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**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:

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

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.

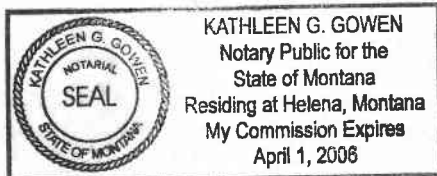
//  
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. //

DATED this 5<sup>th</sup> day of October, 2005.

*Daniel J. Engler*  
DANIEL GENGLER

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

Subscribed to and sworn to before me on the 5<sup>th</sup> 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%
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10/04/2005



# 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

All Claims Identified With PT Liability											PT Claims Not Settled				
AY	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		Avg Post Ret PT Benefit	Tot Post Ret PT Benefit				
								Ret. PT Rate	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

All Claims Identified With PT Liability				PT Claims Not Settled						
AY	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

All Claims Identified With PT Liability							PT Claims Not Settled						
AY	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	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			
				500						116,300,000			
Old Fund				558						186,100,000			
New Fund				1,058						302,400,000			
Total													

# **Cost Estimate of Prospective Application of Lifetime PT**

*Low Estimate*

Increase in Indemnity Costs for AY2006 & Subsequent  
Based on current law regarding application of COLAs  
See notes for details of methods

AY	Post Retire	Wage Trend	On-Level	Current Best	Benefit Level	Severity Trend	Indemnity Loss	On-Level	Benefit Level
	PT @ Current Wage Levels		PT Retire Benefits					Indemnity Loss	
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%

# Cost Estimate of Prospective Application of Lifetime PT

Midpoint Estimate

Increase in Indemnity Costs for AYZ2006 & Subsequent  
Based on current law regarding application of COLAs  
See notes for details of methods

AY	Post Retire	Wage Trend to AYZ2006	On-Level	Current Best	Benefit Level	Severity Trend	On-Level	Benefit Level Change
	PT @ Current Wage Levels		Post Retire PT Benefits	Indemnity Loss Estimate			Indemnity Loss	
1996	18,021,814	1.34	24,219,812	34,500,000	1.393	1.22	58,583,043	0.413
1997	12,987,169	1.30	16,945,310	27,400,000	1.379	1.20	45,156,095	0.375
1998	13,482,022	1.27	17,078,622	28,200,000	1.355	1.17	44,770,277	0.381
1999	14,922,621	1.23	18,352,941	30,900,000	1.335	1.15	47,385,007	0.387
2000	15,647,488	1.19	18,683,918	30,000,000	1.313	1.13	44,359,538	0.421
2001	21,057,295	1.16	24,411,176	34,000,000	1.292	1.10	48,500,062	0.503
2002	15,094,643	1.13	16,989,153	35,000,000	1.228	1.08	46,522,934	0.365

7Yr Avg	0.407
7Yr EXHLO	0.396
5Yr Avg	0.412
5Yr EXHLO	0.397
Selected	0.405
Est. Rate Level Impact	15.4%

# High Estimate

## Cost Estimate of Prospective Application of Lifetime PT

Increase in Indemnity Costs for AY2006 & Subsequent

Based on current law regarding application of COLAs

See notes for details of methods

AY	Post Retire	Wage Trend to AY2006	On-Level	Current Best	Benefit Level	Severity Trend	On-Level Indemnity Loss	Benefit Level Change
	PT @ Current Wage Levels		Post Retire PT Benefits	Estimate Indemnity Loss				
1996	24,542,462	1.34	32,983,016	34,500,000	1.393	1.22	58,583,043	0.563
1997	17,603,894	1.30	22,969,089	27,400,000	1.379	1.20	45,156,095	0.509
1998	18,130,407	1.27	22,967,057	28,200,000	1.355	1.17	44,770,277	0.513
1999	20,701,176	1.23	25,459,835	30,900,000	1.335	1.15	47,385,007	0.537
2000	21,083,635	1.19	25,174,963	30,000,000	1.313	1.13	44,359,538	0.568
2001	27,936,926	1.16	32,386,554	34,000,000	1.292	1.10	48,500,062	0.668
2002	19,996,338	1.13	22,506,054	35,000,000	1.228	1.08	46,522,934	0.484

7Yr Avg	0.549
7Yr EXHILLO	0.538
5Yr Avg	0.554
5Yr EXHILLO	0.539
Selected	0.545
Est. Rate Level Impact	20.7%