

# STAVENJORD

## Identification & Notification

April 26, 2007

### Introduction

- MSF is here today to verify factually that it is not *impracticable or impossible* to properly identify and provide notice to potential Stavenjord II beneficiaries
- MSF does not agree with Stavenjord's suggestion that this proceeding should be step one.
  - MSF provided its reports and data explaining fully its identification process and plan of notification
  - The MSF report was analyzed and responded to by Stavenjord counsel
  - MSF is here to explain and answer any question the court may have

EXHIBIT

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- MSF asked for the pre-hearing conference so it could provide the Court with the information it wanted to see and hear
  - MSF discussed with a broad group (lawyers and claims experts) and developed this explanatory presentation
  - MSF will verify through the testimony of Cris McCoy and Bill Visser that it is not impossible or impracticable to identify Stavenjord II potential beneficiaries
- Cris and Bill are the designated internal contact persons on the Stavenjord project
  - Adjusters have been advised to contact them and refer claims to them
  - They oversaw our identification process and will do the same with the notification
  - They will be integral to any implementation efforts
  - They are present today to provide insight and detail to the identification and notification process
  - Dual testimony
  - They are available to answer any questions from the Court.
  - We request finalization of our presentation before any modified cross examination is allowed by Stavenjord's counsel.

## Important Dates

- Applies to claims arising after June 30, 1987 and prior to May 23, 2001.
- Second Supreme Court decision denying common fund status 10-6-06
- Request for rehearing denied 11-9-06

## MEDIA TYPES & EXAMPLES

- DB02
- CMS

### DB02

DB02 was a disk operating system (DOS) maintained by the State of Montana, and was the initial system utilized by MSF beginning in 1983. Its primary function was data storage for MSF, the Division of Workers' Compensation, and the Department of Labor & Industry. Beginning June 1988, enhancements were made to provide some limited functionality such as indemnity and medical payments, reserving detail, and a limited note field. This system was ultimately retired by MSF in February 1997, and a copy of the database as it existed at the point of conversion, archived. Claim files and/or related claim activities during this period were maintained in hard copy folders. After closing and remaining inactive for a period of 3 years, hard copy files were purged and copied to microfiche for ultimate storage with the Records Retention Bureau.



368 CLAIMANT NAME SEARCH DETAIL PAGE 01

SELECT ACCT/INC	NAME	STATE	ACC DATE	PART OF BODY	CITY EAST HELENA	INDEP CONTR	WINDO YRS	CAR ADM	RESV
03	03/15/88	R/L ARM					999		999
03	11/14/88	BACK/PELVIS							999

ENTER-ENQUIRY, PF1-H/M, PF2-P/F, PF3-INDEP CONTR, PF4-SURSG INJ, RSP-CON  
 PF5-AID INCIDENT, PF6-NAME SELECT, PF7-NAME ENTRY, PF8-NAME MENU,  
 PF9-PLAT NAME, PF10-UPS INCIDENT, PF11-MAIN MENU, CLEAR-LEAVE ADS

R1220 COMP RESERVE WORKSHEET RESERVED: 09/15/95 BY: AB2  
 ACCIDENT: ST NAME: DOI: 05/26/92  
 ZERO RESERVE BALANCE? N STATUS: 13 DISABILITY TYPE: 2 LAST PAY: 02/08/96  
 AMW: 330.00 POST AMW: 0.00 IMPAIR RT: 0 RSRV PARTY: AB2 EXAM: AB2

