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March 15, 2005

Honorable Mike McCarter
Workers' Compensation Court
P.O. Box 537
Helena, MT 59624-0537

FILED

*ALSO ADMITTED - COLORADO STATE BAR
**ALSO ADMITTED - STATE BARS OF CONNECTICUT
AND DISTRICT OF COLUMBIA

Re: Rausch v. State Fund
WCC No. 9907-8274R1
Our File No. 6654/5

MAR 16 2005

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA


Dear Judge McCarter:

It is my understanding, from discussions with Tom Budewitz, the attorney representing claimant on *Asarco, Inc. v. Foster*, WCC No. 2004-1120, that that case has resolved. Since the case has resolved, I do not believe there is any issue pertaining to the rate to be utilized in the application of the Rausch, Fisch, Frost decision of the Montana Supreme Court. I believe all parties are in agreement that the PPD rate that has been utilized in the past should be utilized concerning the Plan I and Plan II insurers.

In the event that the *Foster* matter has resolved, we would assume that there is no reason to delay any of the payment issues involving Rausch, et al., common fund litigation. We would appreciate some judicial confirmation as to the status of the *Asarco, Inc. v. Foster* claim, and whether the April 1 conference is to take place if there is a confirmation of settlement.

Sincerely,

MILODRAGOVICH, DALE,
STEINBRENNER & BINNEY, P.C.



Lon J. Dale

LJD:ljs

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