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September 17, 2008

The Honorable James J. Shea  
Workers' Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537

**FILED**

**SEP 22 2008**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

RE: Stavenjord v. Montana State Fund; WCC No. 2000-0207  
Reesor v. Montana State Fund; WCC No. 2002-0676

Dear Judge Shea:

As discussed in our phone conference on September 8, 2008, we are providing for filing the following original documents:

1. Settlement Agreement (and four exhibits) dated August 8, 2008, relating to both the *Stavenjord* and *Reesor* cases;
2. Settlement Stipulation in *Stavenjord*;
3. Proposed Order approving the *Stavenjord* settlement;
4. Settlement Stipulation in *Reesor*; and
5. Proposed Order approving the *Reesor* settlement.

As you know, the remand of the *Stavenjord* appeal required the settlement approval process to be completed within 60 days of the Order dated August 20, 2008. If you need anything further, please advise.

Very truly yours,

GARLINGTON, LOHN & ROBINSON, PLLP

Bradley J. Luck  
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BJL:jdj

Enclosures

c: Thomas E. Martello (w/encs.)  
Thomas J. Murphy (w/encs.)

DOCKET ITEM NO. 137

## SETTLEMENT AGREEMENT

This Agreement made and entered into this 8<sup>th</sup> day of August, 2008, by and between the Montana State Fund ("State Fund") and Thomas Murphy and James Hunt, individually and as counsel of record in *Stavenjord v. Montana State Fund*, WCC No. 2000-0207 and *Reesor v. Montana State Fund*, WCC No. 2002-0676 ("Claimants").

WHEREAS, the parties are engaged in litigation concerning issues arising out of Montana Workers' Compensation Court ("WCC") and Montana Supreme Court decisions in the *Reesor* and *Stavenjord* litigation, including pending appeals in such actions; and

WHEREAS, the parties have engaged in mandatory appellate mediation and, in the course thereof, have settled and resolved issues pertaining to or arising as a result of the claims; and

WHEREAS, the parties desire to further memorialize the terms and conditions of their various agreements.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Appeals

On or before August 11, 2008, the parties shall jointly petition the Montana Supreme Court to remand the *Stavenjord* appeal for consideration and approval of the WCC of this settlement and any other settlement entered into by Claimants with any other insurer or self insured entity regarding *Stavenjord* entitlement. In the event Claimants' settlements with the State Fund are not approved as outlined herein by the WCC the appeals will be reinstated.

On or before September 22, 2008, the parties shall jointly petition the Montana Supreme Court to remand the *Reesor* appeal for consideration and approval of the WCC of this settlement and any other settlement entered into by Claimants with any other insurer or self insured entity regarding *Reesor* entitlement. In the event Claimants' settlements with the State Fund are not approved as outlined herein by the WCC the appeals will be reinstated.

The viability, terms and conditions of the settlements between Claimants and the State Fund in *Stavenjord* and *Reesor* outlined herein are, in no way, dependent upon the approval of any other settlements arrived at between Claimants and any other insurer or self insured entity. The process of review, approval and implementation of the settlements set forth herein shall not be delayed or affected in any way by the status of the negotiation or settlement review process involving Claimants and other insurers or self insured entities.

## 2. Stipulations

Upon remand, the terms and conditions of the settlements requiring approval of the WCC shall be set forth in Stipulations to be filed in both *Stavenjord* and *Reesor*. Copies of the Stipulations to be filed in the *Stavenjord* and *Reesor* actions are attached as Exhibits 1 and 2. The terms and conditions set forth in the Stipulations are incorporated herein by reference.

Copies of the proposed Orders approving the Stipulations are attached as Exhibits 3 and 4. The parties shall utilize their best efforts to secure the approval of the settlement and Stipulations and to secure the entry of the proposed Orders in each action. Claimants will offer no objection to the terms and conditions of the Stipulations or proposed Orders.

This settlement is expressly conditioned upon the approval of the noted Stipulations and proposed Orders by the WCC in the form and content of the attached Exhibits. In the event the WCC declines to enter the Orders as proposed or makes any material changes thereto the parties are free to withdraw from this settlement.

## 3. Payments

The State Fund shall pay Claimants the sum of \$60,000.00, upon the approval of the settlements by the WCC and dismissal of the *Stavenjord* and *Reesor* appeals and primary actions as required hereby.

## 4. Claim Handling

Claimants acknowledge that the State Fund has a reasonable basis in fact and law for its handling of the *Stavenjord* and *Reesor* claims and the implementation of the benefit decisions in each case. Any potential claim of improper claim handling, unfair claim practice, any violation of Montana Code Annotated §§ 33-18-201, 242 or any other statute, regulation or the common law is hereby fully and finally settled.