BENEFITS	WEEKS	AT	RATE	=	RESERVE	AMOUNT PAID
TEMPORARY TOTAL:	36	X	220.00	=	7,920.00	7,920.00
TOTAL REHABILITATION:	0	X	220.00	=	0.00	
TEMPORARY PARTIAL:	0	X	0.00	=	0.00	
N Y/N PERM PARTIAL:	0	X	168.00	=	0.00	
AUXILIARY REHABILITATION:				=	0.00	
PERMANENT TOTAL:	550	X	220.00	=	121,000.00	3,811.78
PERMANENT ADVANCE:				=	0.00	
N Y/N FATALITY / OTHER:				=	0.00	
CLAIMANT LEGAL FEES:				=	0.00	
DWC DEFENSE FEES:				=	0.00	
OFFSETS- SOCIAL SECURITY:	601	X	9.85	=	5,919.85	
SUBROGATION:				=	0.00	
OCCUPATIONAL DISEASE:	550	X	110.00	=	60,500.00	
OVERPAYMENT:				=	0.00	0.00
RSRV REV DT: 11/15/95	WKSHT TOTALS =				62,500.15	11,731.78
EXAM REV DT:	BALANCE =				50,768.37	

ENTER-CALCULATE, PF2-RESTART WORKSHEET, PF12-SAVE REVIEW DT, PF16-RESERVE MENU  
 \*ENTER WAGES, WEEKS, OR RESERVE AMOUNTS

*Handwritten signature and date: 2-7-96*

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R1230          MEDICAL RESERVE WORKSHEET UPDATE          RESERVED: 05/20/95 BY: RDC
ACCIDENT:      STATUS: 13 TYPE DISAB: 2  PT NAME:      ACCIDENT DATE: 05/26/92
BENEFITS -     RESERVED      ZERO RSRV BAL: N  RSRV PARTY: AB2  EXAM: AB2
                RESERVE      AMOUNT PAID
PHYSICIAN:      1,073.63      1,181.11  MCO ADMIN FEE RSRV:      0.00
HOSPITAL:        140.94      140.94      PAID:
PHYS REHAB:      650.00      650.00      MIRA RSRV BAL:      124,017.68
CHIRO:           0.00
DENTIST:         0.00      OFFSETS -
OSTEOPATH:       0.00      SUBROGATION RSRV:      0.00
VOC REHAB:      1,243.40      1,243.40      PAID:
PANELS:          0.00
LTC FAC:         0.00      WKSHT TOTAL RSRV:      127,291.00
NURSE:           0.00      PAID:      3,380.80
DRUGS:           15.35      15.35      BALANCE:      123,910.20
AMBULANCE:       0.00
PSYCHOLOGIST:    0.00      INDEMNITY RSRV:      62,500.15
PROSTHESIS:      0.00      CASE TOTAL RSRV:      189,791.15
MED SUPPLY:      0.00
CLAIMANT:        0.00
MISC:            150.00      150.00      RSRV RVW DT:      11/15/95
MORTICIAN:       0.00      EXAM RVW DT:
ENTER=CALCULATE, PF2=RESTART WORKSHEET, PF12=SAVE REVIEW DT, PF16=RESERVE MENU
ENTER RESERVE AMOUNTS

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## CMS

- CMS (Claims Management System) was brought on line February 3, 1997 as MSF's primary electronic 'file' for adjusting compensation claims, and recording relevant adjusting activities and details. It was developed by IBM as Oracle based, windows driven technology, which was considered 'cutting edge' at the time. As an adjunct to CMS, MSF also developed a work management system (WMS), and adopted an optical imaging system, and no longer maintained paper or hard copy files.
- CMS was custom designed and developed specifically for MSF and this jurisdiction. While enhanced reporting capabilities, compared to DB02 were included in the design phase, its primary function was to enhance staff claim management, make work flows more efficient, and, ultimately, to better serve our customer base.

