.4%
2001	\$ 439.00	3.3%	3.6%	3.534%	\$ 438.63	3.3%
2002	\$ 454.00	3.4%	3.6%	3.534%	\$ 454.13	3.4%
2003	\$ 473.00	4.2%	3.6%	3.534%	\$ 470.18	4.2%
2004	\$ 487.00	3.0%	3.6%	3.534%	\$ 486.80	3.0%
2005	\$ 504.00	3.5%	3.6%	3.534%	\$ 504.00	3.5%
Average		<u>3.6%</u>				<u>3.1%</u>

DAVID K. (DAVE) JOHNSON

Certified Public Accountant, Shareholder

POSITION Firm Valuation and Litigation Consulting Services Department
Member of Firm since 1974
Shareholder since 1979

EDUCATION B.S. Economics, Utah State University – 1966
M.B.A. Finance, University of Southern California – 1971

Continuing education through Associated Regional Accounting Firms (ARAF), American Institute of Certified Public Accountants (AICPA), Montana Society of Certified Public Accountants (MSCPA) and Anderson ZurMuehlen & Co., P.C. sponsored courses.

In 1997, completed 64 hours Business Valuation Course (NBV 1-8) sponsored by the AICPA.

EXPERIENCE Extensive litigation information services experience including expert witness testimony for plaintiffs and defendants, business and stock valuations, financial modeling and forecasting yield verification and analysis.

Audit and accounting with bank audits and director examinations, analysis of management systems, EDP auditing techniques, statistical sampling, and internal accounting control systems.

Client groups serviced include financial institutions, professional service firms, governmental units, real estate and investment companies, hospitals and nursing homes, contractors, retail clothing, manufacturing and bonding authorities. United States Marine Corps (1966-1969).

DAVID K. (DAVE) JOHNSON

Certified Public Accountant, Shareholder

**PROFESSIONAL
AFFILIATIONS**

Member, American Institute of Certified Public Accountants
Member, Montana Society of Certified Public Accountants
Member, Helena Chapter of Certified Public Accountants
Member, American Academy of Economic and Financial Experts
Chairman, MSCPA Committee on Governmental Relations

Past Activities:

Chairman, ARAF Litigation Services Committee
Member, Peer Review Committee of AICPA (1989-1991)
Member, ARAF Audit and Accounting Committee
Past Chairman, MSCPA Accounting Principles Committee
Member, State Bar of Montana Committee on Unauthorized Practice
Authored articles for publications of financial and legal professions
Taught American Institute of Bankers, State Bar of Montana and
Certified Public Accountant courses
Montana Board of Continuing Legal Education (1991-1996)
Speaker, National Advocacy Center

**COMMUNITY
SERVICE**

Member, Helena Parking Commission
Member, Helena Business Improvement District

Past Activities:

Member, Shodair Children's Home Board of Directors
Chairman, Montana Children's Foundation Board of Directors
Chairman and Member, Big Brother and Sisters of Helena
Board of Directors
Chairman, Helena Nursing Home Board of Directors
President, Helena Improvement Society
Member, Florence Crittenton Home Board of Directors
Member, Helena Parking Advisory Committee

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**SERVICES TO
THE LEGAL
PROFESSION**

Mr. Johnson has extensive experience in assisting attorneys on both liability and damage issues. He has assisted attorneys representing both plaintiffs and defendants with a similar degree of frequency. He has been able to develop innovative and reasonable solutions to complex business and damage problems. The credentials described in the forepart of this resume speak to credibility.

Examples of the types of services rendered in resolving issues of liability include:

- Utilize regression analysis to project historic results to future periods.
- Utilize Z score analysis to statistically predict the probability of a business failure.
- Utilize sophisticated computer spreadsheets to analyze complex accounting systems and transactions.
- Analyze and interpret depositions and relate those findings to recorded business transactions.
- Interpret financial statements, tax returns, work papers and source documents in fraud, arson, bankruptcy and other business problem situations.
- Evaluate business practices.

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**SERVICES TO
 THE LEGAL
 PROFESSION**
(Continued)

Examples of situations where Mr. Johnson has either prepared or evaluated damage claims include:

- Bankruptcy
- Business Interruptions
- Business Reorganizations
- Contractual Disputes/Terminations
- Debt Restructuring
- Failed Financing
- Failure to Defend
- Malpractice (medical, legal and accounting)
- Personal Injury
- Workers' Compensation
- Business Proposals
- Wrongful Death
- Wrongful Termination

Generally, Mr. Johnson's work and analysis have been directed toward distilling complex transactions and relationships in a product that can be clearly understood by a judge or jury. Very often graphs, charts or overheads are produced to facilitate the conveyance of the information. To date, the division of work, based upon the number of cases, has been as follows:

	<u>PERCENTAGE</u>
Assistance to Plaintiffs Counsel	42
Assistance to Defense Counsel	46
Divorce (principally business valuations)	<u>12</u>
Total	<u>100</u>
Liability and Damage Matters	33
Damages	54
Business Valuations	<u>13</u>
Total	<u>100</u>

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**TRIAL
 TESTIMONY:**

<u>CASE</u>	<u>YEAR</u>	<u>JUDGE</u>	<u>COUNSEL</u>
Card v. Montana	1984	Judge Bennett	Cordell Johnson
Langdon v. Montana	1984	Judge Bennett	Cordell Johnson
Gallinger v. Weissman	1984	Judge Spear	Terry Spear
Phillips v. Ford Motor Co. & FMCC	1985	Judge Hatfield	David McLean
Life of Montana	1985	Court Appointed Master	Chris Tweenen
Arnson v. Mountain Bell	1986	Judge Olson	John Sullivan
Roberts v. SBA & U.S. Attorney	1986	Judge Peterson	Robert Brooks
Lauderdale v. State Fund	1986	Judge Reardon	Tom Martello
Morning Star Enterprises v. Various Unions	1987	Judge Batton	Dan Hoven
Larson v. State Fund	1987	Magistrate Campbell	Matt Heffron
Easy v. Montana	1987	Judge Bennett	W.W. Leaphart
Tuss v. Montana	1987	Judge Henson	John Maynard
Featherston v. ASARCO	1987	Judge Lovell	C.W. Leaphart
Minemyer v. Minemyer	1987	Judge Henson	Jeff Sherlock
Griffith v. Griffith	1988	Judge Lobel	Tom Budewitz
Billing Clinic v. KPMG Peat Marwick	1988	Judge Holmstrom	John Stephenson
Byron v. Byron	1988	Judge Holmstrom	Tony Kendell
Campbell v. Molarway	1988	Judge Lovell	Jeff Sherlock
Adams v. Adams	1988	Judge McCarvel	Greg Warner
Dzivi v. Dzivi	1989	Judge McKittrick	C.W. Leaphart
Anderson v. Anderson	1989	Judge Davis	Bill Morse
Gilham & Galdbreath v. Montana	1990	Tribal Court	Greg Warner
Allenbach v. Graveley	1990	Judge Fitzgerald	Tom Budewitz
Clemow v. Clemow	1990	Judge Olson	Carl Davis
McLaughlin v. McLaughlin	1991	Judge Honzel	Cort Harrington
Various Plaintiffs v. Bordens	1991	Judge Lovell	Jim Sewell
Firefighters v. Montana	1991	Judge McKittrick	Will Hutchison
Behlmer v. Behlmer	1991	Judge Sherlock	Jacqueline Lenmark
Foster v. Albertsons	1991	Judge Sherlock	Dennis Loveless
Park Plaza v. MRL	1992	Judge Honzel	Pat Melby
Various v. Harrington Bottling	1992	Judge Davis	Don Robinson
Battershell v. Valitron	1993	Judge Honzel	Dave Hull
Various Plaintiffs v. RTC, COC	1993	Magistrate Anderson	U.S. Attorneys
Hanson v. Stillwater Mine	1993	Columbus	Bruce Fain
Tenneson v. Tenneson	1994	Judge McCarter	Joan Poston
Casebeer v. AZ	1994	Judge Purcell	Keith Keller
McMillan v. U.S.	1994	Judge Lovell	Kris McLean, AUSA
Counts v. Yellowstone Co.	1994	Judge Baugh	Russell Fagg
Hoffman v. Hayhurst	1994	Judge Honzel	Keith Keller

