

09:17 AM 1

WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

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CAUSE NO. 2000-0207

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Debra Stavenjord,

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Petitioner,

7

versus

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Montana State Fund,

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Respondent.

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TRANSCRIPT OF PROCEEDINGS

13

In-Person Conference

14

Montana State Fund Building

5 Last Chance Gulch

09:17 AM 15

Helena, MT 59601

Thursday, April 26, 2007

16

9:00 a.m.

17

Judge James Jeremiah Shea, Presiding

18

19

20

Reported by:

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09:17 AM 15

16 Also Present:

17 Bill Visser
Cris McCoy
18 Nancy Butler
Kathy Gowen

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Julie L. Sampson
Court Reporter

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2 PROCEEDINGS

3

4 (Exhibit Nos. 1 and 2 were marked for
5 identification.)

6

7 THE COURT: We are on the record in the matter of
8 Stavenjord versus Montana State Fund.

9 This is the time set for a conference to address the
10 factual aspects of the Supreme Court's remand order to this Court,
11 both from the standpoint of the original order and the order denying
12 rehearing, which was the remand to the Workers' Compensation
13 Court for further proceedings to include the determination of an
14 appropriate procedure by which potential Stavenjord beneficiaries

09:17 AM 15

will be identified and notified of their interests, as well as in
16 determining whether it will be impracticable or impossible for the
17 Court to comply with the remand order without assistance of
18 common fund counsel. I think those things kind of dovetail it.

19 There have been filings by the Montana State Fund

20 regarding the procedures and the parameters and issues that may
21 arise. Mr. Murphy was invited by the Court to file an amicus reply to
22 that, which he did. State Fund in turn filed a reply to that, and we
23 are here today to kind of address the practicalities.

24 And I think we'll begin with State Fund has a
25 PowerPoint presentation to kind of expound on what's been filed, I'm

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09:18 AM 1 assuming is what it is. And so we'll just kind of go with that and then
2 kind of take it from there.

3 MR. LUCK: Thank you, Your Honor.

4 Your Honor, We are here today to show from a factual
5 standpoint that it's not impracticable or impossible for the State Fund
6 to properly identify and notify potential Stavenjord beneficiaries.

7 We understand from the Court's direction that this is
8 not a time for legal argument, and we don't intend to present any
9 legal argument. What we would like to do is fashion a factual
10 presentation that meets the interests and concerns of the Court, and
11 in that regard we hope that it is inclusive, because we need to note
12 at the outset that we disagree with Counsel for Stavenjord's
13 suggestion that this be the first of many steps. We believe that we
14 have properly provided information on two occasions, it's been

09:19 AM 15 responded to. We are here to present an explanation of that
16 information and answer any questions we can.

17 We do believe that when we finish here today our hope
18 is that the Court will be in a position to make the factual
19 determination that was required -- the limited factual determination

20 required by the remand direction.

21 We asked the Court for a prehearing conference --

22 next page, just go ahead and move with it -- because we were

23 concerned about what the Court would like to see and what

24 information we would have to present that would answer any

25 questions beyond the data and information that was provided in the

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09:20 AM 1 reports. What we did is we got together with both legal staff and
2 claims experts and fashioned for you the presentation that we have
3 in the hopes that it will cover the bases that are appropriate and
4 explain what we have had in our reports and allow for inquiry, and
5 hopefully with the people we have present here today, answer those
6 -- any questions you might have.

7 We believe that the testimony of Cris McCoy and Bill
8 Visser will verify the position that we've taken from a practical -- from
9 a factual standpoint that it's not impracticable or impossible to meet
10 the remand direction by any means.

11 Cris and Bill are the designated internal contact
12 persons on the Stavenjord project. Internally the adjusters have
13 been directed to send to them all questions, all issues, all inquiries
14 so that we're funneling information internally to these two people.

09:21 AM 15 And as we talk about their qualification and as they explain to you
16 what they have done and what they are doing in this case, I think it
17 will become clear why that's important to the identification and
18 notification process.

19 They have overseen the process, especially of late.

20 And the latest reports and the information were overseen by both of
21 these supervisors. And they will be an integral part of any
22 implementation subsequent to notification and -- identification and
23 notification.

24 We thought this was kind of an unusual proceeding,
25 and it's obviously kind of an unusual remand situation, but our

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09:21 AM 1 suggestion with -- to the Court with the hope that we could proceed
2 in this fashion is that we would actually swear both witnesses, qualify
3 both witnesses, and then work through these areas of presentation,
4 primarily asking questions and getting explanations from a particular
5 one of them. But because of the nature of their expertise and an
6 orderly flow of information, maybe the other at that point, on the
7 record and still under oath, could add to that. And especially when
8 the Court has some questions, that might work. If that's okay. I
9 know it's a little unusual.

10 THE COURT: No, I think that makes sense. And like I
11 said, when we had the conference, I mean, I think it is probably
12 going to be most productive if it is at least somewhat of a structured
13 conversation, but more in a conversational tone. I mean, I think
14 that's kind of what we're here to do. It's not necessarily a -- well,

09:22 AM 15 obviously it's not a formal hearing or anything like that. So as much
16 as we can try to preserve Julie's sanity so we're not talking over each
17 other and everything. But I think that makes sense.

18 MR. LUCK: What we tried to do is balance the
19 formality with the logic of moving through as comprehensively as we

20 can from a factual standpoint, Your Honor.

21 THE COURT: Great.

22 MR. LUCK: And certainly, we hope when you have
23 questions, interrupt and we'll try to clarify. We would -- if there is --
24 to the extent there is going to be any cross-examination type
25 approach to this from Mr. Murphy, if it is okay we would like to work

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09:23 AM 1 through because we've got a progression of events, and to the
2 extent that there is some examination, perhaps that could be at the
3 end.

4 THE COURT: Okay.

5 MR. LUCK: So, I guess what we would like --

6 MR. MURPHY: I would like it if that could be a
7 case-by-case thing. I will try not to interrupt, Judge. But I think
8 sometimes there might be some call for some input from this side of
9 the courtroom.

10 THE COURT: I think -- here's what we'll do, is I will
11 consider that on a case-by-case and whether it's something -- I
12 mean, I don't want to kind of -- I don't want to -- I think it would be
13 most productive if we have it, like I said, be as orderly and as kind of
14 structured as possible, but recognizing that there does -- I also kind

09:24 AM 15 of want -- well, I think Brad said, kind of balance the structure of it
16 with somewhat of a conversational thing.

17 So, what I would ask you to do, Tom, is that if there is
18 something that requires, in your mind, some immediacy, address it to
19 me and then I'll say we'll pick that up at the end or go ahead and

20 answer it. Sometimes it may be a question that I may have myself.
21 And as a general rule, I think it probably would be most -- move
22 along smoother if for the most part -- and I think this is what you're
23 basically suggesting anyway, is you will make notes, and obviously
24 there are things that can be picked up at the end. But if there is
25 something before it -- as long as we are on that subject, before we

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09:25 AM 1 move on can I ask this, Judge, then I'll certainly entertain that.

2 MR. MURPHY: Okay. Thank you.

3 THE COURT: Okay. Go ahead, Brad.

4 MR. LUCK: Thank you, Your Honor.

5 Before we start, I think it's important for prospective

6 purposes to get the timeframe down. We are talking about

7 identification and notification to implement Stavenjord for potential

8 beneficiaries. So it's important to understand through all of this that

9 the period we are talking about is claims subsequent to June 30,

10 1987 and prior to May 23, 2001. That's the framework of dates that

11 we are dealing with in terms of implementation issues, notification,

12 and identification.

13 First I would like to call Cris, and maybe what we could

14 do is just have Cris and Bill both sworn at the same time.

09:25 AM 15 THE COURT: That's what I was just going to suggest.

16 I think that makes sense, particularly if one may have the need to

17 defer to the other in the middle of their discussion.

18

19 CRIS MCCOY and BILL VISSER,

20 Together having been first duly sworn, testified

21 under oath as follows:

22

23 MR. LUCK: Cris, let's start with you. Can you please

24 present your full name for the record.

25 MS. MCCOY: Cristine, C-R-I-S-T-I-N-E, Ellen McCoy,

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09:26 AM 1 M-C-C-O-Y.

2 MR. LUCK: Tom, can you hear Cris okay?

3 MR. MURPHY: If you could speak up, Cris, I would
4 appreciate it.

5 MS. MCCOY: I'll give it my best effort, Tom.

6 MR. LUCK: Cris, How long have you worked for the
7 State Fund?

8 MS. MCCOY: It will be 20 years as of June 1st.

9 MR. LUCK: What did you do before coming on with
10 the State Fund?

11 MS. MCCOY: I worked under Judge Bennett with the
12 First Judicial District Court.

13 MR. LUCK: How many years did you do that?

14 MS. MCCOY: Seven years.

09:26 AM 15 MR. LUCK: Okay. Let's talk about your experience

16 with the State Fund. Can you just briefly take me from the beginning

17 of those 20 years up to the present time and tell me generally the

18 positions and duties you had with the State Fund?

19 MS. MCCOY: Initially Claims Examiner I, which is

20 essentially a beginning claims examiner. From there, Claims
21 Examiner II, which would have been a more experienced claims
22 adjuster, to claims supervisor, and for the last six and a half years
23 project specialist.

24 MR. LUCK: What's involved in the position of project
25 specialist at the State Fund, at least in relation to your duties?

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09:27 AM 1 MS. MCCOY: Our primary function is the initiation and
2 completion of court directives regarding common fund litigation,
3 although we are also available to take on special projects for the
4 organization as the need arises.

5 MR. LUCK: So you have taken on all of the litigation
6 and difficult projects the State Fund can dole out to you during those
7 years?

8 MS. MCCOY: Yes.

9 MR. LUCK: Tell the Court what common funds or class
10 actions you've been involved with in terms of identification,
11 notification, and implementation of matters.

12 MS. MCCOY: I've been involved in every common
13 fund since Murer began.

14 MR. LUCK: Is that hands-on or supervisory?

09:28 AM 15 MS. MCCOY: Hands-on.

16 THE COURT: Brad, let me just interrupt for just one
17 second, then. So, Cris, as a rough percentage is it pretty much
18 90-plus percent common fund is what you're doing?

19 MS. MCCOY: In its active phases it's a hundred

20 percent of my time. In between the common funds, then I'm
21 involved in other special projects. They always take precedence
22 over anything else.

23 THE COURT: Thank you. Go ahead, Brad.

24 MR. LUCK: So has the State Fund dedicated your
25 time as a resource to these common fund identification, notification,

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09:29 AM 1 and implementation projects?

2 MS. MCCOY: Yes.

3 MR. LUCK: You worked on, you say, all of the different
4 common funds, and I assume that also includes the Pinckard class
5 action?

6 MS. MCCOY: Yes.

7 MR. LUCK: Which also involved identification,
8 notification, and implementation?

9 MS. MCCOY: Yes.

10 MR. LUCK: In relation to the Stavenjord project that
11 we are here to talk about, you have focused your time on that in
12 recent periods; is that correct.

13 MS. MCCOY: Yes.

14 MR. LUCK: How long have you been involved with the

09:29 AM 15 Stavenjord project of identification and leading to notification of
16 potential beneficiaries?

17 MS. MCCOY: We began our initial work in 2004, early
18 2004. At the point we were waiting for a ruling from the Supreme
19 Court, it essentially was dormant and we didn't do a great deal of

20 work on it. We worked on other common funds, other projects that
21 came down while we were waiting to see what would happen relative
22 to retroactivity. And since that decision has come down, we have
23 been actively working it.

24 MR. LUCK: Is it true also that, especially in relation to
25 Schmill which involves occupational disease claims and Stavenjord,

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09:30 AM 1 that your efforts would duplicate each other or compliment each
2 other on both of those common funds?

3 MS. MCCOY: They overlap insofar as they are the
4 same claim type, occupational disease exposures. So I have been
5 working them in tandem. As I review a file, if there is a Schmill
6 entitlement, it is currently being paid at the 75 percent allowed; and if
7 there are Stavenjord issues attached to that same file, we address
8 those at the same time.

9 MR. LUCK: In relation to Schmill, you were involved in
10 the identification and notification process in that case, also?

11 MS. MCCOY: Yes.

12 MR. LUCK: Bill, how long have you been with the
13 State Fund?

14 MR. VISSER: Off and on. Mostly on since 1977.

09:31 AM 15 MR. LUCK: Would you explain to the Court the
16 progression of positions that you've maintained with the State Fund
17 from 1977 forward.

18 MR. VISSER: I have been a field representative of
19 Miles City and Helena, which entails visiting claimants, employers,

20 doctors' offices if necessary.

21 In '78 I started in the office as a claims adjuster. And
22 since then I've held positions of claims supervisor, interim claims
23 manager. In 1993 I was in charge of setting up the fraud unit and
24 I've worked in the fraudulent, managed it until 2000.

25 Then I made a failed attempt to retire, came back and

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09:32 AM 1 was asked to work on the first common fund effort. I have done that
2 off and on for about three years, and since then I am back full-time
3 again and, like Cris, I'm in special projects.

4 MR. LUCK: Was it the common fund litigation, the
5 process of identification, notification, and implementation that
6 brought you back out of retirement?

7 MR. VISSER: Yeah. That's how that started.

8 MR. LUCK: So from that time you've worked
9 exclusively on special projects, and now back full time working on
10 special projects?

11 MR. VISSER: Yes.

12 MR. LUCK: What common fund cases have you
13 worked on?

14 MR. VISSER: Murer, Flynn and Pinckard, and now

09:33 AM 15 Stavenjord.

16 MR. LUCK: Your focus now, and by direction of the
17 State Fund, is to work with Cris in terms of the identification and
18 notification, and then ultimately in the implementation process?

19 MR. VISSER: Yes.

20 MR. LUCK: Your Honor, what I would like to do with
21 that introduction of the two witnesses is proceed through hopefully in
22 an orderly fashion that builds up to conclusion of the discussion of
23 the most current listing of numbers for potential Stavenjord
24 beneficiaries. But we think it's appropriate to start at the beginning
25 and explain to the Court how that process has evolved since the

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09:34 AM 1 original factual stipulation was filed in 2004.

2 THE COURT: Great. Thank you.

3 MR. LUCK: And the first part of that, what we would

4 like to do is explain the information platforms that are relevant to the

5 time periods. And I'm primarily going to talk with Bill about that just

6 to get some foundational background.

7 Bill, understanding that the area of concern here is July

8 1, '87 to May 22nd, 2001, what information platforms did the State

9 Fund have for computer data on claims?

10 MR. VISSER: DB02 was a data gathering system. We

11 were part of the division of compensation. And they gathered data

12 and we were made part of that. It was not the claims management

13 system, it was very limited in scope. Claims adjustors or claims

14 people could not make any changes or additions into the data for --

09:35 AM 15 until 1988, so it was already five years old.

16 It was basically used by the Department of Labor to

17 gather information from us and others, and as we can see in some

18 of the fields that we could access --

19 MR. LUCK: Let's stop for just a second until we get the

20 time frame here. So this would have -- this system, the DB02, would
21 have been in place as a data storage information platform for the
22 State Fund, and clearly other entities, for the period from July 1,
23 1987 through February of 1997; is that right?

24 MR. VISSER: That's correct.

25 MR. LUCK: Okay. I know you've copied some

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09:36 AM 1 examples of different data fields that you can show the Court how
2 the system worked.

3 MR. VISSER: Yes. Claims management was off of
4 hard copies. This, for instance, is a printout of claims history which
5 we could access. There were -- here is the reserve sheet, and that's
6 basically the kind of information that was out there.

7 MR. LUCK: We can show that just for demonstrative
8 purposes, let me ask a couple of things about that. As you go
9 through talking about these two systems with the documents that are
10 identified as coming from these systems, if there is something on
11 these documents that can be -- that would maybe have been within
12 the categories that were searchable in the identification process that
13 we are talking about, maybe just show that for example. And if there
14 are -- if there is information on any of these things that you would

09:37 AM 15 generate by way of manual review when you did that in the
16 Stavenjord identification process, maybe just point that out as
17 examples for the Court.

18 MR. VISSER: In the previous slide, the accident had a
19 code which indicated injury. And several years into this system there

20 finally was a field for occupational diseases. So, if we --

21 THE COURT: Bill, I'm sorry, can I interrupt you just for

22 one second?

23 MR. VISSER: Sure.

24 THE COURT: And I'm just trying to look at this

25 because it's a little small. So where is the indication that it's injury?

