



and (11) her March 23, 2026 petition for sanctions were scheduled to be heard, and some were heard, on May 12, 2026, in Anchorage, Alaska, a date selected on February 25, 2026. A February 25, 2026 hearing request gave rise to this hearing. Non-attorney Employee represented herself and testified. Attorney Rebecca Holdiman-Miller represented Employer. Attorney Robert Bredesen represented himself on his attorney fee and cost claim. All participants appeared by Zoom. Due to database issues, the record closed on June 15, 2026, when the panel had finished deliberations.

### ISSUES

As a preliminary matter, Employee objected to Employer's one-day tardy brief. She contended that Employer had the advantage of reviewing her brief before presenting its own, which prejudiced her. Employee asked the panel to not consider Employer's brief.

Employer's attorney said she was stuck in a travel situation and did not have access to the Internet or a computer adequate to prepare the brief timely. Holdiman-Miller as an officer of the court stated she did not review Employee's brief prior to preparing her own. Employer contended Employee was not prejudiced by its one-day tardy brief. An oral order overruled Employee's objection and accepted Employer's brief as filed.

#### **1) Was the oral order accepting Employer's untimely brief correct?**

Employee wanted to call Holdiman-Miller as a witness, and perhaps the adjuster, depending upon the issues the panel decided to hear. She attempted to subpoena both potential witnesses. Employee argued she had no other way to address her discovery issues in this case other than by examining these witnesses.

Employer contended that Holdiman-Miller's testimony was not relevant and her conversations with her clients are protected by the attorney-client privilege, which her clients did not waive. Moreover, neither witness had been personally served with subpoenas as required by law. An oral order declined to allow Employee to call Holdiman-Miller or the adjuster.

**2) Was the oral order disallowing Employee to call Holdiman-Miller or the adjuster as witnesses correct?**

Given the Alaska Workers' Compensation Appeals Commission's (Commission) May 4, 2026 order accepting Employee's late-filed Petition for Review, there was a preliminary issue regarding this panel's jurisdiction to hear parties' petitions including those treated as a "claim." The parties disagreed regarding the panel's jurisdiction on most of the 11 pleadings set for hearing.

**3) Does the panel have jurisdiction to hear and decide some issues before it?**

After resolving issue (3) above, the panel identified the following remaining issues for hearing:

Employee's December 12, 2025 petition (treated as a "claim") sought reimbursement for medical and related transportation costs. At hearing, the parties agreed that Employer had already reimbursed Employee for the subject medical expenses. They agreed the panel had jurisdiction to hear and decide this petition and the parties agreed it was moot.

Employee's February 25, 2026 petition to compel sought an order requiring Employer to furnish previously ordered medical treatment. At hearing, the parties agreed that the subject surgery was already scheduled. They agreed the panel had jurisdiction to hear and decide this petition and the parties agreed it too was moot.

Employee's March 23, 2026 petition requested "sanctions." At hearing, Employee stated this petition was moot. The parties agreed the panel had jurisdiction to hear and decide this petition and they agreed it was moot.

**4) Shall Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions be denied as moot?**

Bredesen asserts that Employee's November 11, 2025 petition for a referral to the Division of Insurance for unfair or frivolous controversies was "reserved" and not decided in *Martino I, II* or *III*.<sup>1</sup> Employee in her petition contends Employer's insurer engaged in bad-faith claim

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<sup>1</sup> The parties initially mis-identified *Martino IV* as *Martino III*. The Commission's Dec. No. 304 is actually *Martino IV*. The parties when referring to *Martino III* were referring to AWCB Dec. No. 23-0044 (*Martino IV*).

handling in violation of several regulations and statutes. She alleges Employer did not maintain certain files and thus did not produce discovery. In respect to how her petition relates to an unfair or frivolous controversion under AS 23.30.155(o), Employee contends Employer withheld information from its employer medical evaluator (EME), which was unfair and frivolous because it did not provide full facts upon which the EME could base his opinion. Since the EME resulted in controversions, Employee contends this was not “fair” under AS 23.30.001(1). She also suggests that by allegedly “doing nothing” with treatment requests from her physicians, and delaying her treatment, Employer created controversions-in-fact, which also form the basis for an unfair or frivolous controversion finding under §.155(o).

Employer contends *Martino* decisions ordered it to pay benefits, and it did. The EME physician, to whom it sent records that were not kept by Employer or its adjuster, was not relied upon by panels in previous decisions and thus records he reviewed are irrelevant. Employer argues that any delays in Employee obtaining medical treatment were caused by Employee’s need to see specialists and the difficulty in finding them, especially since she had moved to at least three different states since her injury. It contends there were no unfair or frivolous controversions and Employee waived her right to make the §.155(o) argument because it was not preserved for the instant hearing. Employer objects to any referral to the Division of Insurance.

**5)Should Employee’s November 11, 2025 petition for a referral to the Division of Insurance be granted?**

Employee’s November 11, 2025 petition for past-due TTD benefits and related penalties and interest (treated as a “claim”) contends Employer failed to pay her TTD benefits from October 15, 2020, through November 24, 2020, and from March 14, 2021, through March 27, 2021. She relies on Employer’s payment spreadsheets obtained through discovery, and on her own testimony that she never received payments for these periods, as support for this contention.

Employer contends *Martino IV* made a factual finding that Employer paid Employee TTD benefits “through March 27, 2021.” It argues that Employee’s current request for additional TTD benefits prior to March 28, 2021, is thus barred by *res judicata*. Employer contends its

November 20, 2025 petition to dismiss Employee's November 11, 2025 petition (treated as a "claim") should be granted and Employee's corollary November 11, 2025 petition be denied.

**6)Should Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest be denied? Alternately, should Employer's November 20, 2025 petition to dismiss be granted in part?**

Employer's November 20, 2025 petition contends Employee continues to file petitions that are duplicative or request relief already addressed in previous decisions and orders. It argues that this creates unnecessary work and raises attorney fees and costs. Employer seeks an order establishing a pre-litigation screening order to prevent Employee from further "abusive" filings.

Employee contends prehearing conferences should be the place to determine if her pleadings are duplicative or have already been determined in previous decisions. She argues it is Employer's fault that she has to file repeated petitions to obtain relief she contends has been denied. Employee contends her filings are reasonable and necessary and a pre-litigation screening order would only serve to further "hide" Employer's alleged "wrong-doing."

**7)Should Employer's November 20, 2025 petition for a pre-litigation screening order be granted?**

Employee's March 9, 2026 petition for a protective order and to compel discovery sought relief not yet addressed by a designee in a prehearing conference as required by statute.

**8)Should Employee's March 9, 2026 petition for a protective order and to compel discovery be remanded to the designee for a discovery order?**

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

- 1) On June 30, 2020, Employee was running a compactor when it fell to a lower elevation, and she pulled up on it and felt "shoulder pain." (First Report of Injury, July 7, 2020).
- 2) On January 25, 2022 Employee, represented at that time by Bredesen, first claimed a "Penalty for Late Paid Compensation" but did not request a "Unfair or Frivolous Controversion" finding. (Claim for Workers' Compensation Benefits, January 25, 2022).

3) On April 29, 2022, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No.22-0029 (April 29, 2022) (*Martino I*) in an interlocutory decision granted Employee's request for a second independent medical evaluation (SIME). (*Martino I*).

4) On June 29, 2022, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No.22-0046 (June 29, 2022) (*Martino II*) in an interlocutory decision found that on February 26, 2021, Employee emailed the Division a photograph "of a December 31, 2020 letter from the Division to her confirming TTD benefits Employer paid her from July 3, 2020, through December 19, 2020." *Martino II* repeatedly found that Employer had paid Employee TTD benefits from "July 3, 2020, through December 19, 2020." (*Martino II*).

5) *Martino II* also found Employee had filed the Division's letter to demonstrate through her TTD benefit payment history that her injury had totally disabled her for 90 consecutive days. It further found that on March 1, 2021, Employee sent the adjuster an email regarding "missing TTD checks for 'the first part of January' and 'the month of February.'" *Martino II* found that Employee also emailed the adjuster about other allegedly missing TTD checks. It found Employee's primary dispute for the *Martino II* hearing was that she was entitled to "stipend" benefits while she was in the rehabilitation eligibility evaluation process. *Martino II* agreed and granted Employee "stipend" benefits from March 28, 2021, through September 13, 2021. (*Martino II*).

6) *Martino II* also granted Employee's request for interest and a penalty on the awarded "stipend" benefits. This was based on the fact that Employer had not controverted reemployment benefits on any basis listed in the applicable regulations. *Martino II* did not cite in its principles of law section §.155(o) and Employee made no request for a referral to the Division director. In its analysis, *Martino II* attributed knowledge to the adjuster that she had "been paying [Employee] TTD benefits since July 3, 2020." It further found, "Employer's controversions were legally inadequate to stop the eligibility evaluation from going forward."

The penalty analysis was:

Benefits under the Act "shall be paid periodically, promptly, and directly" to the injured worker except where liability is controverted. AS 23.30.155(a). In other words, the Act "sets up a system in which payments are made without need" of a hearing unless a dispute arises. *Harris*. As for the penalty issue, if the only evidence reviewed regarding the penalty question were Employer's controversions and Dr. Pino's report upon which they relied, this evidence would

not result in Employee being denied “stipend” benefits because the controversions and Dr. Pino’s report were inadequate to stop the reemployment process from moving forward as a matter of law, as discussed above. *Harp*. Since the reemployment process proceeded, and *Carter* and *Vandenberg* state Employee was entitled to “fall-back” §041(k) “stipend” benefits during the process, nothing in the agency file or in the law prohibited Employee from receiving “stipend” benefits, which in this instance were unpaid when due. AS 23.30.155(e). Thus, the controversions do not protect Employer from imposition of a statutory penalty and this decision will award an “additional amount” commonly called a penalty. (*Martino II*).

Employer petitioned the Commission for review of *Martino II*. (Petition for Review, July 14, 2022). Employee did not cross-petition for review. (Agency file).

7) On August 17, 2022, the Commission issued a stay on *Martino II* pending its review. (Order, August 17, 2022).

8) On August 29, 2022, Employee through Bredesen petitioned the Alaska Supreme Court (Court) for review of the Commission’s August 17, 2022 stay order. In her petition to the Court, Employee in her “Statement of Facts” stated that Employer “paid her temporary total disability (TTD) from July 3, 2020 through March 27, 2021.” (Petition for Review, August 29, 2022).

9) On June 22, 2023, *Alaska Asphalt Services, LLC v. Martino*, AWCAC Dec. No. 304 (June 22, 2023) (*Martino III*) the Commission in a final decision stated Employer “paid [Employee] temporary total disability (TTD) benefits from July 3, 2020, through March 27, 2021.” The Commission in *Martino III* affirmed *Martino II*. (*Martino III*).

10) Employee did not appeal *Martino III*. (Agency file).

11) On August 10, 2023, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No.23-0044 (August 10, 2023) (*Martino IV*) in a final decision found “[b]eginning July 3, 2020, Employer began paying Employee TTD benefits.” At the *Martino IV* hearing, Employee contended she was “entitled to TTD benefits from March 28, 2021 through September 13, 2021, meaning this decision should award the difference between the “stipend” ordered in *Martino II*, and TTD benefits. . . .” *Martino IV* found Employee’s left shoulder, left cervical spine and left thoracic outlet syndrome (TOS) were compensable and ordered Employer to “pay all benefits in accordance with the Act, applicable regulations and decisional law.” However, it did not cite §.155(o) and Employee did not mention a referral to the Division director. *Martino IV* cited the adjuster’s testimony that, “Employer initially paid Employee TTD benefits from July 3, 2020 through March 27, 2021.” It also determined Dr. Pino’s EME opinion did not rebut the raised

statutory presumption regarding Employee's cervical spine symptoms, left shoulder and TOS.

*Martino IV* discussed TTD:

Employee also claims past and ongoing TTD benefits. AS 23.30.185. Acknowledging she received "stipend" benefits from March 27, 2021 through September 13, 2021 under *Martino II*, she requests an offset against her TTD benefit claim to account for those payments. Employee contends she is entitled [to] TTD benefits from September 14, 2021 and continuing until she becomes medically stable from all injuries or is no longer disabled. Employer contends it offered her a modified job, which she refused by removing herself from the labor market. Moreover, it contends there are no "off-work" slips stating Employee is disabled, Dr. Pino found her medically stable effective January 6, 2021, and she is therefore not entitled to TTD benefits after that date.

....

The above show Employee was disabled temporarily by her left shoulder injury and not medically stable prior to and through July 29, 2021. AS 23.30.395(16); AS 23.30.395(28); *Lowe's*; *Saxton*. Her claim for TTD benefits for her left shoulder injury from March 27, 2021 through July 29, 2021 will be granted. AS 23.30.185. Since Employer already paid Employee "stipend" benefits from March 27, 2021 through September 13, 2021, it will be directed to pay the difference between stipend and TTD benefits from March 27, 2021 through July 29, 2021, and TTD benefits without reduction through July 29, 2021, for her left shoulder injury.

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Employer presented no evidence to rebut the presumption for continuing TTD benefits for Employee's left cervical stenosis and TOS. *Bailey*. Employee's left shoulder became medically stable on July 29, 2021, but the un rebutted evidence shows her left cervical stenosis and TOS were not medically stable on that date, and disabled her. Employee's claim for TTD benefits will be granted and she will be entitled to TTD benefits for her left neck and TOS beginning July 30, 2021, and continuing until both become medically stable or she is no longer disabled from either injury. AS 23.30.120(a)(1); AS 23.30.185; *Huit*.

*Martino IV* also addressed Employee's request for interest and a penalty:

This decision awarded Employee TTD benefits retroactively and prospectively and past medical-related mileage. She will be awarded interest on all past TTD benefits, excepting amounts previously paid as "stipend" benefits under *Martino II* on which Employer has already paid interest, and on her documented medical mileage, as a matter of law. AS 23.30.155(p).

Employee seeks an “additional amount” in compensation commonly referred to as a “penalty,” under AS 23.30.155(e). Benefits under the Act “shall be paid periodically, promptly, and directly” to the injured worker except where liability is controverted. AS 23.30.155(a). The Act “sets up a system in which payments are made without need” of a hearing unless a dispute arises. *Harris*. Employer needed a good faith factual or legal basis to deny Employee’s right to benefits, and her claims, for her left shoulder, left cervical stenosis and left TOS injuries to avoid a penalty on any awarded benefits. AS 23.30.155(b), (d); *Harp*.

.....

If the only evidence considered was Dr. Pino’s March 4, 2021 report upon which Employer relied, Employee would not be entitled to TTD benefits for her left shoulder because he opined her left shoulder injury was fully resolved and medically stable effective January 6, 2021. A reasonable person could rely upon that opinion in isolation as substantial evidence to deny TTD benefits for her left shoulder injury. Therefore, this decision will deny Employee’s claim for a penalty under AS 23.30.155(e) on TTD benefits awarded through July 29, 2021. *Harp*.

.....