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**TRIAL
 TESTIMONY**
 (Continued):

<u>CASE</u>	<u>YEAR</u>	<u>JUDGE</u>	<u>COUNSEL</u>
Walters v. Walters	1994	Judge Purcell	Mark Miller
McCann Ranch v. S.Q. McCann	1995	Judge Warner	Pat Sullivan
Yorkston v. Minute Man Aviation	1995	Judge McLean	Tom Welsch
Starkenburger v. Montana	1995	Judge McCarter	Janet Rice
McCarty v. Montana	1995	Judge McCarter	Jim Hunt
Schauer v. Schauer	1995	Judge Honzel	Mark Yeshe
Hunter v. Hunter	1996	Judge Honzel	John Hollow
Gebhardt v. Gebhardt	1996	Judge Honzel	C.W. Leaphart
Doty v. U.S. and Champion	1996	Magistrate Erickson	C.W. Leaphart
Kurth v. Great Falls Tribune	1996	Judge Rapkoch	Mike Meloy
Stufft v. Stufft	1996	Judge Cybulski	C.W. Leaphart
Huebsch v. Pegg	1997	Judge Sherlock	Gary Davis
Thayer v. Smith (RSS, Inc.)	1997	Judge Hatfield	Bill Jones
Hanni v. Hanni	1998	Judge Whelan	Bob McCarthy
Tabbert v. Tabbert	1998	Judge Honzel	Bruce Spencer
Riley v. Riley	1998	Judge McCarter	Terry Cosgrove
Burngarner v. FUMI	1998	Judge Neil	Bob James
The Williams Co. v. MDOR	1998	STAB	Terry Cosgrove
Associated Press v. MDOR	1998	Judge McCarter	Patrick Dringman
Trankel v. State of Montana	1999	Judge Honzel	Erik Thueson
Meier v. Morris (Arbitration)	1999	Judge Bennett	Pat Hooks
Casiano v. Greenway Construction	2000	Judge Sherlock	Gary Davis
Osterhout v. Keating	2001	Judge McCarter	Jim Hunt
Cassel v. Wilkins	2001	Judge Warner	Kim Schulke
Rembe v. Rembe	2001	Judge McKittrick	Bill Leaphart
Longmier v. Neer	2001	Judge Sherlock	Pat Hooks
Malesich v. Malesich	2001	Judge Swandal	Andy Suenram
Cutter v. Anaconda	2001	Judge Simonton	Jack Scanlon
Oberson v. USA	2002	Judge Molloy	Deanne Sandholm, AUSA
Monroe v. Ray	2002	Judge Bennett	Erik Thueson
Carpenter, et al. v. Eighorn	2002	Judge Whalen	David Gallik
Polar Bear v. Timex	2002	Judge Haddon	Ron Bender
Thompson v. Ryan	2002	Judge Lympus	Frank Morrison
Byers v. Cummings	2002	Judge Lympus	Norm Newhall
Walker v. Smith Barney	2002	NASD Arbitration	Linda Deola
Polar Bear v. Timex Re-Trial	2002	Judge Haddon	Ron Bender
Swanz v. Casino Creek Concrete	2002	Judge Phillips	Dennis Conner
Kronebusch v. Triangle Packing, Inc.	2003	Judge Cybulski	Dale Keil
Doggett v. Broadwater County	2003	Judge McCarter	Jim Hunt
Hopper v. State of Montana	2003	Judge McCarter	Rick Pyfer
Thiel's Welding v. Vermeer	2003	Judge Watters	Ken Peterson

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**TRIAL
TESTIMONY**
(Continued):

<u>CASE</u>	<u>YEAR</u>	<u>JUDGE</u>	<u>COUNSEL</u>
RMM v. Ford	2003	Judge Sherlock	Jim Sewell
Georgia Johnson v. Missoula Livestock	2003	Judge Macek	Erik Thueson
Purdy v. Merrill Lynch	2003	NASD Arbitration	Dennis Conner
Conway-Jepsen v. SBA	2003	Judge Lovell	Jim Hunt
State Nursery v. Boland & Larson	2003	Judge Sherlock	Tom Budewitz
Stockman Bank v. Potts	2004	Judge Baugh	Gerry Fagan
Woodlands v. Vermeer	2004	Judge Brown	Mike Wheat

DAVID K. (DAVE) JOHNSON*Certified Public Accountant, Shareholder***DEPOSITION
TESTIMONY:**

<u>CASE</u>	<u>YEAR</u>	<u>COUNSEL</u>
Class Action v. State of Montana	1985	Chris Tweeten
Mitchell v. First Citizens Bank, Butte	1985	Jack Peterson
Smith v. K-Mart	1987	Shaun Thompson
Cascade Hydraulics v. Central Bank, Great Falls	1988	Greg Warner
Dickerson v. Hill Haven	1988	Richard Parish
Hjilseth v. Newholland	1988	John Sullivan
Mergenthalers v. State Fund	1988	Will Hutchison
Puckett v. Hill Haven	1988	Richard Parish
Thomas v. Yellowstone County	1988	Joan Cook
Hoeglund v. Ins. Co.	1989	Jim Hunt
Millons v. J. M. Manufacturing	1989	Greg Jackson
Shoquist v. State of Montana	1989	Ron Waterman
Black v. MSU	1990	Doug Harris
Hudson v. Hudson	1990	C. W. Leaphart
McLees v. J. C. Stevens	1990	Tom Anacher
Schulke v. Capital Hill Mall	1990	W. W. Leaphart
FTC v. Babson Bros.	1991	Kim Anderson
Hulbert v. State Fund	1991	Jim Hunt
Yuhas v. Rolscreen	1991	Bill Sternhagen
Kirby v. Dienes	1995	Ken Peterson
Wiltse v. USA	1995	James Shively, AUSA
Graveley v. Farm Credit Services	1996	Peter Pauly
Western Powder v. Accurate Arms	1996	Paul Miller
Graham v. USA	1998	Bud Ellis, AUSA
Kittock-Sargent v. Billings School District #2	1998	Virginia Bryan
Langel v. Langel	1999	Phillip O'Connel
Ladbroke Holdings del Peru SA v. United Tote, et al.	1999	Paul Miller
Drier v. Bartlett	2000	Steve Shapiro
Beetsch v. Farmers Insurance Exchange	2000	Mike Williams
Thorsen v. Farmers Insurance Exchange	2000	Mike Williams
Brown v. Continental Insurance	2000	Erik Thueson
Pardis v. Uhaul	2001	Dennis Conner
Peltier v. BNSF	2001	Mike Lamb
Moran v. Arctic Cat	2001	Kim Schulke
Polar Bear Productions v. Timex	2002	Ron Bender
Byers v. Cummings	2002	Norm Newhall
Bonnes v. St. Peter's Hospital	2002	Erik Thueson
Perry v. ConAgra	2002	Robert Planalp
Boy v. USA	2002	George Darragh, AUSA
Lawyer v. Lawyer	2002	Stan Kaleczyc
Wright v. City of Helena	2002	Jon Modl
Byers v. Geneva Financial	2002	Mike Grace

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**DEPOSITION
 TESTIMONY**
(Continued):