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09:38 AM 1 MR. VISSER: The 01 would be an injury, the 03 would
2 be medical only. And if it was a 13 it would be an occupational
3 disease.

4 THE COURT: 13 was the code for occupational
5 disease?

6 MR. VISSER: Yes.

7 THE COURT: Okay. When -- I'm sorry. What I'm
8 wondering is you said several years later you had the code for
9 occupational disease.

10 MR. VISSER: Yes.

11 THE COURT: So when did that start coding?

12 MR. VISSER: About two years after that system came
13 into being.

14 MR. LUCK: Your Honor?

09:39 AM 15 THE COURT: Yeah.

16 MR. LUCK: I didn't mean to interrupt but I think Cris
17 has a clarification.

18 MS. MCCOY: As a point of clarification, the 04 was the
19 appropriate status code. Again, this was a disk operating system

20 with limited field capabilities, so everything was coding. 04 would be
21 the code for an open active wage loss claim. 13 would be your
22 status code for an OD. And 01 is a new claim coming in. The 03
23 signifies an MO.

24 THE COURT: The 03 signifies a?

25 MR. LUCK: Medical only.

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09:39 AM 1 THE COURT: Oh, medical only.

2 MS. MCCOY: I'm sorry.

3 THE COURT: No, that's fine.

4 MS. MCCOY: As an example, if Kathy were to move
5 forward to the next screen that we had available, you can see status
6 at the top towards the middle indicates a 13. That would be an
7 occupational disease exposure.

8 THE COURT: Okay. And this helps me a lot, too, then.
9 So this previous page has no relation to the next page?

10 MR. VISSER: No, no, no. We picked them randomly
11 when we found some. There's not a whole lot around anymore.

12 THE COURT: The bottom there, are those your initials
13 there, Bill, where it says 2/7/96?

14 MR. VISSER: No.

09:40 AM 15 MS. MCCOY: No. Actually, those were Chuck
16 Driscoll's who was our claim manager at that time approving that
17 particular reserve.

18 THE COURT: I see.

19 MS. MCCOY: Is what that signifies.

20 THE COURT: Okay.

21 MR. LUCK: We need to be very careful that you guys
22 don't talk over each other. What we would like to do, and I think with
23 the Court's permission, is do just what we did, have clarifications,
24 provide additional input, but be careful because it's really easy, and
25 it's very difficult for the reporter to take down both -- two people

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09:40 AM 1 talking.

2 THE COURT: So -- and either one of you, just not both
3 at the same time, what -- so, do you have a recollection as to when
4 was the specific year that in the DB02 system you developed a code
5 specifically for occupational disease?

6 MS. MCCOY: I don't believe that came on-line for the
7 adjustors to utilize until late '91 or early '92. We were quite a bit into
8 the 1987 legislative changes.

9 THE COURT: Okay.

10 MS. MCCOY: Because of the protocols that had to be
11 observed, this was actually a State of Montana operating system.
12 Any changes we wanted to make to it had to be ran through ISD and
13 approved.

14 THE COURT: I see. So what would be done, then, as

09:41 AM 15 relative to this system between 7/1/87 and when a code -- for an
16 occupational disease, what would have been done between 7/1/87
17 and when a specific code was assigned in this program for an OD?

18 MS. MCCOY: On the system side we maintained the
19 codes we had used previously to that. If it were a wage loss claim,

20 even though it were an OD, it would still be coded 04.

21 THE COURT: Oh, I see.

22 MS. MCCOY: If it was a medical only, it would have
23 been coded 03. When the code became available we relied on
24 people to go in and update the status of their claim. For practical
25 purposes, because we were working off of hard files, we had big

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09:42 AM 1 ODs written on the outside of the files so people wouldn't miss it
2 while they were working on the file.

3 THE COURT: So, in that period of time, then -- so it
4 was -- when you talk about OD written on the outside of the file in
5 large letters, are you talking about during that period of time, then,
6 '87 through '91, '92?

7 MS. MCCOY: Yes.

8 THE COURT: Okay. Thank you. Sorry. Go ahead.

9 MR. LUCK: Your Honor, this does tie into where we
10 are going to get to in relation to why we had to search the manner
11 we did, because there just isn't a line that is definitive that all the
12 ODs would come out with a particular kind of search. So this leads
13 into the different approaches to try and search for that information.

14 MR. MURPHY: Judge, could I ask a question?

09:43 AM 15 THE COURT: Sure.

16 MR. MURPHY: Bill, did you say that the DB02 started
17 coding for ODs two years after it was implemented in 1989?

18 MR. VISSER: I thought after its inception, it's a bit of
19 information I picked up, that capability was added.

20 MR. MURPHY: And that was in '89?

21 MR. VISSER: That was in -- I can't tell you exactly

22 when it was.

23 MR. LUCK: I think Cris can.

24 MR. MURPHY: Because earlier you had said 1989,

25 and I think Cris said 2001. That's what I'm trying to get after.

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09:44 AM 1 MS. MCCOY: No. Actually, as clarification, Tom, what
2 I said was late '91, early '92. The first actual functionality, if you will,
3 that we were able to add to the DB02 system was our payment
4 processes. So that those would then be electronically recorded.
5 That began in June 1988. That was our first change. The reserve
6 screens, which you see up here, were subsequently added after
7 that. But the code itself to signify an occupational disease didn't
8 come until late '91, early '92.

9 MR. MURPHY: One more follow-up, Judge?

10 THE COURT: Sure.

11 MR. MURPHY: Could you tell me what it was that --
12 you said you started in 1988? I did misspeak in terms of the date.
13 In 1988 you started electronically recording the fact that it was an
14 OD?

09:45 AM 15 MS. MCCOY: No, Tom, it was -- we started
16 electronically recording our compensation payments and our medical
17 payments.

18 MR. MURPHY: As to whether they were OD, injury, or
19 medical?

20 MS. MCCOY: Some we paid --

21 THE COURT: Let me interrupt for one sec, because I

22 think this might help, too. We have -- and this is going to be made a

23 copy of this, and obviously it's up on the screen. Is there another

24 copy of the PowerPoint? Because I think a lot of these questions

25 are in that general -- that slide that's the DB02 that talks about -- oh,

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09:45 AM 1 you have it?

2 MR. MURPHY: I have it.

3 THE COURT: Okay. If you turn back, I think the slide
4 that says the headline DB02. Is that Page 3? Yeah, in there it talks
5 about -- so let me just ask you -- I'm sorry, Cris --

6 MR. MURPHY: Judge, it looks like you're looking at a
7 different document than I am. This is Page 3.

8 THE COURT: Let's see. No, I think it's just a black
9 and white copy of the same.

10 MR. MURPHY: I see.

11 THE COURT: Yeah.

12 MR. MURPHY: All right.

13 THE COURT: '88 is when the first -- first
14 enhancements of any kind were made to the DB02 system.

09:46 AM 15 MS. MCCOY: Yes.

16 THE COURT: That was, as I understand it, June of
17 '88, enhancements "to provide some limited functionality such as
18 indemnity and medical payments, reserving detail, and a limited note
19 field."

20 MS. MCCOY: Yes.

21 THE COURT: Okay. And then moving forward to '91,

22 '92 is the first -- is another enhancement that is made, which is the

23 coding for ODs.

24 MS. MCCOY: To distinguish the occupational disease

25 claims.

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09:46 AM 1 THE COURT: Okay. Thank you.

2 MR. MURPHY: Thank you.

3 THE COURT: Go ahead.

4 MR. LUCK: Anything else in relation to the DB02 by
5 just -- by way of explaining the information platform, that we need to
6 add?

7 MR. VISSER: Well, there were no electronic records
8 of the files. So when the file was closed for three years or so, we
9 would make a microfiche copy. And all these files with the big letters
10 of OD on them slowly, but surely, disappeared. But they are with
11 injury claims all on microfiche records. And for those years a lot of
12 them have to be hand-searched.

13 MR. LUCK: In the original stipulation there was a
14 discussion of the different methods of storing past data. It started

09:47 AM 15 with microfilm and then microfiche and then computer data. Is it
16 correct that for this discussion, for the period that we are talking
17 about for Stavenjord implementation, that the microfilm data is not
18 relevant?

19 MR. VISSER: Not relevant.

20 MR. LUCK: It was used for a prior period?

21 MR. VISSER: Prior, yes.

22 MR. LUCK: Okay.

23 THE COURT: Brad, let me ask one clarification, then.

24 So, for the period from July 1st, '87 through the late '91, early '92

25 when you first started assigning the 13 code for ODs, I assume

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09:48 AM 1 there's a number of those files that had been -- that where the
2 hardcopy had been purged and it was stored on microfiche, correct?

3 MR. VISSER: Correct.

4 THE COURT: So, how in those files during that period
5 of time when there is no code yet are ODs identified during that
6 period of time, the ones that are on microfiche? I mean, did you
7 copy the front of the file and put that on microfiche so you are seeing
8 OD right at the beginning of the -- I'm assuming when we are talking
9 microfiche it's just like a spool like you would have at the library or
10 something; is that it?

11 MR. VISSER: No, it was just a postcard size with
12 about 25 images on it. And you slide them through a machine
13 picture by picture by picture until you find what you're looking for.
14 The hardcopy files was filled with notations of what kind of file it was.

09:49 AM 15 I mean, there was a sheet that showed the payments, while what we
16 call the fiche, that would say OD. On the first payment that was
17 made it would say OD. So, once you have the microfiche, it is easy
18 to see what it is. If you are not entirely sure, you just start digging in
19 the file further and further until you're absolutely sure what it is.

20 THE COURT: And just through the notations in the file,
21 somewhere there's going to be a reference whether it is either a
22 specific injury or an OD?

23 MR. VISSER: Correct.

24 THE COURT: Okay. Go ahead.

25 MR. LUCK: Now, the obvious -- the obvious concern

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09:50 AM 1 here is, for our purposes, how we used this system to determine who
2 would be in this list. And that's part of the search function that we
3 are going to talk about, correct?

4 MR. VISSER: Yes.

5 MR. LUCK: Okay. Anything else on DB02? From a
6 foundational standpoint?

7 MR. VISSER: No.

8 MR. LUCK: In February of 1997 I think you said the
9 State Fund moved to a different informational platform.

10 MR. VISSER: Yeah. We built and had built a claims
11 management system, and CMS is the acronym for it. This was our
12 first real claims management system. It was not just data gathering.
13 This was a system that helped claims adjustors manage the files.
14 Got -- there were informational fields. There was a payment system.

09:51 AM 15 You could generate checks off of the computer. There was an
16 optical system attached to it, WMS, which imaged -- showed imaged
17 correspondence. Reports could be generated. And it was a great
18 improvement over anything we had had prior to that. But like I say, it
19 was a claims management system.

20 MR. LUCK: So, as opposed to a data storage system,

21 this was a claims management system?

22 MR. VISSER: Correct.

23 MR. LUCK: We have some representative screens

24 from this system that we'll go through. You might just point out to the

25 Court anything of interest as we work through these.

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09:52 AM 1 MR. VISSER: This is a summary screen, and it also
2 shows the part of body which, is always helpful if you are looking for,
3 let's say, an OD. But the real helpful thing is on the next one. No.
4 Yeah. This is the status screen. And as you can see, there is a spot
5 for an injury, there's a spot for the disease. It will tell you if it's a
6 medical only or a wage loss.

7 MR. LUCK: Is that information searchable?

8 MR. VISSER: That is searchable.

9 MR. LUCK: So, for our particular criteria, OD,
10 permanent partial disability, those two boxes would provide data?

11 MR. VISSER: Yes.

12 THE COURT: Okay.

13 MR. VISSER: This is wages --

14 THE COURT: I'm sorry, could you back up to the slide

09:53 AM 15 for one second, there was one question I had there, Bill. So, when
16 this -- this slide is obviously some -- referencing an OD. So what do
17 you use to determine the DOI? Is that the --

18 MR. VISSER: The date of injury is on the summary.

19 THE COURT: Right. But, I mean, if it is an OD, there's

20 obviously no specific date. So I'm -- and I know, you know, there are
21 the different legal criteria for statutes of limitations and whatnot, but
22 what I'm wondering is for your CMS system what do you use to enter
23 in the DOI?

24 MR. VISSER: That kind of differs. In some cases it is
25 the first thing that the doctor diagnosis the problem and the

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09:54 AM 1 claimants or him or her has no idea of when this started exactly, it
2 came on so gradually. Other instances, the claimant will recollect
3 that, you know, the third day on doing this particular type of work,
4 now we more or less know what the date of injury is. But you try to
5 get as close as possible.

6 THE COURT: Gotcha. Okay.

7 MR. LUCK: I would point out to the Court the
8 stipulation that was filed with the Court on January 22nd, 2004,
9 which for purposes of implementation stipulated to the method for
10 the date to be used. And that was the date the claimant's
11 occupational disease is first diagnosed as work-related.

12 THE COURT: Right.

13 MR. MURPHY: I would point out to the Court that there
14 is a question as to whether those stipulations are binding if there isn't

09:55 AM 15 a common fund.

16 MR. LUCK: And I only meant that for informational
17 purposes.

18 THE COURT: Right. And actually that was one of the
19 questions I had, then, is that we have got the stipulation for purposes

20 of Stavenjord, the 2004 stipulation, and whether that comported with
21 the DOI that was being entered into the CMS system. The method
22 that was being used to -- because obviously, I'm assuming a lot of
23 these predated any direction from the court or before there ever was
24 a Stavenjord, so I wouldn't expect that, you know, you would have
25 been that prescient to say, oh, down the road here's what we want to

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09:56 AM 1 be doing. So that's why I had a question as to what were the criteria
2 used to determine a -- or to enter a DOI.

3 MR. LUCK: The date of injury that's used on these
4 records would be the date of injury that's been used throughout the
5 period of the individual claimant's consideration of entitlement; is that
6 correct?

7 MR. VISSER: Yes.

8 MR. LUCK: And when we did our searching, that we
9 are going to talk about in just a second, that component of
10 entitlement date was the entitlement date that was determined for all
11 other entitlement purposes; is that correct?

12 MR. VISSER: Correct.

13 MR. LUCK: Okay.

14 THE COURT: Great. Thank you.

09:56 AM 15 MR. VISSER: This is a screen where it shows how we
16 compute the average weekly wage and a TTD rate and, in this case
17 not the PPD rate, but it does it automatically. And we also have
18 room to make comments if the rate is different and the computation
19 shows.

20 MR. LUCK: There's a statement there that appears to
21 be something that's entered discretionarily by the adjustor in relation
22 to apportionment.

23 MR. VISSER: Yeah.

24 MR. LUCK: Now, that field. Tell us about that field.

25 MR. VISSER: That's the override comment, and it

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09:57 AM 1 shows why the rate is different than the computation showed. So,
2 we would pay only 50 percent of the \$125.35 that was, at the time,
3 the TTD rate.

4 MR. LUCK: That's as it relates to the individual claim.

5 In terms of our concerns for getting data to identify potential
6 Stavenjord claimants, would that kind of a field be helpful?

7 MR. VISSER: That kind of a field would certainly be
8 helpful. Anyway, that is different than the TTD rate is of interest, and
9 that is also an indicator. But, yes, this field is certainly helpful.

10 MR. LUCK: When you are back doing checks on files,
11 is that the kind of field that you would look at manually in assessing
12 whether a case is an OD or not?

13 MR. VISSER: Yes. This is a payment screen that
14 shows when what was paid and for what condition, temporary total

09:59 AM 15 or settlements or whatever. All kinds of payments will show what we
16 call the FINCLE_TRAN, the financial transaction.

17 This is an attachment to the status or to the injury
18 screen. And here we can tell what the condition of the claimant is.

19 MR. LUCK: Are the injury statistics searchable by

20 computer search? The field there in the middle?

21 MR. VISSER: You mean accident description or the

22 injury stats?

23 MR. LUCK: It says injury statistics and then it has --

24 MR. VISSER: The injury stats, yes.

25 MR. LUCK: So, that would be an example of

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10:00 AM 1 something, as we get to the searches, that data runs would be
2 searching those field as we are giving different indications of
3 occupational disease claims?

4 MR. VISSER: Yes.

5 MR. LUCK: Okay. Anything else about the CMS
6 system just simply in relation to the foundation discussion of
7 identification of potential Stavenjord beneficiaries other than what
8 you have touched on?

