

Bradley J. Luck
GARLINGTON, LOHN & ROBINSON, PLLP
199 West Pine • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595

Thomas E. Martello, Esq.
Montana State Fund
P. O. Box 4759
Helena MT 59604-4759

Attorneys for Respondent/Insurer, Montana State Fund

FILED

OCT - 5 2005

OFFICE OF
WORKERS' 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

**SECOND AFFIDAVIT OF DANIEL
GENGLER**

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

DANIEL GENGLER, being first duly sworn upon his oath, deposes and says:

1. I am currently the Internal Actuary for the Montana State Fund ("MSF"). I have been employed with MSF since August 21, 1995.

DOCKET ITEM NO. 270

2. As the Internal Actuary, I am responsible for and have personal knowledge of MSF's policies and procedures regarding ratemaking, surplus, and dividends. I also have personal knowledge of MSF's financial condition and am familiar with the financial impact the recent common fund cases may have on MSF's viability. I am also familiar with the implementation efforts and costs associated with the common fund cases. I am familiar with the pending litigation in the above-referenced matter and the related case of *Reesor v. Montana State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019. I prepared and executed an affidavit dated August 9, 2005, that has been filed with the Court.

3. The affidavit I previously filed with the Court is accurate and based upon reproducible data and calculation consistent with generally accepted actuarial principles.

4. I have reviewed the affidavits filed in this matter by David Johnson CPA and the comments regarding his affidavits made by Petitioners' counsel in their reply brief. I offer the following comments concerning Mr. Johnson's review of mine and other affidavits filed on behalf of MSF in this action and Petitioners' counsels' interpretation of the information in such documents.

5. Petitioners claim that MSF cost estimates are exaggerated. Mr. Johnson conducts an analysis which presents the opinion that MSF cost estimates imply an average incidence of 617 permanent total disability ("PT") claims per year for the MSF alone. They compare this to data from the Department of Labor and Industry ("DLI") 2004 annual report which shows only 118 PT claims for a six-year period 1999-2004, an average of about 20 PT claims statewide per year. From this comparison, Petitioners conclude that MSF cost estimate is unreasonable.

6. Mr. Johnson's analysis to derive the implied claim count in MSF cost estimates is flawed. His calculations miss a very critical step in that his final result of 617 implied PT claims (at midpoint estimate) must further be divided by an average of 15.7 years lifespan post-retirement age. Completing this step then implies approximately 40 PT claims per year. MSF actual figures reflect an average of 42 non-settled PT claims per year.

7. Using the assumption of an average 40 PT claims per year, we can agree to all other figures in Mr. Johnson's analysis and derive a cost estimate very consistent with MSF's estimate:

$$\begin{array}{r}
40 \text{ non-settled PT claims per year} \\
x \quad 23.23 \text{ accident years} \\
x \quad \$18,489 \text{ average annual PT benefits} \\
x \quad 15.7 \text{ years average lifespan after Social Security retirement} \\
\quad \text{age} \\
= \quad \$269.7 \text{ million (MSF midpoint estimate is \$265 million)}
\end{array}$$

It appears that Mr. Johnson's approach, when utilizing the proper data and calculation, supports the estimates of MSF. As can be seen in the demonstration above, and in response to concerns raised by Petitioners in their Reply Brief, MSF's estimate does not include any consideration of additional PPD benefits.

8. The DLI annual report is an incomplete characterization of the incidence of PT claims. PT disability is only rarely known with certainty at the initial stage of a claim. Only the most severe injuries are readily identifiable as involving permanent and total disability early on. In our experience, it generally takes about five to ten years for most PT claims to be recognized as such. For example, the DLI report indicates only 26 PT claims from 1999 known in 2004. More recent NCCI data now shows 45 PT claims incurred in 1999 (the NCCI data excludes self-insured plans).

9. The incidence of PT claims has fluctuated over the years. The MSF incurred an average 144 PT claims per year during the period 1982 to 1994. The MSF incurred an average of only about 41 PT claims per year from 1995-2001. The DLI annual report which addresses the period 1999 to 2004 does not reflect this significantly higher rate of PT incidence in the past.