<u>CASE</u>	<u>YEAR</u>	<u>COUNSEL</u>
Kronebusch v. Triangle Packing, Inc.	2002	Dale Keil
Winslow v. Montana Rail Link	2003	Dennis Conner
Buerkle v. Alcoa	2003	Mike Eiselein
Reidelback v. BNSF	2003	Eric Thueson
Kunkle v. Western Wireless	2004	John Oitzinger
American Capital Co. v. Flathead Electric Co-op	2004	Randy Cox
Big Sky Paramedics, LLC v. Great Falls Emergency Services, Inc. et al.	2004	Tim Fox & Will Gilbert
Olympic Coast Investment v. Seipel	2004	Scott Fiske
Mercy Healthcare Systems v. CSI	2004	Pat Egan
Fortune v. Edman	2004	Don Robinson
Kuhr, et al. v. City of Billings	2005	Rick Larson
First Citizens Bank v. McCoys	2005	Nancy Bennett
William Old Chief v. Sowles Co.	2005	Jim Hunt

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**ARTICLES
AUTHORED:**

Montana Lawyer, September 2000—*“Economic Damages to Minors:
Leaving the Fog”*

Montana Lawyer, December 1994—Co-Author *“CLE Rules Designed to
Help Lawyers be Their Best”*

Montana Lawyer, April 1987—*“Wrongful Employment Termination:
Understanding Key Issues”*

DAVID K. (DAVE) JOHNSON*Certified Public Accountant, Shareholder*

BUSINESS / STOCK APPRAISALS:	<u>COMPANY NAME</u>	<u>LOCATION</u>
	97 Homestead, Inc.	Chester, Montana
	Aanenson Partnership	Missoula, Montana
	American Chemet Corporation	Deerfield, Illinois
	American Plan Corporation	Plano, Texas
	Antler Land Co. (Bank Holding Co.)	Hardin, Montana
	Atlas Beverage, Inc.	Billings, Montana
	Bancshares of Anaconda (Bank Holding Co.)	Anaconda, Montana
	Beartooth Apiaries	Bridger, Montana
	Byron - Bridger Cable TV	Red Lodge, Montana
	C & G Enterprises	Helena, Montana
	Capital Engine, Inc.	Helena, Montana
	Capital Sporting Goods	Helena, Montana
	Carl Weissman & Son	Great Falls, Montana
	Charles Walter, Inc.	Sheridan, Montana
	Cloverleaf Jersey Dairy	Helena, Montana
	Columbia Paint Company	Spokane, Washington
	D & W Partnership	Billings, Montana
	Development Corporation of Montana	Helena, Montana
	DWD Partnership	Billings, Montana
	Empire Steel Manufacturing Co.	Billings, Montana
	Excelsior Meats	Butte, Montana
	George Steele & Company	Butte, Montana
	George's Food, Inc.	Helena, Montana
	Golden Drum Retrievers, Inc.	Ryegate, Montana
	Helena Physicians Group, LLC	Helena, Montana
	Henry's Safety Supply	Billings, Montana
	Holland Ranch Company	Dillon, Montana
	Hudson Furniture, Inc.	Helena, Montana
	John E. Rice & Sons, Inc.	Sheridan, Wyoming
	Knox Flower Shop, Inc.	Helena, Montana
	L-O Ranch	Billings, Montana
	Leachman Angus Ranch	Bozeman, Montana

DAVID K. (DAVE) JOHNSON
Certified Public Accountant, Shareholder

**BUSINESS /
 STOCK
 APPRAISALS**
(Continued):

<u>COMPANY NAME</u>	<u>LOCATION</u>
Little Horn State Bank	Hardin, Montana
M & M Enterprises (Bank Holding Co.)	Plentywood, Montana
Mark Clemow Ranches, Inc.	Wisdom, Montana
Maronick Construction, Inc.	Helena, Montana
Materials Bio, Inc.	Ryegate, Montana
McCann Ranch, Inc.	Culbertson, Montana
McGucken Investment	Coram, Montana
Minow Ranch, Inc.	Miles City, Montana
Missoula Construction Service & Supply	Missoula, Montana
Montana International Insurance	Helena, Montana
Montana Livestock Ag Credit, Inc.	Helena, Montana
Northeastern Wyoming Bank Corp. Inc. (Bank Holding Co.)	Newcastle, Wyoming
Northern Technologies, Inc.	Liberty Lake, Washington
Northwest Steel, Inc.	Great Falls, Montana
O'Hair Ranch Co.	Livingston, Montana
Olson's Upholstery	Great Falls, Montana
Pelley Ranch	Sanders County, Montana
Peninsula Copper Industries	Deerfield, Illinois
Power Townsend	Helena, Montana
Quad Five	Billings, Montana
Quarter Circle U Ranch Company	Birney, Montana
Romito Family LLP	Billings, Montana
Ruby Dell Ranch	Dillon, Montana
Rushmore Gold Co.	Rapid City, So.
DakotaSafeway Gas, Inc.	Billings, Montana
SBT Financial (Bank Holding Co.)	* Townsend, Montana
Scheels Hardware and Sports, Inc.	Fargo, North Dakota
Shipton Supply Company (MT)	Billings, Montana
Shipton Supply Company (WY)	Sheridan, Wyoming
Snowy Mountain Estates	Billings, Montana
Stan Watkins Trucking, Inc.	Missoula, Montana

DAVID K. (DAVE) JOHNSON*Certified Public Accountant, Shareholder***BUSINESS /
STOCK
APPRAISALS**
*(Continued):*COMPANY NAMELOCATION

State Bank of Townsend	Townsend, Montana
Stockton Oil Company	Billings, Montana
Sun West, Inc.	Bryan, Texas
Tabbert Construction	Helena, Montana
The Bair Company	Martinsdale, Montana
The Mint Bar	Townsend, Montana
Timberline Northwest, Inc.	Columbia Falls, Montana
Townsend Lumber Company	Townsend, Montana
Union Construction Company, Inc.	Missoula, Montana
Valchem	Billings, Montana
Vogle Bros. Construction	Townsend, Montana
GWK Partnership	Missoula, Montana
Watkins Shepard Leasing	Missoula, Montana
Watkins Shepard Partnership	Missoula, Montana
Webers' Paramount Beauty Supply	Butte, Montana
Western Broadcasting Company	Missoula, Montana
Western Ranch Supply	Billings, Montana

Also, medical, dental, legal and accounting practices.

EXHIBIT C



Listed below are highlights from the Montana 2004 Workers' Compensation Annual Report. This report contains information about Montana's workers' compensation system, including injury statistics and characteristics, benefits paid to claimants and payments made by insurers to others in the system, dispute resolution and miscellaneous regulatory programs and functions. Unless otherwise cited, all reported numbers, charts, and tables are derived from the State of Montana workers' compensation database (WCAP).

Claims Statistics.....20-27

There were 32,140 claims reported in Fiscal Year 2004 (FY04) compared with 33,230 reported in FY03. This is a decrease of 3.3% from FY03.

Since FY00, the number of claims reported by the Montana State Fund has increased by 42.2% (from 9,924 to 14,114), while claims reported by private carriers have decreased by 35.9% (from 16,556 to 10,613). Self-Insurers have remained about the same.

The service industry was responsible for 25.8% of all claims reported in FY04. Retail trade had the second largest percentage of claims at 13.4%.

Benefits.....30-41

The total indemnity (wage loss) and medical benefits paid in FY04 were \$210,767,361 compared to \$200,553,772 in FY03, increasing \$10,213,589 or 5.1%.

Medical benefit payments as reported to the Department of Labor and Industry (DLI) increased for self-insurers and State Fund, whereas private carriers saw a decrease in medical benefits paid. Self-Insurers' payments increased by 14.1%, Montana State Fund increased 12.9%, and private carriers decreased 8.4% in FY04.