9 MR. VISSER: Uhm, no, other than the files are readily
10 available since they are in an output system.

11 MR. LUCK: Okay. Next, Your Honor, I would like to
12 talk to Cris --

13 THE COURT: Can I ask one question here? Could
14 you back up to that last slide for just one second. And I think I had a

10:01 AM 15 question, I can't find my specific note here, but I think it was DOLI in
16 the attachment, that there was an issue regarding the identification
17 of heart and lung claims. Could you --

18 MR. LUCK: We are going to talk specifically about
19 that.

20 THE COURT: Okay. I'll just wait until you get to that.

21 That's fine.

22 MR. LUCK: And really focus on their run and explain
23 how that was taken into account in term of assessing our system.

24 THE COURT: Okay. Yeah, if we are just going to get
25 to it, then I'll just -- I'll wait until we get to that. Okay, we can move

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10:01 AM 1 ahead.

2 MR. LUCK: Next, Your Honor, what I would like to do is
3 work through the various analyses that were done, beginning with
4 the information that was provided in the original stipulation up to the
5 present time leading toward the present numbers, which we believe
6 should be the notification list. Because it's important to see how
7 they built over time. And Cris is going to talk about that.

8 Again, Cris, I want to make sure we are focused on
9 July 1, '87 to May 22nd, 2001. First from an overview standpoint,
10 can you tell the Judge why we can't just press a button and find all
11 the ODs back to 1987 and just be done with it?

12 MS. MCCOY: In theory that can be done. And what it
13 will bring forward is every claim file that was appropriately codes as
14 an occupational disease exposure, whether it existed in DB02 or

10:02 AM 15 existed in CMS. The risk is, by limiting your search to just that one
16 field, you indirectly drop out a lot of other potential claimants that
17 may be just as eligible. Which is why our preference is always to go
18 with a wider, broader array to bring more files forward to insure we
19 minimize the risk of losing someone.

20 MR. LUCK: And in effect that's what we are going to
21 talk about, the design and searches over time to try to establish
22 those separate criteria that will bring forward ODs beyond those that
23 would have been categorized as ODs?

24 MS. MCCOY: Yes.

25 MR. LUCK: Again, from an overview standpoint, are

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10:03 AM 1 you comfortable that the State Fund can and has properly identified
2 the population of potential Stavenjord beneficiaries that we are here
3 to talk about?

4 MS. MCCOY: At this point in time, absolutely.

5 MR. LUCK: From an overview standpoint, and we're
6 going to get pretty specific, can you give us the overview answer of
7 why you believe that's the case?

8 MS. MCCOY: Because we possess both the
9 knowledge base, the skill set, the technical skills, the familiarity with
10 our business processes and our technology capabilities, as well as
11 multiple years of experience in doing precisely this type of thing
12 successfully.

13 MR. LUCK: In order to --

14 THE COURT: Brad, let me interrupt just for one sec.

10:04 AM 15 When you're talking about the people involved and the experience
16 and skill sets, who are the IT people specifically involved?

17 MS. MCCOY: Our designated IT individual who does
18 the actual queries would be Dave Ogan more often than not, but Bill
19 and I are primarily responsible for developing the parameters that

20 are passed to Dave.

21 THE COURT: Okay.

22 MS. MCCOY: To actually complete the query.

23 MR. LUCK: And it's the parameters in terms of how we

24 describe in different ways occupational disease criteria that develops

25 the listing of potential Stavenjord beneficiaries; is that correct?

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10:05 AM 1 MS. MCCOY: Yes. Bill and I decide how to define
2 those certain criteria.

3 MR. LUCK: Would you need to be familiar with the
4 State Fund systems and claim handling practices in order to
5 comprehensively design an approach to check data and information
6 regarding State Fund claims to develop this list of potential
7 Stavenjord beneficiaries?

8 MR. MURPHY: Foundation. I object; foundation.

9 THE COURT: I think this is an evidentiary hearing, so
10 I'll -- I mean, if you -- and you can ask her at the end in terms of, you
11 know, her background and experience relative to this specific
12 question, but go ahead.

13 MR. LUCK: Yeah. Can you answer -- my concern is,
14 and just a direct question, can someone who happens to know

10:06 AM 15 computers, and may even understand claims, be able to come in, in
16 your opinion, and design as comprehensive an approach to outlining
17 and identifying potential Stavenjord beneficiaries as you are with
18 your background and experience?

19 MS. MCCOY: If the goal is to achieve a

20 comprehensive population identification, no.

21 MR. LUCK: Why?

22 MS. MCCOY: The other pieces of that are equally as

23 important to the success of achieving that goal. You need to know

24 what data is available, what are our workflow processes, where this

25 data would be deposited? How is our information stored? What are

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10:07 AM 1 you even looking for? How would you identify it to know if you got it
2 or didn't get it? Which is also part of what Bill and I do when the
3 initial run comes back. We always do a review to ascertain or verify
4 its validity.

5 MR. LUCK: What does experience actually handling
6 State Fund claims add to the development of the design of the
7 search process?

8 MS. MCCOY: That intimate knowledge of both our
9 tech side, as well as our workflow side.

10 MR. LUCK: Is there any particular knowledge or
11 prospective that has been gained as a result of working on previous
12 common funds and class actions?

13 MS. MCCOY: Yes. We grow more efficient and better
14 able to administer these with each one. Each one is a new learning

10:07 AM 15 experience that helps us be better at our craft.

16 MR. LUCK: And interpret search results?

17 MS. MCCOY: Yes.

18 MR. LUCK: Did the process that we are going to talk
19 about and the evolution of that process take into account those

20 areas of claim and system experience and knowledge that you
21 talked about?

22 MS. MCCOY: Absolutely.

23 MR. LUCK: Is that the heart and soul of what it's
24 evolved into?

25 MS. MCCOY: It definitely helps if you're trying to

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10:08 AM 1 generate a good work product.

2 MR. LUCK: And the point I am trying to get to for the
3 Court is --

4 MS. MCCOY: I didn't mean to be facetious. I'm sorry.

5 MR. LUCK: No, that's okay.

6 The point I wanted to get to for the Court is, does this
7 process that we're talking about in terms of identifying potential
8 Stavenjord beneficiaries require a computer expert, or more of a
9 State Fund systems and claim handling expert?

10 MS. MCCOY: I believe the State Fund system and
11 claims handling expert would be better suited for this task.

12 MR. LUCK: Let's talk about the processes that we
13 went through over time.

14 THE COURT: Are you doing okay, Julie? Okay. Go

10:09 AM 15 ahead.

16 MR. LUCK: First -- and Your Honor, for reference
17 purposes, in the initial statement of stipulated facts from 2004 in
18 Paragraphs 26 to 30 there's an explanation of the initial search. And
19 I thought it would be good to lead up if we started with that and

20 maybe have Cris explain briefly what was done there and how it led
21 to the subsequent searches. Can you do that, Cris?

22 MS. MCCOY: Yes. Essentially what we were
23 attempting to formulate when we did our initial data run on January
24 24th of '04 is not only searching on the obvious criteria, such as
25 claim classification, differentiating between wage loss versus a

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10:10 AM 1 medical-only file, but also trying to anticipate if for some reason that
2 notification was either faulty or incorrect, what other characteristics
3 would a Stavenjord file, consistent with the court's decision, look like.
4 How would we find it in our data system if it weren't obvious? And
5 these are the criteria that Bill and I developed jointly. The obvious
6 thing we are going to go for, is it coded as an occupational disease?
7 Bring all of those forward.

8 The other things we felt would help identify any
9 potential hidden claimants were to search on the nature of injury
10 codes. A 990, which you saw in the earlier injury screen, a 990 is an
11 occupational disease in the nature of injury coding. A 562 is disease
12 of the nerves.

13 THE COURT: Cris, let me just interrupt you. It just
14 occurs to me for my own benefit when we come back, since I'll be

10:11 AM 15 probably looking at this and the written record at the same time, so
16 we are looking at -- the screen you're referencing right now is the top
17 slide on Page 9 of the printed out PowerPoint. Okay. I'm just saying
18 that for my own benefit. I'm sorry, go ahead.

19 MS. MCCOY: Okay. And the other parameters that we

20 considered was to query against the source of injury. A 400 code
21 indicates bodily motion as the source of the injury. We wanted to
22 look at actual payments made on each and every file, looking for
23 basically an absence of any type of partial payment that they had
24 received, either temporary total disability benefits, perhaps
25 permanent total disability benefits, but no partial disability benefits as

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10:12 AM 1 indicative of an occupational disease at that point in time.

2 MR. LUCK: This search, which identified from different
3 angles different descriptions or indicia of occupational diseases to try
4 to flush them out, how many files did this identify?

5 MS. MCCOY: This particular run actually brought back,
6 as indicated, 3,099 files. As is our practice at the State Fund, when I
7 request a data run I have them run it for all claims existing in either
8 database up through the date of the actual run. So what this
9 particular run would have brought forward is anyone with a date of
10 exposure meeting any of these parameters or data fields with the
11 date of exposure up to and including January 24th of '04.

12 What we did then is filtered that list keying to a cutoff
13 point inclusive of May 22nd, 2001. Which reduced our population to
14 the 2,939.

10:13 AM 15 MR. LUCK: That's why the two numbers are different?

16 MS. MCCOY: Yes.

17 MR. LUCK: I notice there that you had -- you note 378
18 claims were identified as settled. At that place in time the legal
19 precedent hadn't been established to conclusively exclude settled

20 claims?

21 MS. MCCOY: No.

22 MR. LUCK: Next slide.

23 Then what did you do after that?

24 MS. MCCOY: We did -- actually, at that point in time

25 we did some very limited initial review of the data we had received

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10:14 AM 1 on the January 2004 data run while we were waiting for the decision
2 to come down from the Supreme Court. Intervening into that,
3 because it took a lot longer to come down than we had actually
4 anticipated at the time, Bill and I then became involved in
5 administering the Flynn common fund, which was active then in
6 2004. And this particular data run more or less went onto the back
7 burner until that decision did come down.

8 MR. LUCK: But there was, based on this screen, some
9 additional additions of potential Stavenjord claims to the list based
10 on a couple of different processes.

11 MS. MCCOY: Independent of what Bill and I were
12 doing, which we also will frequently do as a double check on the
13 quality of the work product, our internal actuary also ran a separate
14 independent run against Data Warehouse rather than our computer

10:15 AM 15 system.

16 Data Warehouse is simply a data storage system that
17 would pull from CMS but it has a little bit different slicing-and-dicing
18 capabilities. And Dan, independent of what we were doing, identified
19 what he thought were an additional 18 claims, as indicated on the

20 first line, and then 586 which we rolled into our run.

21 THE COURT: Just for the record, who is that, Dan?

22 MS. MCCOY: He is our internal actuary, Dan Gengler,

23 G-E-N-G-L-E-R.

24 MR. LUCK: So as I understand it, what happened after

25 the initial search, he came in with a different kind of approach and in

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10:16 AM 1 that broad sweep came up with the additional potential claims for the
2 list and that ballooned the list to 3,543?

3 MS. MCCOY: That's correct.

4 MR. LUCK: At that point did you believe that that was
5 an over-inclusive list?

6 MS. MCCOY: Yes, we did.

7 MR. LUCK: Initially that was to be reviewed but put on
8 the back burner pending a determination by the Supreme Court?

9 MS. MCCOY: It was more the advent of Flynn
10 becoming an active common fund and our need to become involved
11 in that, and that the decision from the Supreme Court was still
12 pending at that point in time that more or less moved this information
13 to the back burner as a lessor priority.

14 MR. LUCK: Did you then become involved in review of
10:16 AM 15 data for purposes of the Schmill case?

16 MS. MCCOY: Yes.

17 MR. LUCK: Can you explain to the Court how that
18 progressed and then led to your second search, that I believe was
19 utilized for data for both common funds?

20 THE COURT: Brad, so it's clear for me again, the slide
21 is the top slide of Page 10. Go ahead.

22 MR. LUCK: First --

23 THE COURT: Brad, since we are moving to the
24 second search here it would be a good point to take about five
25 minutes.

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10:17 AM 1 MR. MURPHY: Thank you.

2

3 (A brief recess was taken.)

4

5 THE COURT: Go ahead, Brad.

6 MR. LUCK: Cris, when we broke we were

7 transitioning between that first search and the second search. But

8 before we talk about that, can you put it into context timing-wise

9 what was going on with your work for identification and notification in

10 relation to the Schmill case during that period and how did that blend

11 in with your Stavenjord efforts.

12 MS. MCCOY: When we were doing the initial data

13 development in 2004 it was anticipatory that the focus would be on

14 Stavenjord, and that Schmill, given their overlap, would then become

10:26 AM 15 a subset of the population we identified for Stavenjord. So we could

16 essentially use that particular data run to hopefully meet both needs.

17 As things turned out, Schmill was actually decided first

18 before Stavenjord occurred, and at that time Bill and I discussed it

19 between us; made the decision that given the 18 months that had

20 passed we wanted a new run, in addition to the 2004 run that we
21 had previously done. In this particular instance, though, our query
22 was the same premise, we wanted it to be overly broad, preferring to
23 have more files that ultimately would not qualify, rather than risk that
24 our parameters were too narrow and inadvertently drop out people
25 who should have been qualified.

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10:27 AM 1 So same premises in place, but these parameters we
2 wanted to run against in 2005 carried more elements that would help
3 us more readily identify potential Schmill files. Which then would
4 carry over as potential Stavenjord files, as well, with the same
5 overlap. Which is why you would see the addition of a number of
6 the same parameters we had used in 2004, but this time we included
7 that we run against data fields in the financial transaction list looking
8 for whether there was an apportionment detail. Which we were able
9 to do on our financial transactions. Which would basically say this is
10 in fact a Schmill file that would be entitled to additional benefits. We
11 queried against our offset screen, which has a data field to indicate
12 whether there is an apportionment on file. Again a good indicator
13 this would be a Schmill file.

14 We maintained occupational disease status on the
10:29 AM 15 injury screen, as well as a claim classification. Expanded our search
16 a bit more this time around to also include anything that referenced
17 disease, respiratory, or nervous system, to pull those files forward,
18 and as a source of injury, bodily motion, infectious or dust, again
19 hoping to catch a wider group of files meeting our criteria that could

20 then be reviewed saying no permanent partial disability benefits had
21 ever been paid on the file indicative of an occupational disease, but
22 also to, again, query the financial transaction list to see if any of the
23 payments contained an expense code type of occupational disease
24 award.

25 The last thing we were looking for, which again would

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10:30 AM 1 be indicative of an apportioned file, is that the query would compare
2 the data field where we store the social security offset rate
3 information, compare it to the rate that was actually used in
4 payments, which was a separate detail available to us; and if the
5 offset rate used is less than the calculated rate in the system to bring
6 that file forward, our practice through the years since 1987 is when
7 files were apportioned we applied a corresponding apportionment to
8 the offset rate, as well. And with this we were confident that we
9 would get a good pull, again over-inclusive of Schmill entitled files.

10 MR. LUCK: These searches and these various ways
11 to approach things, especially in relation to the financial transactions,
12 did they cross the boundaries for our entire time frame that we are
13 talking about and both systems?

14 MS. MCCOY: It was again both systems, one of the
10:31 AM 15 distinctions with this second run is it would have brought forward any
16 file existing in the system as of June 14th, 2005. So again, we then
17 directly expanded it simply by the date range.

18 THE COURT: Why did you -- I mean, I understand
19 June 14th, 2005 was the date of the run, but why did you go beyond

20 the May 22nd, 2001 -- well, and I mean -- the parameters defined by
21 Schmill and Stavenjord?

22 MS. MCCOY: Part of it is it has always been our
23 practice to do it, but the other part is also what is a piece of my
24 position with the State Fund. As part of the claims expert team, we
25 are also tasked with quality assurance for the claims adjusters. So I

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10:32 AM 1 have habitually always gone over and above when we are doing
2 data runs for common funds to also identify files meeting this same
3 criteria so I can also do, from a quality assurance standpoint, some
4 prospective over site to ensure this is translating through our staff
5 into our prospective adjusting of claims. That we continue to be
6 compliant with the decisions.

7 THE COURT: I see.

8 MR. LUCK: So you're verifying that, even though there
9 are claims that aren't subject to common funds, that they are being
10 handled properly?

11 MS. MCCOY: Yes.

12 THE COURT: I see.

13 MR. LUCK: Back to my previous question. We talked
14 about the DB02 and the differences between CMS. Did this run

10:33 AM 15 come at the available DB02 data from additional perspectives to
16 identify potential Stavenjord beneficiaries than the first run?