By no later than March 22, 2023, Employer had knowledge of Employee’s left cervical stenosis and left TOS injuries and her related disability. AS 23.30.155(b). Therefore, all past TTD benefits became “due” at the latest 14 days after March 22, 2023, or by April 5, 2023. But Employer did not commence paying TTD benefits after March 27, 2021, did not commence benefits by July 30, 2021 when medical records show Employee’s left cervical stenosis and TOS were not medically stable and remained disabling, and never filed a controversion notice after February 15, 2022. Employer had a legal duty to review its past controversions and either withdraw or modify them or produce evidence supporting a new one. *Vue*. It did neither. By failing to either pay or controvert, Employer controverted-in-fact any benefits to which Employee could have been entitled given Dr. Pohlman’s neck and TOS opinions. To date, Employer has simply produced no contrary evidence. Given this analysis, Employee’s claim for a penalty under AS 23.30.155(e) on TTD benefits owed beginning July 30, 2021, and continuing through the date Employer pays past benefits awarded in this decision, will be granted. *Bauder; Harp*. The same analyses, above, apply to her past medical milage request, dependent upon the date she incurred the travel expenses. (*Martino IV*; and Errata dated August 16, 2023).

- 12) Employee, at hearing stated she did not appeal *Martino IV* to the Commission. Likewise, she agreed she did not request to modify *Martino IV*. (Record, May 12, 2026). One-year from August 10, 2023, beginning August 11, 2023, the day after *Martino IV* was issued, plus three days added for service by mail was August 14, 2024. (Observations).

- 13) On February 13, 2024, Employee, at that time represented by Bredesen, first requested an “Unfair or Frivolous Controversion” finding. She stated, “See Board Decision & Order.” (Claim for Workers’ Compensation Benefits, February 13, 2024).
- 14) On June 21, 2024, Bredesen wrote to Holdiman-Miller and stated that Vally Medical had been sending treatment authorization forms to him, rather than the insurer, apparently believing he would forward them to the insurer. (Letter, June 21, 2024).
- 15) Only July 2, 2024, Seever wrote to Vally Medical and corrected the authorization issue that Bredesen had brought to light. (Letter, July 2, 2024).
- 16) On September 13, 2024, Employee at that time represented by Bredesen, again requested an “Unfair or Frivolous Controversion” finding, citing *Martino IV*. (Claim for Workers’ Compensation Benefits, September 13, 2024).
- 17) On October 31, 2024, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 24-0060 (October 31, 2024) (*Martino V*) in an interlocutory decision found that Employee’s objection to the Board designee’s failure to issue a protective order on travel for an EME was moot, as she had already attended the examination. It also rejected her request to strike an EME physician’s report. Lastly *Martino V* declined to make an advisory opinion on whether or not Employee had to leave Hawaii for any future EMEs. It denied Employee’s appeal from a Board designee’s discovery decision on these bases. (*Martino V*).
- 18) On April 1, 2025, in a document dated March 31, 2025, Employee at that time representing herself requested among other things an “Unfair or Frivolous Controversion” finding. She cited “repetitive activities throughout employment and/or specific incident on 6/30/20 leading to the neck and shoulder injuries.” (Claim for Workers’ Compensation Benefits, March 31, 2025).
- 19) On August 8, 2025, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 25-0048 (August 8, 2025) (*Martino VI*) in an interlocutory decision granted Employee’s request for a cost of living allowance (COLA) and Employer’s request for a Social Security offset. (*Martino VI*).
- 20) On August 25, 2025, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 25-0054 (August 25, 2025) (*Martino VII*) in an interlocutory decision stayed *Martino VI*’s effective date for 30 days so she could, at her option, request reconsideration of that decision, because her attorney David Graham had died in the interim. (*Martino VII*).
- 21) On November 12, 2025, in a petition mis-dated November 11, 2026, Employee requested a referral to the Division of Insurance for bad-faith claim handling. She cited 3 AAC 26.030 and

AS 21.36.125 as support. Employee contended Employer and its insurer had violated those provisions, and referred to its Notice of Intent to Rely (NOI) dated September 5, 2025, number “9,” “copy of records not maintained in the carrier’s file.” (Petition, November 12, 2026 [sic]).

22) On November 12, 2025, in a petition dated November 11, 2025, Employee requested sanctions against Employer and its insurer, “for non-compliance w [sic] 23-0044, 12/19/25 discovery order non-compliance w [sic] 25-0048 A, B, D” and “violating 3 AAC 26.030.” (Petition, November 11, 2025).

23) On November 12, 2025, in a petition dated November 11, 2025, Employee requested discovery of “all communication w [sic] providers be disclosed as well as all EOBs.” She added, “Request EOB for each bill received, submitted. Payment logs w/date paid amount paid, check number or \$0 denial. Claim notes showing why bills were denied or not processed. Copies of authorizations sent to doctors including the ones adjuster said were the wrong ones.” (Petition, November 11, 2025).

24) On November 12, 2025, in a petition dated November 11, 2025, Employee requested “past due TTD penalty interest.” She explained, “Past due TTD penalty & interest on late & withheld payments prior to March 25, 2021 controversion.” (Petition, November 11, 2025).

25) On December 15, 2025, in a petition dated December 13, 2025, Employee petitioned to compel discovery and for “sanctions.” She clarified, “compel discovery already Board-ordered 12/19/24 & 8/8/25 sanctions for ongoing non-compliance of D/O 23-0044 & 25-0048 and 12/19/25 order.” (Petition, December 13, 2025).

26) On November 20, 2025, Employer petitioned for a “pre-litigation screening order”:

Multiple Board Decisions have been issued in this matter to include the most recent August 10, 2025, Final Decision & Order. That decision resolved various issues brought before the Board to include issues regarding COLA, payment of TTD, discovery disputes as well as payment of penalties and interest on various benefits. Despite the decision, the employee, on her own, has since filed multiple petitions seeking to readdress issues already decided. Following the employee’s submission of the various petitions, her counsel withdrew.

It is the employer’s position the employee should have appealed the August 10, 2025, Final Decision and Order if she disagreed with the findings. Instead, 94 days later, the employee filed multiple petitions seeking to relitigate issues already decided by the Board. The employer asserts the employee’s continued attempts to relitigate issues already decided by the Board are frivolous, meritless and constitute an abuse of the legal process.

Based on the above, the employer requests the Board issue a pre-litigation screening order to determine whether future petitions are valid or if they are merely an attempt by the employee to relitigate issues that have already been decided by the Board. (Petition, November 20, 2025).

27) On November 20, 2025, Employer petitioned for an order dismissing Employee's petitions:

The employer petitions the Board for an order dismissing the following petitions filed by Sabrina Martino:

1. November 11, 2025, petition for sanctions;
2. November 11, 2025, petition for past due TTD, penalty and interest;
3. November 11, 2025, petition to request all communications with providers be disclosed as well as EOBs; and
4. request for referral to division of insurance for bad-faith claim handling and violation of 3 AAC 26.030.

It is the employer's position that all issues raised in the 4 petitions identified have already been litigated and addressed in the Board's prior D&Os to include the August 10, 2025, Final Decision and Order. The employee's time to appeal the August 10, 2025, Final Decision and Order, has passed and she cannot continue to relitigate the same issues by filing new petitions.

Briefing in support of this petition to dismiss will be filed prior to a hearing on this issue. (Petition, November 20, 2025).

28) On December 1, 2025, Employer answered Employee's four November 20, 2025 petitions. It contended that prior Board decisions had already addressed the issues raised in the petitions. Employer sought an order dismissing all four petitions, and asked for a pre-litigation screening order to prevent Employee from filing redundant pleadings. (Response to Petitions Dated November 11, 2025, December 1, 2025).

29) On December 12, 2025, Employee in a petition that the Division treated as a claim requested "reimburse travel expenses & out-of-pocket medical expenses." She cited "AS 23.30.095M" [sic] and wanted reimbursement for items filed with the Division and "submitted to Employer on October 31, 2025." (Petition, December 12, 2025).

30) On December 19, 2025, Employer answered Employee's December 12, 2025 petition. It denied her request for TTD benefits and related penalties and interest. Employer stated:

The issues raised in the employee's November 11, 2025, Petition, which the Board treated as Claim for benefits, are moot. The employee's claim is barred by res judicata. All issues relating to the payment of TTD benefits to include penalties and interest have been litigated and were already addressed in the Board's prior D&Os to include the August 10, 2025, Final Decision and Order. No additional TTD benefits, penalties or interest on prior benefits are due. . . . (Answer to Employee's Workers' Compensation Claims, December 19, 2025).

31) On February 24, 2026, Employee filed and served by email a Medical Summary with 71 pages attached. The records included reports from Employee's September 3, 2025 neurology consult and spanned through treatments at a Veterans Administration (VA) clinic. Also attached were text messages between Employee and Jewel Anna Dominguez, surgery coordinator for Hugh Gelabert, MD, thoracic surgeon. Employee enquired if Dr. Gelabert's office had heard anything about his February 9, 2026 request for approval for TOS surgery. Dominguez responded:

My name is Jewel and I am the surgical coordinator for Dr. Gelabert. I have submitted the request to Liberty Mutual for Authorization. I do apologize for the delay we are very short staffed at the moment and are overwhelmed with Patients. As soon as I receive a decision from Liberty Mutual I will reach out to schedule.

We usually schedule about a month out, so we are currently booking procedures in mid March. Please feel free to reach out to me anytime for an update. . . . (Dominguez text, February 11, 2026).

Employee then asked when Dominguez had sent the authorization request. She responded:

RFA was sent on 02/09/2026. Usually it takes a couple of weeks to get a response, but I have seen decisions come in sooner. I will let you know once we have heard back. . . . (Dominguez text, February 12, 2026).

Employee followed-up on February 18, 2026. Dominguez responded:

No response yet, if we do not hear back by Monday. I will follow up with them again. . . . (Dominguez text, February 18, 2026).

In an undated text, Employee asked Dominguez again, who responded in an undated text:

I still have not received any response. I will reach out again today. I would also suggest you to reach out to your workers comp company as well. . . . (Dominguez text, undated; Medical Summary, February 24, 2026).

32) On February 26, 2026, in a petition dated February 25, 2026, Employee requested an order to “compel medical treatment ordered in 23-0044 [*Martino IV*] & expedited hearing.” She offered, “Petition to compel medical treatment for TOS surgery awarded in 23-0044. Emergency hearing requested.” Attached was a memo explaining Employee’s position regarding *Martino IV*. Employee sought an order compelling Employer to authorize and pay for the recommended TOS surgery “without further delay,” or alternatively, to set the matter on for an expedited hearing due to “medical urgency and ongoing denial of care.” Also attached was a February 9, 2026 facsimile cover sheet to Berni Seever at Liberty Mutual, from “UCLA Vascular Surgery, Dr. Gelabert. Attached to the facsimile cover sheet was a February 9, 2026 State of California, Division of Workers’ Compensation, Request for Authorization (RFA) form. Dr. Gelabert had signed and dated this document, which listed the requested surgery for Employee. Also attached were Employee’s medical records from Dr. Gelabert including January 31, 2024, March 8, 2024, March 26, 2025, and October 22, 2025, through January 14, 2026, outlining his evaluations, diagnoses and recommended treatment. Also attached was an undated text message from Dominquez to an unknown recipient regarding Employee. The text message states:

I have attached the RFA packet that was submitted to Liberty Mutual on 02/09/26. We always include the clinical information when submitting. . . . (Petition, February 25, 2026, with attachments).

33) On February 27, 2026, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 26-0019 (February 27, 2026) (*Martino VIII*) decided Employee’s December 29, 2025 petition appealing a Board designee’s discovery order. Her primary contention was that the designee erred in requiring her to sign medical releases because Employer had allegedly failed to provide informal discovery and ignored orders requiring it to produce Employee’s requested discovery. In short, she objected to providing any discovery to Employer because she felt Employer had not reciprocated. After reviewing the releases at issue, relevant pleadings and other evidence available to the Board’s designee, *Martino VIII* reviewed the parties’ discussions from the December 16, 2025 Prehearing Conference Summary, which recorded the parties’ evidence and argument and the Board designee’s decision. *Martino VIII* reviewed the post-Prehearing Conference Summary pleadings and Employee’s December 29, 2025 petition for review of the designee’s discovery orders. It cited the applicable law addressing the issues at hand. *Martino*

*VIII* affirmed the designee’s discovery order. It ordered Employee to sign, date and return the releases at issue within 10 days. It also limited Employer’s contact with Employee’s medical providers’ offices, using forthcoming releases, to billing exchanges, medical record requests and authorization responses. Any other Employer contact with Employee’s medical providers themselves must be done with at least 10-days’ notice to Employee. (*Martino VIII*).

34) On March 9, 2026, Employee petitioned for a protective order, and to compel discovery. She sought, “To recover & prevent further dissemination of all information unrelated to work injury & compel discovery orders 12-19-24 & 8-8-25 to employer are complied with.” (Petition, March 9, 2026).

35) On March 19, 2026, Employer responded to Employee’s February 25, 2026 petition:

On February 25, 2026, the employee petitioned the Board for an order compelling authorization for medical treatment and for an expedited hearing. The employer objects and asserts there are no current controversions of medical treatment -- the employee can treat. Further, the employer was without valid releases for over 6 months which delayed obtaining updated medical records. The employee finally signed releases on March 8, 2026, following two Board orders, however, the medical release was not notarized. In addition, the employee only recently apprised the employer of medical treatment at a VA facility that was not listed on the prior VA release. Thus, while releases have been signed, the lack of notarization of the employee’s signature and the lack of identification of all updated providers will significantly hinder obtaining records. As such, a properly executed medical release and updated VA release is needed.

In regards to the employee’s request for an expedited hearing, a hearing was set at the request of the parties for May 12, 2026. Given there is a hearing already on the schedule, it is the employer’s position that an additional, expedited, hearing is unnecessary. (Opposition to Petition to Compel Medical Treatment and Expedited Hearing, March 19, 2026).

36) On March 23, 2026, Employee petitioned for “sanctions.” She explained, “Non-compliance AS 23.30.095 & DO 23-0044 non-compliance w [sic] discovery continued from 12/19/24 order new from DO-2025-0048.” (Petition, March 23, 2026).

37) On March 24, 2026, *Martino v. Alaska Asphalt Services, LLC*, AWCB Dec. No. 26-0024 (March 24, 2026) (*Martino IX*) decided Employee’s March 16, 2026 petition for reconsideration of *Martino VIII*, and her request for a protective order “regarding releases.” *Martino IX* cited §.108(c), which states that on an appeal from a designee’s discovery ruling, the Board may not consider any evidence or argument that was not presented to the Board’s designee, “but shall

determine the issue solely on the basis of the written record.” It also cited AS 44.62.540, which provides the Board authority to reconsider any decision if a petition for reconsideration is filed with the Division within 15 days after delivery or mailing of the decision. That statute also states that the Board’s power to order reconsideration expires 30 days after delivering or mailing of the decision. Ultimately, *Martino IX* denied Employee’s March 16, 2026 petition for reconsideration of *Martino VIII*. (*Martino IX*).

38) On March 27, 2026, Employer opposed Employee’s March 9, 2026 petition:

On March 9, 2026, the employee petitioned the Board for an order compelling the employer’s response to discovery orders and to “recover and prevent further dissemination of all information unrelated to work injury.” The employer opposes this request. Discovery issues have been addressed by the Board on multiple occasions. It is and has been the employer’s position that it has complied with all discovery orders. The employer asserts the employee’s continued, duplicative petitions to compel discovery are frivolous and without merit.

In regards to the employee’s request to “recover and prevent further dissemination of all information unrelated to work injury,” the employer is unable to adequately respond when the employee provides no cites to documentation or identification of what records she asserts are unrelated and seeks to recover. The employer does not know what records the employee is referencing and will need to know this information to adequately answer. If the employee believes certain records are unrelated and should be recovered, she should provide an itemized list of same along with her position in regard to relevance. (Opposition to Petition to Recover and Prevent Further Dissemination of All Information Unrelated to Work Injury and Compel Discovery Orders to Employer are Complied With, March 27, 2026).