10. The DLI annual report is not a definitive representation of the incidence of PT claims in Montana for a number of reasons. First, the claims shown do not reflect subsequent development of claims to PT status. Second, the accident years the DLI report addresses do not include periods in which the incidence of PT disability was significantly higher. And third, to the best of my knowledge, DLI does not rigorously evaluate the reasonableness of data reported by all carriers and insurance funds which provide data. I am aware anecdotally of situations in which carriers fail to review ongoing entitlement status of total disability claims and indefinitely pay temporary total disability ("TTD") benefits. This is sustainable because the TTD rate is the same as the PT rate. After many years of continuously paying temporary disability benefits, such claims might be more reasonably viewed as involving permanent total disability. However, such claims would be identified as TTD claims in statewide data collections, thus understating true PT totals.

11. The MSF estimate is based on data which has been captured as of a specific valuation date. This primary data is available to be examined by others should it be required as evidence. Documentation of MSF cost estimates based on this

data is attached as Exhibit "A". The MSF estimate is based on data which does not definitively identify PT claims subject to retroactive costs. We apply rules to derive claim counts which are intended to minimize false positives and false negatives and provide a reasonable, unbiased estimate. A definitive identification of specific injured employees who would be eligible to receive lifetime PT benefits would require a labor intensive review of claim files as described in the McCoy Affidavit. This is particularly true of PT claims which have been long closed and for which data on MSF systems has been converted from prior legacy systems.

12. The McCoy Affidavit spoke strictly to how information is stored and MSF retrieval capabilities. It correctly states that MSF can use electronic data capabilities to narrow the field or population, but ultimately implementation necessary to locate PT claimants entitled to additional benefits would involve a material amount of manual review, which will be time consuming and administratively expensive.

13. Petitioners state that, because the MSF characterizes its estimate as a "highly likely range," the MSF does not present legally sufficient facts. Short of a highly burdensome, lengthy, and costly review of claim records as described in the McCoy Affidavit, the MSF estimate does indeed contain a measure of uncertainty regarding the exact number of past claims involved, expressed in a range derived by sensitivity testing various assumptions. In any event, it is impossible to know at this point in time precisely how long PT claimants will live beyond retirement age. It is also impossible to know with certitude the costs of lifetime PT for claims yet to be incurred. A degree of uncertainty in our estimate is inherent in the nature of the matter. The generally accepted standard in the actuarial profession is whether such estimates are reasonable given all relevant information available at the time the estimate is derived and appropriately discloses how much the estimate can reasonably be anticipated to vary.

14. Petitioners' Reply Brief questions the difference between NCCI estimates and those of MSF. This subject was treated at Paragraph 15(c) of my initial affidavit and Paragraph 10(c) of MSF's Statement of Additional Uncontested Facts.

15. The retroactive cost estimates which were produced by MSF actuarial staff were independently corroborated by MSF claims staff who conducted their own estimate. When we compared the results, the two estimates were consistent with one another and give us confidence that the cost estimates we present in this proceeding are reasonable and accurate.

16. The petitioners point to the statutory minimum surplus level and the fact that the MSF has been declaring dividends. The MSF will declare a dividend when it determines that surplus is at a level deemed to be consistent with financial strength or determines that we are on a sustainable path to achieve this goal within a reasonable timeframe. The statutory minimum represents a level of surplus associated with financial weakness, a position which represents an unacceptable risk of financial failure.

Dividends are an integral component of the MSF overall premium pricing program and serve as an incentive to employers who provide a safe workplace for employees and return injured workers to employment as soon as possible. MSF business strategy up to this point in time could not have reasonably taken into account the potential for lifetime PT until such time as specific legislative or judicial actions are taken. There is no doubt that if subject to retroactive costs of lifetime PT, the MSF would be severely financially impaired, if not insolvent, and would not be in a position to continue a dividend program.

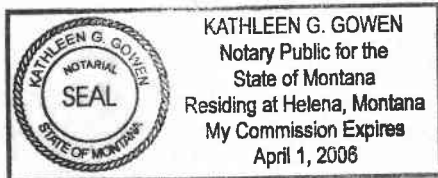
//
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. //

DATED this 5th day of October, 2005.

Daniel J. Gengler
DANIEL GENGLER

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

Subscribed to and sworn to before me on the 5th day of October 2005, by DANIEL GENGLER.