## 5. Implementation

Upon the approval of the Stipulations and entry of the proposed Orders, and dismissal of the actions, the State Fund shall initiate the implementation process by sending the notification letters, questionnaires and claim forms specified in the Stipulations.

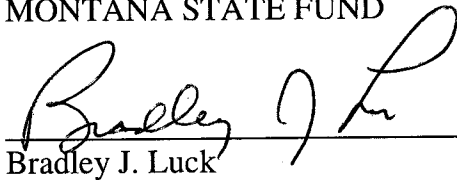
## 6. Dismissal

The dismissal of the actions against the State Fund will not limit the rights of Claimants against other insurers or self insured entities. The dismissal of the actions against

the State Fund will not limit the ability of individual claimants to contest entitlement decisions of the State Fund on individual claims.

DATED this 18<sup>th</sup> day of August, 2008.

MONTANA STATE FUND



Bradley J. Luck  
Garlington, Lohn & Robinson, PLLP  
Attorneys for Montana State Fund

DATED this 8<sup>th</sup> day of August, 2008.

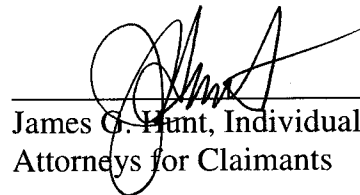
MURPHY LAW FIRM



Thomas J. Murphy, Individually and  
Attorneys for Claimants

DATED this 8 day of August, 2008.

HUNT LAW FIRM



James G. Hunt, Individually and  
Attorneys for Claimants

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Attorneys for Respondent/Insurer

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DEBRA STAVENTJORD,

Petitioner,

v.

MONTANA STATE FUND,

Respondent.

WCC No. No. 2000-0207

SETTLEMENT STIPULATION

The parties hereto (Montana State Fund ("State Fund") and Petitioner ("Claimant"), by and through counsel of record), stipulate and agree as follows:

1. The parties have reached an agreement to settle this action and in *Reesor v. Montana State Fund*, WCC No. 2002-0676. Documents (Stipulation and proposed Order) pertaining to the settlement of *Reesor* will be filed with the Court subsequent to remand of that action by the Montana Supreme Court.

The terms and conditions of the Stipulations and proposed Orders are the product of negotiation between the parties in mandatory appellate mediation. They constitute the parties' best efforts to utilize their extensive experience in the pending cases and similar actions to resolve fundamental and necessary issues surrounding the implementation of the benefit decisions in each case. A copy of the Settlement

Agreement reached between the parties is attached as Exhibit 1.

2. This action shall be fully and finally settled upon the terms and conditions hereof, subject to the approval of the Workers' Compensation Court ("WCC"). The settlement is conditioned upon the approval of the WCC and the entry of the proposed Orders presented to the Court simultaneously with this filing in this action and the Stipulation and proposed Order to be filed in the *Reesor* case. Each party shall utilize their best efforts to secure the approval of the settlement and this Stipulation and to secure the entry of the proposed Orders in each action. Claimants will offer no objection to the terms and conditions of the proposed Orders.

In the event the WCC declines to enter the proposed Orders or makes any material changes thereto, the State Fund is free to withdraw from this settlement.

3. The parties have secured the remand of this action and will seek the remand of the *Reesor* appeal for consideration by the WCC of the present settlement and settlements with other insurers or self insured entities. Upon the approval of this Stipulation and entry of the proposed Orders the WCC proceedings will be dismissed, with prejudice.

4. The State Fund shall pay Claimants the sum of \$60,000.00 upon the approval of this Stipulation, entry of the proposed Order, the approval of the Stipulation and proposed Order in *Reesor* and the dismissal of both actions.

5. The implementation of the *Reesor* and *Stavenjord* benefit decisions will commence following the entry of the proposed Orders. The implementation efforts shall include the following terms and conditions:

a. To the extent the *Flynn* Supreme Court decision, when rendered, modifies the scope of retroactivity, it shall be applied in the consideration of those entitled to *Reesor* or *Stavenjord* benefits.

b. In the process of implementation, the State Fund will be allowed to take credit for any advances or overpayment on claims found entitled to *Reesor* or *Stavenjord* benefits.

c. Those claimants who died prior to the Supreme Court decision in each case will not be entitled to additional benefits. Those dying after the Supreme Court decision will only be entitled to benefit consideration if a claim is presented with proper documentation by an appointed and presently acting Personal Representative.