39) On April 6, 2026, a Division Hearing Officer issued a subpoena on Employee’s behalf for “Custodian or Records / Claims Adjuster” for her claim to appear and testify on May 12, 2026. The Division notified Employee on the same date that her subpoena for Holdiman-Miller was denied because as “a party” Holdiman-Miller would “be at the hearing.” (Agency file: Judicial, WC Actions, Subpoena Issued tabs, April 6, 2026).

40) On April 7, 2026, Employee filed a Petition for Review with the Commission. Specifically, she petitioned for review of *Martino IX*. Employee explained her petition as follows:

This petition addresses whether the board abused his discretion by denying relief where the employer’s disclosures failed to identify the universe of records obtained, disclosed, or relied upon, thereby depriving employee of a meaningful

ability to understand, evaluate, and challenge the scope of record disclosures and authorizations.

This case presents a procedural defect in which relief was denied on the basis that issues were not raised at an earlier stage, while the record itself does not reveal the existence, scope, or recipients of the materials necessary to raise those issues. Because the record does not reveal the existence, scope, or recipients of the materials at issue, the board’s conclusion that employee failed to raise these issues earlier rests on an assumption that the necessary information was available when it was not, resulting in prejudice.

#### I. ISSUE PRESENTED

Whether the Board abused its discretion by denying reconsideration and protective relief where: (1) the Board relied on procedural grounds that issues were not raised earlier; (2) the Employer did not provide sufficient information identifying what records were obtained, withheld, or provided to medical evaluators; and (3) the post-D&O record reflects reliance on materials not clearly identifiable within the produced discovery.

....

Discovery rulings are reviewed for abuse of discretion. An abuse of discretion exists where a decision is arbitrary, unreasonable, or results from a failure to consider relevant facts or application of improper legal standards.

#### IV. ARGUMENT

The board’s ruling implicates AS 23.30.107 and AS 23.30.108 governing medical releases and discovery, as well as employee’s rights under article 1, sections 7 and 22 of the Alaska Constitution. . . .

Employee’s Petition for Review to the Commission also raised issues about Employer’s alleged failure to identify record custodians, and all records obtained through executed releases. She also took issue with Employer’s privilege log, contending it was insufficient to permit meaningful review. Employee further contended that Employer had selectively and incompletely transmitted medical records to its own medical evaluators. In her view, the Board’s application of “procedural requirements” resulted in prejudice to her.

#### V. RELIEF REQUESTED

Employee respectfully requests that the appeals commission:

1. VACATE the March 24, 2026 decision and order;

2. REMAND for reconsideration based on a complete and properly disclosed record;
3. Direct that reconsideration account for:
  - (a) absence of custodian identification;
  - (b) privilege log deficiencies;
  - (c) reliance on unidentifiable materials; and
  - (d) failure to identify third-party vendors and associated records; and
4. Grant such further relief as appropriate. (Petition for Review, April 7, 2026).

- 41) On April 10, 2026, Employer opposed Employee's March 23, 2026 petition for sanctions:

The employer is unable to accurately respond to broad assertion of non-compliance with various Board orders. The employer asserts the employee must identify specifically any alleged non-compliance. Further, discovery issues have been addressed by the Board on multiple occasions. It is and has been the employer's position that it has complied with all discovery orders. The employer asserts the employee's continued, duplicative petitions relating to discovery are frivolous and without merit. (Opposition to Petition for Sanctions, April 10 26).

- 42) On May 4, 2026, the Commission accepted Employee's late-filed Petition for Review. The order did not grant the petition but simply accepted it as late-filed. The Commission also directed Employer to file its response to Employee's Petition for Review not later than 15 days of May 4, 2026. (Order on Motion to Accept Late-Filed Petition for Review, May 4, 2026).

- 43) On May 6, 2026, Employee filed and served her hearing brief for the May 12, 2026 hearing. The brief is approximately 17 pages long, is in an unauthorized font and is not 1.5-spaced. (Employee's Hearing Brief, May 6, 2026; observations).

- 44) Employee's brief directed her attention mostly to her allegations that Employer had committed discovery violations and record retention issues. Her brief argued that when an SIME physician agreed with her position on several issues, and absent a contrary medical opinion from an EME, Employer was obligated to withdraw its controversion and begin paying benefits. She also contended that Employer was obligated to send all relevant medical opinions to its EME physicians, and did not. Employee argued that Employer exhibited a pattern of delay and non-response to requests for treatment authorizations. She implied that these delays constituted a controversion-in-fact sufficient to justify a §.155(o) finding. Other than requesting a referral and mentioning the carrier's alleged claims-handling practices, Employee's brief did not address with any substance her November 11, 2025 request for an order referring Employer to the Division of Insurance nor did it mention §.155(o). Likewise, other than mentioning it in passing, and noting

one period of allegedly missing TTD payments, Employee's brief did not address her November 11, 2025 petition (treated as a claim) for past TTD benefits and related penalty and interest. The brief gave cursory treatment, without substance, to Employer's two November 20, 2025 petitions. Employee's brief otherwise mirrored most of her testimony and oral argument at the May 12, 2026 hearing. Contrary to Bredesen's statements at hearing regarding the §.155(o) issue, discussed below, Employee's brief indicates that in her view the §.155(o) issue applied to *Martino I, II, and IV* (initially misidentified as *Martino III*, which was the Commission's first decision). (Employee's Hearing Brief, May 6, 2026; observations).

45) Employee's brief also discussed "denied" or "left unanswered" treatment plans from various medical providers. The panel understands these are the same "authorizations" Employee mentioned at hearing. She cited "conflicting accounts" regarding transmission details for these "treatment plans" and noted alleged absence of verifiable transmission records prevented "confirmation of when -- or whether -- the authorization was actually issued or received." Employee implied that Employer's alleged silence, or failure to authorize, constituted deliberate delay, sufficient to subject Employer to §.155(o) unfair or frivolous controversion-in-fact findings. (Employee's Hearing Brief, May 6, 2026; observations).

46) Employee's brief also implies she cannot tell how or when Employer's payments to her medical providers were made and how they were applied to her bills. She asserts that all of these issues relate back to discovery disputes which are "directly tied" to all her petitions. Thus, she opposes a pre-litigation screening order. (Employee's Hearing Brief, May 6, 2026; observations).

47) On May 7, 2026, the parties attended a prehearing conference before a Board designee. The issues for the May 12, 2026 hearing, which had previously been established at earlier prehearing conferences, were reiterated and included:

**Issues Identified for 5/12/2026 Hearing:**

- (1) Employee's 12/12/2025 WCC -- *Medical costs/Transportation costs*
- (2) Employee's 12/15/2025 Petition to Compel and for Sanctions
- (3) Employee's 11/11/2025 Petition for Referral to the Dept. of Insurance
- (4) Employee's 11/11/2025 Petition for Sanctions
- (5) Employee's 11/11/2025 Petition for E.O.B. copies
- (6) Employee's 11/11/2025 Petition for Past Due TTD benefits
- (7) Employer's 11/20/2025 Petition to Dismiss

- (8) Employer's 11/20/2025 Petition for Pre-litigation screening
- (9) Employee's 2/25/2026 Petition to Compel
- (10) Employee's 3/9/2026 Petition to Compel and Petition for Protective Order
- (11) Employee's 3/23/2026 Petition for Sanctions (Amended Prehearing Conference Summary, May 7, 2026)

48) At hearing on May 12, 2026, Employee said she obtained her current adjuster's name on April 10, 2026. Employer stated that the adjuster was not personally served with the subpoena and there was nothing the adjuster could say that was relevant to the issues set for hearing. Holdiman-Miller on behalf of her clients said they were not waiving the attorney-client privilege. The Designated Chair advised Employee that if she had difficulty discovering her adjuster's name, she could have petitioned a Board designee to compel that information well before the hearing and obtained a discovery order. (Record, May 12, 2026).

49) At hearing the designated chair reviewed Employee's pending petition before the Commission and tried to identify what issues were before it. Employer initially stated the Board had no jurisdiction to hear any of the 11 pleadings or issues set for hearing. After hours-long discussion among the parties, the parties agreed that Employer could use the information releases Employee had previously provided, and she reserved her right to inquire where and when her medical records were sent. Employee also agreed that on January 14, 2026, she received a check for \$6,814.64. The parties agreed that the first issue set for hearing on the May 7, 2026 Prehearing Conference Summary, Employee's December 12, 2025 petition (treated as a "claim") for medical and transportation costs (#1), was moot. (Record, May 12, 2026).

50) At hearing the parties disagreed about whether the Board could hear her December 15, 2025 petition to compel and for sanctions (#2) based on discovery issues. Employee apparently objected more about how her medical record releases were "going to be used," than from any other discovery perspective. She also objected to the notary requirement on Employer's releases because it required her to "freely and voluntarily" sign her name on the releases, even though she did not know how the releases were going to be used and to whom the records resulting from the releases would be distributed. The panel decided it could not hear that petition because it was too closely related to her pending petition before the Commission. (Record, May 12, 2026).

51) At hearing the parties disagreed about whether the Board could hear Employee's November 11, 2025 petition for a referral to the Division of Insurance (#3). The panel ultimately

decided that it could be heard as that petition would not interfere with the Commission's exercise of its jurisdiction. (Record, May 12, 2026).

52) At hearing the parties disagreed about the Board's jurisdiction over Employee's November 11, 2025 "Petition for Sanctions" (#4). Employee referenced *Martino IV* for this petition. She contended that the Board was not aware of alleged "gaps" in disability payments when it decided *Martino IV*. The panel decided that her "sanctions" petition related to discovery and thus decided not to address it given the pending petition before the Commission. (Record, May 12, 2026).

53) Employee said her November 11, 2025 petition related to copies of EOBs (#5). She did not think this was "discovery," as it was a "new" request for Employer to produce EOBs. Employee's petition also reportedly addressed communications between the adjuster and providers and "other communications." The panel determined it would not hear and decide this issue because it was closely related to the pending petition before the Commission. (Record, May 12, 2026).

54) At hearing the parties agreed the panel could decide Employee's November 11, 2025 Petition (treated as a "claim") for past-due TTD Benefits (#6). (Record, May 12, 2026).

55) The parties agreed in part on whether the panel could hear Employer's November 20, 2025 Petition to Dismiss, which had four sub-parts (#7). The panel determined that it would not hear sub-parts 1 and 3, because they were closely related to the pending petition before the Commission, but would hear and decide sub-parts 2 and 4, because they correlated, respectively, with Employee's petition for past-due TTD, a penalty and interest (#6 on the May 7, 2026 Prehearing Conference Summary), and her petition for a referral to the Division of Insurance (issue #3 on the same summary). (Record, May 12, 2026).

56) At hearing the parties agreed that the panel could hear Employer's November 20, 2025 petition for a pre-litigation screening order (#8), agreeing that such an order if granted would have nothing to do with her petition pending before the Commission. (Record, May 12, 2026).

57) The parties also agreed that Employee's February 25, 2026 petition to compel medical treatment for her TOS (#9) could be heard and decided because it was moot. It was moot because surgery was already scheduled for that condition. (Record, May 12, 2026).

58) At hearing the panel on its own motion decided that Employee's March 9, 2026 petition to compel, and for a protective order (#10), was not properly before it because Employee was

requesting new discovery relief. As discovery matters must come first before the Board's designee at a prehearing conference for a ruling, the panel decided not to hear this issue but to remand it to a prehearing designee. Both parties retained their right to appeal an adverse decision from the Board's designee after a prehearing conference discovery order. (Record, May 12, 2026).

59) At hearing the parties agreed that Employee's March 23, 2026 petition for sanctions (#11) could also be heard as it too was moot. (Record, May 12, 2026).

60) At hearing, Employee, as she had in her brief, asserted a December 29, 2025 petition to compel production of an authorization for a neurology consult was also set for hearing. The designated chair reviewed the file and found that was a new discovery matter not listed on the controlling Prehearing Conference Summary as an issue for this hearing. As Employer did not agree to add this as an issue for hearing, the panel decided not to hear or decide it. That issue would also be sent back to the Board's designee for a prehearing conference and a discovery order if applicable. (Record, May 12, 2026).

61) At hearing, Bredesen initially said the §.155(o) unfair and frivolous controversion issue did not relate to previous *Martino* decisions, but instead related to subsequent "discovery issues, discovery actions." He later changed his view and argued in the alternative that if the panel considered the §.155(o) issue applied to prior decisions, *Martino I, II* and *IV* (misidentified as *Martino III*, the Commission's first decision) provided factual findings and legal conclusions to support unfair and frivolous controversion findings. (Record, May 12, 2026).

62) Ultimately, Employee gave testimony and the parties provided argument regarding issues #3, #6, #7 and #8: On issue #3, Employee related this request to post-injury discovery violations. This included the insurer's failure to keep documentation regarding medical records and to whom they were sent, and varying disclosures regarding EME "vendors." She also contended that Employer had certain medical records in May but did not file them on a Medical Summary until December. Employee contended that Employer obtained mental health records without her authorization. She objected to any physicians who never mentioned certain records in their EME reports. Employee felt that she could not track where medical records went after she released them to Employer. This somehow affected the way the claim was handled, in her view. She objected to the attorney-client privilege during periods when the insurer did not have an attorney. Employee also referenced EME intake documents that were not produced in discovery, but of

which she had photographic evidence that she took at the doctor's appointment. She argued that things were being "hidden" from her, which she related somehow to her medical treatment. An adjuster's note that said previously "Good-faith payment. No." was later redacted and she wants to know why. Employee contended that claims should be handled in a way that the injured worker or the Board "can reconstruct how things are happening." For example, she objected that she could not determine what records Dr. Pino had when he did her EME. Employee clarified that she based her petition on 3 AAC 26.030, Alaska Civil Rule 26(b) in reference to Employer's privilege log, and AS 21.36.125. She believed there are unfair claim settlement practices happening in her case. For example, Employee contended that Employer did not give their EME physicians all relevant documents. This makes the EME "unfair." She could point to no statute that required an insurer to send any medical records to its EME physicians for review, much less all records. If there is no applicable statute, in her opinion there should be one. Nonetheless, Employee contended that discovery should allow her to discover what records Employer sent to its EME physicians. In her view, Employer should not be allowed to use an uninformed EME opinion as grounds for a controversion. She did not know what treatment plans Employer received for the insurer's authorization, but argued they received "quite a few," and did not respond, which she contended was a controversion-in-fact. Employee cited the *Bockus* decision and testified that she repeatedly asked why her treatment plans for surgery and other treatment had not been approved. She contended that she was never able to get a neurology consult for Complex Regional Pain Syndrome (CRPS). Employee was unaware that her physicians actually provided some treatment authorizations. In her view, these actions should be reported to the Division of Insurance as an unfair claim settlement practice. She argued this created an unfair or frivolous controversion-in-fact. Employee said there could be more than one unfair or frivolous controversion-in-fact if the Board counted each time Employer failed to respond to a treatment authorization. Or, in her view, the panel could lump them all together. (Record, May 12, 2026).