Kathleen G. Gowen
(Type or print name) Kathleen G. Gowen
NOTARY PUBLIC FOR THE STATE OF MONTANA
residing at Helena, Montana, Montana
My commission expires: April 1, 2006

Cost Estimates for Lifetime PT Benefits

Retroactive Impact

	Low	Mid	High
# PT Claims	>\$10k PT paid or reserve	>\$10k PT paid or reserve	>\$10k PT paid or reserve + 5%
Life Expectancy	90% of general life expectancy	100% of general life expectancy	105% of general life expectancy
COLAS	3% for all AYs except AY95-96 @ 18.2%	3% for all AYs except AY95-96 @ 18.2%	3% for all AYs prior to 2003, AY95-96 @ 18.2%, 4% for AY04-05

Old Fund	92,900,000	104,800,000	116,300,000
New Fund	<u>134,500,000</u>	<u>161,200,000</u>	<u>186,100,000</u>
Total	227,400,000	266,000,000	302,400,000

Prospective Impact

	Low	Mid	High
# PT Claims	AY1996-2002 frequency	AY1996-2002 frequency	AY1996-2002 frequency + 10%
Life Expectancy	90% of general life expectancy	100% of general life expectancy	100% of general life expectancy
COLAS	2.50%	3.00%	4.00%
Rate Impact	10.8%	15.4%	20.7%

10/04/2005

Lifetime PT Estimate. 123

Cost Estimate of Retroactive Application of Lifetime PT

Low Estimate

For claims incurred 10/1/1981 - 6/30/2005
 AY 2003-2005 Based on Developed Estimate
 See notes for details of methods

AY	All Claims Identified With PT Liability				PT Claims Not Settled						
	PT Claims	Avg PT Rate	Avg Age @ Dt of Inl	PT Claims	Avg Life Expectancy	Avg Yrs Post Retire	Avg PT Rate	Wtd Avg Post Ret. PT Rate	Avg Post Ret PT Benefit	Tot Post Ret PT Benefit	
1982	73	183.15	47.4	24	82.0	16.8	168.63	170.16	149,451	3,600,000	
1983	133	197.31	47.4	55	82.0	16.7	188.06	190.77	166,528	9,200,000	
1984	172	218.45	47.3	57	82.3	16.9	213.96	209.65	185,278	10,600,000	
1985	158	216.91	48.1	62	82.2	16.9	207.97	209.23	185,000	11,500,000	
1986	172	221.50	46.6	52	80.7	15.2	218.54	222.28	175,994	9,200,000	
1987	218	233.76	47.8	65	81.4	16.0	237.15	238.37	198,488	12,900,000	
1988	161	216.84	46.2	54	80.5	15.0	221.40	280.92	220,123	11,900,000	
1989	162	211.74	47.8	60	80.4	14.9	211.64	269.43	209,666	12,600,000	
1990	152	215.81	47.2	47	80.8	15.4	239.68	301.14	241,667	11,400,000	
1991	163	217.02	48.4	65	80.6	15.1	219.01	278.04	218,701	14,200,000	
1992	121	226.93	48.8	45	80.0	14.3	254.22	320.42	238,833	10,700,000	
1993	81	242.30	47.3	43	79.3	13.5	259.16	335.82	235,840	10,100,000	
1994	75	243.98	47.3	35	79.9	14.1	258.58	326.92	241,298	8,400,000	
1995	55	237.76	49.3	33	79.9	14.3	247.27	288.09	214,241	7,100,000	
1996	44	277.23	46.0	23	79.3	13.4	290.50	317.84	222,381	5,100,000	
1997	35	254.63	48.8	23	79.4	13.5	253.18	318.99	224,177	5,200,000	
1998	37	254.23	50.1	19	79.4	13.5	234.63	292.58	206,395	3,900,000	
1999	38	265.86	46.6	18	78.1	11.8	275.95	357.46	219,741	4,000,000	
2000	35	320.19	48.9	20	78.8	12.7	330.49	428.34	284,562	5,700,000	
2001	45	342.21	51.3	32	78.8	12.6	342.22	435.98	287,762	9,200,000	
2002	35	319.90	50.9	24	79.1	13.0	328.72	414.80	281,645	6,800,000	
2003	48.5	336.75	50.0	44.5	79.0	12.9	334.02	418.71	281,865	12,500,000	
2004	51.9	346.85	50.0	50.9	79.0	12.9	344.04	431.27	290,321	14,800,000	
2005	56.2	357.26	50.0	56.2	79.0	12.9	354.36	444.21	299,031	16,800,000	
Old Fund	1,401			476						92,900,000	
New Fund	921			532						134,500,000	
Total	2,322			1,008						227,400,000	