17 MS. MCCOY: Yes. The same parameters were
18 applied to the data fields in DB02 to bring forward any file meeting
19 any one of these criteria.

20 MR. LUCK: So the number 4,797, given the breadth

21 and the time frame, was certainly over-inclusive?

22 MS. MCCOY: Yes.

23 MR. LUCK: Then what did you do?

24 MS. MCCOY: Once we had established this run, Bill

25 and I then went through a process of doing a limited electronic

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10:34 AM 1 review of each file identified in the second run we had done in 2005
2 to determine whether or not it was in fact appropriate to include in
3 the Stavenjord population, appropriate for inclusion in the Schmill
4 population, or whether, even though it had met a criteria, it applied to
5 neither. As an example, we might have hit one of our filters, i.e.,
6 respiratory. But when we did the electronic review of the actual
7 claim file in CMS, it would be an injury. So then it would be excluded
8 from our common fund -- our potential common fund populations
9 with that reason attached to it, that it is in fact, on review, an injury.
10 Not meeting what we need for our purposes. And we began a
11 process of going through each and every one that we had identified
12 on that list and allocating it according to what the ultimate conclusion
13 was.

14 THE COURT: So, just to clarify in my own mind is, the
10:35 AM 15 example you're using would be something where one of the search
16 parameters or search flags that you used was respiratory, and it
17 would have been -- this would have been an example of something
18 that would have been coded as a specific injury but because it had a
19 reference to respiratory in it, it got caught up in the net. But then

20 when you looked at the specific instance, it might have been
21 somebody who got a -- on a particular day a big dose of carbon
22 monoxide or something like that.

23 MS. MCCOY: Exactly right.

24 THE COURT: Okay. Thank you.

25 MR. LUCK: And the same would be true of a denied

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10:36 AM 1 claim. It could have come up through one of the filters, but upon
2 electronic search it was a claim that had been denied. Is that --

3 MS. MCCOY: Generally speaking, no. The -- once we
4 had done the initial data run, we would also apply -- because it runs
5 the entire database on both sides. Once all of that information is
6 brought forward, we would apply exclusionary criteria, as well, which
7 is what is listed at the bottom. We excluded any denied claims. We
8 excluded all medical-only claims because they will not -- we know
9 they will not meet our criteria. If there were a disputed settlement on
10 the file, it would be excluded.

11 MR. LUCK: So, that's the list of the exclusionary
12 criteria, then.

13 MS. MCCOY: Yes.

14 MR. LUCK: Okay.

10:36 AM 15 THE COURT: We are referring to the bottom slide on
16 Page 10. So, go ahead.

17 MR. LUCK: Then what did you do and what were the
18 results?

19 MS. MCCOY: Once we had done the initial electronic

20 review to be able to determine what exactly our population
21 comprised of, how many were actual ODs, from there we further
22 filtered those particular files down into which ones were in fact
23 settled files, based on the review. Each file, all 4,700, were run
24 through the Social Security death index so we could verify anyone
25 who might be deceased but it didn't show on our file. In that advent

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10:37 AM 1 they were segregated into their own separate little tab, and injuries
2 were just excluded to a tab to themselves.

3 At the end of this process, what Bill and I had
4 determined is there were 348 files remaining where there was
5 insufficient electronic data available for us to review to make a call
6 as to whether they should appropriately be included or excluded.
7 And at that point, Bill undertook the task of pulling the microfiche
8 files for each and every one of those and doing a review to
9 determine where they should be placed.

10 MR. LUCK: Let me interrupt you at that point. We are
11 looking now at the slide at the bottom of Page 11 of Exhibit 1. This
12 is the results of prior to manual review of the 348 claims of your
13 refinement process?

14 MS. MCCOY: Let's see. That was the end result.

10:39 AM 15 MR. LUCK: Then the next slide relates to those 348
16 claims that we spoke of that required manual review; is that correct?

17 MS. MCCOY: Yes, and then how they were
18 subsequently allocated.

19 THE COURT: Top slide of Page 12. I'm sorry, go

20 ahead.

21 MR. LUCK: That review has been completed and this

22 is a result of that review?

23 MS. MCCOY: Yes, it is.

24 MR. LUCK: So we took the 3,017 that included the

25 348; and after the review of those 348, 51, as indicated from the

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10:39 AM 1 review results, were subtracted from the Stavenjord notice list; is that
2 correct? Is that how that works?

3 MS. MCCOY: They weren't specifically -- the injuries
4 were specifically excluded from the notice provisions. The two
5 settled files, two deceased files were then moved to those
6 appropriate tabs pending a decision of whether notice will be sent to
7 them. And then the remaining 297 that are in fact occupational
8 disease claims were added to the list of those we know for sure we
9 want to send notice to.

10 MR. LUCK: So we know settled claims are out. Okay.
11 So, I just want to interpret the slide. After that review, other than
12 deceased claimants in a special category, the Stavenjord notice list
13 following this refinement would now be at 2,966?

14 MS. MCCOY: Yes.

10:40 AM 15 MR. LUCK: If we added the category of individual
16 claimants that we know are deceased and send them notice, that
17 would raise the notice list to 3,072?

18 MS. MCCOY: Yes.

19 MR. LUCK: And as we indicated in our report, and we

20 can talk about it later, Your Honor, we just included that back in. We
21 are not sure when we get responses and how to follow up on it, but
22 for our gross over-inclusive notice list this would be the total at this
23 point including those that we have identified so far as being
24 deceased.

25 THE COURT: Okay.

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10:41 AM 1 MR. LUCK: Cris, are you comfortable that these
2 number are a proper list of identifiable potential Stavenjord
3 beneficiaries?

4 MS. MCCOY: I'm confident that the list is probably
5 over-inclusive containing people who likely in the long run will not
6 qualify, but confident we have everyone who would in fact qualify
7 and should be noticed.

8 MR. LUCK: We talked about this refinement process.
9 Were you making subjective unreviewable decisions, or was that
10 refinement process part of the objective -- an objective application of
11 record fact?

12 MS. MCCOY: From my perspective it is objective, it is
13 reproducible to people looking at the same set of facts should reach
14 the same conclusion.

10:42 AM 15 MR. LUCK: For instance, the decision to take out the
16 47 injuries, that was by looking at each one of those files and seeing
17 that the claim had been handled as an injury as opposed to an
18 occupational disease?

19 MS. MCCOY: We verified it was in fact an injury based

20 on the description of injury, the file handling notations by the
21 adjustor, before it was allocated to injury and excluded.

22 MR. LUCK: So it wasn't a judgment call.

23 MS. MCCOY: No.

24 MR. VISSER: What we really looked for was

25 acceptance letters in the file, whether or not an occupational disease

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10:42 AM 1 panel was involved, all that kind of information.

2 MR. LUCK: That hands-on review was done by you,
3 and you went to the data source and actually went through the file to
4 look, --

5 MR. VISSER: Page-by-page.

6 MR. LUCK: -- for instance on that category, something
7 definitive, a position taken by the State Fund that that case was
8 being handled as an injury and not as an OD?

9 MR. VISSER: Correct.

10 MR. LUCK: Same question to you, Bill, based on your
11 involvement in this identification process are you comfortable that
12 these numbers represent a proper list of identifiable potential
13 Stavenjord beneficiaries?

14 MR. VISSER: Definitely.

10:43 AM 15 THE COURT: Can I ask, what -- and either one of you.

16 What about -- I imagine in this search there were some that, even
17 with the search parameters where -- I know I have had cases come
18 before me where there is a dispute possibly between two insurers
19 whether somebody is suffering from an OD or a specific incident.

20 Did that come up in the search where it was looking where it's
21 maybe on the -- in the factual review was not exactly clear whether
22 this was, say, somebody who, because of the medical, had -- over
23 the course of years had repeated back problems and then ultimately
24 has an L-5-S-1 disk and in the medical it's undetermined whether it
25 would constitute degenerative disk disease or on that specific day

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10:44 AM 1 the disk blew out. I'm just trying to see how that was -- if it came up,
2 and if so, how that was addressed.

3 MS. MCCOY: To specifically answer your question, as
4 Bill indicated, what we would rely on are the facts documented to the
5 file, which would not be equivocal. We either would accept this file
6 as an injury and handle it accordingly, or it was clear that it is an
7 occupational disease, it is being adjusted as an occupational
8 disease. But as further clarification, as a matter of practice when we
9 are going through the process of determining inclusion, exclusion,
10 our practice is always to err on the side of caution. In order to
11 exclude a file we need a valid verifiable reason that it's being
12 excluded. If there is any question involved, it's automatically
13 included. I would rather have one that doesn't belong in than
14 inadvertently exclude one that should have been there.

10:45 AM 15 THE COURT: Okay. Thank you.

16 MR. VISSER: A little more into the scenario you just
17 painted, using the results in the claim shifting from occupational
18 disease to injury, and not the other way around.

19 THE COURT: Okay. Thank you.

20 MR. LUCK: So those 297 on manual review, we would
21 have erred on the side of inclusion in that category to maintain
22 over-inclusiveness?

23 MS. MCCOY: Definitely.

24 MR. LUCK: I want to speak next to the Department of
25 Labor review. Bill, first a question to you and then a question to Cris.

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10:46 AM 1 The Department of Labor reviewed the process, and
2 the letter that they wrote, it was attached to our initial report.

3 First, I want to talk -- ask you a question about
4 background. The data that the Department of Labor has, is that
5 State Fund data?

6 MR. VISSER: Yes.

7 MR. LUCK: So they don't have data that's separate
8 from what's in the systems that you were searching?

9 MR. VISSER: Correct.

10 MR. LUCK: And whatever they have was provided by
11 you, so any search you did, corresponding to any search they did,
12 would have been of identical data; is that right?

13 MR. VISSER: Yes.

14 MR. LUCK: Okay. They did a gross search and

10:47 AM 15 provided you a printout of potential occupational disease claims. Did
16 that assist you in your identification process?

17 MR. VISSER: No, it didn't.

18 MR. LUCK: Why?

19 MR. VISSER: The search criteria were such that it

20 included medical-only claims, denied claims, injury claims, settled
21 claims. If you search through a database on one particular source of
22 injury, you get an overbroad population without applying some
23 companion parameters or some exclusionary criteria. So we looked
24 at approximately -- a little over 1,100 claims from that list.

25 MR. LUCK: What did that indicate to you?

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10:48 AM 1 MR. VISSER: That told us that we identified in our
2 searches approximately 100, and I think it was 90 claims more than
3 were -- than the ODs on the Department of Labor list. Secondly, we
4 did not find any addition for our list. They did not come up with any
5 claim out of that 1,100 that would be a potential Stavenjord claim.

6 MR. LUCK: What did that tell you in relation to their
7 search and your search of the same data?

8 MR. VISSER: That you have to put some parameters
9 on the search. I am more confident that we did -- or I'm sure we
10 caught more people in our searches than the Department of Labor
11 printout could.

12 MR. LUCK: But if you both were searching the same
13 data, you found theirs to be absent of exclusionary criteria and you
14 identified substantially more claimants that might be entitled to

10:49 AM 15 Stavenjord benefits. Does that -- since you were working on the
16 same database, does that mean your process was superior?

17 MR. VISSER: Absolutely.

18 MR. LUCK: Cris, you were part of the analysis. Is that
19 accurate from your standpoint? Or am I using the wrong words?

20 MS. MCCOY: I probably would characterize it as ours
21 was more comprehensive. What I noted in reviewing the data run
22 that DOLI had sent over to us is we essentially used the same
23 source of injury and nature of injury codes. When the data runs
24 were being completed, we augmented our search with the further
25 parameters, say, looking at payment histories or status, those types

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10:50 AM 1 of things, to give us a broader population.

2 As Bill indicated, we went through approximately 1,100
3 of the files just to see what was different in terms of their number
4 versus ours, because it was so huge. The first thing that we noted
5 immediately is the absence of any form of exclusionary criteria,
6 which automatically inflates your number. Nothing was excluded.

7 The other thing that was of interest to us is the same
8 thing we discussed earlier, where it -- in reviewing the actual file
9 on-line it was clear which of their particular codes had been tripped
10 to bring that file forward; but in reviewing in the State Fund's
11 database, we had the same file but it had actually been accepted as
12 an injury because it met the definition for either a single shift or
13 traumatic happening. Where they had it out there as a potential OD.

14 And the other thing of interest that Bill and I noted is

10:51 AM 15 that we had a significant number of additional claims that were not
16 reported on the DOLI occupational disease list, suggesting again
17 that our search was overbroad and we have at least 197 people that
18 don't belong there, or ours is in fact more comprehensive. It
19 minimized the possibility that we excluded someone who should

20 have been include.

21 MR. LUCK: So by --

22 THE COURT: So -- Brad, let me interrupt just for one
23 second. So, if I understand it, then, theirs did not have parameters
24 specific enough that inflated their number; is that right?

25 MS. MCCOY: It's the exclusionary criteria. As I said,

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10:52 AM 1 we excluded all medical-only claims. We excluded denied claims.

2 We excluded anything that was settled as a disputed liability.

3 THE COURT: Okay.

4 MS. MCCOY: Where theirs included all of those.

5 THE COURT: So, even though theirs included that, at
6 the ultimate run is your list had approximately 190 more than theirs?

7 MS. MCCOY: Yes.

8 MR. VISSER: Yes.

9 THE COURT: Okay. So, you had obviously, since they
10 had some that were disputed settlement or medical only that would
11 not have been on your list, correct?

12 MS. MCCOY: Right.

13 THE COURT: So there was more than 190, obviously
14 by definition, then, that you had that were not on their list?

10:53 AM 15 MS. MCCOY: Well, this was a representative sample
16 of approximately 1,100 out of the 9,000.

17 THE COURT: Okay.

18 MS. MCCOY: And of that group, every valid
19 occupational disease claim DOLI had identified, we had also

20 identified.

21 THE COURT: Okay.

22 MS. MCCOY: Plus some additional claims.

23 THE COURT: Okay.

24 MR. LUCK: So, what you are talking about here is you

25 took the DOLI list and you manually reviewed 1,100 files, you

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10:54 AM 1 reviewed the actual data in the files for 1,100 files, and you
2 determined that your process, just in those 1,100 files, identified 197
3 more potential Stavenjord beneficiaries than they did?

4 MS. MCCOY: Yes.

5 MR. LUCK: And you also determined in that hands-on
6 analysis that because of their lack of exclusionary criteria, their
7 numbers were ballooned with claims that clearly weren't -- could
8 never be in the population?

9 MS. MCCOY: Exactly. Well, as an adjunct to that, it
10 also, at least from our perspective, absolutely validates our process
11 that we undertook.

12 MR. LUCK: The Judge mentioned earlier that the
13 DOLI had a suggestion for another search approach. Did you look
14 at that, and was that helpful?

10:54 AM 15 MS. MCCOY: We did, but unfortunately it wasn't.
16 Even though we have similar data and it's structured similarly, a
17 single limited field like heart or lungs is not within our coding and not
18 something we are able to independently search against. Although
19 with the broad parameters we did use, which should theoretically

20 catch any potential occupational disease or exposure when you're
21 looking at things like repetitive and dust and respiratory and those
22 types of things, we are still confident that, even though we can't
23 individually identify each and every one, we would have caught
24 anything that should have been caught.

25 MR. LUCK: So, what you are saying is on that limited

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10:55 AM 1 additional search criteria that they suggested, you would have come
2 at those same claims from different filter directions and you're
3 confident that you would have caught anything that would be in
4 those classifications?

5 MS. MCCOY: We are. And we did attempt to do that
6 type of data run, and it simply couldn't be done in our system.

7 MR. LUCK: I want to finalize our discussion of the
8 identification process. And I have a couple of questions for both of
9 you.

10 First, Cris, do you believe the process that was outlined
11 and explained to the Court in your testimony for the identification of
12 potential Stavenjord beneficiaries is appropriate and comprehensive
13 given your work on this and other common fund and class actions
14 and your experience with claims?

10:56 AM 15 MS. MCCOY: Yes.

16 MR. LUCK: Are you comfortable that the State Fund
17 did everything reasonably possible to identify potential Stavenjord
18 beneficiaries?

19 MS. MCCOY: I think we went over and above.

20 MR. LUCK: Did you encounter any problems in this
21 process that made it impossible or impracticable for the Montana
22 State Fund to identify potential Stavenjord beneficiaries?
23 MS. MCCOY: No. It's simply committing the time.
24 MR. LUCK: Bill, rather than going through all of those
25 questions, are you in agreement, or do you have any disagreement

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10:57 AM 1 with Cris's testimony on that?