63) In respect to issue #1, Bredesen argued that it was his understanding that the unfair and frivolous controversion claims prior to February 2025 were not at issue for this hearing; *i.e.*, those would include issues addressed in *Martino I, II* and *III*. *Martino I* was Employer's resistance to an SIME. *Martino II* addressed Employer's failure to pay stipend benefits while Employee was in the reemployment eligibility evaluation process. *Martino III* (which is actually *Martino IV* since the Commission's Dec. No. 304 is *Martino III*) awarded benefits including a

penalty. In his view, each of those decisions would justify a referral to the Division of Insurance under §.155(o). Bredesen contended that those issues were “reserved.” In Bredesen’s opinion, delays inherent in *Martino I* related to the SIME, and in failure to start the reemployment eligibility process and pay stipend benefits in *Martino II*, delayed Employee’s medical treatment. He “understood,” that Employee was not asking to have the unfair and frivolous controversion issues from the first three *Martino* Board decisions addressed at this time, and not until Employee’s discovery disputes were resolved. In his view AS 23.30.001(1) requires quick, fair and predictable delivery of benefits to an injured worker and, if discovery violations are done unfairly or frivolously, this delays benefits. Such could be considered a controversion-in-fact and subject Employer and its insurer to a §.155(o) referral. In his opinion, any time Employer used discovery violations to slow down the process, this resulted in an unfair or frivolous controversion at least for the duration of the delay. There are numerous decisions where a controversion-in-fact had been found to be unfair or frivolous. He cited the *Hammer* decision. In his opinion, the unfair or frivolous controversion in *Martino IV* arose from the fact that Employer did not send all of Employee’s records to its EME physicians. Bredesen contended that this issue was reserved by a stipulation in a January 15, 2024 prehearing conference when the parties decided to attempt mediation. He also added that there is no regulation, statute or case law putting a time limit on a person’s request for an unfair or frivolous controversion referral. (Record, May 12, 2026).

64) Regarding issue #3, Employer contended that all the issues argued at the instant hearing were previously decided and benefits were paid accordingly. In its view, any delays in Employee’s treatment is based on her constantly re-litigating the same issues. Employer contended that Employee’s TOS surgery recommendation came after she was cleared for her cervical spine and saw other specialists. The surgical recommendation came from a February order, and Holdiman-Miller approved the surgery in a March 2026 letter. But the provider said they needed a California form signed, which was not a typical form that an Alaska adjuster would sign. Nonetheless, the adjuster signed and approved it and surgery was ultimately scheduled. Employer contended these delays were not its fault and the physician himself testified that the delay was the “need for her to see all these different specialists” to rule out other issues to come to the ultimate conclusion that she needed TOS surgery. It further contended that Employee waived her right to argue an unfair or frivolous controversion related to the previous

*Martino* decisions. In Employer's opinion, the fact that Employee moved to three different states since 2020 further complicated her ability to establish medical care for her "very complex medical condition" as her surgeon testified in a recent deposition that was not filed before the hearing. (Record, May 12, 2026).

65) Regarding issue #3, Employee argued that she filed many petitions and had numerous prehearing conferences because she kept seeking an answer to why her various treatment authorization plans were allegedly denied or unanswered. In her view, this has never been adequately explained. She added that her discovery of various "vendors" and related documents have escaped her. (Record, May 12, 2026).

66) Addressing #6, her claim for past-due TTD benefits, and #7, which is Employer's request to dismiss that claim, Employee argued she would have to go through all of her pay stubs and point out the "gaps" in several payments. She acknowledged there was a "partial excuse," because she moved from Alaska to Hawaii. Even then, Employee argued that "the attorney" was notified that she had moved. Employee admitted that she may be missing a pay stub for various reasons when she was trying to calculate her missed TTD payments. She commented on Employer's various Excel spreadsheets, which Employee found confusing. Specifically, Employee identified alleged non-payment from October 15, 2020 to November 24, 2020. She identified another period of alleged non-payment from March 14, 2021 to March 27, 2021. When asked to specify the periods for which Employee stated she was not paid TTD benefits, she said "no, I'm not going to be able." She based her inability to identify other non-paid periods besides these two on Employer's alleged lack of discovery production of "pay dates." When specifically asked if it was her testimony that she did not receive payment for these two identified periods, Employee said, "I don't believe that I did." Employee stated "it took [her] forever" to find her pay stubs and when she did, she could not find pay stubs for those two periods. Employee acknowledged that on occasion she asked the adjuster to stop payments on checks. Employee did not ask the adjuster to stop any March 2021 payments. She testified that she looked through Employer's Excel spreadsheets and could find no entry showing payment to her for the "October to November" timeframe. Employee was "99% certain" that the allegedly missing March 2021 payment did not happen. She conceded that she had not appealed *Martino IV* and had not petitioned to have it modified. Employee read *Martino IV* to say that all past-due TTD benefits would be paid. (Record, May 12, 2026).

67) Employer argued in respect to #6 and #7 that *Martino IV* already found Employer had paid Employee TTD benefits from July 3, 2020 through March 27, 2021. It argued that since Employee did not appeal or petition for modification of *Martino IV*, and since it was a final decision, her claim to resurrect that TTD issue was barred by *res judicata*. (Record, May 12, 2026).

68) On issue #8, Employer’s petition for a screening order, it argued that Employee had filed 90 petitions since the July decision. It cited *Parsons*, which granted a pre-litigation screening order. Employer noted that Employee is not represented by counsel, and continues to file repetitive and duplicative petitions, and petitions that address issues already decided. It asked for a pre-litigation screening order in this case. (Record, May 12, 2026).

69) Employee argued that prehearing conferences are where repetitive or duplicative pleadings should be ferreted out. She contended that if Employer obeyed previous Board orders, she would not have to file petitions to obtain relief. In her view, a pre-litigation screening order would only serve to “hide a lot of the wrongdoing” that Employee believed Employer is engaging in. She opposed a pre-litigation screening order. (Record, May 12, 2026).

70) The parties have filed the following documents that appear relevant to §.155(o):

**Table I**

Authorization	Treatment	Approved	Denied	Controversion	Benefit Controverted
4/30/24	Follow-up with Dr. Gelabert	5/1/24 for three appointments only	5/1/24 for more than three appointments		
7/2/24	Vally Medical	Seever email approving treatment at Vally Medical			
7/24/24	4-Point Cane		Undated denial for initial evaluation and neck MRI		
7/24/24	Neck, thoracic and L-shoulder imaging	Undated approval for neck MRI only	Undated denial for neck MRI only		
7/24/24	Injections	Undated approval for neck & MRI follow-up only	Undated denial for neck & MRI follow-ups only		
7/24/24	Neck & thoracic massage and acupuncture				
8/6/24	Consultation with Hawaii Pacific Neuroscience				
8/6/24	Refer to Dr. Graham [who had retired]				
				9/9/24	8/13/24 claim; attorney fees & costs; medical bills; pre-authorization; cervical MRI approved on 7/2/24 by direct contact with provider
				10/9/24	9/13/24 claim; attorney fees & costs; medical bills; no pre-authorization required; COLA; No U & F

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					controversion
11/5/24	Refer to Dr. Roh [because Dr. Graham had retired]				
12/5/24	Refer to Dr. Vally				
1/29/25	Refer to Dr. Gelabert				
2/3/25	Refer to UCLA	2/4/25			
3/24/25	Follow-up with Dr. Gelabert	3/25/25			
4/7/25	Refer to Dr. Gelabert	4/8/25			
4/10/25	Refer to Dr. Ennila				
4/11/25	Refer to Big Island Massage	4/11/25			
4/11/25	Refer to Big Island Acupuncture	4/11/25			
				4/24/25	No U & F controversion
6/5/25	Refer to Dr. Vally	6/6/25			
6/6/25	Refer to Dr. Kaminskas				
				4/24/25[sic] (filed 12/8/25)	11/11/25 petition barred by <i>res judicata</i> or moot
8/29/25	Stellate Block	9/3/25? [no boxes on form to check, but dated and signed by adjuster]	9/3/25? [no boxes on form to check, but dated and signed by adjuster]		
9/4/25	Ketamine Infusion				
10/16/25	Follow-up with Dr. Gelabert	10/17/25			
10/22/25	Refer to Dr. Fowler				
11/5/25	Dr. Ghostine treatment	11/5/25			
2/9/26	Gelabert surgery request	4/1/26 with note that Employee moved to West Virginia			
				12/19/25	11/11/25 petition barred by <i>res judicata</i> or moot
				1/5/26	All travel and out-of-pocket medical pending documentation

On their faces, the authorization forms included no proof of service on the adjuster, or from the adjuster to the providers. (Observations). However, on October 28, 2024, Employer filed and served on Employee the neither approved nor denied August 6, 2024 referral to Dr. Graham. (Medical Summary, October 28, 2024). On November 7, 2024, Employer filed and served on Employee the neither approved nor denied November 5, 2024 referral to Dr. Roh. (Medical Summary, November 7, 2024). On November 13, 2024, Employee filed and served on Employer the July 24, 2024 referral to Hawaii Radiologic Associates with the adjuster’s approval and denial, limiting the approval to only the neck MRI. (Medical Summary, November 13, 2024). On November 3, 2025, Employee filed and served on Employer the neither approved nor denied October 22, 2025 referral to Dr. Fowler. (Medical Summary, November 3, 2025). Attached to her February 25, 2026 Petition to compel medical treatment, Employee filed and served the February 9, 2026 facsimile cover sheet from Dr. Gelabert’s office to Berni Seever, to which was attached the February 9, 2026 California Request for Authorization form, signed and

dated by Dr. Gelabert on that date. Also attached were Employee's chart notes from Dr. Gelabert's office spanning from January 31, 2024, through February 9, 2026, explaining in detail Employee's symptoms, evaluation and treatment recommendations for her TOS. On April 21, 2026, Employer filed and served on Employee the February 9, 2026 Dr. Gelabert TOS surgery request with the adjuster's April 1, 2026 approval. (Medical Summary, April 21, 2026). On May 26, 2025, Employer filed and served on Employee the neither approved nor disapproved April 10, 2025 referral to Dr. Ennila, and the neither approved nor denied September 4, 2025 ketamine infusion request. (Medical Summary, May 26, 2026).

### PRINCIPLES OF LAW

**AS 21.36.125. Unfair claim settlement practices.** (a) A person may not commit any of the following acts or practices:

- (1) misrepresent facts or policy provisions relating to coverage of an insurance policy;
- (2) fail to acknowledge and act promptly upon communications regarding a claim arising under an insurance policy;
- (3) fail to adopt and implement reasonable standards for prompt investigation of claims;
- (4) refuse to pay a claim without a reasonable investigation of all of the available information and an explanation of the basis for denial of the claim or for an offer of compromise settlement;
- (5) fail to affirm or deny coverage of claims within a reasonable time of the completion of proof-of-loss statements;
- (6) fail to attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear;
- (7) engage in a pattern or practice of compelling insureds to litigate for recovery of amounts due under insurance policies by offering substantially less than the amounts ultimately recovered in actions brought by those insureds;
- (8) compel an insured or third-party claimant in a case in which liability is clear to litigate for recovery of an amount due under an insurance policy by offering an amount that does not have an objectively reasonable basis in law and fact and that has not been documented in the insurer's file;
- (9) attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;
- (10) attempt to settle a claim on the basis of an application that has been altered without the consent of the insured;
- (11) make a claims payment without including a statement of the coverage under which the payment is made;
- (12) make known to an insured or third-party claimant a policy of appealing from an arbitration award in favor of an insured or third-party claimant for the

- purpose of compelling the insured or third-party claimant to accept a settlement or compromise less than the amount awarded in arbitration;
- (13) delay investigation or payment of claims by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;
- (14) fail to promptly settle claims under one portion of a policy for the purpose of influencing settlements under other portions of the policy;
- (15) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or
- (16) offer a form of settlement or pay a judgment in any manner prohibited by AS 21.96.030;
- (17) violate a provision contained in AS 21.07.

(b) The provisions of this section do not create or imply a private cause of action for a violation of this section.

(c) The director of insurance shall adopt regulations to implement, define, and enforce this section.

“Neither the Appeals Commission . . . nor the Board . . . has jurisdiction to hear any action outside of a workers’ compensation claim.” *Alaska Public Interest Research Group (AKPIRG) v. State*, 167 P.3d 27, 36-37 (Alaska 2007).

**AS 23.30.001. Legislative intent.** It is the intent of the legislature that

- (1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . employers. . . .

.....

- (4) hearings in workers' compensation cases shall be impartial and fair to all parties and that all parties shall be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered.

The Alaska Workers’ Compensation Act (Act) has a liberal humanitarian purpose. *Burgess Construction Co. v. Lindley*, 504 P.2d 1023, 1025 (Alaska 1972). The purpose is to provide workers with a simple and speedy remedy to compensate them for work injuries. *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 531 (Alaska 1987). The Board may base its decision not only on direct testimony, medical findings and other evidence, but also on the Board’s “experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above.” *Rogers & Babler*, 747 P.2d at 533-34. *Robertson v. American*

*Mechanical, Inc.*, 54 P.3d 777 (Alaska 2002), held *res judicata* applies in workers' compensation cases and set forth the three-part test to determine when it applies:

- (1) The prior judgment was a final judgment on the merits;
- (2) A court of competent jurisdiction rendered the prior judgment, and
- (3) The same cause of action and same parties or their privies were involved in both suits.

**AS 23.30.045. Employer's liability for compensation.** (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. . . .

**AS 23.30.095. Medical treatments, services, and examinations.** (a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires. . . . The board may authorize continued treatment or care or both as the process of recovery may require. . . .

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the board, submit to an examination by a physician or surgeon of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. . . . Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. . . .

. . . .

(k) In the event of a medical dispute regarding determinations of causation, medical stability, ability to enter a reemployment plan, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's independent medical evaluation, the board may require that a second independent medical evaluation be conducted by a physician or physicians selected by the board from a list established and maintained by the board. . . .

Injured workers must weigh many variables when deciding whether to pursue a certain course of medical or related treatment. An important consideration in many cases is whether a physician's recommended treatment is compensable under the Act. *Summers v. Korobkin*, 814 P.2d 1369, 1372 (Alaska 1991). Thus, an injured worker is entitled to a hearing and a prospective determination on whether medical treatment for his injury is compensable. *Id.* at 1373-74.

**AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance. . . .**

(c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. . . .

**AS 23.30.110. Procedure on claims.** (a) . . . the board may hear and determine all questions in respect to the claim. . . .

*Fischback & Moore of Alaska v. Lynn*, 407 P.2d 174, 176 (Alaska 1965) stated the general rule that “when an order of an administrative agency is appealed to a court, the agency’s power and authority in relation to the matter is suspended as to questions raised by the appeal.”

The exercise of administrative jurisdiction in ordering further medical examination and treatment while the case was pending in the superior court was not inconsistent with the proper exercise of the court’s jurisdiction, because the Board’s action did not interfere or conflict with the exercise of the court’s jurisdiction over the case. *Id.* at 177.

*Noey v. Bledsoe*, 978 P.2d 1264, 1275 (Alaska 1999) addressing a trial court’s jurisdiction when a case is on appeal stated, citing the exception to *Lynn*’s general rule:

Moreover, even if all facts were as Noey alleged, the trial court would not have been deprived of jurisdiction to hear the contract dispute in this case. Alaska Appellate Rule 203 divests trial courts of jurisdiction over “proceedings on appeal . . . in the appellate court[.]” Because this interpleader action was not the “proceeding on appeal” in *DEC*, the appeal in *DEC* could have had no effect on the superior court’s jurisdiction to hear the interpleader trial, even if *DEC* conceivably might have impacted this case.