**Claim - Summary**

**Claim**  
 Claim Number: [redacted] Status: Accepted-Closed  
 Type: wage loss Status Reason: Return to Work MMI  
 Injury Date: 08/12/1997 Major Part of Body: WRIST  
 Adjuster Name: Boland, Ann Adjuster Phone: (406) 444-9306

**Claimant**  
 Name: [redacted] In House Indicator: [redacted]  
 Birth Date: [redacted] SSN: [redacted]  
 Mailing Address: [redacted]  
 Phone: [redacted] Alternate Phone: [redacted] Mobile Phone: [redacted]  
 E-mail Address: [redacted]

**Employer**  
 DBA name: [redacted] Policy Number: 031396548  
 Major Industry: [redacted]  
 Mailing Address: [redacted]  
 Phone: [redacted] Alternate Phone: [redacted] Mobile Phone: [redacted]  
 E-mail Address: [redacted]  
 Agent Name: [redacted] Agent Phone: [redacted]  
 Master Agency Name: [redacted]

**Legal Representation**  

Type	Name	Phone	Effective

**Claim - Status**

**Status**  
**Milestones**  
 Open: 04/01/1998 Closed: 05/26/1999 Re-open: [redacted]

**Current**  
 Status: Accepted-Closed Date: 05/26/1999  
 Reason: Return to Work MMI By: Jones, Todd  
 Comment: [redacted]

**Control**  
☐ Do not close ☐ Do not archive ☐ Do not refer to Rehab ☐ In House Indicator

**Type**  
 Claim Type: ☐ Medical Only ☒ Wage Loss  
 Classification Type: ☐ Injury ☒ Disease  
☐ SIF Claim ☐ E. L. Claim

**Important Dates**  
 DOI: 08/12/1997 Last Worked: 00/00/0000  
 RTW: 07/06/1998 Last Med DOS: 10/27/1999  
 MMI: 05/18/1999 Target RTW: 00/00/0000

**Catastrophe**  
 Date Created Type



**Claim - Wages and Rates**

**Pay Period Summary**

Paid Date	Period Frequency	Actual Total Amt	Adjusted Rate	Regular Rate	Overtime Rate	Rate Unit
06/15/1997	semi-monthly	\$320.11	\$320.11	\$5.15		hour
06/30/1997	semi-monthly	\$440.00	\$440.00	\$5.15		hour
07/15/1997	semi-monthly	\$401.25	\$401.25	\$5.15		hour

**Pay Period Detail Breakdown**

Type of Wages	Detail Amount	Adjusted Amount
Regular	\$320.11	\$320.11

**Pay Period Detail Comment**  
OD CLAIM APPORTIONED AT 50%,  
COMP RATE SHOULD BE \$62.67

**Rate Factors**

AWW

Calculated: \$188.01

Override:

Override Comments:

Total Rate: \$125.34 Partial Rate: \$125.34

Calc History

ID	Date Detail Type Effective Dates	Pay Type	Weeks	Tran Type Subtype	Status Exp Code	Amount
1251893	07/03/1998 indemnity	payment		payment	processed	\$0.00
	06/24/1998 to 07/07/1998	2	temporary total	41		(\$35.81)
	06/24/1998 to 07/07/1998	2	temporary total	41		\$125.34
	06/24/1998 to 07/07/1998	2	temporary total	41		(\$125.34)
	06/24/1998 to 07/07/1998	2	temporary total	41		\$35.81
1231310	07/03/1998 indemnity	payment		payment	Dead	\$125.34
	06/24/1998 to 07/07/1998	2	temporary total	41		\$125.34
1228248	06/19/1998 indemnity	payment		payment	processed	\$125.34
	06/10/1998 to 06/23/1998	2	temporary total	41		\$125.34
1225010	06/05/1998 indemnity	payment		payment	processed	\$125.34
	05/27/1998 to 06/03/1998	2	temporary total	41		\$125.34
1222025	05/22/1998 indemnity	payment		payment	processed	\$62.67
	05/20/1998 to 05/26/1998	1	temporary total	41		\$62.67

Number of Transactions Displayed: 6

**Claim - Injury**

Injury Date/Catastrophe No.:  
 Injury Date: 08/12/1997 00:00:00 Catastrophe No.:  
 Shift Began: 00/00/0000 00:00:00 Hours Into Shift:

Injury Location  
 County: Park  
 Dept. of Occur:

Part of Body	Description	Location	Eff Date	Primary
WRIST		bilateral	08/12/1997	<input checked="" type="checkbox"/>

Accident Description  
 Developed carpal tunnel chopping food

Injury Statistics  
 NOI: NERVOUS SYSTEM CONDITIO DISEASES OF THE NERVES AND PERIPHERAL GANGLIA (CARPI  
 Source: BODILY MOTION BODILY MOTION  
 Type: BODILY REACTION BODILY REACTION  
 ADS:

Hazardous Cond: NO HAZARDOUS COND

Disability Case: Case does not involve disability, no loss of work time Injured on Employer's Premises: ☒  
 Bypass Code: Injured While In Employment: ☒

Other Statistics

Coverage	Wages
Major Industry: EATING PLACES	Weekly Wage: \$188.00
Employment	Claimant
Occupation: MISC FOOD PREPARATION	Marital Status: Married
Length of Employment	Accident Age: 41
Years: 2 Months: 7 Days: 11	

## COMPUTER SYSTEMS & SEARCHES



## INITIAL SEARCH

- As explained in paragraphs 26-30 of the Joint Statement of Stipulated Facts
  - Initial computer run identified 2,939 claims meeting the established criteria for potential Stavenjord claims
    - ✓ 378 claims were identified as settled

### Identification Process:

- An initial data run to identify claims potentially affected by Stavenjord was completed 01/24/04, using the following data fields:
- Claim class type code = 'od';
- NOI code = 990 or 562;
- Source of injury = 400;
- TTD or PTD benefits paid, but no PPD;
- Benefit type code = 'od';
- Date of injury  $\geq$  07/01/87;
- Any claim with the word 'repetitive' in the description of accident field on FROI;
- This data run returned 3,099 claims meeting the above criteria.

## INITIAL SEARCH (CONT.)

- A second independent computer run identified 18 claims in injury status with benefit transactions coded as ODs
  - Internal actuary identified 586 claims coded as injuries with indicators suggestive of ODs
  - Total claims identified for review – 3,543
- To be subsequently refined by electronic and manual review

## SECOND SEARCH

Following *Scmill II*, a second data run was requested on 06/14/05. This run expanded the data fields/parameters initially used, using the following criteria:

- Claim classification type of OD;
- DOI equal to or greater than 07/01/87 to present;
- Apportionment offset detail in financial transactions;
- Apportionment field updated;
- Claim Injury screen reflects 'occupational disease';
- Nature of injury is 'disease', 'respiratory', or 'nervous system';
- Source of injury is 'bodily motion', 'infectious', or 'dust';
- Type of injury is 'bodily reaction' or 'exposure';
- No PPD benefits have been paid;
- 'Occupational Disease Award' expense code in financial transactions;
- Weekly SS offset rate in financial transactions is less than the calculated weekly SS offset rate

This data run contains a total of 4,797 claims meeting the above criteria.

## FURTHER REFINEMENTS

- Of the additional 1,698 claims identified in the second run, 624 would be directly attributable to expanding the end date of the run (01/24/04 v 06/14/05), leaving an additional 1,074 claims identified. This difference relates to the presence and/or absence of exclusionary criteria as the other significant difference between the data runs. In the initial data run, exclusionary criteria to further filter the data retrieved was used, which included:
  - Denied claims;
  - Medical only claims;
  - Disputed settlements;
  - Settlements with disputed liabilities;
  - In the second data run, the only claims excluded after identification of all files meeting the criteria were medical only claims.