A new report portraying average and median benefits (indemnity and medical) paid throughout the lives of indemnity claims have been added in the Benefits section. The report, compiled by Insurance Services Office, Inc. (ISO) using data from the WCAP database, covers a period of 6 years (FY99 through FY04).

Attorneys represented injured workers in 55.7% of all claims settled in FY04.

Dispute Resolution.....44-49

The Claims Unit of the Employment Relations Division (ERD) is responsible for the occupational disease evaluation process. They processed 124 occupational disease cases in FY04. This is a decrease of 34.7% from FY03.

The Mediation Unit completes a case by holding a conference and issuing a written recommendation. During FY04, the unit processed 1,303 petitions, resulting in a resolution rate of 75.4%.

The Hearings Bureau received 14 new petitions for contested case hearings in FY04, a decrease of 26.3% from FY03.

The Workers' Compensation Court received 261 petitions, dismissed 88 petitions and issued 158 decisions in FY04.

Workers' Compensation Assessments as Expended53

The administration of the Workers' Compensation and Occupational Disease Acts and the various occupational safety laws is funded by an assessment on employers and insurers. The cost of the regulatory functions in FY04 was \$4,584,468. Beginning in FY00, a new process was instituted and each insurer was assessed 3% of benefits paid.

Subsequent Injury Fund (SIF).....54

SIF payments in Calendar Year (CY02) for all dates of injury were \$291,940. There were 173 new SIF certifications during FY04 resulting in a total of 3,402 certified individuals in the state of Montana.

Uninsured Employers' Fund (UEF).....55-56

UEF provides benefits for injured employees when employers are without appropriate workers' compensation insurance. In FY04, UEF collections increased 31.9% from FY03, totaling \$1,412,419.

The UEF unit received 79 new claims and injured workers received \$522,973 in medical and indemnity benefits in FY04.

Occupational Safety & Health.....57-58

Mandatory inspections completed by the Occupational Safety & Health Bureau in the public sector totaled 492. They completed 270 onsite inspections in the private sector. In addition, 37 onsite inspections were performed in the coal mining industry and 78 in sand and gravel operations.

The Training Institute conducted 45 formal training sessions in CY04, training 805 workers. Local Focus Groups held 69 training sessions, which trained 603 workers.

Independent Contractor Exemptions.....59

Independent contractors who do not wish to be covered under workers' compensation insurance may file for an exemption with the DLI. The number of independent contractor exemption applications received for FY04 totals 12,141.

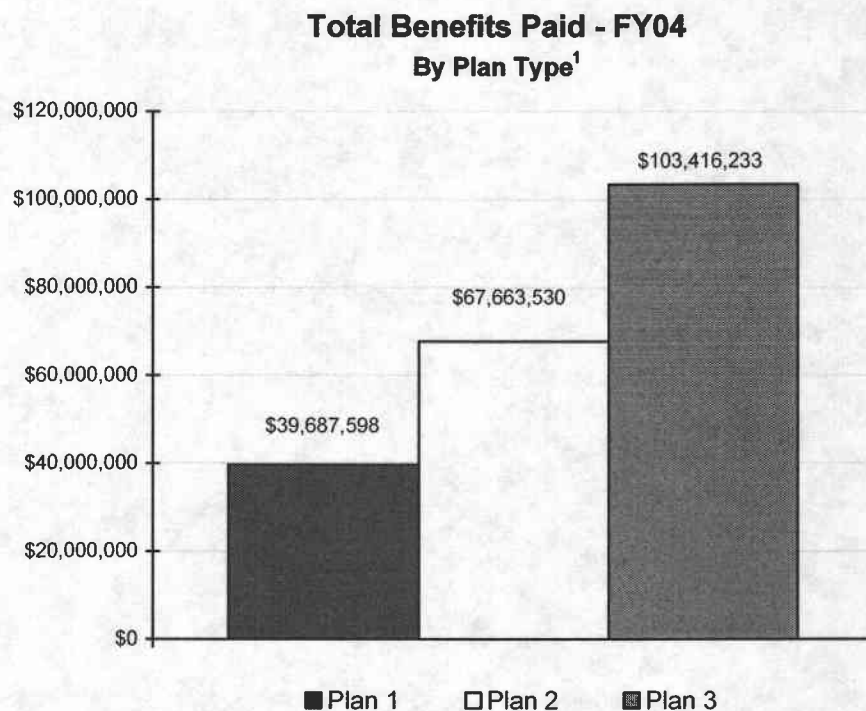
In Montana, there are a total of 33,247 independent contractors, 41% of whom are in the construction industry.

Professional Employer Organizations (PEO).....60-61

To be licensed, a PEO must submit an application and proof of workers' compensation coverage. At the end of FY04 there were 26 PEOs licensed in Montana. These PEOs leased 2,499 employees to 333 client companies.

Total Benefits

"Indemnity claim" is a workers' compensation or occupational disease claim where compensation benefits in addition to medical benefits are being paid or are likely to be paid in the future. Totals represent indemnity benefits paid to the injured worker and medical benefits paid to hospitals, doctors and other health care providers as reported to the DLI. Benefit totals have been updated since the publication of previous annual reports due to the receipt of amended expenditure reports.



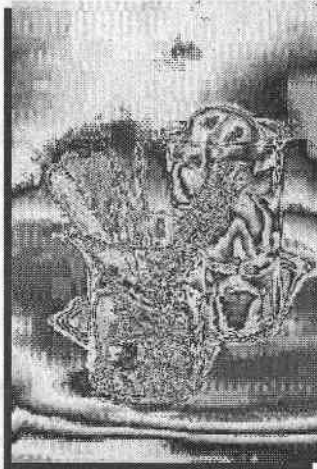
Total Benefits Paid
By Plan Type¹ and Fiscal Year of Payment

Plan Type ¹	FY00	FY01	FY02	FY03	FY04
Plan 1	24,618,959	29,141,324	32,322,477	34,866,131	39,687,598
Plan 2	63,425,703	79,341,672	69,983,989	73,889,121	67,663,530
Plan 3	66,723,654	70,893,570	75,735,063	91,798,520	103,416,233
Total²	\$154,768,316	\$179,376,566	\$178,041,529	\$200,553,772	\$210,767,361

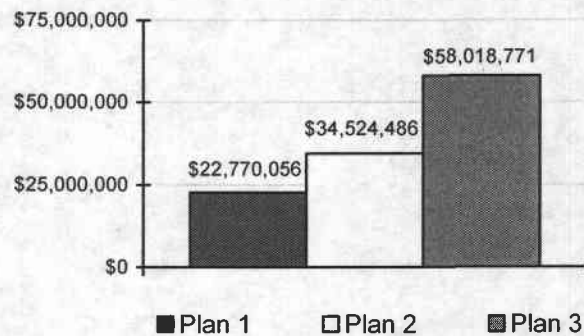
Notes:

¹Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

²Total benefits represent indemnity and medical, from DLI Quarterly Expenditure Reports as of 04-19-2005.