Cost Estimate of Retroactive Application of Lifetime PT

Midpoint Estimate

For claims incurred 10/1/1981 - 6/30/2005
 AY 2003-2005 Based on Developed Estimate
 See notes for details of methods

AY	All Claims Identified With PT Liability				PT Claims Not Settled						
	PT Claims	Avg PT Rate	Avg Age @ Dt of Inj	PT Claims	Avg Life Expectancy	Avg Yrs Post Retire	Avg PT Rate	Wtd Avg Post Ret. PT Rate	Avg Post Ret PT Benefit	Tot Post Ret PT Benefit	
1982	73	183.15	47.4	24	84.0	18.8	168.63	169.66	166,367	4,000,000	
1983	133	197.31	47.4	55	83.9	18.7	188.06	190.00	185,290	10,200,000	
1984	172	218.45	47.3	57	84.1	18.8	213.96	210.71	206,932	11,800,000	
1985	158	216.91	48.1	62	84.1	18.8	207.97	208.93	205,317	12,700,000	
1986	172	221.50	46.6	52	82.9	17.4	218.54	221.01	200,919	10,400,000	
1987	218	233.76	47.8	65	83.5	18.1	237.15	238.03	224,441	14,600,000	
1988	161	216.84	46.2	54	82.7	17.2	221.40	281.85	253,349	13,700,000	
1989	162	211.74	47.8	60	82.7	17.2	211.64	269.26	241,328	14,500,000	
1990	152	215.81	47.2	47	82.9	17.5	239.68	300.42	274,405	12,900,000	
1991	163	217.02	48.4	65	82.8	17.3	219.01	277.27	249,696	16,200,000	
1992	121	226.93	48.8	45	82.4	16.7	254.22	322.02	279,930	12,600,000	
1993	81	242.30	47.3	43	81.9	16.1	259.16	335.64	281,159	12,100,000	
1994	75	243.98	47.3	35	82.4	16.6	258.58	326.32	283,476	9,900,000	
1995	55	237.76	49.3	33	82.3	16.6	247.27	288.26	249,948	8,200,000	
1996	44	277.23	46.0	23	81.9	16.0	290.50	316.71	264,063	6,100,000	
1997	35	254.63	48.8	23	81.9	16.0	253.18	320.58	267,600	6,200,000	
1998	37	254.23	50.1	19	82.0	16.1	234.63	294.13	247,000	4,700,000	
1999	38	265.86	46.6	18	81.2	14.8	275.95	356.97	276,570	5,000,000	
2000	35	320.19	48.9	20	81.5	15.4	330.49	425.87	343,155	6,900,000	
2001	45	342.21	51.3	32	81.6	15.4	342.22	437.83	351,499	11,200,000	
2002	35	319.90	50.9	24	81.8	15.7	328.72	413.95	338,775	8,100,000	
2003	48.5	336.75	50.0	44.5	81.7	15.6	334.02	424.56	344,822	15,300,000	
2004	51.9	346.85	50.0	50.9	81.7	15.6	344.04	437.29	355,166	18,100,000	
2005	56.2	357.26	50.0	56.2	81.7	15.6	354.36	450.41	365,821	20,600,000	
Old Fund	1,401	141.62		476						104,800,000	
New Fund	921	41.29		532						161,200,000	
Total	2,322			1,008						266,000,000	

Cost Estimate of Retroactive Application of Lifetime PT

High Estimate

For claims incurred 10/1/1981 - 6/30/2005
 AY 2003-2005 Based on Developed Estimate
 See notes for details of methods

