

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

FILED

MAR 2 2005

March 2, 2005

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

Mr. Lon J. Dale
Attorney at Law
P.O. Box 4947
Missoula, MT 59806-4947

Mr. Bradley J. Luck
Attorney at Law
P.O. Box 7909
Missoula, MT 59807-7909

Mr. Monte D. Beck
Attorney at Law
1946 Stadium Dr., Suite 1
Bozeman, MT 59715

Mr. Greg E. Overturf
Special Assistant Attorney General
Montana State Fund
P.O. Box 4759
Helena, MT 59604-4759

Mr. Stephen D. Roberts
Attorney at Law
1700 W. Koch St., Suite 5
Bozeman, MT 59715

Mr. Thomas E. Martello
Special Assistant Attorney General
Montana State Fund
P.O. Box 4759
Helena, MT 59604-4759

Re: Rausch, et al. v. Montana State Fund
WCC No. 9907-8274R1

Dear Counsel:

I have just begun reviewing a request for declaratory judgment in *Asarco v. Foster*, WCC No. 2004-1120. The case has been submitted for decision.

The issue in the *Asarco v. Foster* case is whether the impairment awards payable to permanently totally disabled claimants are payable at the permanent partial disability rate or the permanent total disability rate. That issue has not been raised in *Rausch* to my recollection. Obviously, it is important to implementing the *Rausch* decision since it affects

Rausch, et al. v. Montana State Fund

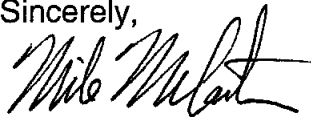
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the amounts payable to at least some of the common fund beneficiaries of the decision.

Please advise me as soon as possible which rate has been used up to the present time in paying impairment awards to permanently totally disabled claimants. As I would expect an appeal of whichever way I decide the declaratory judgment action, we may also want to discuss whether and how the pendency of the issue affects our continued efforts to identify and pay the common fund beneficiaries in *Rausch*.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McCarter". The signature is fluid and cursive, with the first name "Mike" being more prominent than the last name "McCarter".

Mike McCarter
Judge

MM:cw

c: Letter sent via e-mail to the Global Common Fund Distribution List (see attached) on March 2, 2005.

Wilson, Clara

Distribution List Name: !!GLOBAL COMMON FUND LIST

Members:

Aline Faucolner (Dave Lauridsen)	bl_aline@centurytel.net
Bill Mattix	wmattix@crowleylaw.com
Bob James	rfj@uazh.com
Brad Luck	bjluck@garlington.com
Carol Gleed	cgleed@mt.gov
Carrie Garber	carrie.garber@llawoffice.com
Chris Ragar	crofbose@aol.com
Cindy Brown Felton	cindy.brown@llawoffice.com
Clara Wilson	cwilson@mt.gov
Cris McCoy	cmccoy@mt.gov
Dave Hawkins	dahawkins@mt.gov
David Sandler	dsandler_hhs@centurytel.net
Dean Blackaby	blackaby@mt.net
Diana Ferriter	dferriter@mt.gov
Dick Brown	dick@mtha.org
Geoff Angel	christianangel@hotmail.com
Greg Overturf	goverturf@mt.gov
Jackie Bockman	jbockman@mt.gov
Jacqui Lenmark	jtlenmark@kellerlawmt.com
Jay Dufrechou	jdufrechou@mt.gov
Jim Hunt	jimhunt@qwest.net
Katharine Donnelley	katharine@bkbh.com
Kelly Wills	kmwills@garlington.com
Ken Crippen	kcrippen@alpsnet.com
Larry Anderson	laa@transedge.com
Larry Jones	larry.jones@llawoffice.com
Laurie Wallace	info@bandllaw.com
Leo Ward	leow@bkbh.com
Lon Dale	lon@bigskylawyers.com
Luke Foust	lfoust@foustbuckley.com
Mark Cadwallader	mcadwallader@mt.gov
Mike Heringer	mheringer@brownfirm.com
Mike McCarter	marsilius@mt.net
Monte Beck	info@becklawyers.com
Nancy Butler	nbutler@mt.gov
Norm Grosfield	norm@grosfieldlaw.com
Oliver Goe	oliver@bkbh.com
Pat Kessner	pkessner@mt.gov
Rex Palmer	attorneysinc@montana.com
Rick Davenport	rdaven@putmancomp.com
Steve Roberts	h2s@aspenprof.com
Sydney McKenna	semckenna@montanadsl.net
Todd Hammer	thammer_hhs@centurytel.net
Tom Budewitz	tbude30095@aol.com
Tom Harrington	tjharrington@garlington.com
Tom Martello	tmartello@mt.gov
Tom Murphy	murphylaw@mt.net