Medical Payments - FY04 By Plan Type¹



Medical Payments By Plan Type¹ and Fiscal Year of Payment

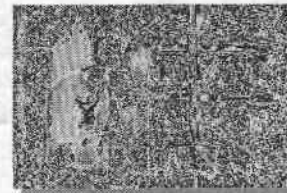
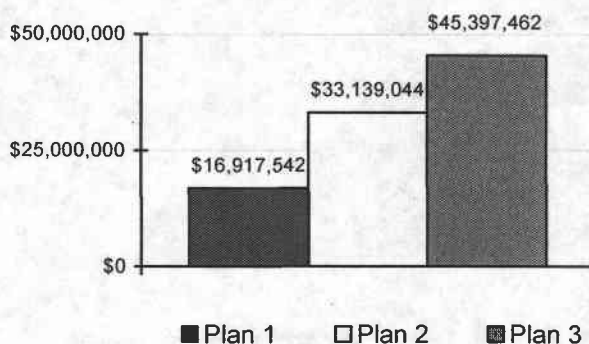
Plan Type ¹	FY00	FY01	FY02	FY03	FY04
Plan 1	13,469,679	15,791,261	17,626,880	19,960,057	22,770,056
Plan 2	30,557,976	41,626,961	36,012,896	37,705,229	34,524,486
Plan 3	34,223,740	35,656,851	40,571,820	51,404,831	58,018,771
Total²	\$78,251,395	\$93,075,073	\$94,211,596	\$109,070,117	\$115,313,313

Notes:

¹Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

²Total benefits represent medical payments, from DLI Quarterly Expenditure Reports as of 04-19-2005.

Indemnity Payments - FY04 By Plan Type¹



Indemnity Payments By Plan Type¹ and Fiscal Year of Payment

Plan Type ¹	FY00	FY01	FY02	FY03	FY04
Plan 1	11,149,280	13,350,062	14,239,070	14,906,074	16,917,542
Plan 2	32,867,727	37,714,712	33,971,093	36,183,892	33,139,044
Plan 3	32,499,914	35,236,719	35,163,243	40,393,689	45,397,462
Total	\$76,516,921	\$86,301,493	\$83,373,406	\$91,483,655	\$95,454,048

Notes:

¹Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

²Total benefits represent indemnity payments, from DLI Quarterly Expenditure Reports as of 4-19-2005.

Benefit Report Data

The DLI currently requires insurance companies to submit Subsequent Reports of Injury (SROIs) at regular intervals throughout the life of an indemnity claim. The SROI report provides updates as to the status of an indemnity claim, including information on the benefits paid (both medical and wage loss). In an effort to better evaluate the long-term costs of claims, DLI contracted Insurance Services Office, Inc. (ISO) to process the SROI data and present it in a form that would be more conducive to analysis. Accordingly, ISO developed the following tables, which detail the cumulative costs of claims over the past six fiscal years¹ (FY), beginning with injuries sustained in FY99.

- ♦ Tables 1 and 2 report indemnity benefits and medical benefits.
- ♦ Tables 3 through 6 break indemnity benefits down into the four primary categories (excluding lump sum payments): temporary total, temporary partial, permanent partial, and permanent total.
- ♦ Tables 7 through 9 divide medical benefits into three groups (excluding lump sum payments): payments to physicians, hospital costs, and other medical provider costs.
- ♦ Table 10 provides a combined total of the data contained in tables 7 through 9.
- ♦ Tables 11 and 12 report lump sum payments of indemnity benefits and medical benefits.

Each table consists of six rows of data; each row holds information pertaining to injuries sustained during the fiscal year shown in the "Injury Year" column. The columns report cumulative totals of claims, as well as the average and median benefits paid through the column's given year. The "First Year" column provides the number of claims receiving the given benefit type within the same fiscal year as the injury; it also gives the average and median² benefits paid on those claims. The "Second Year" through "Sixth Year" columns report cumulative claim totals, average benefits, and median benefits as more benefits are paid and/or more claimants begin receiving benefits. Consequently, the right-most populated column of each row contains the most current (as of FY04 year-end) figures pertaining to the accumulated claimant count, average claim cost, and median claim cost for injuries sustained in the year assigned to that row.

EXAMPLE: A SROI is submitted (effective date of 4/9/2002) as a report on an injury that occurred in FY99. Because 2002 is the fourth year since the injury (counting the injury year as the first), this claim will be reported in the "Fourth Year" column of the "1999" row.

Table 1:	Wage replacement (indemnity) benefits paid, including lump sum payments
Table 2:	Medical benefits paid, including lump sum payments
Table 3:	Temporary total disability benefits paid
Table 4:	Temporary partial disability benefits paid
Table 5:	Permanent partial disability benefits paid
Table 6:	Permanent total disability benefits paid
Table 7:	Payments to physicians paid
Table 8:	Hospital costs paid
Table 9:	Other medical provider costs paid – includes payments for prescription medicine
Table 10:	Payments to physicians, hospital costs, and other medical provider costs combined
Table 11:	Wage replacement lump sum payments
Table 12:	Medical lump sum payments

Notes:

¹ Fiscal Year (FY) is defined as July 1 through June 30; FY04 ended on June 30, 2004

² See definition of "median" in the "Definitions" section of the Appendices

Table 1

Total Wage Replacement: TTD, TPD, PTD, PPD, including Lump Sums							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	2,496					
	Avg Cost/Claim	\$2,034					
	Median	\$677					
2003	# of Claims	2,742	3,876				
	Avg Cost/Claim	\$1,975	\$5,487				
	Median	\$722	\$1,798				
2002	# of Claims	2,748	3,894	4,155			
	Avg Cost/Claim	\$1,781	\$5,269	\$7,798			
	Median	\$630	\$1,737	\$2,384			
2001	# of Claims	2,734	3,902	4,065	4,137		
	Avg Cost/Claim	\$1,694	\$4,842	\$7,206	\$8,937		
	Median	\$654	\$1,615	\$2,134	\$2,311		
2000	# of Claims	2,567	3,579	3,951	4,010	4,034	
	Avg Cost/Claim	\$1,375	\$3,566	\$6,094	\$7,436	\$8,439	
	Median	\$553	\$1,213	\$1,819	\$1,948	\$2,000	
1999	# of Claims	1,200	3,512	3,806	4,035	4,058	4,083
	Avg Cost/Claim	\$1,329	\$3,768	\$5,550	\$6,876	\$7,513	\$8,104
	Median	\$414	\$1,270	\$1,685	\$1,852	\$1,886	\$1,916

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 2

Total Medical Costs, including Lump Sums							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1,995					
	Avg Cost/Claim	\$3,638					
	Median	\$1,262					
2003	# of Claims	2,147	3,530				
	Avg Cost/Claim	\$3,907	\$7,324				
	Median	\$1,703	\$3,982				
2002	# of Claims	2,030	3,529	3,825			
	Avg Cost/Claim	\$3,679	\$7,862	\$9,724			
	Median	\$1,337	\$3,775	\$4,457			
2001	# of Claims	1,881	3,395	3,592	3,694		
	Avg Cost/Claim	\$3,371	\$6,787	\$8,528	\$9,876		
	Median	\$1,350	\$3,521	\$4,137	\$4,390		
2000	# of Claims	1,829	3,147	3,564	3,630	3,655	
	Avg Cost/Claim	\$2,482	\$4,954	\$7,038	\$7,975	\$8,779	
	Median	\$1,077	\$2,399	\$3,450	\$3,679	\$3,786	
1999	# of Claims	654	2,990	3,390	3,617	3,640	3,666
	Avg Cost/Claim	\$2,385	\$5,159	\$6,239	\$7,470	\$8,036	\$8,577
	Median	\$1,117	\$2,565	\$3,142	\$3,449	\$3,511	\$3,545