## REVIEW PROCESS/FURTHER REFINEMENT

- Following identification, a review of the data available electronically was undertaken for each file identified. The scope of the review included:
  - Verification the claim had been accepted as an occupational disease versus an injury using claim classification; review of the description of injury; file notations; and/or documents in Image;
  - Identification of potential Schmill files through review of indemnity payments made to determine whether an apportionment had been applied; file notations for reference to an apportionment requested and/or received; and documents in Image which referenced an apportionment;
  - Whether PPD benefits had been paid on the file;
  - Whether the file had been settled through review of file status; indemnity payments made; file notations; documents in Image; and/or comparison to the ERD settlement list;
  - Whether claimant was deceased through review of file notations; documents in Image; and/or the Social Security Death Index;

## REFINEMENT (CONT)

- At the time, 751 files were excluded as injuries, rather than an occupational disease exposure. Of the remaining 4,046 claims, 925 were settled and 104 are deceased.
- 2,669 meet the criteria for an in-depth Stavenjord review, but only 1,849 have a date of exposure between 07/01/87 through 05/22/01.



## REFINEMENT (CONT)

Report to the Court (January 22, 2007)

3,017 - Potential Stavenjord notice list

Total included 348 claims requiring manual review

Manual review results:

Injuries	47
Settled	2
Deceased	2
Maybe	0
OD	297
Total	348

Revised Stavenjord notice list 2,966 (3,017 - 51)

Total including deceased 3,072 ( 2966 + 106)

## DOLI INPUT

- Review of DOLI computer run
  - Confirmed MSF process
- Suggested additional search criteria
  - Determined to be of no additional value

# QUESTIONS?

## NOTIFICATION

- Letter and questionnaire mailed to all potential beneficiaries
- Address checking on returns
  - Lexis Nexus
  - Merlin
  - MSF will report results to Court
- All files on notification list will be reviewed
- Notification of results sent to all claimants



5 South Last Chance Gulch • P.O. Box 4759 • Helena, MT 59604-4759  
Customer Service: 1-800-332-6102 or 406-444-6500  
Fraud Hotline: 1-888-682-7463 (888-MT-CRIME)

March 8, 2007

Re: Claim No. 3-

Addressee  
Address  
City, State Zip Code

Dear

A Montana Supreme Court decision, *Stavenjord v Montana State Fund*, may entitle you to additional benefits. In *Stavenjord*, the Court found that workers suffering from an occupational disease, such as you, are entitled to the same benefits as workers suffering from an injury. Montana State Fund (MSF) is reviewing certain workers' compensation claims to determine eligibility for additional permanent partial disability benefits which may be due under *Stavenjord*.

A medical report is currently on file with MSF indicating you have an impairment rating of \_\_\_\_%. The impairment rating was determined by the physician who measured your loss of function. A copy of this report is enclosed. Insofar as Dr. \_\_\_\_\_ has indicated you sustained no permanent impairment as a result of your occupational disease, no permanent partial disability benefits would be due.

Therefore, you are entitled to receive \_\_\_\_% of \_\_\_\_ weeks, which is the maximum allowed by law. This is paid at your permanent partial rate of \$\_\_\_\_\_ per week from [MMI], for a total award of \$\_\_\_\_\_.

Our file Information indicates you returned to work in your time of injury employment on \_\_\_\_\_. If this information is not correct, or you were paid less following your return to work as a direct result of your occupational exposure, **and you have a ratable permanent impairment objectively established by your doctor**, you may be entitled to additional permanent partial disability benefits beyond the impairment.

Your eligibility for additional benefits depends on the several factors set forth in section 39-71-703 (year). For your convenience, a copy of that statute is provided for your review. To assist MSF in evaluating any additional benefits you believe may be due you, please complete the attached form and return it to my attention at Montana State Fund. You will be contacted after we receive this information and advised of further entitlement, or if additional information must be gathered.

Language if additional portions of the 703 benefits are undisputed.