2 MR. VISSER: No. I whole-heartedly agree. We
3 learned from --

4 THE COURT: At the end of this whole process I would
5 have loved to have seen the look on your face, Well, I have a few
6 disagreements...

7 MR. VISSER: We learned in past cases that it's a
8 grind, it's monotonous, tedious, but it's the only way to do it. And I
9 think we have done an excellent job so far.

10 MR. LUCK: Are you comfortable that it is not, as a
11 result of working through this process, either impossible or
12 impractical to properly identify potential Stavenjord beneficiaries?

13 MS. VISSER: Well, I think we can do it, and we did it.

14 MR. LUCK: Your Honor, for -- in relation to the

10:58 AM 15 identification, that would be the end of our presentation and maybe a
16 good time for questions or a break or...

17 THE COURT: Okay. If anybody needs a break, we
18 can take a few minutes. Otherwise, why don't -- I've got a few
19 questions. But why don't I let -- Tom, you go ahead with your

20 questions and that, because that might cause me to follow -- bring
21 something else to mind for me.

22 MR. MURPHY: All right. Well, Bill, you've done an
23 excellent job "so far." You said, "So far." You consider this to be a
24 process of identification?

25 MR. VISSER: Well, we have to get the notification

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10:59 AM 1 done.

2 MR. MURPHY: No, we are talking about
3 identification.

4 MR. VISSER: The identification? I think we have the
5 gross population, yes.

6 MR. MURPHY: You know, in the past cases, the
7 common fund cases you have worked on, did you consider it a
8 process of identification moving forward where you'd get a more and
9 more articulate population?

10 MR. VISSER: You use as many searches as you can,
11 combine them, and there is a point where you say, well, this is all I
12 can get. At that point in time you start to eliminate what does not
13 belong there. I think we are over that top and now we are looking at
14 who should be notified, and we have reached the number.

11:00 AM 15 MR. MURPHY: Did you say you worked on the Murer
16 case?

17 MR. VISSER: I inherited Murer about ten years after it
18 was decided, and am studying now the process of the previous
19 handling of the Murer case.

20 MR. MURPHY: Were you involved in the searches

21 done to locate Murer claimants?

22 MR. VISSER: No, I was not.

23 MR. MURPHY: Was that Cris McCoy, then?

24 MR. VISSER: I don't know. Were you?

25 MS. MCCOY: Actually, at that point in time I believe it

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11:00 AM 1 was Sam Heigh who actually undertook the process of
2 identification.

3 MR. MARTELLO: Along with Dave Ogan. I was
4 involved with Murer, but Dave Ogan was the contact person for the
5 searches.

6 MR. MURPHY: Thanks. Cris, can you tell me a
7 common fund case that you were involved in from the start in terms
8 of identifying claimants?

9 MS. MCCOY: Broeker, Buckley, FFR, Flynn, Schmill,
10 Stavenjord.

11 MR. MURPHY: In Broeker did the State Fund come up
12 with all the queries that located the claimants?

13 MS. MCCOY: We actually came up with the queries,
14 Larry Anderson did contract with Dave Gannon to review, based on

11:01 AM 15 his computer expertise, the work produced by our IT person, Dave
16 Ogan.

17 MR. MURPHY: Were there additional claimants
18 identified as a result of Larry Anderson and Mr. Gannon's work?

19 MS. MCCOY: No.

20 MR. MURPHY: Did they review your queries to make
21 suggestions as how to refine your fields that you used?

22 MS. MCCOY: They reviewed the queries for
23 appropriateness and comprehensiveness; and to the best of my
24 knowledge, Mr. Gannon approved of the work Dave Ogan did.

25 MR. MURPHY: Do you know of additional queries that

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11:02 AM 1 were asked as a result of Mr. Gannon's work?

2 MS. MCCOY: Personally, no, I don't.

3 MS. MURPHY: Are you saying that they didn't

4 happen?

5 MS. MCCOY: No, I am saying I personally have no

6 knowledge.

7 MS. MURPHY: Thank you. Do you know if additional

8 queries were formulated as a result of input from either adverse

9 counsel or the court in the Murer case?

10 MS. MCCOY: That, I do not know, no.

11 MR. MURPHY: How about in the FFR case?

12 MS. MCCOY: To be sure I'm understanding your

13 question, did they provide input that resulted in subsequent data

14 runs?

11:03 AM 15 MR. MURPHY: Correct. That's a good way of putting

16 it.

17 MS. MCCOY: No.

18 MR. MURPHY: How about in the Flynn case?

19 MS. MCCOY: No.

20 MR. MURPHY: So each time adverse counsel just
21 accepts the queries that are asked by the State Fund and they don't
22 question whether additional fields should be looked at or additional
23 claimants or files should be looked at?
24 MS. MCCOY: Our work has always been available to
25 each of those attorneys to review, we discuss the processes, and

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11:03 AM 1 they have been satisfied with my work product, yes.

2 MR. MURPHY: Have they ever gone and looked at the
3 manual files themselves?

4 MS. MCCOY: We, as a point of clarification, would not
5 have manual files for them to review. I have always provided
6 plaintiff's counsel with any documentation they wanted to see.

7 MR. MURPHY: For instance, these 348 files that you
8 reviewed, Bill, are those on microfiche? Were they all on
9 microfiche?

10 MR. VISSER: They were on microfiche and I would
11 print them, some pertinent pages in the process.

12 MR. MURPHY: In any of the common fund cases
13 you've worked with, have you sat down with opposing counsel and
14 looked at the files and seen if you agree on what category it should

11:04 AM 15 be in?

16 MR. VISSER: In Pinckard we have had several
17 discussions with opposing counsel, but due to the status of the case
18 it was kind of tough to let counsel look at files. We did discuss
19 processes at length.

20 MR. LUCK: Point of clarification, Tom. Can I just --
21 just a clarification. Are you speaking to identification or
22 implementation issues?

23 MR. MURPHY: I hadn't segregated them out yet. But I
24 think that that's a fair question.

25 MR. VISSER: In Pinckard there was no

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11:05 AM 1 implementation, the whole issue was identification, so...

2 MR. MURPHY: Were there any disagreements with
3 adverse counsel in Pinckard about who was a claimant and who was
4 not?

5 MR. VISSER: I wouldn't call it a disagreement. When
6 I -- I broke them down in categories, since it was kind of a fuzzy
7 topic, the whole class action. And then with counsel on both sides I
8 outlined, okay, this is what I have. And then counsel might have their
9 disagreement, which should be who would and who wouldn't. And to
10 me it would make no difference what counsel decided they wanted
11 in. So, if they wanted group whatever in the population for the
12 mailing, we put them in the mailing.

13 MR. MURPHY: Cris, have you ever personally sat
14 down with claimant's counsel and looked at a particular file and said

11:06 AM 15 this is one we have a disagreement about, in any of the common
16 fund cases you have worked on?

17 MS. MCCOY: If there were any disagreement, we
18 would sit down and have that discussion, or that discussion would
19 involve claimant's counsel and Tom Martello.

20 MR. MURPHY: So, I guess I'm -- that's what I'm trying
21 to get at. How often does that happen? For instance in the Murer
22 case, a case that's spanned I think ten or more years.

23 MS. MCCOY: There were areas of disagreement in
24 Murer, and those were frequently a topic of discussion between Allen
25 McGarvey and Tom Martello.

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11:07 AM 1 MR. MURPHY: What kinds of disagreements did you
2 have?

3 MS. MCCOY: Have I personally had?

4 MR. MURPHY: No, were those that we were just
5 referring to, between Mr. McGarvey and Mr. Martello.

6 MS. MCCOY: An evaluation as to the benefit
7 entitlement.

8 MR. MURPHY: Entitlement issues? Were there any
9 identification issues that were at issue?

10 MS. MCCOY: Not that I was ever made aware of.

11 MR. MURPHY: How about in the other cases?

12 MS. MCCOY: No.

13 MR. MURPHY: Just entitlement issues came up?

14 MS. MCCOY: Periodically.

11:07 AM 15 THE COURT: Cris, if you would, when you are talking
16 about entitlement, just expound on that. Was it specifically -- well,
17 and I'm sure it wasn't the exact same issue, but when you're --
18 define what you mean when you're talking about entitlement issues.

19 MS. MCCOY: As a relevant example, because there

20 was actually only one issue ever raised when we were administrating
21 Fisch, Frost, and Rausch, I had an inquiry from Lon Dale who
22 thought I had miscalculated an entitlement, which of course then in
23 turn would translate into a miscalculation of the fee. I reviewed the
24 information he had sent over where he thought I was in error,
25 pointed out to him where he was in error and my calculation was in

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11:08 AM 1 fact correct, and that was the end of it.

2 MR. MURPHY: You had mentioned -- one of you, I
3 think it was you, Cris, that mentioned that the State Fund is getting
4 better and better at handling these common funds. Is that accurate?

5 MS. MCCOY: I believe that to be true.

6 MR. MURPHY: What makes them better?

7 MS. MCCOY: What makes the State Fund specifically
8 better at doing this?

9 MR. MURPHY: Yeah.

10 MS. MCCOY: We have the experience, the resources,
11 the expertise. As I said before, the knowledge base, the skill sets.

12 MR. VISSER: And practice.

13 MR. MURPHY: You know, one my favorite sayings,
14 Cris and Bill, it's in my desk, it's, judgement comes from an

11:09 AM 15 experience; and experience, well, that comes from bad judgement.

16 Something along those lines. It talks about how we grow and learn
17 from our mistakes. Good judgement comes from experience; and
18 experience, well, that comes from bad judgement.

19 Have you perfected it to the extent that you are not

20 making any more mistakes? Is that what you're testifying?

21 MS. MCCOY: What I am testifying is I believe we have

22 developed an efficient process. Our learning curve was essentially

23 Murer where we were able to see first hand what worked, what

24 doesn't work, and more efficient ways to go about meeting the needs

25 of both the injured workers, the attorneys, the court.

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11:10 AM 1 MS. MURPHY: I think that the former Judge McCarter
2 commented on the multiple hearings in Murer, the arguments about
3 all sorts of things, identification and otherwise, that were
4 encountered between counsel in the Murer case over that ten- or
5 twelve-year period, whatever it was were you a party to any of
6 those?

7 MR. LUCK: I'm going to, just for the record, make an
8 objection. I don't think any of those discussions were in relation to
9 identification. There were a lot of discussions about entitlement
10 issues.

11 MR. MURPHY: Well, I think those discussions are a
12 matter of record.

13 MR. LUCK: Yep, that's right.

14 THE COURT: Yeah.

11:11 AM 15 MR. LUCK: But I just wanted to make sure the record
16 is clear --

17 MR. MURPHY: My question to Cris is --

18 THE COURT: So, we are not talking over each other.

19 So, no, and I think -- and I'm familiar with the language you are

20 referring to in Murer, so, and it is a matter of the record. So go
21 ahead.

22 MR. MURPHY: All I was saying was were you a party
23 to any of those discussions or arguments about all of those things in
24 Murer over that many-year period?

25 MS. MCCOY: I was personally present at some of

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11:11 AM 1 those hearings. I'm not sure what constitutes all those things over
2 the years.

3 MR. MURPHY: What were the issues that you
4 remember being argued about in Murer?

5 MS. MCCOY: Specifically how to appropriately adjust
6 and settle files and what parameters would be pertinent to those.
7 There were one or two file-by-file discussions of benefit entitlements
8 that we were able -- unable to resolve independently. I personally
9 don't recall any specific issues raised by Allen McGarvey regarding
10 our notification process.

11 MR. MURPHY: As I understand it, Mr. Luck is
12 suggesting that only State Fund experts are able to comment on this
13 search that was done in the Stavenjord case. Is that what you're
14 testifying?

11:12 AM 15 MS. MCCOY: We are in the best position to comment
16 on our capabilities, yes.

17 MS. MURPHY: Are you testifying that there is no one
18 else that could comment about your capability or your search --

19 MS. MCCOY: Such as?

20 MR. MURPHY: Another expert?

21 MS. MCCOY: Outside of the State Fund?

22 MR. MURPHY: Correct.

23 MS. MCCOY: It would be my belief that it would not be
24 as informed as ours is.

25 MR. MURPHY: Do you believe that your expertise is

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11:13 AM 1 necessary to conclude that there are this many claimants?

2 MS. MCCOY: In this particular instance, yes, I do. An
3 identification process is more than a simple query.

4 MR. MURPHY: In the law I think we define an expert
5 as somebody that will assist the trier of fact to understand the issues
6 at hand. Would you say that an expert with that definition is
7 necessary in this case?

8 MS. MCCOY: I'm not sure I understand the question.

9 MR. MURPHY: Is there -- is an expert necessary here
10 to assist the trier of fact in determining who is and who is not a
11 Stavenjord claimant?

12 MS. MCCOY: Again, if I'm understanding your
13 question, and I don't believe I am, are you asking whether Judge
14 Shea requires an expert to make that determination?

11:14 AM 15 MR. MURPHY: I suppose you could answer that
16 question, yes, how would you answer that question?

17 MS. MCCOY: I think he can rely on us to fill that
18 need.

19 MS. MURPHY: Because you're experts?

20 MS. MCCOY: As qualified, yes.

21 MR. MURPHY: And you don't think there's any other
22 expert available that could give the same quality of opinion?

23 MS. MCCOY: Again, we are talking strictly outside of
24 the State Fund organization? Yes? No?

25 MR. MURPHY: To identify these same -- I'm sorry --

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11:14 AM 1 THE COURT: It may not be clear, because we're not
2 picking up inflection on the written transcript. I think Cris was asking
3 for clarification whether another expert, and I think you thought she
4 was answering the question. Am I correct there?

5 MS. MCCOY: That was how I would characterize it,
6 yes.

7 THE COURT: Yeah. So, maybe, Julie, can you go
8 back and read what Tom's last question was to Cris and what her
9 response in seeking a clarification as to what he was asking was?

10

11 (Record read.)

12

13 MR. MURPHY: Thank you. I didn't realize you didn't
14 answer the question. I was really just trying to find out if you think

11:16 AM 15 there's another expert that might have some input into this
16 complicated issue.

17 MS. MCCOY: There might be such an individual within
18 the State Fund organization, which is why I asked for the
19 clarification, if it pertained to individuals or potential experts outside

20 of our organization. Outside of our organization, my answer would
21 remain the same. I would still feel I am in a better position, Bill is in
22 a better position to provide that type of expertise than someone from
23 the outside.

24 MR. MURPHY: I guess I'm just brand new to the whole
25 list thing. It looks like it takes quite a bit of expertise to figure out

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11:17 AM 1 what kind of fields to use and which kind of exclusions to exclude
2 and so forth. That takes expertise, is that your testimony?

3 MS. MCCOY: At least some knowledge of operating
4 systems, yes.

5 MR. MURPHY: Well, for instance, how many fields are
6 there? If we were to pick different fields, how many were there
7 available to use?

8 MS. MCCOY: In the overall within the claim
9 management system, or are we talking about individual?

10 MR. MURPHY: Well, we'll talk about both, combined.
11 How many fields are there?

12 MS. MCCOY: Literally thousands.

13 MR. MURPHY: Do we have a printout of how many
14 fields there are? Could I look at every one of them in every

11:17 AM 15 category?

16 MS. MCCOY: It could be provided to you, yes.

17 MR. MURPHY: How long would that take to provide?

18 MS. MCCOY: That, I couldn't tell, I would have to
19 request that through IT.

20 MR. MURPHY: And then if there was an expert that
21 knew what each of those fields was, that person, he or she, could
22 say, hey, I think you should run this field and not that field, use this
23 exclusion, not that one. That's possible, right?
24 MS. MCCOY: They may come to a different conclusion
25 or opinion than we do, yes.

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11:18 AM 1 MR. MURPHY: That takes expertise to choose those
2 fields, to chose which ones to include and which ones not, right?

3 MS. MCCOY: It does. And simply reading data fields
4 does not suggest you have the requisite expertise to then translate
5 that into a query that brings you back a valid incomprehensive data
6 run.

7 MR. MURPHY: I agree. My point is that it takes
8 expertise to do this. Your point is that you don't need one from
9 outside the State Fund?

10 MS. MCCOY: No. I believe my point was I believe we
11 already possess that requisite expertise.

12 MR. MURPHY: Has any of the interaction that you've
13 had with adverse counsel in any of the other common fund cases
14 resulted in additional claimants being located?