In *Doyon Drilling, Inc. v. Whitaker*, AWCAC Dec. No. 006 (March 2, 2006), the Commission in a case where an order continuing TTD benefits was appealed, addressed the Board’s right to exercise its concurrent jurisdiction. *Whitaker* noted *Lynn* did not say that an appeal suspends “all” Board jurisdiction in a case. The Board could exercise concurrent jurisdiction when it would not “conflict with the proper exercise of the court’s jurisdiction. If there would be no conflict, then there would be no obstacle to the administrative agency exercising a continuing jurisdiction *that may be conferred upon it by law*” (emphasis in original). In *Whitaker*, the question on appeal was whether or not the employee was entitled to continuing TTD

compensation. The Board addressing the same issue conflicted with the proper exercise of the court's jurisdiction, so the Board could not hear that same issue. *Id.* at 4.

*Pietro v. Unocal Corp.*, AWCB Dec. No. 11-0132 (August 25, 2011) declined to exercise concurrent jurisdiction in a case where the Board's initial determination that the employee had a compensable injury was the decision from which all his entitlement to benefits flowed. If the Commission were to reverse that decision "the basis for an award of any benefits to Employee under the Alaska Workers' Compensation Act disappears." Thus, "Concurrent jurisdiction cannot be exercised here because the issues raised in Employee's claim are wholly dependent upon the issues pending on appeal."

*Meili v. Sterling Assisted Living*, AWCB Dec. No. 20-0030 (May 15, 2020) held the Board could hear and decide the employee's request for additional attorney fees and costs, post-appeal of a Board decision that was favorable to her, because "deciding this new issue now does not conflict with the commission's jurisdiction, [and] it is a quicker and more efficient use of administrative and party resources and will save all parties money."

**AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .

*Schoppenhorst v. Property Pros*, AWCB Dec. No. 24-0071 (December 19, 2024) addressed an employer's request for a pre-litigation screening order. Prior Board orders had decided many issues subsequently raised in the claimant's numerous petitions. *Schoppenhorst* said:

A vexatious litigant is one who litigates maliciously and without good grounds to create trouble and expense for the party being sued. . . . Frivolous pleadings are those lacking a legal basis or legal merit, or are not serious, or are not reasonably purposeful. . . . The history of vexatious, frivolous, or repetitive claims or petitions; the motive in filing the claims or petitions; representation by counsel; the expense caused to other parties, or unnecessary burden imposed on the Board and its staff; and whether other sanctions are adequate to protect the parties and the Board, must be assessed. . . .

At the very least, a litigation screening order requires a showing that Employee's actions have been numerous or abusive. . . . Employee has filed at least 176 petitions since litigation began and as many as 11 and 12 in a single day. . . .

*Schoppenhorst* granted the employer's request and issued a screening order. *Id.* at 31. It relied in part on *Molski v. Mandarin Touch Restaurant*, 347 F.Supp.2d 860, 864-68 (Cal. 2004) (*Molski I*) where the court found the claimant filed duplicative lawsuits, and so it entered a screening order. *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, (Cal. 2007) (*Molski II*) on appeal from *Molski I*, found "abuse of discretion" was the proper standard for review, and affirmed *Molski I*. *Molski II* recognized prelitigation orders were "an extreme remedy that should rarely be used," and noted that a decision issuing such an order should be supported by (1) adequate notice and a chance to be heard, (2) an adequate record for review, (3) substantive findings of frivolousness, and (4) the order "must be narrowly tailored to closely fit the specific vice encountered." "A court should enter a pre-filing order constraining a litigant's scope of actions in future cases only after a cautious review of the pertinent circumstances." *Id.* at 1057-58.

**AS 23.30.155. Payment of compensation.** (a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled to it, without an award, except where liability to pay compensation is controverted by the employer. To controvert a claim, the employer must file a notice, in a format prescribed by the director, stating

- (1) that the right of the employee to compensation is controverted;
- (2) the name of the employee;
- (3) the name of the employer;
- (4) the date of the alleged injury or death; and
- (5) the type of compensation and all grounds on which the right to compensation is controverted.

. . . .

(d) . . . If the employer controverts the right to compensation after payments have begun, the employer shall file with the division, in a format prescribed by the director, a notice of controversion not later than the date an installment of compensation payable without an award is due. . . .

. . . .

(o) The director shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the director, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

Medical care is “compensation” under the Act. *Williams v. Safeway Stores*, 525 P.2d 1087 (Alaska 1974). The Court has taken a broad reading of the term “controverted,” and has held a “controversion in fact” can occur when an employer did not file a formal controversion. *Alaska Interstate v. Houston*, 586 P.2d 618 (Alaska 1978). A controversion-in-fact can occur when an employer does not “unqualifiedly accept” an employee’s claim for compensation, or when an employer consistently denies and litigates its obligation to pay increased benefits. *Wien Air Alaska v. Arant*, 592 P.2d 352 (Alaska 1979). A controversion-in-fact also occurs when an employer does not file a controversion notice but denies liability for benefits in its answer to a claim. *Harnish Group, Inc. v. Moore*, 160 P.3d 146 (Alaska 2007). To determine whether there has been a controversion-in-fact, an employer’s answer to a claim for benefits and its actions after the claim is filed must be examined. *Id.* at 152. For there to be a controversion-in-fact, an employer must take some action in opposition to a claim after it is filed. *Id.*

The Board has followed this rule when reviewing cases under §.155(o). It is now well-settled that, for purposes of a referral to the Division of Insurance under §.155(o), “controversions” need not be formal or written controversions. *Tweden v. United Parcel Service*, AWCBC Dec. No. 02-0076 (April 29, 2002). “The general rationale for these cases is that an employer who fails to pay or formally controvert an employee’s claim should not be shielded from a referral to the Division of Insurance by its own negligent or intentional refusal to controvert.” *Id.*

*Harp v. Arco Alaska, Inc.*, 831 P.3d 352, 358 (Alaska 1992) held, “For a controversion notice to be filed in good faith, the employer must possess sufficient evidence in support of the controversion that, if the claimant does not introduce evidence in opposition to the controversion, the Board would find that the claimant is not entitled to benefits.”

*King v. Utility Technologies, Inc.*, AWCBC Dec. No. 13-0110 (September 6, 2013) found four occasions when an employer delayed payment for a claimant’s “fully documented, compensable prescription medications” were “controversions in fact.” “Employer’s obligation thereafter was to promptly authorize Employee’s medication prescriptions on presentment, or formally controvert on a form provided by the Director, AS 23.30.155(a). Employer did neither.” *Id.* at 4.

*Lavallee v. Bucher Glass, Inc.*, AWCB Dec. No. 16-0055 (July 8, 2016) held:

. . . However, the passage of time alone does not automatically translate to Employer resistance. Employer’s actions must be examined, and when one does so, it is difficult to identify any resistance. *Id.* . . . Since there has been no identifiable Employer resistance, there has been no controversions-in-fact. . . . Since there was no controversions-in-fact, there could not have been an unfair or frivolous controversion. . . .

*Baker v. Crawford & Co.*, AWCB Dec. No. 92-0213 (September 1, 1992) (later *Baker-Withrow I*, the name this decision uses henceforth) addressed a claim for a finding under §.155(o), which at that time provided that the Board, rather than the Director as the current version states, was required to notify the Division of Insurance if the Board determined that the employer’s insurer had frivolously or unfairly controverted compensation due. *Baker-Withrow I* stated:

AS 23.30.155(o) provides a penalty for frivolous controversions of benefits. Presuming that the employee intends this to apply to the TPD benefit dispute, we note that the employer filed no Notice of Controversion on this point. We additionally note that even if a controversion had been filed, the medical records of Dr. Lindig did indicate the employee’s release to seek full-time work and he did not clarify his records until the hearing. Considering this evidence, we could not find a controversion to have been frivolous in any event.

*Baker-Withrow I* ostensibly denied the §.155(o) request although it did not state so in its order.

In *Baker-Withrow v. Crawford & Co.*, AWCB Dec. No. 00-0131 (July 3, 2000) (*Baker-Withrow II*) the issue was, “Shall we refer this case to the Alaska Division of Insurance to determine if the insurer has committed an unfair claim settlement practice?” *Baker-Withrow II* cited §.155(o):

Nevertheless, we find these medical records are not a sufficient basis to conclude there was no “controversion-in-fact” during the period of January 9, 1997, when the medical costs were incurred, through November 5, 1997 when the controversion was filed and sent to the medical provider. Based on this delay in communicating the controversion to the employee and provider, specifically addressing the subject of “Atypical chest pain,” we find the defendants have frivolously or unfairly controverted the employee’s claim by defacto-controversion.

Accordingly, we conclude the defendants did not act in good faith and did frivolously or unfairly controvert compensation due the employee. Therefore,

we will grant the employee's request that we notify the Division of Insurance of this matter.

The insurer appealed *Baker-Withrow II* to the superior court and then to the Supreme Court. *Crawford & Company v. Baker-Withrow*, 81 P.3d 982 (Alaska 2003) (*Baker-Withrow III*) stated that §.155(o) "requires the Alaska Workers' Compensation Board to notify the Division of Insurance when it determines that an insurer has frivolously or unfairly controverted a compensation claim." Upon receiving notice, the Division of Insurance must determine if the insurer has committed an unfair claim practice under AS 21.36.125. *Baker-Withrow III* stated:

In proceedings before the Division of Insurance the board's frivolous controversion determinations cannot be questioned on evidentiary or legal grounds and thus will be binding. Since the elements of a frivolous or unfair controversion under AS 23.30.155(o) are similar to the unfair claim settlement practice defined in AS 21.36.125(a)(6) -- failing to "attempt in good faith to make prompt and equitable settlement of claims in which liability is reasonably clear" -- the board's determinations will go a long way toward establishing an unfair claim settlement practice. *Id.* at 985.

*Irby v. Fairbanks Gold Mine, Inc.*, 203 P.2d 1138 (Alaska 2009) said the Board's determination in an unfair or frivolous controversion case may be fact- or legal-based. Fact-based findings focus on whether the controversion is based on adequate facts to justify it. Legal-based findings focus on whether the employer was legally justified in controverting benefits.

*Harris v. M-K Rivers*, 325 P.3d 510 (Alaska 2014) held the Board had authority to impose statutory penalties based on an employer's bad faith controversion of a claim for medical benefits, even though prescribed medical treatments and prescriptions had not yet been provided, such that the claimant could not provide the employer with bills for treatments. After an EME, the employer controverted the employee's medical prescription for a Clinitron bed, which cost approximately \$50,000. After a hearing, the Board found the Clinitron bed controversion was not in good faith because the adjuster had no evidence on which to base the controversion. The Board assessed a penalty "on the value of a Clinitron bed as of the controversion date." The employer appealed to the Commission.

On appeal, the Commission decided that because the prescription for the bed was never actually filled, no compensation was “owing” under the statute and thus no penalty was due. It held the Board also erred by assessing a penalty for the employee’s medication and sleep apnea treatment, because no medical bills “were presented for payment and not paid.” The employee appealed to the Alaska Supreme Court.

On appeal to the Court, the employee argued that penalties can be imposed when an employer lacks a good faith basis to controvert prescribed medical treatment even if no bill has yet been presented for payment. Using the Clinitron bed as an example, the employee argued “that few workers’ compensation recipients can afford ‘a bed costing tens of thousands of dollars.’” In analyzing this issue, *Harris* cited *Harp* and stated, “it is still the law.” It also cited another case, which applied penalty provisions under §155(e) to medical benefits. *Harris* reasoned:

Alaska Statute 23.30.155(e) requires imposition of a penalty when compensation is not paid within seven days after it becomes “due.” Installments of compensation must be paid on a schedule set out in the statute. We must determine when medical care becomes “due” such that an employer may be subject to a penalty when its controversion was not filed in good faith under *Harp*. *Id.* at 518.

*Harris* noted that there was no definition of “due” in the Act or in Title 1 of the Alaska Code. Thus, *Harris* interpreted the applicable statute according to reason, practicality, and common sense, considering the meaning of the statute’s language, legislative history and the statute’s purpose. The Court turned to Webster’s dictionary for a definition of “due,” and found the first definition as “[p]ayable immediately or on demand” and the second definition as “[o]wed as a debt: OWING.” *Harris* also looked to Black’s Law Dictionary where it found two similar, relevant meanings: “[i]mmediately or on demand” and “[o]wing or payable; constituting a debt < the tax refund is due from the IRS>.” *Id.* The Court found the Commission’s interpretation appeared to use the second meaning because it interpreted the statute to require “presentation of a bill.” *Harris* found, “the Board’s interpretation is closer to the first meaning of “due” because it assessed a penalty on the value of the bed as of the date of the controversion, “implying that the bed should have been made available to Harris then.” *Id.*

*Harris* cited the Act’s overall intent, to “ensure” quick, efficient, fair and predictable delivery of benefits to injured workers at a reasonable cost to employers. It noted the Act set up a system where payments are made without Board intervention unless a dispute arose, and in that event, an employer had to file a timely controversion notice. *Harris* further cited the protection from tort liability an employer receives by participating in the workers’ compensation system. The Court concluded, “Under this compensation system, payments ‘due’ under the act are more appropriately characterized as ‘[p]ayable immediately or on demand,’ not ‘[o]wed as a debt.’” *Id.* at 518-19. *Harris* also made other observations: medical benefits become “due for purposes of controversion and penalties” when the employer “has notice they have been prescribed by a doctor.” The Court held that *Sumner* supported imposition of a penalty when a controversion delays medical care that is reasonable and necessary. Most notably:

The most closely analogous case to the present case is also from Pennsylvania. The Pennsylvania Commonwealth Court decided that a penalty was appropriate when an insurer refused to pre-certify back surgery and failed to file a “[utilization review] determination petition” prior to its refusal. The worker’s back injury had been found compensable, but at the time of the surgery request, the employer refused to pre-certify it because its doctor contended the employee had fully recovered from the work-related injury. The worker was unable to have the surgery after the insurer refused to authorize it. The administrative law judge imposed a penalty of 20% of the claimant’s compensation for more than a year, from the date of the scheduled surgery to the date of the administrative decision. The insurer argued on appeal that a penalty could be assessed only when it failed to pay a bill that had been presented for payment. Calling the employer’s argument “disingenuous,” the court disagreed because the insurer’s “own action effectively prevented Claimant from receiving the recommended treatment in the first place”; it thus upheld the penalty. *Id.* at 520.

The argument rejected by the Pennsylvania court is similar to the Commission’s view in this case that no penalties could be imposed on the improper controversion of the Clinitron bed because “no bills were presented for payment.” But a rule that a penalty can be imposed only when a bill is presented for payment can result in an insurer never being penalized for issuing a controversion that is not made in good faith because the worker may not be able to afford the treatment on his own. Such a controversion could prevent an injured worker from receiving the treatment, so there would never be a bill to present for payment. The Commission’s construction of the statute is contrary to the statute’s purpose of providing “quick, efficient, fair, and predictable delivery” of medical benefits to a claimant. . . . We therefore hold that the Commission erred in deciding that as a matter of law no penalty could be imposed for the bad faith controversion of the Clinitron bed. *Id.* at 521-22.