d. Claims which have been settled, by settlement petitions approved by

the Department of Labor or Stipulations approved by the WCC, will not be entitled to additional benefits under *Reesor* or *Stavenjord*. Claims in which a final judgment has been entered by the WCC and not currently pending on appeal are likewise closed and will not be entitled to additional benefits under *Reesor* or *Stavenjord*.

e. Payments of prior occupational disease entitlement will be credited against any award under *Reesor* or *Stavenjord*.

f. The entitlement date for an occupational disease claim considered for additional benefits under *Reesor* or *Stavenjord* shall be the date the claimant's occupational disease was first diagnosed as work related. The period of entitlement for review purposes is July 1, 1987, to April 1, 2003.

g. The notification process for consideration of *Reesor* and *Stavenjord* benefits shall be initiated by letter to the population identified in each claim as potentially entitled to additional benefits under the decisions. The letters shall generally explain the potential entitlement, provide a questionnaire for information to be utilized in the review process and invite the person receiving the letter to submit a claim requesting review of potential entitlement. Claims will be processed on the basis of signed and completed questionnaires providing claim information and making claim for further benefits. The completed and executed questionnaire/claim form must be returned and received by the State Fund within 120 days of its mailing. Those not returning the completed and executed questionnaire/claim form within 120 days will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement. Letters returned as undeliverable to the State Fund will be processed once through an appropriate address review software. In the event of a second mailing to a new address, the addressees will have 90 days from the date of re-mailing to respond with a completed and executed questionnaire/claim form. Those not returning the completed and executed questionnaire/claim form within such 90 days will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement.

h. The periods for returning properly completed and executed questionnaire/claim forms may be extended for good cause. For purposes of this agreement, "good cause" shall mean that the claimant to whom the notification letter was sent was unable to receive the letter because of being in the military on active duty, out of the country or was subject to a disability that made it impossible to understand the contents of the notification letter. The extension of the period for response to the notification letter with a completed and executed questionnaire and claim form shall be limited to the period of unavailability or mental disability defined above.

i. The State Fund's process for identification and notification of persons potentially entitled to increased benefits due to the *Stavenjord* and *Reesor*

decisions is reasonable and appropriate. The identification process and methodology is as described and discussed during the hearing of April 26, 2007, in the *Stavenjord* case. The identification and notification process and implementation efforts shall be modified consistent with this Stipulation and the entry of the proposed Order.

6. Neither Tom Murphy, James Hunt nor their law firms will file or participate as counsel, consultant, advisor or expert, directly or indirectly, in any claim or case against the State Fund on behalf of more than one claimant arising out of the *Reesor* or *Stavenjord* decisions. This restriction includes the filing or maintenance of any claim or case against the State Fund claiming common fund relief or class action status. In addition, neither Tom Murphy, James Hunt nor their law firms will participate as counsel, directly or indirectly, in any claim or case (regarding a single claimant or any group of claimants) alleging the State Fund did not properly identify or notify prospective *Reesor* or *Stavenjord* beneficiaries of their entitlement.

This provision does not limit the ability of Thomas Murphy or James Hunt or their law firms from representing individual claimants on individual claims relative to a request for additional benefits under the *Reesor* or *Stavenjord* decisions.

7. The State Fund had a reasonable basis for its handling of the *Reesor* and *Stavenjord* claims and the implementation process to date. The delay in full implementation has been reasonable to date and reasonably based upon the ongoing proceedings in each case.

Dated: 8/18/08

GARLINGTON, LOHN & ROBINSON, PLLP

By Bradley J. Luck  
Bradley J. Luck  
Attorneys for Montana State Fund

Dated: 8/8/08

MURPHY LAW FIRM  
By Thomas Murphy  
Thomas J. Murphy, Individually and  
Attorneys for Claimant

Dated: 8/10/08

HUNT LAW FIRM  
By James G. Hunt  
James G. Hunt, Individually and  
Attorneys for Claimant



IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DEBRA STAVENJORD,

Petitioner,

v.

MONTANA STATE FUND,

Respondent.

WCC No. No. 2000-0207

ORDER

The parties have filed their Stipulation and Settlement Agreement. The Court has considered the record of this cause, *Reesor v. Montana State Fund*, Cause No. 2002-0676, the record of common fund related actions, including the settlements of various common fund cases and the extensive experience of the litigants and their counsel in these and related matters. The Court agrees with the parties that it is in the best interests of those potentially entitled to additional benefits under the decisions of this Court and the Montana Supreme Court to fully and finally resolve the issues in this proceeding to the extent possible and allow implementation to proceed in an orderly fashion.

