

1625 11th Avenue
P.O. Box 537
Helena, MT 59624-0537
(406) 444-7794
FAX (406) 444-7798
TDD (406) 444-0532



E-mail Clerk of Court at:
pkessner@state.mt.us

Court Web Site:
<http://wcc.dli.state.mt.us>

Workers' Compensation Court

Mike McCarter
Judge

March 2, 2005

Mr. Todd A. Hammer
Attorney at Law
P.O. Box 7310
Kalispell, MT 59904-7310

Mr. Thomas A. Budewitz
Attorney at Law
1625 11th Ave.
Helena, MT 59601

Re: Asarco, Inc. v. Foster
WCC No. 2004-1120

Dear Counsel:

I have reviewed the petition for declaratory judgment in the above matter and the briefs. Interestingly, at least to me, is the fact that the rate issue has never come up, that I can recall, in either the original *Rausch* case or the common fund implementation of that decision. I am going to query counsel in that case as to whether impairment awards paid to State Fund claimants have been at the permanent partial disability or permanent total disability rate. If the latter, I may ask the attorneys in that case to submit *amici* briefs regarding the matter. I will inquire of them immediately. An emergency appeal of whatever decision I reach in this case may be in order since common fund implementation in *Rausch* is ongoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McCarter".

Mike McCarter
Judge

MM:cw

c: Letter sent via e-mail to the Global Common Fund Distribution List (see attached) on 03/02/05.