11:19 AM 15 MS. MCCOY: No.

16 MR. MURPHY: You mentioned that you do quality
17 assurance in some of these searches, did you notice any quality
18 assurance problems?

19 MS. MCCOY: On occasion, yes, I do.

20 MR. MURPHY: What were the kind of quality problems
21 that you were noticing?

22 MS. MCCOY: As an example, where I have done
23 some prospective over site. Perhaps six months to a year out there
24 were instances where I found improper calculations of the primary
25 insurance amount contrary to Broeker. Those were remedied, the

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11:19 AM 1 unpayments made to the injured workers.

2 MR. MURPHY: Did you find any cases that were
3 miscategorized?

4 MS. MCCOY: I'm sorry, miscategorized in what fashion
5 in relation to the common fund?

6 MR. MURPHY: Categorized, for instance, as injury
7 when they should have been OD, or they were categorized as OD
8 when they should have been categorized as injury?

9 MS. MCCOY: I have found those instances, yes.

10 MR. MURPHY: Did you find that in your quality
11 assurance run here during your second -- I think you called it your
12 second run? Your second search?

13 MR. LUCK: Point of clarification?

14 MR. MURPHY: I'll re-ask the question. Did you find

11:20 AM 15 any miscategorizations on your second search?

16 MR. LUCK: Your Honor, could I -- could I just interpose
17 a question?

18 THE COURT: Yeah, go ahead.

19 MR. LUCK: As I recall the testimony, the quality

20 assurance runs were on -- in that situation, at least a couple of years
21 beyond the entitlement date. And I'm just curious whether he's
22 talking about quality assurance issues that would be involved in the
23 Stavenjord potential beneficiary population, or those that would be a
24 year or two beyond the deadline. Two different populations, that's
25 why I wanted the clarification.

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11:21 AM 1 MR. MURPHY: Respectfully, Judge, I don't think that
2 clarifies anything. I'm just asking her if she found any that were
3 miscategorized.

4 THE COURT: Well, actually, I had kind of the same
5 thought in my own mind. And if I -- and maybe I'm kind of mixing
6 terms or I misunderstood, too, but when I thought -- I think the
7 quality assurance answer came up within the context of in response
8 to my question as to why you did these searches to the date of the
9 run and didn't end them on May 22nd, 2001. And I think it was that
10 the post-May 22nd, 2001 searches were done as a quality
11 assurance tool to determine that prospectively that these files were
12 being -- that the claims were being handled in accordance with
13 Schmill and Stavenjord; is that --

14 MS. MCCOY: That's correct.

11:22 AM 15 THE COURT: On a future basis -- and, Tom, just
16 because this was my -- I had this kind of question in my own mind
17 when you were asking this. When we are talking about quality
18 assurance, that's what I thought it was limited to. Maybe -- and I'm
19 not trying to ask your question for you, Tom, I'm just -- but I actually

20 -- since we are on this, I actually did have this question as it
21 pertained to the quality assurance time period, the post-May 22nd,
22 2001 moving forward, for whatever benefit this may be, did you
23 come across any files that were not being handled consistent with
24 the Stavenjord and Schmill directives?

25 MS. MCCOY: I did find a few instances fairly early into

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11:23 AM 1 the prospective period where files had been closed, when I was
2 reviewing the file for compliance.

3 THE COURT: Okay.

4 MS. MCCOY: I would find, as an example, an
5 impairment award documented to the file that had never been paid.
6 In those instances, which is part of why we also do the prospective
7 over site, I would take care of that particular issue so that it would be
8 in compliance, insured that the injured worker received their whole
9 award. And then we would close the file.

10 THE COURT: When you were saying like in those
11 instances, are we talking about, then, the -- these were people who
12 didn't fall within the Stavenjord or Schmill time periods but they were
13 part of the quality assurance period, the post- --

14 MS. MCCOY: The prospective period?

11:24 AM 15 THE COURT: Right.

16 MS. MCCOY: Yes.

17 THE COURT: Okay. Thank you. Tom, go ahead.

18 MR. MURPHY: What I was getting at, Cris, was that it
19 is something that happens, that cases are miscategorized.

20 Sometimes they are categorized as OD when they are not, and
21 sometimes they're categorized as injury when they are not; is that
22 correct?

23 MS. MCCOY: That is true.

24 MR. MURPHY: And you found instances of that, it
25 doesn't matter which time period?

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11:24 AM 1 MS. MCCOY: I have.

2 MR. MURPHY: Has that been true of the State Fund's
3 work all the way through, including the time period that's relevant to
4 Stavenjord?

5 MS. MCCOY: There have been isolated instances that
6 would be categorized as miscoded, but generally Bill and I review
7 more than a simple claim classification to determine what should be
8 the appropriate classification. And when we do in fact encounter
9 these coding errors, we fix them as we find them.

10 MR. MURPHY: And I appreciate that.

11 Bill, of the 348 cases that you manually reviewed, were
12 any of them miscategorized?

13 MR. VISSER: We caught them in the net of the query.

14 So there were potential Stavenjord. There were injuries in there.

11:25 AM 15 How many were classified as an OD and were injuries, or vice versa,

16 I can't tell you without going back into them.

17 MR. MURPHY: I'm just asking if there were

18 mischaracterizations.

19 THE COURT: Let him finish there and then go ahead

20 and follow up.

21 MR. VISSER: I looked at the copy of the file, I did not
22 look at the database. So what was an OD, was on the OD list and
23 what was on the injury list, so I did not search back into the system
24 to find out how they were classified. So I can't give you an exact
25 answer. If there were some, that could very well be, since it was an

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11:26 AM 1 overbroad search from the beginning.

2 MR. MURPHY: I think your answer was, it could well
3 be that they were miscategorized, but I don't know. Is that what you
4 said to me?

5 MR. VISSER: I didn't verify on the system. I looked at
6 the hard copy of the file. From the microfiche. On others, I looked
7 at the system and yes, if they are not classified properly, we'd
8 change them.

9 MR. MURPHY: Did you change any?

10 MR. VISSER: Out of those 348, no.

11 THE COURT: So Bill, if I understand your answer,
12 then, because these were manual review -- the ones that were an
13 electronic review, you were, I guess, already in the system so you
14 would change the code. The 348, since it was a manual review, you

11:27 AM 15 were just looking factually on that review to make a determination,
16 OD or injury. And you would make that determination, and it would
17 either, if it was OD, go on the list, but you weren't in the system
18 because it was a manual review so you didn't change the code in the
19 system?

20 MR. VISSER: Right.

21 THE COURT: All right.

22 MR. MURPHY: Did you determine if there were any
23 occupational diseases that were superimposed on previous injury
24 claims?

25 MR. VISSER: I didn't look at the whole body of work of

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11:28 AM 1 the claimant, how many claims he had and whether or not one
2 related to the other. We look at the individual claim, is it an OD, is it
3 an injury? Does it fall under Stavenjord or doesn't it? So, your
4 question relates to did we grab every claim from this person, or...

5 MR. MURPHY: Yes, that's a starting point. Did you
6 grab every claim from that person?

7 MR. VISSER: No, we took whatever came up on the
8 query and started to look for them.

9 MR. MURPHY: Then looking at Page 4 of Exhibit 1,
10 these are the codes for injury and -- the code for injury, medical only,
11 new claims, active wage loss. How many other codes are there,
12 how many other numbers are there?

13 MS. MCCOY: There was an 05, which was, I believe,
14 unemployment -- or not unemployment, UEF.

11:30 AM 15 MR. VISSER: Uninsured -- Yes.

16 MS. MCCOY: There was a 10, which was a closed
17 wage loss.

18 MR. VISSER: Was there a 9, too?

19 MS. MCCOY: Yeah. A 9 was a pending -- you know,

20 still not set up in the system. An incident report, if you will. Are the
21 ones I can recollect, off the top of my head.

22 MR. MURPHY: This isn't a situation where we might
23 have thousands of numbers?

24 MS. MCCOY: No.

25 MR. MURPHY: Just five or ten, maybe.

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11:31 AM 1 MS. MCCOY: It was a very limited system.

2 MR. MURPHY: The number 9 would be for something
3 that you had an incident report on but no file was set up?

4 MS. MCCOY: As I recall.

5 MR. MURPHY: Did your query look for the number 9s?

6 MS. MCCOY: No.

7 MR. MURPHY: What about a number 9 which was an
8 occupational disease?

9 MS. MCCOY: It wouldn't have that designation. It has
10 -- in order to be a valid claim, it would need to move to one of the
11 other statuses, and we would pick it up at that point.

12 MR. MURPHY: In other words, the State Fund needed
13 to make a calculation as to what kind of claim this was and pursue it
14 a little farther before it was a valid claim, in the State Fund's opinion?

11:31 AM 15 MS. MCCOY: Or perhaps the valid claim had yet to be
16 filed, it was simply an incident report.

17 MR. MURPHY: In my head I'm thinking incident report
18 means claim.

19 MS. MCCOY: Not necessarily.

20 MR. MURPHY: A claim -- what do they call that?

21 Claim form.

22 MS. MCCOY: And I understand your prospective on
23 that, Tom, but that is not what an 09 designated. An actual claim
24 form would be set up as a claim.

25 MR. MURPHY: How could you have a claim without a

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11:32 AM 1 claim form?

2 MS. MCCOY: A medical bill that came in.

3 MR. MURPHY: Would you ever consider an 09

4 designation involving something that would be a claim form?

5 MS. MCCOY: I'm sorry?

6 MR. MURPHY: Like a letter saying I got hurt, I got hurt

7 yesterday working for my boss and I hurt my back. That's a claim

8 form in my opinion.

9 MS. MCCOY: And it would be in ours, as well. If there

10 is sufficient information to indicate that an on-the-job injury has

11 occurred and we know who and what employer, it technically is a

12 valid claim. We never insisted it absolutely had to be on the Division

13 claim form. But an 09 does not meet that qualification.

14 MR. MURPHY: 09 means that there is not an

11:33 AM 15 adequate claim form?

16 MS. MCCOY: That may be a better explanation of it.

17 MR. MURPHY: Do you know of any exceptions to that

18 explanation?

19 MS. MCCOY: Not that I recall, no.

20 MR. MURPHY: In your initial search, can you tell me

21 who was involved in that?

22 MS. MCCOY: In what aspect, please?

23 MR. MURPHY: What State Fund employees worked

24 on the initial search? Who? If you could remember their names,

25 please.

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11:34 AM 1 MS. MCCOY: Bill Visser and Cris McCoy.

2 MR. MURPHY: I think that you had mentioned an IT
3 person.

4 MS. MCCOY: Yes. We developed the initial search
5 criteria, that was then passed to Dave Ogan who is one of our IT
6 programmers, and he would run the actual queries against the
7 database.

8 MR. MURPHY: How long does it take to run a query?

9 MS. MCCOY: The one time we did time it on the -- I
10 believe it was the initial Stavenjord run of 2004, it was somewhere
11 between four and eight hours to formulate and run that query.

12 MR. MURPHY: Were there any other State Fund
13 employees or agents that helped you with the initial search, other
14 than the three that you identified?

11:34 AM 15 MS. MCCOY: No.

16 MR. MURPHY: How about the second search?

17 MS. MCCOY: We -- in formulating the query?

18 MR. MURPHY: No. In working on it in any aspect?

19 MS. MCCOY: On any level? We did have some

20 temporary assistance in the review process from Chuck Edwards.

21 MR. MURPHY: That answer, does it refer to the initial

22 search, or the second search?

23 MS. MCCOY: No, sir, it's the 2005.

24 MR. MURPHY: That's the second search, June 14,

25 '05?

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11:35 AM 1 MS. MCCOY: Yes.

2 MR. MURPHY: Did anybody else help in the first
3 search, the initial?

4 MS. MCCOY: No, that was Bill and I.

5 MR. MURPHY: And then in the second search it was
6 Bill and you, was Dave involved again?

7 MS. MCCOY: Dave ran the query.

8 MR. MURPHY: And Chuck Edquest. Did anyone else
9 have any involvement in the second search?

10 MS. MCCOY: No.

11 MR. MURPHY: No one gave any other input?

12 MS. MCCOY: No.

13 THE COURT: Cris, let me ask you a question on that
14 same thing. And now I can't remember where it came up in the

11:36 AM 15 presentation, but the internal actuary, Dan Gengler?

16 MS. MCCOY: Yes.

17 THE COURT: Is that right? What was his function or
18 his role?

19 MS. MCCOY: Dan was not specifically involved in

20 either of the two data runs that we referenced, the 2004 and the
21 2005. Dan ran his own independent query using Data Warehouse --
22 THE COURT: Oh, that's right.
23 MS. MCCOY: -- Which feeds off of our systems.
24 THE COURT: Right. Okay. I had forgotten that that
25 was the answer.

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11:36 AM 1 MR. MURPHY: Following the same line, with regard
2 beyond the common funds, has anyone else at the State Fund been
3 involved in the initial queries, these searches?

4 MS. MCCOY: Through the years. Initially in Broeker
5 there were more individuals involved.

6 MR. MURPHY: Who were the individuals in Broeker?

7 MS. MCCOY: At that point in time Lucinda Dixon.
8 L-U-C-I-N-D-A.

9 MR. MURPHY: Anybody else?

10 MS. MCCOY: I believe Hank may have had some
11 involvement, and give me a minute and I'll remember his last name.

12 MR. VISSER: Worchek.

13 MS. MCCOY: Thank you. W-0-R-C-H-E-K? S-C-H?

14 MR. VISSER: It starts with W-0-R.

11:37 AM 15 MR. MURPHY: I'm just looking for other employees
16 that have helped formulate searches like the ones that you did in the
17 initial and second search in the Stavenjord case.

18 MS. MCCOY: I believe those two individuals were
19 involved in Broeker. Lucinda may have had input into Murer, but I

20 couldn't swear to it.

21 MR. MURPHY: How about the other common fund

22 cases, anybody else involved in the searches?

23 MS. MCCOY: No.

24 MR. MURPHY: This independent run that Mr. Gengler

25 ran, did you ask him to run that?

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11:38 AM 1 MS. MCCOY: No.

2 MR. MURPHY: Why did he do it, then?

3 MS. MCCOY: I would assume for his purposes.

4 MR. MURPHY: What are his purposes that are
5 searched?

6 MS. MCCOY: He's the internal actuary.

7 MR. MURPHY: So this was when we were trying to
8 determine the value of Stavenjord?

9 MS. MCCOY: Possibly. It was not discussed with me
10 personally.

11 MR. MURPHY: How is it that he shared with you his
12 results?

13 MS. MCCOY: Because we work for the same
14 organization.

11:38 AM 15 MR. MURPHY: Does he have the same expertise as
16 you-all in terms of determining what kind of search queries to use,
17 what fields and so forth?

18 MS. MCCOY: Dan would have expertise to the same
19 extent in the claims arena as Bill and I, I would probably have to say

20 no, anymore than I would be able to apply my expertise to the
21 actuary fields.

22 MR. MURPHY: Do you know if Mr. Gengler ran similar
23 internal audits of the other common fund cases?

24 MS. MCCOY: That, I have no personal knowledge of
25 it. I don't know if he did or did not.

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11:39 AM 1 MR. MURPHY: Has he shared with you any other of
2 his independent runs in any of the other cases?

3 MS. MCCOY: My recollection is that it is generally Bill
4 and I feeding information to Dan as a more reliable source.

5 MR. MURPHY: Bill, how long did it take to review the
6 348 cases?

7 MR. VISSER: Oh, roughly I think it was closer to three
8 weeks than two.

9 MR. MURPHY: Would that be each day, or how many
10 hours would you say per week?

11 MR. VISSER: Maybe 30 a week.

12 MR. MURPHY: So maybe 90 hours total; is that fair?
13 Or is that too high?

14 MR. VISSER: No, probably a fair estimate.

11:40 AM 15 THE COURT: Bill, I'm assuming some of them -- and if
16 I'm picturing -- you said these microfiche are stored on cards,
17 correct?

18 MR. VISSER: Yes.

19 THE COURT: So is it one card would be a file with

20 multiple pages?

21 MR. VISSER: No. There might be 12 to 15 of these
22 microfiche pages being one envelope, and each has 25 pictures on
23 it.

24 THE COURT: Okay.

25 MR. VISSER: Sometimes part of a file is a microfiche,

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11:41 AM 1 later the file comes alive, other data are in different platforms so you
2 have to get the whole body of work here.