Montana's insurance carrier of choice and industry leader in service



In addition to compensation for your impairment, information on your file indicates that you are entitled to further permanent partial disability benefits under the \_\_\_\_\_ (applicable year) version of the Workers' Compensation Act. Your additional benefits are calculated as follows:

Age:  
Education:  
Wage Loss:  
Restrictions:

Therefore, you are entitled to receive \_\_\_\_% of \_\_\_\_\_ weeks, which is the maximum allowed by law. This is paid at your permanent partial rate of \$\_\_\_\_\_ per week from [MMI], for a total award of \$\_\_\_\_\_.

Language if additional portions of the 703 benefits are disputed.

You may be entitled to additional permanent partial disability benefits beyond the impairment. Your file, however, contains insufficient information at this time to make that determination. Your eligibility for additional benefits depends on the several factors set forth in section 39-71-703 (insert year). For your convenience, a copy of that statute is provided for your review. To assist MSF in evaluating any additional entitlement, please complete the attached form and return it to my attention at Montana State Fund. You will be contacted after we receive this information and advised of any further entitlement, or if additional information must be gathered.

Questions or concerns specifically related to the *Stavenjord* benefit issue only should be directed to Cris McCoy (444-1345) or Bill Visser (444-9328). All other issues related to the handling of your claim should continue to be brought to the attention of your claims examiner, \_\_\_\_\_.

If you disagree with this decision concerning your workers' compensation benefits, please provide Montana State Fund with a written demand. The demand should contain sufficient explanation and documentary evidence to allow us to thoroughly evaluate your request. A response will be provided within 15 days. If you are not satisfied with Montana State Fund's response to your demand, you may request determination of the dispute through a non-binding mediation process. Mediation request forms are available from the Employment Relations Division of the Department of Labor and Industry at PO Box 1728 (1805 Prospect), Helena, MT 59624 (59620) or by calling (406) 444-6534.

Sincerely,

Cristine E McCoy  
Project Specialist  
(406)444-1345  
[cmccoy@montanastatefund.com](mailto:cmccoy@montanastatefund.com)

Enclosures: (3)

## "STAVENJORD" INFORMATION REQUEST

Name

Claim number

I am supplying the following information to the Montana State Fund to ascertain if I have a valid claim for additional compensation as a result of the Montana Supreme Court decision in "Stavenjord".

I suffered an Occupational Disease and received compensation under the OD-act.

**1. Physical Impairment.** (a purely medical determination provided by a physician based on the Guides to Evaluation of Permanent impairment published by the American Medical Association.)

- a. I received an Impairment Rating from my physician of \_\_\_\_ %  
b. I did not receive a rating, but do know/think that I did suffer a permanent restriction or loss of motion as a direct result of my O.D. Yes \_\_\_\_; No \_\_\_\_  
If Yes, please explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 2. Wage Loss due to my Occupational Disease

- a. I did suffer a wage loss when I returned to work at my time of injury job. Yes \_\_\_\_; No \_\_\_\_  
b. I did suffer a wage loss when I returned to work in alternative employment. Yes \_\_\_\_; No \_\_\_\_

If answered Yes, please provide 5 years of employment history from your release to return to work.

from	to	employer	occupation	wage per hour
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____



**Name Ms**

**Claim number 03-2003-**

**3. At the time of the onset of my disease (as indicated on your claim form)  
my level of education was:**

**less than 9 years** \_\_\_\_

**9 through 12 years** \_\_\_\_

**More than 12 years** \_\_\_\_

**4. At my time of injury job I was required to do:**

**Heavy labor activity (lift over 50 lbs occasionally or up to 50 lbs frequently)** \_\_\_\_

**Medium labor activity (lift up to 50 lbs occasionally or up to 25 lbs frequently)** \_\_\_\_

**Light labor activity (lift up to 25 lbs occasionally or up to 10 lbs frequently)** \_\_\_\_

**Sedentary labor activity (lift up to 10 lbs occasionally or up to 5 lbs frequently)** \_\_\_\_

**As a result of my O.D. my physician limited me to:**

**Medium labor activity** \_\_\_\_

**Light or sedentary labor activity** \_\_\_\_