In *Bockus v. First Student Services*, AWCB Dec. No. 14-0040 (March 24, 2014) (*Bockus I*), a surgeon's scheduler called the adjuster to verify coverage for a work-related surgery in a case that was not formally controverted. The adjuster told her the "claim was open and billable" but added that an EME was scheduled. The physician's office had a policy to not schedule surgery if there was a pending EME, so patients would not be stuck with the bill. The surgeon said he would have gone ahead with the surgery if the carrier had "authorized," but it had not. The employee filed a claim and alleged the carrier had "controverted in fact" medical care by resisting payment by not approving the surgery his treating physician had recommended, until after an EME. Ultimately, the EME physician found that work remained the substantial cause of his need for the surgery. The carrier finally approved the surgery and the employee had it.

At hearing before the Board, the employee testified he had made numerous calls to his surgeon's office inquiring about the surgery, and several to the adjuster. The adjuster would always tell him the claim was "open" but would never "say yes or no" about the surgery. The adjuster testified she was obligated to tell a medical provider that there was a pending EME scheduled, but did not say why she had this obligation. She further testified that her office did "not preauthorize any medical treatment because [they are] unable to direct" medical treatment. The adjuster repeatedly testified "there [were] no issues with surgery being scheduled." The surgeon's scheduler testified the surgeon would not schedule surgery if he knew an EME was pending, until it was done. She waited for the insurance company to advise if they were going to pay for the surgery before scheduling it. The adjuster did not authorize the surgery. Had she done so, the scheduler would have scheduled the surgery. *Bockus I* noted, "'Open and billable' is hardly synonymous with 'open and payable.'"

As for the applicable regulations, *Bockus I* noted ". . . 8 AAC 45.082(d) merely sets forth the procedural requirement for when bills must be paid following receipt. It does not form the basis for a sweeping legal doctrine stating Employer did not have to preauthorize medical care in Alaska." *Bockus I* decided that the employee's attorney fees could be awarded because the employer had resisted furnishing medical care and the employee's attorney successfully obtained that benefit. It construed the *Summers* decision to provide the employee with a remedy even if

the Act did not require the employer “to preauthorize treatment.” *Bockus I* reasoned that the employer’s resistance effectively and unilaterally terminated the employee’s benefits, justifying a fee award. The employer appealed.

On appeal, the Commission in *First Student Services v. Bockus*, AWCAC Dec. No. 205 (December 3, 2014) (*Bockus II*) decided the issue was “whether an employer was required to preauthorize care” under the Act. *Bockus II* found nothing in case law requiring an employer to preauthorize surgery, and decided the “one and only one means” for an employee to find out in advance whether his employer must pay for certain medical treatment is to file a claim with the Board to determine compensability. *Id.* at 9. It relied on a statute which requires an employer to pay the employee’s medical bills within 30 days of receiving the provider’s bills and reports. *Bockus II* reversed the employee’s attorney fee award. The employee appealed.

On appeal *Bockus v. First Student Services*, 384 P.3d 801(Alaska 2016) (*Bockus III*) addressed the attorney fee issue around a prescribed third back surgery for the injured worker:

We see no need in this case to determine whether an employer’s statutory duty to furnish medical care includes a general duty to preauthorize treatment. On the other hand, we do not suggest that the carrier’s only obligation is to reimburse medical providers or injured workers for care already provided and billed or paid. In this case, as in others, a worker may be unable to get needed treatment without some assurance, implicit or otherwise, that the carrier will pay for the recommended procedure. Both parties acknowledge that an injured worker may be in a difficult position when his doctor requires assurance of payment, particularly in light of the statutory prohibition on requiring an injured worker to pay for compensable medical care. *Id.* at 808.

....

In considering the contours of First Student’s obligation to furnish medical care under AS 23.30.095(a), the Commission reasoned that AS 23.30.097(d), the statutory provision requiring payment of medical bills within 30 days, was more specific and thus controlled over AS 23.30.095(a). To the extent the Commission’s decision can be read as interpreting “furnish” in AS 23.30.095(a) to mean *solely* a duty to pay bills in accordance with AS 23.30.097(d), we disagree with that analysis. . . . *Id.* at 809; (emphasis in original).

In a related footnote, *Bockus* stated:

At oral argument before us, First Student agreed that an employer’s obligation to furnish medical care is broader and includes at a minimum an obligation to review medical records to determine what treatment is necessary. *Id.* at 809, n. 24.

*Bockus* reversed and remanded the Commission’s decision with instructions to reinstate the Board’s attorney fee award. *Id.* at 811.

In *Vue v. Walmart Associates, Inc.*, 475 P.3d 270, 286 (Alaska 2020) the claimant argued that the employer’s controversions were frivolous or unfair such that the employer’s insurer “must be referred to the Division of Insurance under AS 23.30.155(o).” Because the employee’s arguments were principally related to the evidence his employer had to support its controversions, the analysis of the controversions in *Vue* focused “on whether they were frivolous.” *Id.* at 288. *Vue* found that an EME report must contain adequate evidence to support a controversion based on that physician’s report. *Id.* at 291. If not, the controversion was “frivolous” as a matter of law. *Id.* Likewise, a controversion completely lacking a plausible legal defense or evidence to support a fact-based controversion is likewise frivolous. *Id.*, n. 110. *Vue* added:

But we agree with *Vue* that an insurer has a continuing obligation to consider new evidence that comes to its attention and to modify or withdraw controversions based on that new evidence or face a possible penalty or referral to the Division of Insurance. . . . *Id.* at 288. . . . We therefore hold that the employer has a continuing duty to evaluate the evidence supporting a controversion and that it may be subject to a penalty if it fails to modify or withdraw a controversion after receiving evidence that removes the original basis for the controversion. . . . *Id.* at 289.

. . . .

The Act has contained a penalty provision since 1959, but AS 23.30.155(o) was added in 1988. The statutory language is not complex: . . .

. . . .

The legislature’s intent was that the Division of Workers’ Compensation and the Division of Insurance “strictly enforce . . . the reporting requirements and penalties for noncompliance under AS 23.30.155.”

*Vue* accepted the Commission’s definition of “frivolous” as one “completely lacking a plausible legal defense or evidence to support a fact-based controversion.” *Id.* at 292, n. 110. *Vue* held that an EME who had no basis to dispute an attending physician’s treatment options, within the

first two years post-injury, as a matter of law failed to meet the *Harp* test. Alternately, the EME report only referenced medical stability from a “surgical aspect” and failed to address non-surgical treatment the claimant was receiving. *Vue* concluded both controversions were “frivolous” as defined in various Commission decisions. “More importantly, controverting a claim or otherwise undermining a claim’s status has a documented negative impact on medical care for injured workers. . . .” *Id.* at 292. *Vue* remanded for referral to the Division of Insurance. *Id.*

**AS 44.62.430. Subpoenas; witness fees.** (a) Before the hearing begins the agency shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure. . . .

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. A witness is not obliged to attend at a place out of the house district in which the witness resides unless the distance is less than 100 miles from the place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

**8 AAC 45.020. Transaction of business. . . .**

(5) a document is considered filed upon receipt unless received on a Saturday, Sunday, a day the board is closed due to a state-recognized closure, or after 5:00 p.m. Alaska time; if the document is filed on a Saturday, Sunday, a day the board is closed due to a state-recognized closure, or after 5:00 p.m. Alaska time, the filing date will be the next working day;

**8 AAC 45.050. Pleadings. . . .**

(c) For answers to claims and petitions under this subsection,  
. . . .

(2) an answer to a petition must be filed not later than 20 days after the date of service of the petition and served upon all parties; (3) an answer must be simple in form and language and state the admitted and disputed claims briefly and clearly so that a lay person knows what proof will be required at the hearing and, when applicable, state. . . .

(f) For stipulations under this subsection,

- (1) a stipulation of facts signed by all parties may be filed if the parties agree . . . to the immediate filing of an order based upon the stipulation of facts;
- (2) stipulations between the parties may be made in writing at any time before the close of the record or may be made orally in the course of a hearing or a prehearing; . . .

**8 AAC 45.054. Discovery**

. . . .

(c) The board or division will issue subpoenas and subpoenas duces tecum in accordance with the Act. The person requesting the subpoena shall serve the subpoena at the person's expense. Neither the board nor the division will serve subpoenas on behalf of a party.

**8 AAC 45.090. Additional examination. . . .**

(d) Regardless of the date of an employee's injury, the employer must

- (1) give the employee and the employee's representative, if any, at least 10 days' notice of the examination scheduled by the employer;
- (2) arrange, at least 10 days in advance of the examination date, for the employee's transportation expenses to the examination under AS 23.30.095(e) . . . at no cost to the employee if the employee must travel more than 100 road miles for the examination or, if the employee cannot travel on a government-maintained road to attend the examination, arrange for the transportation expenses by the most reasonable means of transportation; and
- (3) arrange, at least 10 days in advance of the examination date, for the employee's room and board at no cost to the employee if the examination under AS 23.30.095(e) . . . requires the employee to be away from home overnight.

**8 AAC 45.092. Second independent medical evaluation. . . .**

(g) If there exists a medical dispute under AS 23.30.095(k),

- (1) the parties may file a . . .
- (2) a party may petition the board to order an evaluation. . . .
- (3) the board will, in its discretion, order an evaluation under AS 23.30.095(k) even if no party timely requested an evaluation under (2) of this subsection. . . .

**8 AAC 45.114. Legal memoranda.** Except when the board or its designee determines that unusual and extenuating circumstances exist, legal memoranda must

. . . .

(2) not exceed 15 pages, . . . unless at a prehearing the board or its designee determined that unusual and extenuating circumstances warranted a longer memorandum; if the board or its designee granted permission at prehearing to file a legal memorandum exceeding 15 pages, excluding exhibits. . . .

(3) be on 8 1/2 by 11-inch paper of at least 16-pound weight, have margins of at least one inch on all sides, exclusive of headers and page numbers, and have spacing of not less than one and one-half lines, except that quotations may be single-spaced and indented; and

(4) display the text . . . black typeface equivalent in size to at least 12 point Courier or 13 point Times New Roman or New Century Schoolbook.

**8 AAC 45.182. Controversion.** (a) To controvert a claim the employer shall file form 07-6105 in accordance with AS 23.30.155(a) and shall serve a copy of the notice of controversion upon all parties in accordance with 8 AAC 45.060. This notice must be filed in addition to the notice required under AS 23.30.155(c) and 8 AAC 45.136.

. . . .

(d) After hearing a party’s claim alleging an insurer or self-insured employer frivolously or unfairly controverted compensation due, the board will file a decision and order determining whether an insurer or self-insured employer frivolously or unfairly controverted compensation due. Under this subsection,

(1) if the board determines an insurer frivolously or unfairly controverted compensation due, the board will provide a copy of the decision and order at the time of filing to the director for action under AS 23.30.155(o); . . .

(e) For purposes of this section, the term “compensation due,” and for purposes of AS 23.30.155(o), the term “compensation due under this chapter,” are terms that mean the benefits sought by the employee, including but not limited to disability, medical, and reemployment benefits, and whether paid or unpaid at the time the controversion was filed.

**Alaska Rule of Civil Procedure 45. Subpoena**

. . . .

(c) Service. A subpoena may be served by a peace officer, or any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the person the fees for one day’s attendance and the mileage prescribed by rule. . . . Proof of service shall be made by affidavit.

In *Atlas v. State of Alaska*, AWCB Dec. No. 20-0072 (August 17, 2020) (*Atlas I*) a party tried to call subpoenaed witnesses at hearing and the employer objected, based on improper service of

the subpoenas. The Board applied AS 44.62.430, 8 AAC 45.054(c) and Civil Rule 45 and disallowed all witnesses that were not personally served. The Commission in *Atlas v. State of Alaska*, AWCAC Dec. No. 292 (November 19, 2021) (*Atlas II*) affirmed.

**3 AAC 26.030. File and record documentation.** (a) Any person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim under any type of insurance must document each action taken on a claim. The documentation must contain all notes, work papers, documents and similar material. The documentation must be in sufficient detail that relevant events, the dates of those events, and all persons participating in those events can be identified. The documentation may include legible copies of originals and may be stored in the form of microfilm or electronic media. The documentation is subject to examination and copying by the director or persons acting on the director's behalf.

(b) A person transacting a business of insurance who participates in the investigation, adjustment, negotiation, or settlement of a claim under any type of insurance shall respond to inquiries from the director related to the claim not later than 10 days from the date of the director's inquiry. The response must include all documentation within the person's possession, custody, or control, or in the possession, custody, or control of other persons or entities acting on behalf of that person in relation to the claim, that is responsive to the director's inquiry.

(c) The director may assess a penalty under AS 21.36.910 of not more than \$2,500 for each violation or \$25,000 for engaging in a general business practice that violates (b) of this section.

## ANALYSIS

### **1) Was the oral order accepting Employer's untimely brief correct?**

Hearing briefs were due on May 5, 2026. On May 5, 2026, Employer petitioned for a two-day extension to file its brief. The petition cited no reason for the extension, but at hearing Holdiman-Miller explained that she had a travel issue and did not have access to her devices to properly prepare and timely file her brief. On May 6, 2026, Employer filed its brief. On May 12, 2026, Employee objected to the extension, stating it was unfair to allow Employer to review her brief and then file its own. Holdiman-Miller stated that she had not read Employee's brief prior to preparing her own. The panel at the May 12, 2026 hearing believed Holdiman-Miller's explanation as an officer of the court, overruled Employee's objection and in an oral order accepted Employer's brief as timely filed.

Absent a pattern of tardy filings from a party, which the panel has not seen with Holdiman-Miller, hearing panels may relax the filing rule for briefs. Such was the case here. Furthermore, although Employer did not object, the panel noted Employee's brief was not filed until May 6, 2026, making it one-day late. The Division must receive the entire filing before 5:00 PM Alaska time for the document to be considered timely filed. 8 AAC 45.020(5). Moreover, briefs are limited to 15 pages unless otherwise ordered, must have spacing of not less than one and one-half lines, and must be typed in at least 12 point Courier or 13 point Times new Roman or New Century Schoolbook. 8 AAC 45.114 (2)-(4). Employee's brief, approximately 17 pages long, was single-spaced, in a smaller point and in a non-conforming typeface, all in violation of §.114(2)-(4), the briefing regulation to which all parties are referred in every Prehearing Conference Summary. Thus, Employee was accorded about 34 pages to argue her case. Employer's brief, also filed on May 6, 2026, was only 11 pages long, and conformed to §.114 (2)-(4). Therefore, the oral order accepting Employer's untimely brief as filed was correct.

**2) Was the oral order disallowing Employee to call Holdiman-Miller or the adjuster as witnesses correct?**

Employee said she subpoenaed the adjuster, and wanted Holdiman-Miller to testify at hearing. Employer objected, arguing that their testimony would not be relevant for any issue at this hearing. At this point in the hearing it was unclear what, if any, issues the panel would hear given the Commission's pending Petition for Review. On further inquiry Employee admitted she had not personally served the subpoena on the adjuster. Holdiman-Miller also asserted the attorney-client privilege on her clients' behalf and stated her clients would not waive the privilege. Employee argued that Employer refused to disclose the adjuster's name, so she could not have personally served him. An oral order precluded Employee from calling Holdiman-Miller and the adjuster, primarily because she failed to personally serve them with subpoenas.