3 THE COURT: Sure.

4 MR. VISSER: And you know, there are interruptions.

5 And I would say a work file takes ten minutes, but sometimes it takes
6 you more than an hour.

7 THE COURT: That was going to be my next question.

8 But some of them you might -- in the first few pages there might be
9 something that's clearly going to identify it as an OD or not and --

10 MR. VISSER: Yes. You are done.

11 THE COURT: Then others you are just going to have
12 to keep looking until you find something. Were there any that you
13 looked at that you just flat out weren't able to make a determination?

14 MR. VISSER: Well, we threw them in a mailing list,

11:42 AM 15 there were two of them.

16 THE COURT: Two that --

17 MR. VISSER: Yeah. That we couldn't find a hard file

18 and there was nothing on the electronic fields and there was not

19 sufficient information on the microfiche. We had similar problems in

20 Pinckard, and the consensus was when in doubt, they go in the
21 mailing list.

22 THE COURT: Okay. Thank you.

23 MR. MURPHY: Does the Montana State Fund only
24 have one record person?

25 MR. VISSER: Right now? Yes. We used to have an

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11:43 AM 1 army; but since everything is optical disk now we only need one.

2 MR. MURPHY: How about to get microfiches, how
3 hard is that for you to get the microfiche?

4 MR. VISSER: I call that record person; and what
5 magic he does with other departments where he gets them from, I
6 really have no idea. But a few days later I get them.

7 MR. MURPHY: Are these all copied then onto paper?
8 Is that how --

9 MR. VISSER: No, no, they come in microfiche form.

10 MR. MURPHY: So they don't have to be copied onto
11 pages?

12 MR. VISSER: No.

13 MR. MURPHY: In any of the common fund cases,
14 Cris, I understand that some of them you did advertising on the

11:44 AM 15 television and the newspaper and the radio, those kinds of things?

16 MS. MCCOY: No. The only common fund where we
17 advertised was Broeker, given our lack of information between the
18 years 1975 and 1983. Because we didn't bring up DB02 till '83. And
19 we did newspaper advertising.

20 MR. MURPHY: That was to locate additional
21 claimants?

22 MS. MCCOY: Yes.

23 MR. MURPHY: Did you locate any?

24 MS. MCCOY: We got some responses, yes.

25 MR. MURPHY: Are you anticipating doing that here in

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11:44 AM 1 the Stavenjord case?

2 MS. MCCOY: We didn't feel that it's probably going to
3 be necessary, because the information we would require is available.
4 The '75 to '83 period the files are gone, there's no fiche, there's no
5 electronic track. That was the obstacle there.

6 MR. MURPHY: Did any of the people that stepped
7 forward as a result of that advertising have dates of claims that were
8 after '83?

9 MS. MCCOY: Actually, some of the people who did in
10 fact respond to the newspaper advertisement we had already
11 identified.

12 MR. MURPHY: My question was, were any of them
13 after 1983?

14 MS. MCCOY: Some, yes.

11:45 AM 15 MS. MURPHY: Had you identified them prior to that?

16 MS. MCCOY: Yes.

17 MR. MURPHY: Had you identified them all prior to
18 that?

19 MS. MCCOY: We didn't specifically track that

20 particular piece of information, so I really couldn't tell you with any
21 degree of accuracy.

22 MR. MURPHY: The Data Warehouse program that Mr.
23 Gengler used, you said it has a different capability. What is that?
24 Can you describe that different capability to me?

25 MS. MCCOY: Within my limited knowledge and

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11:46 AM 1 experience with Data Warehouse, since I tend to go more directly to
2 the system, it is primarily designed for report functions. And it has a
3 little more flexibility, slice-and-dice information.

4 MR. MURPHY: "Slice-and-dice" being like what fields
5 to use, which exclusions to use and so forth?

6 MS. MCCOY: It allows more flexibility for management
7 to create individual ad hoc reports.

8 MR. MURPHY: I hear you saying that it produces a
9 more specific report.

10 MS. MCCOY: No. What you hear me saying is my
11 direct experience with Data Warehouse is extremely limited.

12 MR. MURPHY: Do you think we have fully utilized
13 Data Warehouse's ability to find Stavenjord claimants in this case?

14 MS. MCCOY: I don't think Data Warehouse adds

11:47 AM 15 anything over and above the operating systems we have in place,
16 given that the information that feeds Data Warehouse comes from
17 our operating systems.

18 MR. MURPHY: But the queries that we are asking,
19 these are slice-and-dice queries and I think you just told me that

20 Data Warehouse has a better ability to do that?

21 MS. MCCOY: It has that capability. I never said it was
22 better than what I can derive with a query going directly into the
23 system.

24 MR. MURPHY: Looking at your second search, Page
25 11, the screen at the bottom it says, "At the time, 751 files were

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11:49 AM 1 excluded as injuries." You see where I am talking about there?

2 MS. MCCOY: Yes.

3 MR. MURPHY: Were those all -- were those excluded
4 because they were improperly included, or were they excluded
5 because they were improperly categorized?

6 MS. MCCOY: No. They were included initially
7 because our search parameters were, by design, overly broad.
8 Once the individual claims were reviewed, it was determined these
9 particular files, even though they had met at least one of the search
10 criteria, were in fact injuries and should be legitimately excluded.

11 MR. MURPHY: Have you ever been involved in a case
12 where there was a contest as to whether it was an injury or an OD?

13 MS. MCCOY: My hesitation is on the word "contest."

14 MR. MURPHY: How about a legal dispute with a

11:50 AM 15 competent lawyer on the other side?

16 MS. MCCOY: Now that, I'm more familiar with, yes.

17 THE COURT: Now her hesitation is --

18 MR. MURPHY: Well, that's the thing. That's the thing,
19 Cris, I mean, we used to fight about this all the time. In fact, when

20 the limitation was 10,000 for PPD, everybody tried to make it an
21 injury. And now they are going to be trying to make it OD and there's
22 a question as to which is which. I'm trying to figure out how many we
23 are going to have in the flux there.

24 MS. MCCOY: And the question to me is?

25 MR. MURPHY: Exactly. Do you agree that that

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11:50 AM 1 contest happened quite frequently during the time period in
2 question?

3 MS. MCCOY: Again, I wouldn't personally have
4 categorized it as a contest. Were there disagreements in terms of
5 how we interpreted facts between myself and claimant's counsel?
6 Of course.

7 MR. MURPHY: Judge, given the fact that this is not an
8 evidentiary hearing where you're taking objections and full testimony
9 from our side, I'll reserve any questions that I have for a future date,
10 if the Court allows.

11 THE COURT: Okay. Why don't we -- it's ten to twelve.
12 We have got to talk about now the notification. What is -- well, first --
13 I should ask you first, you're the one sitting here typing. What is the
14 preference, I guess, and I'd try to get some sense of what we might

11:52 AM 15 be thinking time-wise, whether we push on, take a few minutes, just
16 push on, or grab some lunch, come back and do the notification?

17 MR. LUCK: My sense, Your Honor, is that we can get
18 through the notification explanation in just a few minutes.

19 THE COURT: Oh, okay. Why don't we take about five

20 minutes, then, so we can just --

21 MR. LUCK: And it frankly is not a lot more than we put

22 in our report, then subject to any question on detail.

23 THE COURT: Okay. Great. Thank you.

24

25 (A brief recess was taken.)

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12:00 AM 1

2 THE COURT: You want to go back on the record?

3 Okay. Brad, why don't we proceed on, then, to the

4 notification.

5 MR. LUCK: Your Honor, can I ask one clarifying

6 question in relation to one of Mr. Murphy's questions?

7 THE COURT: Sure. Yeah.

8 MR. LUCK: Cris, in the situation where there might

9 have been a legal issue between the claimant and the State Fund in

10 relation to classifying the case, his claim as an injury or an OD,

11 would that create some margin of error or problem with the search,

12 that we have discussed in relation to Stavenjord beneficiaries, or

13 your results?

14 MS. MCCOY: As a practical consideration for what Bill

12:05 AM 15 and I are doing, it would not. If it tripped one of the triggers that we

16 have put out there in the query, come onto the list, we would have

17 reviewed that file anyway. Determined the facts, perhaps noted that

18 there were issues associated with the file, but still make a

19 determination based on those facts whether to include or exclude.

20 MR. LUCK: Was that any -- was that a significant
21 issue in relation to working through the files and making up this
22 potential Stavenjord list?

23 MS. MCCOY: Not for us, no.

24 MR. LUCK: I want to get to and work through the
25 notification matters. I think we can do that quite quickly.

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12:06 AM 1 And Your Honor, we have marked for identification
2 purposes Exhibit No. 2. And that's a document that would be a form
3 to work from in relation to the notification that we are talking about.

4 Bill, can you very briefly explain what the plan is for
5 giving notification for people identified for this potential entitlement
6 list from the State Fund?

7 MR. VISSER: Yeah. We intend to send the letter,
8 questionnaire to the final group that falls into Stavenjord claimants.
9 The process will be similar to Pinckard. I don't think we have made
10 a firm decision yet to search for current addresses first and then
11 mail, or mail to the last-known address. Either way, on return as
12 undeliverable we will use search engines like Lexus/Nexus, Merlin to
13 find more current addresses and e-mail. All of that will be kept track
14 of when the first mailing was done, then returned, and second

12:07 AM 15 mailing was done. And in that fashion we'll try to reach all of them.

16 MR. LUCK: Let's stop at that point. The State Fund
17 will send out a letter approved by the Court. A suggestion or a letter
18 used for later claimants is Exhibit No. 2 for reference purposes; is
19 that correct?

20 MR. VISSER: Correct.

21 MR. LUCK: When and if letters are returned, then they

22 will go through the process identified in the report working up to the

23 fee process involved in the Merlin web site to -- in order to find the

24 best available address?

25 MR. VISSER: Yes.

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12:08 AM 1 MR. LUCK: To the extent after all those processes are
2 completed and there is any additional unlocated claimant, then the
3 intention is to report that to the Court for further direction?

4 MR. VISSER: Correct.

5 MR. LUCK: In terms of review, and I don't want to go
6 too far into implementation, but just to complete the circle, what is
7 the intention in relation to the State Fund, Cris, in terms of ongoing
8 work at this point working off the notification list?

9 MS. MCCOY: If I understood the question correctly,
10 our primary focus right at the moment is more in relation to Schmill
11 files; but if there are Stavenjord issues noted on the file during the
12 Schmill review, we note it, and in appropriate instances we have
13 made the decision and have been, if the undisputed liability award is
14 already documented to the file, insuring that that is being timely

12:09 AM 15 paid.

16 MR. LUCK: I did ask a very bad question that wasn't
17 very clear. The idea here is we're -- the State Fund intends to send
18 notice to everybody on the final notice list, follow up on any returns
19 for bad addresses. But following that notification approved by the

20 Court, will there be a review of the files on the notification list for
21 entitlement issues?

22 MS. MCCOY: Yes.

23 MR. LUCK: Is it also the plan to review those files
24 whether they get a response from the claimant or not?

25 MS. MCCOY: It is our intent.

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12:10 AM 1 MR. LUCK: And then to notify everybody on the
2 notification list of the results of that review after it is completed?

3 MS. MCCOY: Our intent is to advise applicable
4 claimants what information we have that supports an entitlement,
5 since they also have an opportunity and a right to dispute our
6 assessment, and also advise them of any deficient information on
7 the file that we would require to determine any additional
8 entitlements so they can act on that.

9 MR. LUCK: For the notification process, however, the
10 plan is to utilize the final notification list, get those notices out, and
11 then double-check them with available resources on -- for last-known
12 -- for updated addresses as necessary?

13 MS. MCCOY: Yes.

14 MR. LUCK: Is there anything about the notification
15 process that would indicate to you that it's impossible or
16 impracticable to get notice out to potential Stavenjord beneficiaries?

17 MS. MCCOY: No.

18 MR. LUCK: I have no further questions. Thank you,
19 Your Honor.

20 THE COURT: Cris, let me ask you real quick. In terms
21 of the notification that you're planning to use for Stavenjord, how, if
22 at all, does it differ from the process that was used in past common
23 fund cases?

24 MS. MCCOY: Each one potentially is handled
25 differently. As an example, in Murer we did do a mass mailing for

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12:11 AM 1 notification purposes to everyone who was on the Murer list. In
2 Broecker we also did a certain level of mass mailing augmented with
3 advertisement inviting people to contact us. In FFR we did do a
4 specific notification process based on the data runs we had done,
5 which were then reviewed by FFR counsel. Those were approved
6 and we simply moved forward with working the files.

7 If there were deficient information, i.e., an impairment
8 award on some that we thought should be entitled, the State Fund
9 took the lead on obtaining that information coordinating it with that
10 claimant.

11 THE COURT: What about -- and this I guess kind of
12 goes to both identification and notification, but in the original -- well, I
13 guess it wouldn't -- in the Stavenjord decision, the 2006 MT 257,
14 prior to the rehearing denial, but Stavenjord II, I guess the second

12:13 AM 15 trip up, there was -- addressing the -- at Paragraph 27 about -- this is
16 dicta, I guess, but it does -- where the court addressed, "Bears
17 noting that many of these claimants are represented by counsel and
18 will require further assistance from their attorneys." And I
19 understand from the filings, and for purposes of this conference,

20 there is a contention as to how many of them are. But I guess from
21 an identification standpoint, as well as a notification, what is the plan
22 or the intention if there is -- in the identification I'm assuming
23 somewhere in the -- we didn't talk about this, but I'm assuming there
24 isn't a field there that says if they are represented by counsel, and if
25 so who; is that correct?

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12:14 AM 1 MS. MCCOY: Actually there is.

2 THE COURT: There is.

3 MS. MCCOY: Yes.

4 THE COURT: So what would be the plan on claimants

5 who are potential Stavenjord beneficiaries that it has been identified

6 that they were represented by counsel? Would a notification be sent

7 to the counsel, as well, or just to the claimant and rely on the

8 claimant to then bring it to his or her attorney if they so desire? Or is

9 that -- are there any plans to address that one way or the other?

10 MS. MCCOY: Well, absent direction to the contrary,

11 we would likely stay consistent with our organizational practice with

12 represented claimants, the communication is directed to the attorney

13 with a copy to the claimant.

14 THE COURT: Gotcha. Okay. This was actually a note

12:15 AM 15 I had made for myself before we even came here, so, and I think you

16 probably covered it. But, in going through the original -- I guess the

17 Stavenjord II opinion there was a reference about the parties

18 stipulate it may be necessary for claimant's claim files to be updated

19 or augmented in order to determine what PPD benefits each

20 claimant is due under Stavenjord I. And I understand that that's
21 more a determination of the amounts, I think, is what the court was
22 referring to there, as opposed to identification or notification. But
23 what, if any, has it been identified any augmentation or update of the
24 claims files that has been necessary, or is that -- we are not at the
25 stage yet because you are not at a specific calculation yet?

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12:16 AM 1 MS. MCCOY: What I would have interpreted that as is
2 deficient information and what plan we would have for remedying
3 that situation. Which is the focus behind the questionnaire we
4 developed.

5 THE COURT: Which is Exhibit 2.

6 MS. MCCOY: Exactly. To solicit input from the
7 claimant, who is the best source of their personal information, as a
8 place for us to begin.

9 THE COURT: Okay. Tom, do you have any questions?

10 MR. MURPHY: Yes, a few.

11 Cris, you said you have a field to determine how many
12 claimants are represented?

13 MS. MCCOY: We have a field that contains
14 information, if there is attorney representation, what it contains is the
15 name.

16 MR. MURPHY: What percentage of these claimants
17 are represented?

18 MS. MCCOY: We did track that, but I didn't specifically
19 run the numbers to determine a percentage.

20 MR. MURPHY: Do you have an estimate?

21 MS. MCCOY: It will be not as precise as I prefer to be,

22 but my guesstimate would be in the 30 to 40 percent range.

23 MR. MURPHY: 30 to 40 percent are represented?

24 MS. MCCOY: Over that span of years.

25 MR. MURPHY: How long would it take the State Fund

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12:17 AM 1 to run a query to tell us exactly what percentage of this number are
2 represented?

3 MS. MCCOY: Your best source of information for that
4 determination is actually in the manual review process. Our
5 experience, again, because of limitations in DB02 where that
6 information was not available to adjustors so it did not convert into
7 CMS, is likely to be under counted.