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 3

Wage Replacement: Temporary Total Disability							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	2,330					
	Avg Cost/Claim	\$1,786					
	Median	\$604					
2003	# of Claims	2,558	3,437				
	Avg Cost/Claim	\$1,789	\$3,907				
	Median	\$668	\$1,351				
2002	# of Claims	2,572	3,444	3,599			
	Avg Cost/Claim	\$1,588	\$3,869	\$5,115			
	Median	\$582	\$1,381	\$1,606			
2001	# of Claims	2,569	3,464	3,575	3,640		
	Avg Cost/Claim	\$1,554	\$3,632	\$4,856	\$5,747		
	Median	\$622	\$1,247	\$1,425	\$1,563		
2000	# of Claims	2,402	3,221	3,474	3,515	3,542	
	Avg Cost/Claim	\$1,200	\$2,595	\$4,139	\$4,819	\$5,321	
	Median	\$511	\$975	\$1,338	\$1,419	\$1,448	
1999	# of Claims	1,099	3,142	3,322	3,483	3,503	3,522
	Avg Cost/Claim	\$942	\$2,742	\$3,636	\$4,427	\$4,762	\$5,034
	Median	\$398	\$984	\$1,228	\$1,320	\$1,346	\$1,373

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 4

Wage Replacement: Temporary Partial Disability							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	308					
	Avg Cost/Claim	\$865					
	Median	\$484					
2003	# of Claims	305	597				
	Avg Cost/Claim	\$765	\$1,519				
	Median	\$386	\$665				
2002	# of Claims	269	582	645			
	Avg Cost/Claim	\$805	\$1,487	\$1,735			
	Median	\$400	\$652	\$724			
2001	# of Claims	247	516	564	594		
	Avg Cost/Claim	\$849	\$1,513	\$1,788	\$1,909		
	Median	\$457	\$637	\$708	\$750		
2000	# of Claims	254	469	570	587	602	
	Avg Cost/Claim	\$800	\$1,250	\$1,612	\$1,736	\$1,846	
	Median	\$368	\$530	\$578	\$608	\$628	
1999	# of Claims	141	461	549	599	609	615
	Avg Cost/Claim	\$743	\$1,352	\$1,595	\$1,712	\$1,809	\$1,873
	Median	\$371	\$594	\$633	\$672	\$677	\$678

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 5

Wage Replacement: Permanent Partial Disability							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	152					
	Avg Cost/Claim	\$2,274					
	Median	\$1,461					
2003	# of Claims	152	954				
	Avg Cost/Claim	\$2,145	\$4,940				
	Median	\$1,016	\$3,078				
2002	# of Claims	130	825	1,327			
	Avg Cost/Claim	\$2,124	\$4,430	\$6,004			
	Median	\$1,322	\$2,724	\$3,950			
2001	# of Claims	131	851	1,182	1,343		
	Avg Cost/Claim	\$2,169	\$4,536	\$5,895	\$7,217		
	Median	\$1,317	\$2,640	\$3,733	\$3,841		
2000	# of Claims	116	579	1,048	1,168	1,233	
	Avg Cost/Claim	\$2,501	\$3,895	\$5,472	\$6,405	\$7,153	
	Median	\$1,488	\$2,231	\$2,975	\$3,699	\$3,719	
1999	# of Claims	73	694	1,034	1,265	1,308	1,344
	Avg Cost/Claim	\$3,687	\$4,058	\$5,274	\$6,286	\$6,820	\$7,297
	Median	\$1,431	\$2,808	\$3,519	\$3,596	\$3,596	\$3,611

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 6

Wage Replacement: Permanent Total Disability							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1					
	Avg Cost/Claim	\$33					
	Median	\$33					
2003	# of Claims	0	7				
	Avg Cost/Claim	\$0	\$23,149				
	Median	\$0	\$15,000				
2002	# of Claims	0	9	31			
	Avg Cost/Claim	\$0	\$1,442	\$11,126			
	Median	\$0	\$1,362	\$2,270			
2001	# of Claims	2	4	11	31		
	Avg Cost/Claim	\$6,155	\$3,831	\$5,253	\$8,640		
	Median	\$6,155	\$1,506	\$2,479	\$4,028		
2000	# of Claims	0	1	10	13	22	
	Avg Cost/Claim	\$0	\$86,000	\$19,493	\$26,528	\$25,658	
	Median	\$0	\$86,000	\$3,385	\$25,464	\$16,063	
1999	# of Claims	1	2	6	13	17	26
	Avg Cost/Claim	\$424	\$1,462	\$41,805	\$28,452	\$26,980	\$33,537
	Median	\$424	\$1,462	\$1,742	\$7,732	\$10,000	\$16,649

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 7

Medical Costs: Payments to Physicians Paid to Date							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1,504					
	Avg Cost/Claim	\$1,538					
	Median	\$637					
2003	# of Claims	1,734	3,336				
	Avg Cost/Claim	\$1,689	\$2,803				
	Median	\$780	\$1,452				
2002	# of Claims	1,606	3,324	3,618			
	Avg Cost/Claim	\$1,447	\$2,696	\$3,315			
	Median	\$638	\$1,394	\$1,688			
2001	# of Claims	1,528	3,199	3,403	3,505		
	Avg Cost/Claim	\$1,324	\$2,521	\$3,089	\$3,440		
	Median	\$600	\$1,355	\$1,671	\$1,759		
2000	# of Claims	1,522	2,903	3,353	3,420	3,444	
	Avg Cost/Claim	\$1,051	\$1,841	\$2,537	\$2,813	\$3,035	
	Median	\$449	\$893	\$1,331	\$1,427	\$1,470	
1999	# of Claims	591	2,782	3,172	3,401	3,425	3,448
	Avg Cost/Claim	\$1,003	\$1,865	\$2,310	\$2,635	\$2,771	\$2,897
	Median	\$428	\$918	\$1,186	\$1,343	\$1,367	\$1,388

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 8

Medical Costs: Hospital Costs Paid to Date							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1,106					
	Avg Cost/Claim	\$3,130					
	Median	\$1,140					
2003	# of Claims	1,258	2,624				
	Avg Cost/Claim	\$2,955	\$4,174				
	Median	\$1,300	\$2,043				
2002	# of Claims	1,181	2,674	2,946			
	Avg Cost/Claim	\$2,948	\$4,708	\$5,369			
	Median	\$1,046	\$1,879	\$2,079			
2001	# of Claims	1,113	2,557	2,748	2,838		
	Avg Cost/Claim	\$2,701	\$3,913	\$4,719	\$5,255		
	Median	\$1,073	\$1,748	\$1,988	\$2,063		
2000	# of Claims	1,069	2,251	2,682	2,749	2,771	
	Avg Cost/Claim	\$1,964	\$2,907	\$3,880	\$4,302	\$4,613	
	Median	\$853	\$1,341	\$1,804	\$1,886	\$1,919	
1999	# of Claims	407	2,240	2,576	2,791	2,814	2,832
	Avg Cost/Claim	\$1,380	\$3,103	\$3,469	\$3,977	\$4,181	\$4,361
	Median	\$668	\$1,303	\$1,504	\$1,671	\$1,693	\$1,697

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 9

Medical Costs: Other Medical to Medical Provider Paid to Date							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1,726					
	Avg Cost/Claim	\$859					
	Median	\$340					
2003	# of Claims	1,847	3,095				
	Avg Cost/Claim	\$943	\$1,788				
	Median	\$436	\$773				
2002	# of Claims	1,722	3,078	3,371			
	Avg Cost/Claim	\$966	\$2,012	\$2,759			
	Median	\$400	\$783	\$923			
2001	# of Claims	1,587	2,976	3,170	3,277		
	Avg Cost/Claim	\$826	\$1,650	\$2,229	\$2,871		
	Median	\$417	\$778	\$891	\$971		
2000	# of Claims	1,456	2,643	3,053	3,119	3,143	
	Avg Cost/Claim	\$576	\$1,401	\$2,014	\$2,399	\$2,803	
	Median	\$279	\$473	\$696	\$741	\$767	
1999	# of Claims	470	2,462	2,802	2,995	3,019	3,045
	Avg Cost/Claim	\$863	\$1,319	\$1,727	\$2,307	\$2,633	\$2,975
	Median	\$272	\$515	\$630	\$696	\$726	\$739