The Division issues subpoenas but does not serve them. AS 44.62.430(a); 8 AAC 45.054(c). Subpoenas for a person to testify at hearing must be issued in accordance with Civil Rule 45(c), which require personal service. AS 44.62.430(b); *Atlas I* and *II*. It seems unlikely that Employer would not have disclosed the name and location of the adjuster if asked, or that Employee could not have obtained that information from the Division. Nevertheless, the chair advised Employee

that if that was the case, her remedy was to petition for an order compelling Employer to provide the adjuster's name well before the hearing. Instead, she used "Record Custodian / Adjuster" on her subpoena. In any event, because Employee did not provide proof of personal service on either putative witness, the oral order disallowing her to call Holdiman-Miller and the adjuster was correct. *Atlas*. Further, given the limited issues heard on May 12, 2026, it does not appear that either witness' testimony would have been admissible or relevant.

**3) Does the panel have jurisdiction to hear and decide some issues before it?**

This hearing panel has statutory authority to "hear and determine all questions in respect" to a claim under AS 23.30.110(a). The 11 issues set for hearing in some way relate to questions in respect to Employee's pending claims. However, the panel's jurisdiction is not without limits. Before proceeding with the 11 pleadings and issues scheduled for hearing, the panel had to determine which, if any, it could hear given Employee's pending Petition for Review before the Commission. About three hours were spent at hearing trying to determine this.

Employee's Petition for Review expressly stated it pertained to *Martino IX*, which was limited to denying reconsideration of *Martino VIII*. Assuming Employee's Petition for Review applies to both *Martino VIII* and *IX*, those decisions had limited impact. *Martino VIII* decided Employee's December 29, 2025 petition appealing from a designee's discovery order. That decision affirmed the designee's order and required Employee to sign and deliver five releases to Employer. *Martino VIII* also limited Employer's contact with Employee's medical providers' offices using those releases to requesting billing exchanges, medical records and authorization responses. Any other Employer contact with her medical providers themselves had to be done with at least 10-days' notice to Employee. *Martino IX* simply affirmed *Martino VIII* and denied Employee's petition to reconsider it.

But Employee did not limit her Commission briefing to those two decisions. She spent considerable time arguing many of the issues raised in her petitions scheduled for hearing on May 12, 2026. Employee's Petition for Review ultimately sought broad relief from the Commission in its "Relief Requested" section. Understanding that the Commission may exercise relaxed rules while reviewing and interpreting Employee's petition because she is self-

represented, the panel did its best to avoid those pending issues that could conceivably interfere with the Commission's jurisdiction. The panel determined that "discovery matters" were the primary focus in Employee's pending Petition for Review before the Commission.

After hours reviewing the pleadings and listening to the parties' positions, three of the 11 pleadings were found by the parties' agreement to be moot. Three more, and part of a fourth, were determined to possibly or likely interfere with the Commission's jurisdiction on Employee's pending Petition for Review. The panel declined to address them. Those petitions included Employee's December 15, 2025 petition to compel and for sanctions; November 11, 2025 petition for sanctions; November 11, 2025 petition for EOB copies; and part of Employer's November 20, 2025 petition to dismiss. Another, Employee's March 9, 2026 petition to compel and for a protective order, was found not to have been addressed at the prehearing conference level, where petitions for protective orders and petitions to compel, by statute, are initially addressed.

Employer and Bredezen initially argued that the panel had no jurisdiction to hear any issues set for hearing because the Petition for Review at the Commission suspended the panel's jurisdiction. The general "concurrent jurisdiction" rule is that when a decision is "appealed," the "trial court," which equates to this panel in an administrative system, loses jurisdiction on the issue appealed. *Lynn*. The panel assumes this same rule applies to "Petitions for Review." But there is no prohibition against this panel deciding issues not part of a pending Petition for Review, if deciding those issues will not interfere with the Commission's exercise of its appellate powers. *Lynn; Noey*. In some cases a Petition for Review would defeat a panel's jurisdiction over the same issue pending before the Commission. *Whitaker; Pietro*. But hearing four issues presented at the May 12, 2026 hearing would not interfere with the pending Petition for Review. *Meili*. With this analysis in mind, this decision will address the issues set for hearing:

#7: Among other things, Employer's November 20, 2025 petition sought to dismiss the following, as numbered in the petition: (1) Employee's November 11, 2025 petition for sanctions; and (3) her November 11, 2025 petition for all EOBs and communications with

Employee's providers. The panel determined that hearing and deciding petition number (1) on Employer's petition (which is issue #4 on the May 7, 2026 prehearing summary), and number (3) (issue #5 on the summary) as discussed above could interfere with the Commission's jurisdiction because they relate to discovery issues she briefed to the Commission. The panel will not hear or decide these petitions, and will not hear or decide Employer's request to dismiss them.

However, adding another level of complexity, in the Petition for Review before the Commission, Employee expressly seeks an order vacating *Martino IX*, which simply denied reconsideration of *Martino VIII*, which ordered Employee to sign and return previous releases, which she did. Employee's petition before the Commission may be challenging the designee's authority to order her to sign releases in general. It is hard to tell, exactly. Consequently, this will be addressed more fully in issue (8), below.

#3: Employee's November 11, 2025 petition for a §.155(o) referral to the Division of Insurance, as best as can be determined from arguments at hearing, is two-pronged. First, it requests a referral based on facts already established in prior *Martino* decisions. Those findings resulted in penalties assessed against Employer when prior decisions found Employer's controversies were inadequate to protect it from a penalty. Second, Employee appears to argue that Employer's alleged general delay and non-responsiveness was "unfair," which she argues results in a §.155(o) referral for unfair or frivolous controversies-in-fact. There is no clear connection between these issues and the petition before the Commission. The panel will hear and decide these.

#6: Employee's November 11, 2025 petition (claim) for past-due TTD benefits, a penalty and interest could not have any bearing on Employee's petition before the Commission. She seeks TTD benefits for periods in 2020 and 2021. There was no articulated connection between discovery issues and that claim. The panel will hear and decide Employee's November 11, 2025 petition in conjunction with Employer's November 20, 2025 petition to dismiss that petition. Employer's petition to dismiss is essentially its answer to Employee's petition (claim).

#7: Employer's November 20, 2025 petition to dismiss also contained two additional requests, (2) and (4). Request (2) wanted Employee's November 11, 2025 petition (claim) for past-due TTD, a penalty and interest dismissed. Request (4) wanted her November 11, 2025 petition for a §.155(o) referral to the Division of Insurance for bad faith claim handling dismissed. As discussed immediately above, petition (2) on Employer's petition to dismiss is issue #6 on the Prehearing Conference Summary, and petition (4) on Employer's petition is issue #3 on the summary. The above analysis shows that (2) and (4) will not interfere with the Commission's jurisdiction. Thus, the panel will hear and decide Employer's November 2025 petition, requests to dismiss (2) (#6) and (4) (#3), in conjunction with Employee's corresponding petitions.

**4) Shall Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions be denied as moot?**

The proper exercise of concurrent jurisdiction assisted in moving this case forward by the parties identifying three issues that were moot. These included, as numbered in the controlling May 7, 2026 Prehearing Conference Summary, issue #1 Employee's December 12, 2025 petition (treated as a claim) for medical costs and related transportation expenses; #9 her February 25, 2026 petition to compel medical treatment; and #11 Employee's March 23, 2026 petition for sanctions. Because they are moot, those issues have no impact on the Commission's Petition for Review. *Lynn; Noey*. Thus, this decision will address and decide them:

#1: The parties agreed based on Employer's payment spreadsheets, that Employer had fully reimbursed Employee for the claimed past medical costs and transportation expenses. Employee's December 12, 2025 petition (claim) is resolved and will be denied as moot.

#9: Likewise, the parties agreed that Employee's surgery for her TOS has been scheduled. Therefore, they agreed Employee's February 25, 2026 petition for an order compelling Employer to act on that issue is resolved and the petition will be denied as moot.

#11: Employee's March 23, 2026 petition for "sanctions," which she explained was a request for Employer to approve her TOS surgery, was unnecessary because Employer had approved it and the surgery is currently scheduled. Therefore, the March 23, 2026 petition is resolved and will be denied as moot. The remaining issues than can be heard will be addressed next:

**5)Should Employee’s November 11, 2025 petition for a referral to the Division of Insurance be granted?**

The first issue to decide from the May 7, 2026 Prehearing Conference Summary is #3, Employee’s petition for a §.155(o) referral. On February 13, 2024, Employee represented by Bredesen, first requested an “Unfair or Frivolous Controversion” finding. On September 13, 2024, she repeated her request, citing *Martino IV*. On April 1, 2025, in a document dated March 31, 2025, Employee representing herself requested among other things an “Unfair or Frivolous Controversion” finding. She cited “repetitive activities throughout employment and/or specific incident on 6/30/20 leading to the neck and shoulder injuries.” Employee’s November 11, 2025 petition requesting a §.155(o) referral based on alleged “bad faith claim handling” was her fourth request. She cited AS 21.36.125 and 3 AAC 26.030 as support for her last petition.

As best as the panel can determine, Employee seeks two remedies in her various §.155(o) requests. She wants a §.155(o) referral based on previous *Martino* decision findings that resulted in a penalty award. Employee also wants a §.155(o) referral based on her general allegations that Employer has engaged in bad faith claim handling.

*a) A §.155(o) referral based on prior Martino decisions.*

At hearing, Bredesen argued that Employer’s resistance to an SIME in *Martino I* gave rise to a §.155(o) referral. The basis for this argument is not clear. If there is a medical dispute in one or more statutory categories between an attending physician and an EME physician, a party may petition for, and may obtain, an SIME under AS 23.30.095(k). Parties may also stipulate to an SIME under 8 AAC 45.050(f)(1) and 8 AAC 45.092(g)(1)(B), but a stipulation is not required. An opposing party may answer a petition for an SIME and dispute the need for one under 8 AAC 45.050 (c)(2)-(3). In 2021 when Employee petitioned for an SIME, regulations provided detailed instructions for requesting and obtaining an SIME under 8 AAC 45.092(g)(1)-(3). Procedures have since changed to streamline SIME procedures. In *Martino I*, the Division on February 16, 2022, scheduled Employee’s December 8, 2021 petition for an SIME for a hearing. A panel heard it on April 6, 2022. *Martino I* issued on April 29, 2022, and granted the petition. There

was nothing unusual about Employer's resistance to an SIME or the *Martino I* decision that violated the law or would give rise to a §.155(o) referral.

If Employee's *Martino I* §.155(o) analysis suggests Employer's alleged failure to send its EME physicians all relevant medical records, which in her view was "unfair" under AS 23.30.001(1), supports a §.155(o) referral, her argument lacks merit. Employee cited no statute, regulation or case law that required Employer to send any records to an EME physician, much less all relevant records. The EME empowering statute AS 23.30.095(e), which requires Employee after an injury and at reasonable times during the continuance of her disability, if requested by Employer, to submit to an EME does not address what medical records Employer must send to its EME physician. Though the statute says the EME physician "shall use existing diagnostic data" to complete the examination, in context that section simply means the EME physician could not force an injured worker to undergo invasive diagnostic testing "unless medically appropriate."

The regulations regarding EME physicians, 8 AAC 45.090(d)(1)-(3), only required Employer to give Employee proper notice and transportation for an EME under §.095(e). If Employer failed to send its EME physicians relevant records, their opinions may at hearing be given lesser weight and credibility than physicians who reviewed numerically more or more relevant records. Employer exercising its due process right under AS 23.30.001(4) to object to an SIME is not a controversion-in-fact that can subject it to a §.155(o) referral. In fact, not every SIME request results in an SIME. To the extent Employee seeks a §.155(o) referral based on *Martino I*, her request will be denied.

Employee also asks for a §.155(o) referral based on *Martino II* and *IV*. Employer contends the §.155(o) referral request was not preserved, or was otherwise untimely. But to the extent Employee relies on *Martino II* or *IV* as support for her referral request, those decisions were issued in 2022 and 2023, while Employee's first request for an unfair or frivolous controversion finding came on February 13, 2024. The panel finds nothing improper or untimely about Employee's request. There is no time limitation for making a §.155(o) referral request.

*Martino II* found Employer could not stop the reemployment eligibility evaluation process by controverting benefits on grounds that do not stop the process. It awarded Employee reemployment stipend benefits while she was in the eligibility evaluation process even though she was ultimately found not eligible for retraining. *Martino II* also awarded a penalty, citing *Harris*. The Commission in *Martino III* affirmed *Martino II* in all respects. *Martino IV* found an SIME physician raised the statutory presumption regarding Employee's left cervical stenosis and her TOS condition. It granted Employee's request for a penalty because Employer did not begin paying her TTD benefits within the time required and did not have a contrary EME opinion addressing Employee's neck or TOS issues to rebut the raised presumption. *Vue*.

An unfair or frivolous controversion under §.155(o) may be fact- or legal-based. Fact-based findings focus on whether a controversion is based on adequate facts to justify it. Legal-based findings focus on whether Employer was legally justified in controverting benefits. *Irby*. *Martino II* found Employer had no legal basis to controvert Employee's stipend benefits. Therefore, it awarded a penalty. In most instances, injured workers request a penalty and interest on benefits improperly withheld through a controversion or a controversion-in-fact that was inadequate to protect the employer from a penalty. Most injured workers do not also seek a §.155(o) referral to the Division of Insurance because it affords them no direct monetary benefit. Here, Employee make such request, which is her right. *Martino II* found an EME report did not contain adequate evidence to support a controversion, and found Employee was entitled to stipend benefits during her eligibility evaluation. Thus, Employer had neither a factual basis nor a plausible legal defense to controvert Employee's stipend benefits and its controversion was frivolous. *Vue*. Therefore, her request for a referral to the Division of Insurance under §.155(o) based on a frivolous controversion in *Martino II* will be granted.

*Martino IV* found, in respect to Employee's TOS condition, that once medical opinions triggered Employer's duty to pay TTD benefits for Employee's TOS, and absent any EME report to the contrary, Employer did not timely commence paying TTD benefits. Employer had a legal duty to review its past controversions and either withdraw or modify them or produce evidence supporting a new one. It did nothing. *Martino IV* found that by failing to either pay or controvert, Employer controverted-in-fact benefits to which Employee would have been entitled

given an SIME physician's opinions. Pursuant to *Vue*, Employer had neither a factual basis nor a plausible legal defense to controvert-in-fact Employee's right to benefits for her neck and TOS. Therefore, her request for a referral to the Division of Insurance under §.155(o) based on a frivolous controversion-in-fact in *Martino IV* will be granted.

The panel can discern no other basis for a §.155(o) referral based on prior *Martino* decisions. However, §.155(o) is unclear if the above findings constitute one instance of Employer and its insurer frivolously controverting compensation due under this chapter, or two. The panel leaves it up to the Division of Insurance to properly apply its applicable statutes and regulations.

*b) A §.155(o) referral based on other grounds.*

Employee's second prong in her §.155(o) request appears to hinge on Employer's and its insurer's action -- or inaction -- in adjusting her claim. This issue is more nuanced than her first prong, above. This hearing panel has no jurisdiction to apply AS 21.36.125 and 3 AAC 26.030 to determine if Employer committed an unfair claim settlement practice in this case. *AKPIRG*. It has jurisdiction under §.155(o) to determine "that the employer's insurer has frivolously or unfairly controverted compensation due" under the Act. Thus, if Employee is asking this panel to apply AS 21.36.125 and 3 AAC 26.030 to Employer's and its insurer's general adjusting actions in this case, her request will be denied for lack of jurisdiction. *Baker-Withrow*.