8 MR. MURPHY: I have one catch-up question which
9 might be more towards the older part. But I was noticing that we
10 talked about the statement of facts, the joint statement of facts, No.
11 90. It talks about that many of Montana State Fund's OD claims
12 were not coded as such by adjustors, especially on pre-1997 claims.
13 But the one that I wanted to get back to was that, "Many OD claims
14 with impairment awards were coded as TTD claims because the

12:18 AM 15 PPD designation was thought to apply only to impairment awards
16 under the Workers' Compensation Act." And I'd like you to speak to
17 that. Are you excluding those TTD claimants, the ones that received
18 impairments?

19 MS. MCCOY: No, we did not.

20 MR. MURPHY: This categorization, though, where you
21 took an impairment award and you called it TDD, that was -- what is
22 that? What happened there?

23 MS. MCCOY: Essentially what that is referencing is a
24 system limitation in CMS. At the time of design, and with the
25 applicable statutes in place, it was hard-coded into CMS that files

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12:19 AM 1 designated as ODs should not be recipients of perm partial
2 payments. With the advent of Stavenjord, when that was no longer
3 true, we basically had to recode the entire system to allow us to
4 make those types of payments with the appropriate designation. So
5 there was a period, because our primary responsibility is benefit
6 delivery to entitled claimants rather than be servants to a machine,
7 we insured that the dollars went out, even though they may have
8 been improperly coded.

9 For our particular purposes, because those payments
10 would in fact show as a total payment and not a partial payment, Bill
11 and I still would have picked those up on our data runs, and they
12 would ultimately be reviewed, at which point it would be determined
13 that impairment benefits had in fact been paid, just simply
14 miscoded.

12:21 AM 15 MR. MURPHY: So you are saying that it was just
16 coded as TTD for claims that were paid after 2001.

17 MS. MCCOY: Until we were able to make the system
18 change that would allow our staff to pay permanent partial benefits
19 using a permanent partial expense code, they used a TDD expense

20 code to insure benefits were timely paid.

21 MR. MURPHY: But for claims only after 2001, is that

22 what you're saying? Or was it for claims before 2001, too?

23 MS. MCCOY: No. We would not have paid perm

24 partial benefits on claims arising on or before 5/22/01.

25 MR. MURPHY: So, this TDD designation that you

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12:21 AM 1 used is only for claims paid after 5/22/01; is that what your testimony
2 is?

3 MS. MCCOY: Prospective claims only.

4 MR. MURPHY: Because this stipulation of fact seems
5 to be talking about the applicable time period, so I'm not very clear.

6 MR. LUCK: Could we have her take a look at it?

7 MR. MURPHY: It says, "Errors in data are such that" --

8 THE COURT: Yeah, why don't we.

9 MR. MURPHY: Of course. Hand her one. I only have
10 one.

11 MR. LUCK: I did. I just don't know the number, Tom, if
12 you could reference it for her.

13 MR. MURPHY: Page 14, No. 90. It says, "Errors in
14 data are such that it would lead to an under estimation of liability."

12:22 AM 15 (Pause.)

16 Cris, have you had an opportunity to read it?

17 MS. MCCOY: Yes.

18 MR. MURPHY: What I'm asking you about, of course,
19 is for what time period did you miss or did they categorize

20 impairment benefits as TTD? I think your testimony was for the time
21 period after 2001. Are you sticking to that testimony?

22 MS. MCCOY: It would only apply to claims with a date
23 of exposure 5/23/01 or later.

24 MR. MURPHY: So how does these -- how do these
25 errors, then, according to this last sentence, how do these errors

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12:23 AM 1 lead to an underestimation of liability? If they apply -- if you only did
2 that categorization after the applicable Stavenjord time period?

3 MS. MCCOY: I'm not really confident I'm the proper
4 person to be answering that.

5 MR. MURPHY: So you don't know?

6 MS. MCCOY: No.

7 MS. MURPHY: I'm going to go -- looking at Exhibit 2
8 here, which is the proposed -- is this a proposed notice that you are
9 going to send out?

10 MS. MCCOY: Yes.

11 MR. MURPHY: And is it going to give these people,
12 then, a number? Are you going to make a number calculation as to
13 the benefit available? Exhibit 2 seems to have a blank there.

14 MS. MCCOY: If there are in fact, on review of the file,

12:24 AM 15 what we would consider undisputed benefits due, we would notify
16 the claimant of that, what our assessment of the entitlement is.
17 They also then have an opportunity to dispute that.

18 MR. MURPHY: Now, I'm just -- dealing from common
19 sense it would seem to me that if a person gets something in the

20 mail that says, hey, you may be entitled to X thousands of dollars,
21 they are going to take that a little more seriously than say a notice
22 that says you might be somebody that could get some money, we
23 don't know yet.

24 So, this determination of an actual benefit, this is an
25 important thing. The State Fund is going to do it in every case they

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12:25 AM 1 can?

2 MS. MCCOY: If the data is available and supports
3 there is an entitlement, we would notify the people of that.

4 MR. MURPHY: What data are you going to need? All
5 of the five factors?

6 MS. MCCOY: Essentially what's -- some of those will
7 automatically be on file. We generally have information as it relates
8 to someone's age at the time of injury, their education level at the
9 time of injury. Some will have impairment ratings already
10 documented to the file. They may have had a vocational workup
11 that would allow us to determine whether or not there was any loss
12 of earning capacity. The vocational workup would also tell us
13 whether or not there's an entitlement based on restrictions, since
14 there will normally be a time of injury job description on the file.

12:26 AM 15 When those things are absent, it means we need to go gather them
16 to make a complete and comprehensive assessment.

17 MR. MURPHY: I am clear, though, that you are going
18 to try in every instance to suggest a number to a claimant if possible,
19 correct? A benefit number, an amount?

20 MS. MCCOY: As a point of clarification, I'm hoping you
21 are not suggesting we would make something up just to get
22 something out?

23 MR. MURPHY: No, I'm not implying that at all.

24 MS. MCCOY: Okay. We are both in agreement
25 there.

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12:26 AM 1 MR. MURPHY: What I'm really asking, Cris, is -- what
2 I'm concerned about, Cris, is that these people are going to get a
3 letter out of the blue, possibly 19 years after their claim, maybe 15,
4 maybe 14 years after their claim, and the number is going to be a
5 number, and it's going to be found money. And they are going to
6 jump at it, but they are not going to know that they can dispute it.
7 That's what I'm worried about. 70 percent of these people. That's
8 what I'm worried about. So, my question is are you going to give
9 them a number when possible? And if you do give them a number,
10 is it going to be the disputed number, is it going to be your take on it,
11 or is it going to be their take? Are you going to advise them that they
12 can have a dispute here?

13 MS. MCCOY: The letter does in fact do that. If we are
14 able to make an assessment, I think it's our responsibility to advise
15 people of that. That we think this is your entitlement. The letter we
16 contemplated has two additional paragraphs, one, if they have any
17 question regarding any of the above calculation it gives both Bill and
18 my name and our direct phone number to call with those questions.
19 And as is our standard practice, the mediation paragraph is there, so

20 they are aware of their avenue of recourse.

21 MR. MURPHY: Well, I don't want to send the chickens
22 to the fox, Cris. I mean, the point is that they are coming to you to
23 determine their rights. Will they be advised that you're their
24 adversary?

25 MR. LUCK: Is it possible, Your Honor, to make an

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12:28 AM 1 argumentative objection? I mean, we know what the insinuation is
2 and we are here to talk about what we are going to do.

3 MR. MURPHY: Well, it's the issue.

4 THE COURT: Well, wait a minute. No, I know. I
5 mean, I think without the colored commentary. I mean, I get your
6 point.

7 MR. LUCK: Thank you.

8 MR. MURPHY: I'm looking at a notice that I got for one
9 of my clients in the Schmill case. And the Schmill case, which is
10 obviously a different case, the notice tells this person exactly what
11 she is entitled to and it says here it is. Is the Stavenjord letter going
12 to be similar to the Schmill letter?

13 MS. MCCOY: If there are in fact undisputed benefits
14 due, we will pay those. If people think they are entitled to more, they

12:29 AM 15 are told how to pursue that. Either -- even in the Schmill letters, they
16 can call Bill and I directly, they can call Lori directly. They obviously
17 have advantage of your services. And you were sent notice of this.
18 My worksheet is contained in there so they can see exactly what I
19 base the calculation on.

20 MR. MURPHY: The letter, Exhibit 2, says that there is
21 a form that they should fill out. Do you have that form formulated
22 yet?

23 MS. MCCOY: Yes, we have a draft.

24 MR. MURPHY: I don't have it attached to Exhibit 2.

25 MR. LUCK: Is it the questionnaire?

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12:30 AM 1 MS. BUTLER: Is it the questionnaire?

2 MS. MCCOY: 2002 questionnaire.

3 MS. BUTLER: We may have missed it, do you want

4 Kathy to go print it?

5 MR. LUCK: That's my error if it is not attached to it.

6

7 (A brief recess was taken.)

8

9 THE COURT: Is there anything to cover before we get

10 the questionnaire?

11 MR. MURPHY: Let me just see.

12 Have you found in the other common fund cases when

13 you suggest a dollar figure that they're entitled to that you get a

14 bigger response rate?

12:31 AM 15 MS. MCCOY: As opposed to?

16 MR. MURPHY: If you don't suggest what they are

17 entitled to?

18 MS. MCCOY: In each of the common funds, excluding

19 Pinckard, up to this point it was a fairly straightforward calculation.

20 MR. MURPHY: So, your experience is that you've

21 always suggested a number that they are entitled to?

22 MS. MCCOY: We determine what the minimum

23 entitlement is. As an example, in Fisch, Frost, and Rausch we would

24 obtain an impairment rating, I would pay the undisputed liability

25 award accordingly. But as part of that, they were also advised of

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12:32 AM 1 their right to dispute it, but we would still pay the minimum we felt
2 was due.

3 MS. MURPHY: I know you've mentioned Pinckard,
4 Pinckard actually was a class action case, it wasn't a common fund
5 case, right?

6 MS. MCCOY: I said with the exception of.

7 MR. MURPHY: But when we talk about Pinckard, it
8 was a class action, it wasn't common fund, correct?

9 MS. MCCOY: Yes.

10 MR. MURPHY: It was handled in district court, not
11 comp court.

12 MS. MCCOY: Yes.

13 MR. MURPHY: I reserve any other questions I have
14 until we get that form.

12:33 AM 15 THE COURT: Okay.

16 MR. MURPHY: Not that I have any questions about
17 that.

18 MR. LUCK: Your Honor, one thing I would ask, just so
19 the record is complete, I ask the Court to take notice in relation to

20 Broeker and the Fisch, Frost, and Rausch case, those were
21 implementations based on settlements.

22 THE COURT: Okay.

23 MR. LUCK: The procedures were specified,
24 particularly in very extensive settlement documentation. So it might
25 be a little apples and oranges.

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12:33 AM 1 THE COURT: Do you have any follow-up on -- or
2 anything from -- based on Tom's questions while we are waiting for
3 the questionnaire?

4 MR. LUCK: No, sir.

5 THE COURT: Okay. I don't think I do.

6

7 (A brief recess was taken.)

8

9 THE COURT: We'll mark this. So we have got the
10 Stavenjord information request that will be attached to the transcript
11 as Exhibit 3. And so let me just take a minute and look it over, and
12 Tom, you do the same, and Brad, and if anybody has any questions.

13 MR. MURPHY: May I ask a question?

14 THE COURT: Yeah. Give me one second just to...

12:35 AM 15 MR. LUCK: Your Honor, Cris indicates that there's a
16 second page to this, so we need to identify the second page.

17 May we take just a short break?

18 THE COURT: Yeah, why don't we take five minutes.

19

20 (A brief recess was taken.)

21

22 (Exhibit No. 3 was marked for identification.)

23

24 THE COURT: Go ahead, Tom.

25 MR. MURPHY: Cris, I'm looking at Exhibit 3 which is

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12:43 AM 1 two pages and it's entitled the "Stavenjord Information Request."

2 Who was involved in drafting this?

3 MS. MCCOY: Tom Martello and Bill Visser.

4 MR. MURPHY: I'm just looking at that second page,

5 the labor activities that you designate, is there any plans to put in a

6 question about just asking the person to tell you what he or she

7 thinks their physical restrictions are?

8 MS. MCCOY: There's no specific plan, but our intent in

9 presenting this is that it's an initial draft. And if appropriate changes

10 are proposed and accepted, it's not an issue. Specifically with us.

11 MR. MURPHY: Well, this may be my only opportunity

12 to make that kind of recommendation, but I would recommend that

13 you put in these forms a place for the person to tell you what he or

14 she thinks their limitations are, not just limited to what my physician

12:44 AM 15 has said. Although that's a possibility. And of course you want to

16 know that, too, but that's an example of something I think you ought

17 to have some input on.

18 Is there going to be a definition section of what an

19 occupational disease is or an injury or any kind of glossary for

20 terms?

21 MS. MCCOY: We haven't included one in this

22 particular version.

23 MR. MURPHY: Are you going to reference the codes

24 for these people in case they want to go to the library and look up

25 the code?

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12:44 AM 1 MS. MCCOY: We had not contemplated that.

2 THE COURT: A copy of 703 is going to be included,
3 isn't it?

4 MS. MCCOY: As indicated in the letter, we would
5 provide them with a copy of the relevant 703 based on their time of
6 exposure with the notification. They would have that to review.

7 MR. MURPHY: Are you going to ask them about
8 subsequent injuries or subsequent occupational diseases?

9 MS. MCCOY: As the form indicates, we hadn't initially
10 contemplated it. It's a thought.

11 MR. MURPHY: Wouldn't that minimize your exposure,
12 if you had a subsequent injury to the same body part?

13 MS. MCCOY: In what respect?

14 MR. MURPHY: In what respect? If you had MMI and a

12:45 AM 15 new injury to the same body part, your exposure on the old claim
16 ends.

17 MS. MCCOY: Not necessarily. Each claim stands on
18 its on.

19 MR. MURPHY: Well, obviously I'm not going to argue

20 against my position. Normally I'm saying you don't get to end your
21 exposure, and you say yes, we do. And so I'm not going to be lured
22 into saying the opposite.

23 MR. LUCK: We would certainly consider asking a
24 whole laundry list of potential defenses if you think that's
25 appropriate.

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12:46 AM 1 MR. MURPHY: I'm surprised they are not here.

2 MR. LUCK: Well, I could comment on that, too, but I
3 don't think I will.

4 MR. MURPHY: I think there are some here. Those are
5 some of my questions, I'll reserve the others for later.

6 THE COURT: Any follow-up?

7 MR. LUCK: No, sir.

8 THE COURT: Thank you very much. This was really
9 helpful. Like I said, rather than looking at the cold page and that,
10 this was -- and having kind of the give-and-take was really helpful
11 and I appreciate that.

12 So, we'll get a transcript, I think we'll probably post the
13 transcript on the web anyway, but we'll provide you guys obviously
14 with copies of the transcript. And then I want a chance to look that

12:47 AM 15 over and kind of look everything over. I may have, just because I

16 know I frequently do whenever I've had a trial, it's -- rare is the
17 occasion when I'm not then reading the transcript and going, oh, why
18 didn't I ask that. So I may have some additional questions. If I do, I
19 think we can do it pretty informally, whether by conference call or

20 maybe just e-mail or something like that. So, I mean, whether it's
21 something that needs a clarification or something, I don't know, I'm
22 just basing it on my past experience on my infirm ability to think of
23 asking everything. Okay?

24 So we will go off the record. Thank you.

25 MR. LUCK: Thank you, Your Honor.

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12:47 AM 1

2 (End of proceedings.)

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12:47 AM 1

2 CERTIFICATE

3 STATE OF MONTANA }
4 } ss:
5 COUNTY OF Lewis and Clark }

6

7 I, Julie L. Sampson, Professional Court Reporter, a notary
8 public in and for the aforesaid county and state, do hereby certify that:

9 I am a duly-appointed, qualified, and acting Official Court
10 Reporter for the Workers' Compensation Court of the State of Montana;
11 that I reported all of the foregoing proceedings had in the above-entitled
12 action, and the foregoing transcript contains a full, true, and correct
13 transcript of the said proceedings to the best of my ability.

14 IN WITNESS WHEREOF, I have hereunto set my hand this
15 _____ day of _____, 2007.

12:47 AM 15

16 _____
17 Julie L. Sampson
18 Professional Court Reporter

19

20

(SEAL)

Julie L. Sampson

21

Notary Public for the State of Montana

Residing at Butte, Montana

22

My Commission Expires July 10, 2010

23

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