

THOMAS A. BUDEWITZ
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Attorney for Respondent

FILED

AUG 23 2004

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

ASARCO, INC.,)	
)	WCC NO. 2004-1120
Petitioner,)	
)	RESPONSE TO PETITION FOR
vs.)	DECLARATORY JUDGMENT
)	
KEITH L. FOSTER,)	
)	
Respondent.)	

COMES NOW the Respondent, Keith L. Foster, and makes the following response to the Petition of ASARCO, Inc. pursuant to Rule 24.5.302, Administrative Rules of Montana.

RESPONSE TO PETITIONER'S ALLEGATIONS

1. Respondent admits the allegations of paragraphs 1 through 9 of the petition.
2. With respect to the allegations of paragraph 10, Respondent admits that a dispute exists as to the proper rate to be applied to Respondent's impairment award.

RESPONDENT'S CONTENTIONS

3. Respondent contends that the Petitioner has applied the wrong rate to Respondent's impairment award and that he should be paid at the permanent total disability rate and not the permanent partial rate.

RESPONDENT'S POTENTIAL WITNESSES

	<u>Name</u>	<u>Anticipated Testimony</u>
1.	Keith Foster	Disability status
2.	Kori Schasu	Disability status, foundation for documents, computation of rate
3.	Any witnesses identified in the course of discovery	Unknown
4.	Rebuttal witnesses	Unknown

DOCUMENTS

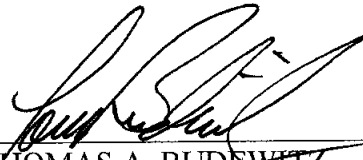
The Respondent has not yet determined what documents will be introduced as evidence at trial. Respondent anticipates that the exhibits offered at trial will include written documents obtained from Petitioner through discovery.

EXCHANGE OF MEDICAL RECORDS

The Respondent has no medical records to exchange.

WHEREFORE, the Respondent prays that the Court determine that Respondent's impairment award should be paid at the permanent total disability rate.

DATED this 23rd day of August, 2004.

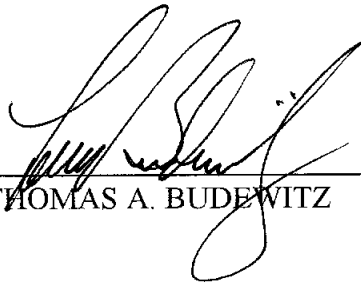


THOMAS A. BUDEWITZ
Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served upon all parties and interested persons of record by mailing a copy thereof, postage prepaid, to them or their attorneys at the address set forth below on the 23^d day of August, 2004

Todd A. Hammer
Hammer, Hewitt & Sandler, PLLC
PO Box 7310
Kalispell MT 59904-0310
Attorneys for Petitioner



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August 23, 2004

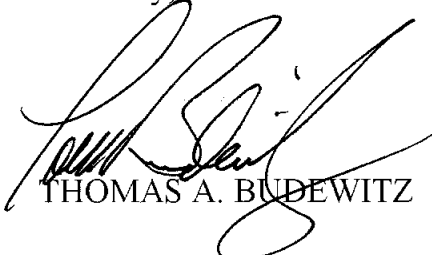
Patricia J. Kessner
Clerk of the Workers Compensation Court
PO Box 537
Helena MT 59624-0537

RE: CLAIMANT: KEITH FOSTER
EMPLOYER: ASARCO
INJURY DATE: 3/31/98
CLAIM NO.: 1C008952
MEDIATION FILE NO.: 2004 1281 02

Dear Pat:

I enclose for filing in the captioned matter the Response to Petition for Declaratory Judgment.

Sincerely,



THOMAS A. BUDEWITZ

TAB:ss
enc

cc: Keith Foster
Todd A. Hammer