

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2004-1120

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ASARCO, INCORPORATED

Petitioner

vs.

KEITH L. FOSTER

Respondent.

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ORDER INVITING *AMICUS CURIAE* BRIEFING

¶1 The issue submitted for decision in this case is whether impairment awards payable to permanently totally disabled claimants pursuant to *Rausch v. State Compensation Ins. Fund*, 2002 MT 203, 311 Mont. 210, 54 P.3d 25, are payable at permanent partial or permanent total disability rates. I am informed by counsel in *Rausch* that the impairment awards being paid in post-remand, common fund proceedings in that case are at the permanent partial rate. Petitioner in this case argues that such awards should be paid at the permanent total rate.

¶2 Since resolution of the issue in this case may affect the payments being made in the *Rausch* common fund proceedings, I invite the attorneys of record in *Rausch*, as well as other attorneys practicing before this Court, to submit briefs on the issue. The Court has posted the briefs filed by the parties in this case under the common fund area of its WEB site. Those briefs are in PDF format and may be downloaded by going to the WEB site, [www.wcc.dli.mt.gov](http://www.wcc.dli.mt.gov), thence to the common fund area, and finally to the *Asarco v. Foster* page. Briefs should be limited to additional arguments and considerations not already addressed in the briefs filed by the parties in this case.

¶3 All *amicus* briefs should be submitted to the Court by March 18, 2005. Copies should be served upon Mr. Todd A. Hammer and Mr. Thomas A. Budewitz, counsel of record in this case. The Court will post the additional briefs on its WEB site for other interested counsel to download.

¶4 If counsel in this case, or any other counsel, believe oral argument will be helpful to the Court, that counsel should make a request for oral argument. If argument is requested, it will be held at the time of the March 23, 2005 conference scheduled in *Rausch*. That

conference is scheduled for 1:00 p.m. at the Court's offices in Helena.

DATED in Helena, Montana, this 3rd day of March, 2005.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Todd A. Hammer (via US Mail and E-Mail)  
Mr. Thomas A. Budewitz (via US Mail and E-Mail)  
Rausch Attorney E-Mail List (via US Mail and E-Mail)(see copy attached)  
E-mailed to the Attorney List of all Counsel Practicing Before the WCC (see copy attached)