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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DEBRA STAVENJORD,)	
)	WCC No. 2000-0207
Petitioner,)	
)	Petitioner's Request for
vs.)	Emergency Hearing on
)	Attorney Fee Lien
MONTANA STATE FUND)	
)	
Respondent/Insurer)	

Introduction:

Counsel for Stavenjord recently learned that the State Fund plans to disregard the *Stavenjord* attorney fee lien. Currently, the State Fund is sending out letters to hundreds of potential *Stavenjord* claimants informing them that there is a "final decision in *Stavenjord*." Stavenjord asks this Court to uphold the attorney fee lien until the Montana Supreme Court conclusively rules on the issue of common fund.

Background:

After finding it unconstitutional to deny equal permanent partial disability benefits to Occupational Disease Claimants (*Stavenjord I*), the Montana Supreme Court held the case was fully retroactive from 1987 forward (*Stavenjord II*). On remand of, the Supreme Court ordered this Court to conduct:

"... further proceedings to include the determination of an appropriate procedure by which potential *Stavenjord* beneficiaries will be identified and notified of their interests related to *Stavenjord*-type PPD benefits."

However, *Stavenjord II* denied common fund status to the non-participating *Stavenjord* Claimants. That part of the *Stavenjord II* left non-participating Claimants without an attorney to assist them in their effort to secure *Stavenjord* benefits from hundreds of potential Insurers. In response, Stavenjord filed a petition for rehearing

asking the Supreme Court to reinstate the common fund. In its order denying Stavenjord's petition for rehearing, the Supreme Court stated:

“[S]hould the Workers' Compensation Court determine that it will be impracticable or impossible for it to comply with our remand Order without the assistance of a Common Fund counsel, then and in that event the Workers' Compensation Court may enter an order to such effect, which order would then be amenable to review on appeal.”

Stavenjord v. Montana State Fund Order denying Rehearing (11/9/06).

On January 15, 2008, this Court essentially found that it was impossible to administer the *Stavenjord* case on remand without counsel; therefore, Stavenjord was preparing to go back to the Supreme Court to re-request a common fund. Unfortunately, the State Fund sought reconsideration of this Court's January 15, 2008 Order, so the question of common fund status remains unresolved.

Current Problem Requiring Emergency Hearing

Until the Montana Supreme Court conclusively rules on the issue of common fund, Stavenjord asserts an attorney fee lien against the payment of *Stavenjord*-type PPD benefits. In its Order denying Rehearing, the Supreme Court left the door open to the possibility of reinstating the common fund. Therefore, Stavenjord maintains that the attorney fee lien should be enforced until the Supreme Court finally concludes the issue.

The State Fund declares that it does not have to honor the *Stavenjord* attorney fee lien, and the State Fund is currently sending out hundreds of letters to potential *Stavenjord* claimants informing them that there is a “final decision in *Stavenjord*.” Stavenjord asks this Court to preserve the attorney fee lien until the Montana Supreme Court conclusively rules on the issue of common fund.

Conclusion

This Court found that it will be “impractical or impossible” to supervise the payment of *Stavenjord*-type benefits without jurisdiction over multiple non-party insurers. Stavenjord submits that the common fund approach is the only reliable method that will allow this Court to deliver *Stavenjord*-type benefits to all relevant Claimants. Simply put, there are basic principles of jurisdiction that require opposing advocates to complete the necessary judicial examination. Otherwise, it will be

“impractical or impossible” to provide *Stavenjord* benefits to all deserving claimants from all concerned insurance companies. *Stavenjord* asks this Court to uphold the attorney fee lien until the Montana Supreme Court conclusively rules on the common fund issue.

DATED this 18th day of April, 2008.

Thomas J. Murphy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of April, 2008, a copy of the foregoing Response was served by mailing a true and correct copy of said document via first class mail to the attorneys at the addresses listed below:

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