In *Stavenjord* and *Reesor*, it has been determined that a common fund has not been established. Nonetheless, the parties have agreed to an appropriate process for identification and notification of those potentially entitled to additional benefits. The terms and conditions of the present settlement are consistent with other settlements approved by the Court in cases involving the retroactive implementation of benefit precedent. The Court is specifically aware of the track record of the State Fund in properly implementing such settlements in common fund and/or class action type remediations. On that basis, and good cause having been shown,

IT IS HEREBY ORDERED:

1. The Stipulation of the parties is approved. The parties shall abide by the terms and conditions of the Stipulation.

2. In reviewing potential entitlement under the *Reesor* and *Stavenjord* decisions of this Court and the Montana Supreme Court, the following standards, procedures and practices shall apply to the State Fund:

a. To the extent the *Flynn* Supreme Court decision, when rendered, modifies the scope of retroactivity it shall be applied in the consideration of those

entitled to *Reesor* or *Stavenjord* benefits.

b. In the process of implementation, the State Fund will be allowed to take credit for any advances or overpayment on claims found entitled to *Reesor* or *Stavenjord* benefits.

c. Those claimants who died prior to the Supreme Court decision in each case will not be entitled to additional benefits. Those dying after the Supreme Court decision will only be entitled to benefit consideration if a claim is presented with proper documentation by an appointed and presently acting Personal Representative.

d. Claims which have been settled, by settlement petitions approved by the Department of Labor or Stipulations approved by the Workers' Compensation Court, will not be entitled to additional benefits under *Reesor* or *Stavenjord*. Claims in which a final judgment has been entered by the WCC and not currently pending on appeal are likewise closed and will not be entitled to additional benefits under *Reesor* or *Stavenjord*.

e. Payments of prior occupational disease entitlement will be credited against any award under *Reesor* or *Stavenjord*.

f. The entitlement date for an occupational disease claim considered for additional benefits under *Reesor* or *Stavenjord* shall be the date the claimant's occupational disease was first diagnosed as work related. The period of entitlement for review purposes is July 1, 1987, to April 1, 2003.

g. The notification process for consideration of *Reesor* and *Stavenjord* benefits shall be by letter to the population identified in each claim as potentially entitled to additional benefits under the decisions. The letters shall generally explain the potential entitlement, provide a questionnaire for information to be utilized in the review process and invite the person receiving the letter to submit a claim requesting review of potential entitlement. Claims will be processed on the basis of signed and completed questionnaires providing claim information and making claim for further benefits. The completed and executed questionnaire/claim form must be returned and received by the State Fund within 120 days of its mailing. Those not returning the completed and executed questionnaire/claim form within 120 days will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement. Letters returned as undeliverable to the State Fund will be processed once through an appropriate address review software. In the event of a second mailing to a new address, the addressees will have 90 days from the date of re-mailing to respond with a completed and executed questionnaire/claim form. Those not returning the completed and executed questionnaire/claim form within such 90 days will not be entitled to have their claims

reviewed for *Stavenjord* or *Reesor* entitlement.

h. The periods for returning properly completed and executed questionnaires/claim forms may be extended for good cause. For purposes of this agreement, "good cause" shall mean that the claimant to whom the notification letter was sent was unable to receive the letter because of being in the military on active duty, out of the country or was subject to a disability that made it impossible to understand the contents of the notification letter. The extension of the period for response to the notification letter with a completed and executed questionnaire and claim form shall be limited to the period of unavailability or mental disability defined above.

3. The State Fund's process for identification and notification of persons potentially entitled to increased benefits due to the *Stavenjord* or *Reesor* decisions is reasonable and appropriate. The identification process and methodology is as described and discussed during the hearing of April 26, 2007, in the *Stavenjord* case. The identification and notification process and implementation efforts shall be modified consistent with this Order. The State Fund shall initiate such implementation efforts upon the entry of this Order.

4. The State Fund had a reasonable basis for its handling of the *Reesor* and *Stavenjord* claims and the implementation process to date. The delay in full implementation has been reasonable to date and reasonably based upon the ongoing proceedings in each case.

5. The State Fund shall make the payment required by the Settlement Agreement at the time and in the amount set forth therein.

6. This action is dismissed with prejudice as between the parties. The dismissal of this action does not limit the Claimant's rights against other insurers or self insured entities. The dismissal of this action does not limit the ability of individual claimants to contest entitlement decisions of the State Fund on individual claims.

DATED in Helena, Montana, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

(SEAL)

\_\_\_\_\_  
JUDGE

c: Thomas J. Murphy  
James G. Hunt  
Bradley J. Luck  
Greg Overturf/Thomas E. Martello