Bockman, Jacqueline

Stavenjord v MSF WCC 2000-0207

From: Bradley J. Luck [bjluck@GARLINGTON.COM]
Sent: Tuesday, September 30, 2008 8:58 AM
To: Bockman, Jacqueline
Cc: Martello, Tom; tommurphy@qwest.net
Subject: Stavenjord
Attachments: 507235.doc

Jackie:

I am attaching the proposed changes to the proposed Order we felt considered and resolved the concerns raised by the Court in our conference. We provided these to Mr. Murphy and he advised he was agreeable to them and suggested another minor modification which we did not think was necessary. In addition, Mr. Murphy has indicated he believes the Settlement Agreement and Stipulation need to be modified to take these changes into account. We do not agree and believe once we have an agreed Order we can stipulate on the record that the agreement and stipulation can be modified accordingly.

Perhaps the Court can provide some input in relation to the proposals as they stand at this point in this document. I am sure Mr. Murphy will let you know if he is not agreeable to that process.

In any event, we wanted to report to you so you were aware of the status.

I am available on October 10. We do have some concern that the deadlines set by the Supreme Court will need to be considered in finalizing this settlement.

Brad

Brad Luck
406-523-2548

garlington|lohn|robinson
PO Box 7909 (199 West Pine Street)
Missoula, MT 59807-7909
Phone: (406) 523-2500, Fax: (406) 523-2595

REVISED FOLLOWING CONFERENCE WITH COURT 9-26-08

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DEBRA STAVENJORD, Petitioner, v. MONTANA STATE FUND, Respondent.	WCC No. No. 2000-0207 ORDER

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

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

The Court has jurisdiction to consider and approve this settlement. Common fund, implementation and benefit issues are and have been before the Court and the Montana Supreme Court has specifically remanded the action for consideration of the settlement. The settlement constitutes a compromise and resolution of issues within the jurisdiction of the Court.

On the basis of the above, and good cause having been shown,

Deleted: at

IT IS HEREBY ORDERED:

1. Except to the extent noted[1], the Stipulation of the parties is approved. The parties shall abide by the terms and conditions of the Stipulation.

Deleted: T

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

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

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

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

d. Claims which have been settled, by settlement petitions approved by the Department of Labor or Stipulations approved by the Workers' Compensation Court, will not be entitled to additional benefits under *Reesor* or *Stavenjord.*

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

f. The entitlement date for an occupational disease claim considered for additional benefits under *Reesor* or *Stavenjord* shall be the date the claimant's occupational disease was first diagnosed as work related.

g. The notification process for consideration of *Reesor* and *Stavenjord* benefits shall be by letter to the population identified in each claim as potentially entitled

---

[1] The Workers' Compensation Court does not have jurisdiction over issues relating to the Montana Unfair Trade Practices Act (UTPA), Montana Code Annotated Sections 33-18-201, et. seq.. Therefore, this Court expresses no opinion relative to the parties compliance with such statutes and does not incorporate by reference that portion of the Settlement Agreement relating to UTPA compliance.

to additional benefits under the decisions. The letters shall generally explain the potential entitlement, provide a questionnaire for information to be utilized in the review process and invite the person receiving the letter to submit a claim requesting review of potential entitlement. Claims will be processed on the basis of signed and completed questionnaires providing claim information and making claim for further benefits. The completed and executed questionnaire/claim form must be returned and received by the State Fund within 120 days of its mailing. Those claimants not returning the completed and executed questionnaire/claim form within 120 days will be considered as having opted out from and not bound by the settlement. Having opted out, such claimants will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement pursuant to the terms and conditions hereof but may present their claims separately. Letters returned as undeliverable to the State Fund will be processed once through an appropriate address review software. In the event of a second mailing to a new address, the addresees will have 90 days from the date of re-mailing to respond with a completed and executed questionnaire/claim form. Those not returning the completed and executed questionnaire/claim form within such 90 days will be considered as having opted out from and not bound by the settlement. Having opted out, such claimants will not be entitled to have their claims reviewed for *Stavenjord* or *Reesor* entitlement pursuant to the terms and conditions hereof but may present their claim separately.

Deleted: ¶

h. The notification process set forth is appropriate and calculated to provide notice of retroactive implementation of the Supreme Court's decision in this matter. It is reasonable to expect that claimants with potential entitlement will timely respond with information allowing the State Fund to review claims, evaluate such potential additional entitlement and attempt to promptly resolve such claims. It is also reasonable to establish appropriate time tables for the adjustment of claims potentially entitled to further benefits. As a result, and in the legitimate interests of finality, it would be appropriate for the State Fund to issue denial letters relative to further entitlement under the Supreme Court decision in this matter to those claimants who opt out of the settlement by not timely responding to the notice. Such claimants would have the opportunity to present their claims if they choose to do so.

Deleted: h

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

3. The State Fund's process for identification and notification of persons

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

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

5. The State Fund shall make the payment required by the Settlement Agreement as set forth therein.

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

DATED in Helena, Montana, this _____ day of _____, 2008.

(SEAL)

_____
JUDGE

c: Thomas J. Murphy
James G. Hunt
Bradley J. Luck