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FILED

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OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CATHERINE E. SATTERLEE, et al.

Petitioners,

v.

LUMBERMAN'S MUTUAL CASUALTY
COMPANY, et al.

Respondents/Insurers.

WCC No. 2003-0840

AFFIDAVIT OF CRISTINE E. MCCOY

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

Cristine E. McCoy, being first duly sworn upon her oath, deposes and says:

1. I am currently a Project Specialist with the Montana State Fund ("MSF") and have previously worked as a Claims Supervisor and Claims Examiner with MSF. I have been employed with MSF since June 1, 1987.

DOCKET ITEM NO. 229

2. As a Project Specialist and as a result of my prior employment with MSF, I have personal knowledge of the process by which files and data are stored and retrieved at MSF. I am also familiar with Montana's workers' compensation laws and the type of information a claims examiner needs to obtain in order to evaluate and adjust a file. Further, I am familiar with and have personal knowledge of the common fund cases that have been litigated in the Montana's Workers' Compensation Court and the Montana Supreme Court. I have assisted with the implementation process in each of the common fund cases, including the seminal case of *Murer v. Montana State Fund*, WCC No. 95-542.

3. Locating files on various media types at MSF is a labor-intensive, manual process, and several different procedures are employed to retrieve the stored media.

4. Retrieval time depends on what media type the file is stored, the date of the claim, when the claim was active, and how long the claim was active.

5. A claim may be closed and re-opened. If a claim has been closed and re-opened, it may be stored on multiple or all media types. A *Satterlee* review may include a review of a claim file with information stored on all media types.

6. To determine the media type of a claim, the adjuster must make a file request from MSF's only records person, who will search the computer system to ascertain when the claim was active and on which media it is likely to be stored. The records person will then check the records for each claim. A simple search may take ten minutes. A complex search may take three hours or longer.

7. Open files in the Old Fund unit with claims arising on or before June 30, 1990 may be lengthy files consisting of several volumes and thousands of pages. The adjuster in the Old Fund unit retrieves paper files, which can be disassembled and photocopied.

8. Optically imaged documents can be retrieved via the MSF computer system. Entire files are printed via a FileNet printer, which can print several claim files per night. Individual pages can be printed at any workstation at about eight pages per minute.

9. If *Satterlee* applies retroactively, MSF will have to identify claimants who may be affected by the decision. Although a single computer run will not locate all the potential *Satterlee* claims, they can be substantially identified by using complex computer queries to search the CMS and DB02 systems. Because of the over-inclusive

parameters of the search query, manually reviewing each file may be the only reliable means of identifying affected claims. A manual review process would be time-consuming.

10. Given MSF's experiences in *Murer*, *Broeker* and the other common fund cases, closed and inactive files frequently lack current addresses for the claimants.

11. Locating a claimant often requires several attempts, and each attempt requires a new search. It is anticipated that there will be older claims in which the claimant cannot be located.

12. In *Murer*, MSF utilized Internet searches in an attempt to locate claimants whose contact information had changed. Although MSF's ultimate success was fairly good, simply locating a claimant could require several hours of searching.

13. Some claimants have died in the intervening years since claim closure which, as to those claims, compounds the problems discussed above in determining any benefits that may be due.

14. A review of potential *Satterlee* claims would also require adjusters to recognize and appropriately address the prior attorney liens filed in the pending common fund litigation, including but not limited to *Murer*, *Schmill*, *Stavenjord*, *Rausch*, *Flynn*, and *Reesor*.

15. At the time of the *Murer* decision and during almost all of the *Murer* implementation process, MSF was under a different organizational structure, one which was more conducive to accomplishing special projects. Even with a more flexible structure, completing the implementation process was a strain on the MSF's business operations. This was so even though the *Murer* review was limited to a four year period, July 1, 1987 through June 30, 1991, and only involved the recalculation of the disability rate for those claimants at the maximum rate. Compared to *Murer*, a *Satterlee* review process would involve a more complex review of each claim and cover a substantially longer period of time. The internal and external resources needed to accomplish a *Satterlee* review, along with attended costs, would be considerably more than *Murer*.

CERTIFICATE OF MAILING

I, Kathleen G. Gowen, the undersigned, of Respondent/Insurer, Montana State Fund, hereby certify that on this 8th day of August, 2005, I mailed a copy of the foregoing *Affidavit of Cristine E. McCoy*, postage prepaid, to the following persons:

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