

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 15

WCC No. 8906-5395

HARRY A. NESS

Petitioner

vs.

ANACONDA MINERAL COMPANY, a division of
ATLANTIC RICHFIELD COMPANY, INCORPORATED

Respondent.

ORDER DENYING REQUEST FOR DECLARATORY RULING

On August 17, 1993 DEFENDANT'S REQUEST FOR DECLARATORY RULING was filed by the Court. Petitioner responded on August 27, 1993 and respondent's reply was filed September 7, 1993.

Respondent requests this Court to issue a declaratory ruling which would determine:

1. Whether the Defendant is entitled to a credit against any benefits payable to the Claimant by reason of the Defendant's subrogation entitlement [if any] in the Claimant's third party action arising out of his industrial injury.
2. If so, a determination of the amount of such subrogation entitlement and credit.

Respondent's request is not supported by affidavit, deposition or written discovery. See Rule 56(c), Mont. R. Civ. P. Petitioner in his response argues that the third party settlement, together with his third party claim did not result in full legal redress. ***Zacher v. American Insurance Co., 243 Mont. 226, 794 P.2d 335, (1990).*** However, petitioner attaches no documentation to support his position. The Court has no evidence upon which to consider the request for declaratory ruling and it appears that the REQUEST FOR DECLARATORY RULING is premature.

IT IS HEREBY ORDERED that the REQUEST FOR DECLARATORY RULING is **denied**. The issues raised by the motion will be resolved at trial.

DATED in Helena, Montana, the 15th day of November, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. R. Lewis Brown
Mr. Andrew J. Utick