AY	All Claims Identified With PT Liability				PT Claims Not Settled						
	PT Claims	Avg PT Rate	Avg Age @ Dt of Inl	PT Claims	Avg Life Expectancy	Avg Yrs Post Retire	Avg PT Rate	Wtd Avg Post Ret. PT Rate	Avg Post Ret PT Benefit	Tot Post Ret PT Benefit	
1982	76.65	183.15	47.4	25	85.0	19.8	168.63	161.38	174,826	4,400,000	
1983	139.65	197.31	47.4	58	84.9	19.7	188.06	180.64	194,671	11,200,000	
1984	180.6	218.45	47.3	60	85.1	19.8	213.96	201.11	217,759	13,000,000	
1985	165.9	216.91	48.1	65	85.1	19.8	207.97	198.86	215,475	14,000,000	
1986	180.6	221.50	46.6	55	84.0	18.5	218.54	209.99	213,381	11,700,000	
1987	228.9	233.76	47.8	68	84.5	19.1	237.15	226.56	237,418	16,200,000	
1988	169.05	216.84	46.2	57	83.8	18.3	221.40	268.79	269,962	15,300,000	
1989	170.1	211.74	47.8	63	83.8	18.3	211.64	256.37	257,159	16,200,000	
1990	159.6	215.81	47.2	49	84.0	18.6	239.68	285.83	290,774	14,300,000	
1991	171.15	217.02	48.4	68	83.9	18.4	219.01	263.76	265,194	18,100,000	
1992	127.05	226.93	48.8	47	83.6	17.8	254.22	307.30	300,478	14,200,000	
1993	85.05	242.30	47.3	45	83.2	17.4	259.16	319.60	303,819	13,700,000	
1994	78.75	243.98	47.3	37	83.6	17.9	258.58	310.56	304,565	11,200,000	
1995	57.75	237.76	49.3	35	83.5	17.8	247.27	274.60	267,802	9,300,000	
1996	46.2	277.23	46.0	24	83.2	17.3	290.50	301.21	284,905	6,900,000	
1997	36.75	254.63	48.8	24	83.2	17.3	253.18	305.91	289,312	7,000,000	
1998	38.85	254.23	50.1	20	83.3	17.4	234.63	280.70	267,303	5,300,000	
1999	39.9	265.86	46.6	19	82.7	16.4	275.95	339.80	304,985	5,800,000	
2000	36.75	320.19	48.9	21	82.9	16.8	330.49	404.70	372,451	7,800,000	
2001	47.25	342.21	51.3	34	82.9	16.8	342.22	417.65	383,368	12,900,000	
2002	36.75	319.90	50.9	25	83.1	17.0	328.72	393.93	367,340	9,300,000	
2003	50.9	336.75	50.0	46.9	83.0	16.9	334.02	445.22	392,550	18,400,000	
2004	54.5	346.85	50.0	53.5	83.0	16.9	344.04	458.58	404,327	21,600,000	
2005	59.0	357.26	50.0	59.0	83.0	16.9	354.36	472.33	416,456	24,600,000	
Old Fund	1,471			500						116,300,000	
New Fund	967			558						186,100,000	
Total	2,438			1,058						302,400,000	

10/04/2005

Lifetime PT Estimate. 123

Cost Estimate of Prospective Application of Lifetime PT

Increase in Indemnity Costs for AYZ2006 & Subsequent

Based on current law regarding application of COLAs

See notes for details of methods

Low Estimate

AY	Post Retire PT @ Current Wage Levels	Wage Trend to AYZ2006	On-Level Post Retire PT Benefits	Current Best Estimate Indemnity Loss	Benefit Level	Severity Trend	On-Level Indemnity Loss	Benefit Level Change
1996	12,771,057	1.34	17,163,233	34,500,000	1.393	1.22	58,583,043	0.293
1997	9,274,827	1.30	12,101,545	27,400,000	1.379	1.20	45,156,095	0.268
1998	9,743,574	1.27	12,342,868	28,200,000	1.355	1.17	44,770,277	0.276
1999	10,092,889	1.23	12,412,980	30,900,000	1.335	1.15	47,385,007	0.262
2000	11,071,736	1.19	13,220,232	30,000,000	1.313	1.13	44,359,538	0.298
2001	15,194,807	1.16	17,614,946	34,000,000	1.292	1.10	48,500,062	0.363
2002	10,831,753	1.13	12,191,234	35,000,000	1.228	1.08	46,522,934	0.262

7Yr Avg	0.289
7Yr EXHILo	0.279
5Yr Avg	0.292
5Yr EXHILo	0.279
Selected	0.285
Est. Rate Level Impact	10.8%