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 10

Medical Costs: Paid to Physicians, Hospitals and Other Medical Providers							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	1,995					
	Avg Cost/Claim	\$3,638					
	Median	\$1,262					
2003	# of Claims	2,147	3,530				
	Avg Cost/Claim	\$3,907	\$7,320				
	Median	\$1,703	\$3,982				
2002	# of Claims	2,030	3,529	3,825			
	Avg Cost/Claim	\$3,679	\$7,862	\$9,703			
	Median	\$1,337	\$3,775	\$4,455			
2001	# of Claims	1,880	3,392	3,589	3,691		
	Avg Cost/Claim	\$3,372	\$6,775	\$8,511	\$9,857		
	Median	\$1,353	\$3,529	\$4,140	\$4,396		
2000	# of Claims	1,829	3,147	3,562	3,628	3,653	
	Avg Cost/Claim	\$2,482	\$4,954	\$7,037	\$7,974	\$8,772	
	Median	\$1,077	\$2,399	\$3,442	\$3,679	\$3,784	
1999	# of Claims	654	2,988	3,387	3,614	3,637	3,663
	Avg Cost/Claim	\$2,385	\$5,150	\$6,231	\$7,463	\$8,030	\$8,571
	Median	\$1,117	\$2,556	\$3,124	\$3,428	\$3,502	\$3,526

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 11

Wage Replacement: Lump Sums							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	36					
	Avg Cost/Claim	\$8,419					
	Median	\$3,500					
2003	# of Claims	50	184				
	Avg Cost/Claim	\$5,595	\$11,173				
	Median	\$2,566	\$5,572				
2002	# of Claims	44	255	352			
	Avg Cost/Claim	\$7,212	\$10,422	\$12,953			
	Median	\$2,979	\$5,250	\$7,775			
2001	# of Claims	31	186	315	346		
	Avg Cost/Claim	\$4,286	\$8,890	\$12,375	\$14,339		
	Median	\$2,500	\$5,000	\$7,500	\$9,000		
2000	# of Claims	23	169	256	305	325	
	Avg Cost/Claim	\$6,668	\$8,747	\$11,133	\$13,228	\$14,471	
	Median	\$2,500	\$5,080	\$7,312	\$7,500	\$8,500	
1999	# of Claims	26	128	248	280	299	310
	Avg Cost/Claim	\$7,133	\$9,180	\$9,936	\$10,637	\$11,116	\$11,375
	Median	\$3,500	\$5,818	\$6,472	\$7,278	\$7,500	\$7,500

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Table 12

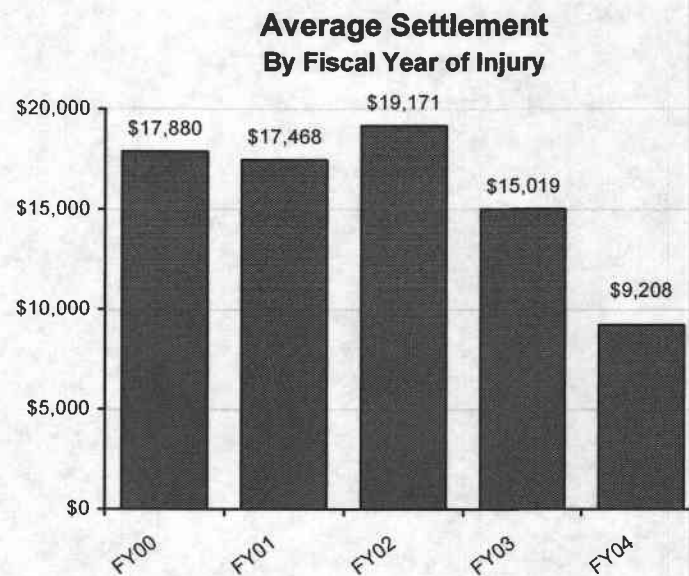
Medical Lump Sums: Paid to Claimant as Settlement of Medical Liability							
Injury Year	Category	First Year	(Cumulative Totals)				
			Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year
2004	# of Claims	0					
	Avg Cost/Claim	\$0					
	Median	\$0					
2003	# of Claims	0	9				
	Avg Cost/Claim	\$0	\$1,565				
	Median	\$0	\$548				
2002	# of Claims	0	0	26			
	Avg Cost/Claim	\$0	\$0	\$3,070			
	Median	\$0	\$0	\$806			
2001	# of Claims	1	6	7	18		
	Avg Cost/Claim	\$500	\$10,042	\$12,179	\$5,576		
	Median	\$500	\$4,375	\$6,750	\$1,102		
2000	# of Claims	0	0	3	4	8	
	Avg Cost/Claim	\$0	\$0	\$5,693	\$5,020	\$5,303	
	Median	\$0	\$0	\$4,900	\$4,700	\$3,750	
1999	# of Claims	0	6	8	8	8	8
	Avg Cost/Claim	\$0	\$6,250	\$5,765	\$5,765	\$5,765	\$5,765
	Median	\$0	\$5,250	\$5,250	\$5,250	\$5,250	\$5,250

SOURCE: Data provided by State of Montana WCAP database; figures calculated by Insurance Services Office, Inc. (ISO)

Settlement Dollars

Settlements are lump sum payments of the claimant's workers' compensation benefits. Benefits are usually paid in periodic payments designed to sustain an injured worker over an extended period of time. Settlements can occur when the claimant and the insurer agree that benefits will be converted to a lump sum payment. If the claimant has more than one claim, a settlement may settle more than one of those claims. Settlements are subject to approval by the DLI.

This graph displays average settlement amounts, by fiscal year of injury, for claims settled between July 01, 1999 and June 30, 2004. This information includes both injury and occupational disease settlements.



Settlement Amounts For Claims Settled¹ By Plan Type² and Fiscal Year of Injury

Plan Type ²	FY00		FY01		FY02		FY03		FY04	
	Amount	Count	Amount	Count	Amount	Count	Amount	Count	Amount	Count
Plan 1	2,706,801	151	2,429,251	150	2,115,661	140	1,128,565	116	160,708	21
Plan 2	7,073,188	408	6,548,888	399	5,324,115	312	3,175,303	212	441,978	46
Plan 3	4,345,169	231	5,415,401	275	6,056,584	252	3,310,674	179	318,082	33
Totals³	\$14,125,158	790	\$14,393,540	824	\$13,496,360	704	\$7,614,542	507	\$920,768	100

Notes:

¹This chart does not include settlements ordered by the Workers' Compensation Court.

²Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund.

³Previous fiscal year information has been updated.

Settlement Attorney Fees

ERD collects workers' compensation claimant legal expense data on attorney fees claimed for approved settlements. Legal costs accumulated in defense of a claim, pro-bono work, court awarded fees, fees taken from bi-weekly compensation payments prior to settlement, fees related to uninsured employer claims, annuities or benefit advances are not included.

Settlement of Claimant Attorney Fees¹ By Fiscal Year of Settlement

	FY00	FY01	FY02	FY03	FY04
Number of Settlement Petitions Processed	1,334	1,339	1,227	1,317	1,414
Claims Settled with Attorney Representation	678	715	682	645	787
Percent Claimants Represented by Attorney	51%	53%	55%	49%	56%
Total Settlement Amount With Attorney Involvement	\$14,169,102	\$16,734,211	\$17,551,999	\$17,675,697	\$22,960,912
Total Attorney Fees	\$2,620,749	\$3,028,678	\$3,183,270	\$3,166,382	\$4,053,961
Average Fee/Settlement Percentage	19%	18%	18%	18%	18%

Notes:

¹ Similar to reports issued in previous years, there are a small percentage of records for which no attorney fees were listed due to entry errors and/or reporting limitations.



Rehabilitation

The best possible outcome after an injury is for the injured worker to return to work. Sometimes a disabled worker needs help to become employable. The expense of vocational rehabilitation pays off when the worker becomes as productive and self-sufficient as possible.

Rehabilitation benefits are paid bi-weekly while completing the rehabilitation plan. Benefits are 66⅔% of wages received at the time of the injury, not to exceed the state's average weekly wage.

The worker's rehabilitation plan must be started within 78 weeks of reaching maximum medical improvement (MMI) and must be completed within 26 weeks of the completion date specified in the plan. In addition, the insurer may pay auxiliary benefits up to \$4,000 for reasonable travel and relocation expenses.

Rehabilitation benefits are provided to claimants under certain circumstances. Disabled workers are eligible when:

- ◆ Permanent impairment established by objective medical findings, that resulted from a work related injury and precludes the injured worker from returning to the job at the time of injury or a job with similar physical requirements; and
- ◆ Actual wage loss; or
- ◆ Medical impairment of at least 15% established by objective medical findings and no wage loss.

The injured worker must have reasonable vocational goals and re-employment opportunities that will likely reduce the wage loss and have a rehabilitation plan agreed upon with the insurer.

Vocational Rehabilitation Benefits Paid By Plan Type¹ and Fiscal Year of Injury

Plan Type ¹	FY00	FY01	FY02	FY03	FY04
Plan 1	179,356	329,178	84,552	51,024	120,448
Plan 2	810,180	585,750	634,462	305,068	63,831
Plan 3	1,103,170	1,271,095	1,042,689	781,371	221,427
Total	\$2,092,707	\$2,186,022	\$1,761,702	\$1,137,462	\$405,706

Notes:

¹Plan types: Plan 1 – Self-Insured Employers, Plan 2 – Private Insurance and Plan 3 – Montana State Fund

EXHIBIT D

http://www.montanastatefund.com

STATEFUND
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► New Initiatives
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President's Message

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On the Future

Connecting With
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**Quick Facts/
Board of Directors**

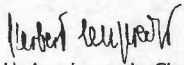
A Message from the Chairman


On behalf of the Board of Directors, it gives me great pleasure to share with you the accomplishments of Montana State Fund for FY 2004. Montana State Fund has led the way in providing workers' compensation insurance coverage to Montana businesses since 1990. Throughout the years, we have met the ever-changing needs of our customers, and we will continue to do so. It's our firm belief that a competitive state fund must be a stabilizing force in the marketplace. It is of paramount importance to all businesses in Montana that there is a reliable, stable workers' compensation system in place for this essential and mandatory coverage. Montana State Fund is that organization.

Montana State Fund employees have remained focused on delivering the best product and service possible to policyholders and their injured employees. As you will read in this report, we have undertaken a number of initiatives that will result in higher efficiencies, lower costs and improved delivery of our services.

By maintaining our financial strength and stability, we continue to deliver the highest quality workers' compensation insurance at competitive prices. The growth we are experiencing in premiums and policyholders poses both a challenge and an opportunity for our organization. We understand the critical role we play in the economic and social well-being of the citizens of our state. It is a responsibility that we gladly accept, and it's what separates us from the other insurance carriers that operate in Montana.

We thank you for your continued support.


Herbert Leuprecht, Chairman




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Check out MSF's
new on-line
payroll reporting
system!

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STATUTORY STATEMENTS OF ADMITTED ASSETS, LIABILITIES, AND SURPLUS

as of June 30,

ADMITTED ASSETS

	2004	2003
INVESTMENTS		
Bonds	\$499,090,381	\$436,818,298
Equity Securities	72,138,374	69,958,153
Cash and Short-Term Investments	20,685,046	32,150,786
Other Investments - Collateral Securities on Loan	141,060,425	30,968,721
Total Investments and Cash	732,974,226	569,895,958
OTHER ADMITTED ASSETS		
Premium Receivables	7,818,889	7,354,843
Equipment (net)	962,632	815,820
Interest Receivable	7,520,657	6,586,054
Other Assets	532,037	186,713
Total Admitted Assets	<u>\$749,808,441</u>	<u>\$584,839,388</u>

LIABILITIES AND SURPLUS

LIABILITIES		
Losses Incurred Reserves	\$410,090,000	\$372,300,000
Loss Adjustment Expense Reserves	42,025,000	41,100,000
Liability for Securities on Loan	141,060,425	30,968,721
Deferred Revenue	5,977,233	202,912
Other Liabilities	23,163,627	18,668,338
Total Liabilities	622,316,285	463,239,971

CONTINGENCIES AND SUBSEQUENT EVENTS

SURPLUS		
Policyholders' Surplus	127,492,156	121,599,417
Total Liabilities and Surplus	<u>\$749,808,441</u>	<u>\$584,839,388</u>

STATUTORY STATEMENTS OF OPERATIONS AND CHANGES IN SURPLUS

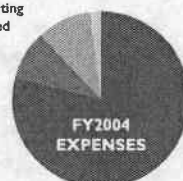
for the years ended June 30,

	2004	2003
Net Premium Earned	\$139,360,612	\$117,776,580
Losses Incurred	(136,267,288)	(146,912,095)
Loss Expenses Incurred	(14,869,190)	(16,074,946)
Underwriting Expenses Incurred	(20,841,166)	(17,559,701)
Net Underwriting Loss	<u>\$(32,617,032)</u>	<u>\$(62,770,162)</u>
Net Investment Income Earned	26,562,859	26,799,946
Net Realized Capital Gains (Losses)	1,103,132	2,126,151
Premium Balances Recovered (Charged Off)	(1,200,914)	(686,078)
Other Income	(202,031)	16,796
Net Income (Loss) Before Dividends	<u>(6,353,986)</u>	<u>(34,513,347)</u>
Policyholder Dividends	(1,909,856)	(2,949,597)
Net Income (Loss) After Dividends	<u>(8,263,842)</u>	<u>(37,462,944)</u>
Prior Year End Surplus	121,599,417	158,498,995
Net Unrealized Gains (Losses) on Equity Securities	12,773,545	777,514
Change in Nonadmitted Assets	1,403,739	(156,802)
Aggregate Write In for Gains (Losses) in Surplus	(10,485)	(56,058)
Transfer In (Out), net	(10,218)	(1,288)
END OF PERIOD SURPLUS	<u>\$127,492,156</u>	<u>\$121,599,417</u>

 Complete audited financial information is available at www.montanastatefund.com or upon request.

 17% Investment,
Realized Gains/Losses
and Other Income


83% Premiums

 12.5% Underwriting
Expenses Incurred
8.9% Loss
Expenses
Incurred
1.1% Policyholder
Dividends


1% Other

 81.6% Losses
Incurred

EXHIBIT E

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Montana State Fund Declares Dividend

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The Montana State Fund (MSF) Board authorized a dividend payment to qualifying policyholders. The Board approved a \$5 million dividend distribution. This will be the seventh consecutive year MSF has rewarded customers with superior safety records. Over 16,600 policyholders of record for the period of July 1, 2002 – June 30, 2003 are eligible to receive the dividend.

“Dividends reward our policyholders who provide a safe workplace for their employees,” said Herbert Leuprecht, Chairman of the Board of Directors. “Besides being an added incentive and value to employers who focus on safety, this is money that stays in Montana and is put back to work in our businesses and communities.”

Since 1998, \$38 million has been returned to deserving policyholders. Those who meet the criteria for a dividend will be notified by mail in late April/early May. Funds will be distributed by mid June. Montana State Fund provides workers’ compensation coverage to nearly 28,000 employers in the state, making it the largest workers’ compensation insurance company in Montana.