Employee also contended Employer and its agents allegedly refused to provide discovery, did not maintain a copy of the medical records it sent to its EME, those records were discarded, certain discovery documents have been redacted, and in general, Employer and its insurer are "hiding" things. Most of these issues were addressed above, and this panel will not exercise its jurisdiction on them because it could interfere with the Commission's jurisdiction. Therefore, to the extent Employee is arguing past alleged "discovery abuses" give rise to a referral to the Division of Insurance under §.155(o), this decision will not consider those arguments at this time and will defer to the Commission.

However, at hearing and in her briefing, Employee raised novel §.155(o) arguments. This includes her apparent argument that each time Employer allegedly ignored or failed to respond, or untimely responded in her view, to various requests for authorization to treat her, this

constituted a controversion-in-fact of the requested treatment. If the panel has understood Employee's argument correctly, this issue is squarely in the panel's wheelhouse.

Alaska workers' compensation law is clear on some points. The Act must be interpreted to ensure quick, efficient, fair and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to employers under AS 23.30.001(1); *Harris*. Medical care is "compensation" under the Act. *Williams*. Compensation under the Act shall be paid "promptly" and without an award unless it is "controverted by the employer" under AS 23.30.155(a)(1)-(5) and (d). When presented with a treatment recommendation or request, an employer or its insurer must promptly act to either "furnish" the medical care under AS 23.30.095(a) or controvert it under §.155. Employer must "secure payment" under AS 23.30.045(a). Doing nothing is not an appropriate action. Under *Vue*, §.155(o) is strictly enforced. While Employee can request a hearing under *Summers*, one should not be needed.

The second prong of Employee's §.155(o) argument focuses primarily on the California "Request for Authorization" and the "Hawaii Workers Compensation Treatment Plan" forms. She contends that her providers sent these forms to Employer's adjuster for processing and that in many instances approval was either denied or delayed. In some instances, there was no response at all. Employee contends that each of these incidences constitutes either "bad faith," "unfair" treatment or resulted in a delay, making each instance an unfair or frivolous controversion-in-fact.

Notably, the California and Hawaii forms at issue on their face do not provide dates of service or proof of service of the documents on the adjuster or its attorney. Consequently, in some instances it is not possible to determine if and when the documents were provided to the adjuster by looking at the documents alone. Employee admitted she did not know if Employer received them all. According to Bredesen's June 21, 2024 letter to Holdiman-Miller, at some point at least one provider, Vally Medical, was sending the authorization forms to Bredesen apparently thinking he would pass them along to the adjuster. It is not clear from the record how long this situation lasted. However, on July 2, 2024, the adjuster wrote to Vally Medical an email apparently providing broad authorization for Employee to treat at Vally Medical Group. To

complicate matters, the subject forms are scattered throughout hundreds of pages in Employee's file.

Table I, above, attempted to capture each authorization form at issue to determine if Employer or its agents approved the requested treatment timely. To the extent they did timely approve, there is no basis to suggest Employer made an unfair or frivolous controversion-in-fact regarding those forms. *Lavallee*. For example: the February 3, 2025 referral to UCLA was approved on February 4, 2025; a March 24, 2025 request to follow up with Dr. Gelabert was approved on March 25, 2025; an April 7, 2025 referral was approved on April 8, 2025; an April 11, 2025 referral to Big Island Massage and to Big Island Acupuncture were both approved on the same day, April 11, 2025; a June 5, 2025 referral to Vally Medical was approved on June 6, 2025; an October 16, 2025 follow-up appointment with Dr. Gelabert was approved on October 17, 2025; and a November 5, 2025 referral to Dr. Ghostine was approved on November 5, 2025. Clearly, these approvals show Employer received them and the prompt approvals do not violate any statute in the Act and cannot result in a finding that Employer or its insurer made an unfair or frivolous controversion-in-fact regarding these medical requests. To the extent Employee relies on these to support her §.155(o) request, it will be denied.

In one instance, the provider's form appears to have defects. A referral was made on August 29, 2025, for a stellate block. On September 3, 2025 the adjuster dated and signed the form but there are no boxes presented on it for her to check. Thus, it is unknown if she intended to approve or deny the request. The defective form will not be held against Employer or its adjuster to say that this form created an unfair or frivolous controversion-in-fact. Likewise, any treatment request form without evidence that it was served on the adjuster will not form the basis for an unfair or frivolous controversion-in-fact or a referral under §.155(o).

On the other hand, many forms were served on Medical Summaries. It is important to note at this juncture that on August 10, 2023, *Martino IV* found Employee's left shoulder, left cervical spine and left TOS were compensable injuries. It ordered Employer to pay all related benefits in accordance with the Act. On November 7, 2024, Employer filed and served on Employee the neither approved nor denied November 5, 2024 referral to Dr. Roh. This proves Employer had

that form two days after the referral was made. There is no corresponding Controversion Notice regarding this referral. There was no response to it. If Employer had a factual or legal basis to deny this referral it should have controverted it, and advised Employee why it refused to authorize this consultation. Its failure to comply with §.155 was unfair and frivolous under §.155(o).

On November 13, 2024, Employee filed and served on Employer the July 24, 2024 referral to Hawaii Radiologic Associates with the adjuster's approval and denial, limiting the approval to only the neck MRI. In light of *Martino IV* finding the left shoulder, left cervical spine and left TOS compensable injuries, it is difficult to understand why Employer approved the cervical MRI but denied approval for radiograph studies of the shoulder and thoracic area. If Employer had a factual or legal basis to deny two parts of this referral it should have controverted it, and advised Employee why it refused to authorize two of the three requested diagnostic imaging. Its failure to do so was unfair and frivolous under §.155(o).

On May 26, 2025, Employee filed and served on Employer the neither approved nor denied April 10, 2025 referral to Dr. Ennila. If Employer had a factual or legal basis to deny this referral it should have controverted and advised Employee why it refused to authorize it. Its failure to do so was unfair and frivolous under §.155(o).

On November 3, 2025, Employee filed and served on Employer the neither approved nor denied October 22, 2025 referral to Dr. Fowler. If Employer had a factual or legal basis to deny this referral it should have controverted and advised Employee why it refused to authorize the referral. Its failure to do so was unfair and frivolous under §.155(o).

On February 9, 2026, Dr. Gelabert's office faxed his same-dated California Request for Authorization form to Seever. Attached were all Employee's relevant medical records showing her treatment history for TOS at Dr. Gelabert's office. The authorization request clearly explained the surgical procedures he recommended. It provided a place for the adjuster to approve or deny the request. On February 25, 2026, Employee filed and served on Employer her petition to compel medical treatment. The February 9, 2026 documents, described immediately

above, were all attached to her petition. In its March 19, 2026 answer to Employee's February 25, 2026 petition, Employer admitted there were no "controversions of medical treatment." It added, "the employee can treat." But how could she treat when the surgeon would not provide treatment without assurances he would be paid? Seever had routinely approved other preauthorization requests in this case. On April 21, 2026, Employer filed and served on Employee the February 9, 2026 Dr. Gelabert TOS surgery request with the adjuster's April 1, 2026 approval.

Employer apparently rests its defense on its premise that the Act does not require it to "pre-authorize" medical treatment. But an employer can controvert benefits without filing a formal controversion. *Houston*. Employer did not "unqualifiedly accept" Dr. Gelabert's prescribed treatment. *Arant*. It admitted there was no current controversions for medical care in effect when Dr. Gelabert asked it to approve TOS surgery. *Moore*. An employer that fails to pay or formally controvert an employee's claim is not shielded from a §.155(o) referral. *Tweden*. Once it received Dr. Gelabert's medical records and his surgical recommendations, absent any valid factual or legal reason to deny treatment, Employer's obligation was to promptly authorize that treatment on presentment. *King; Harris*. Dr. Gelabert would not schedule surgery without proper authorization. Employer did not provide it until April 1, 2026. Non-action does not meet the *Harp* test.

To the extent Employer's position as stated in its October 9, 2024 controversion that it need not "pre-authorize" treatment was the basis for its inaction, Employer is mistaken. The Court rejected that argument in *Harris* and in *Bockus III*. *Bockus I, II* and *III* are nearly on point with this case. If Employer had a factual or legal basis to deny Dr. Gelabert's authorization request it should have controverted and advised Employee why it refused to authorize the treatment. Its failure to do so was unfair and frivolous under §.155(o). Its inaction inappropriately delayed Employee's TOS treatment for no valid reason and violated the Act's humanitarian origins and the Act's requirements for a fair, speedy remedy. AS 23.30.001(1); *Lindley; Rogers & Babler*.

On May 26, 2026, Employer filed and served on Employee the neither approved nor denied September 4, 2025 ketamine infusion request. If Employer had a factual or legal basis to deny

this referral it should have controverted and advised Employee why it refused to authorize it. 8 AAC 45.182. Its failure to do so was unfair and frivolous under §.155(o).

In summary, Employee's request for a §.155(o) referral to the Division director for referral to the Division of Insurance will be granted in accordance with this decision.

**6)Should Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest be denied? Alternately, should Employer's November 20, 2025 petition to dismiss be granted in part?**

On November 12, 2025, in a petition dated November 11, 2025, Employee requested "past due TTD penalty interest." She explained, "Past due TTD penalty & interest on late & withheld payments prior to March 25, 2021 controversion."

*Martino II* in an interlocutory decision found that on February 26, 2021, Employee emailed the Division a photograph "of a December 31, 2020 letter from the Division to her confirming TTD benefits Employer paid her from July 3, 2020, through December 19, 2020." *Martino II* repeatedly stated that Employer had paid Employee TTD benefits from "July 3, 2020, through December 19, 2020." Employee had filed the Division's letter to demonstrate, through her TTD benefit payment history, that her injury had totally disabled her for 90 consecutive days. It further found that on March 1, 2021, Employee sent the adjuster an email regarding "missing TTD checks for 'the first part of January' and 'the month of February.'" *Martino II* found that Employee also emailed the adjuster about other allegedly missing TTD checks. It also found Employee's primary dispute for the *Martino II* hearing was that she was entitled to "stipend" benefits while she was in the rehabilitation eligibility evaluation process. *Martino II* agreed and granted Employee "stipend" benefits from March 28, 2021, through September 13, 2021. These facts demonstrate that Employee was well aware that she thought Employer had underpaid her TTD benefits.

On August 29, 2022, Employee through Bredesen petitioned the Alaska Supreme Court for review of the Commission's August 17, 2022 stay order. In her petition to the Court, Employee in her "Statement of Facts" stated that Employer "paid her temporary total disability (TTD) from July 3, 2020 through March 27, 2021." This was an admission that benefits were paid.

*Martino III* in a final decision the Commission stated Employer “paid [Employee] temporary total disability . . . benefits from July 3, 2020, through March 27, 2021.” The Commission in *Martino III* affirmed *Martino II*.

On August 10, 2023, *Martino IV* in a final decision found “[b]eginning July 3, 2020, Employer began paying Employee TTD benefits.” At the *Martino IV* hearing, Employee contended she was “entitled to TTD benefits from March 28, 2021 through September 13, 2021, meaning this decision should award the difference between the “stipend” ordered in *Martino II*, and TTD benefits. . . .” *Martino IV* cited the adjuster’s testimony that, “Employer initially paid Employee TTD benefits from July 3, 2020 through March 27, 2021.” *Martino IV* said:

Employee also claims past and ongoing TTD benefits. AS 23.30.185. Acknowledging she received “stipend” benefits from March 27, 2021 through September 13, 2021 under *Martino II*, she requests an offset against her TTD benefit claim to account for those payments. Employee contends she is entitled [to] TTD benefits from September 14, 2021 and continuing until she becomes medically stable from all injuries or is no longer disabled. Employer contends it offered her a modified job, which she refused by removing herself from the labor market. Moreover, it contends there are no “off-work” slips stating Employee is disabled, Dr. Pino found her medically stable effective January 6, 2021, and she is therefore not entitled to TTD benefits after that date.

....

The above show Employee was disabled temporarily by her left shoulder injury and not medically stable prior to and through July 29, 2021. AS 23.30.395(16); AS 23.30.395(28); *Lowe’s*; *Saxton*. Her claim for TTD benefits for her left shoulder injury from March 27, 2021 through July 29, 2021 will be granted. AS 23.30.185. Since Employer already paid Employee “stipend” benefits from March 27, 2021 through September 13, 2021, it will be directed to pay the difference between stipend and TTD benefits from March 27, 2021 through July 29, 2021, and TTD benefits without reduction through July 29, 2021, for her left shoulder injury.

Employee at hearing on May 12, 2026, stated she did not appeal *Martino IV* to the Commission. Likewise, she agreed she did not request to modify *Martino IV*. One-year from August 10, 2023, plus three days added for service by mail was August 26, 2024. Consequently, as it pertained to TTD benefits, *Martino IV* was a final decision and Employee’s time to appeal or request modification based on a factual mistake has long since passed. At this point, it is irrelevant

whether or not Employer properly paid Employee TTD benefits for the period at issue. She is bound by *res judicata* and cannot now claim additional entitlement for TTD benefits for the same periods that have already been adjudicated without appeal or without a timely petition for modification. *Robertson*. Therefore, Employee's November 11, 2025 petition (claim) for TTD benefits will be denied and Employer's November 20, 2025 petition to dismiss will be granted in part.

**7)Should Employer's November 20, 2025 petition for a pre-litigation screening order be denied?**

Employer faults Employee for filing too many petitions and claims requesting the same or duplicative relief. It is true that Employee has filed numerous petitions and some of them seek the same or similar relief. However, unlike some claimants, it cannot be said that Employee is intentionally vexatious or is harassing Employer or its agents. *Shoppenhorst*. *Molski II* recognized pre-litigation orders were "an extreme remedy that should rarely be used," and noted that a decision issuing such an order should be supported by (1) adequate notice and a chance to be heard, (2) an adequate record for review, (3) substantive findings of frivolousness, and (4) the order "must be narrowly tailored to closely fit the specific vice encountered."

(1)Employee had notice and was heard on this issue. She argued that a prehearing conference is the place to resolve issues related to her pleadings. (2) While the record shows Employee files numerous pleadings, absent is (3) frivolousness on her part or a vexatious attitude. As a self-represented litigant, Employee appears frustrated. As demonstrated by this decision, some of her frustration was justified. In short, at this point Employee has not reached a level required for this significant and rarely used sanction. AS 23.30.135(a). "A court should enter a pre-filing order constraining a litigant's scope of actions in future cases only after a cautious review of the pertinent circumstances." *Molski II*. A "cautious review" of Employee's circumstances does not justify a pre-litigation screening order at this time, and Employee's request will be denied.

In the future, should Employee have difficulties obtaining information or a response from Employer's attorney, she is encouraged to contact a Workers' Compensation Technician at any Division office. They will provide procedural assistance. If a technician cannot resolve the

issue, Employee should ask for a prehearing conference where she can articulate her issues before a Workers' Compensation Officer who may be able to resolve the problem short of her filing an additional pleading.

**8) Should Employee's March 9, 2026 petition for a protective order and to compel discovery be remanded to the designee for a discovery order?**

Employee's March 9, 2026 petition to compel and for a protective order (#10) has never been addressed at a prehearing conference as required by AS 23.30.108(c). Thus, there is nothing for this panel to review as the designee never entered a discovery ruling on Employee's March 9, 2026 requests. At hearing Employee said the issues in this petition referred to "new" releases she says Employer sent her after she moved to West Virginia. This petition will not be heard or decided here, but will be remanded to the designee. However, although this decision will remand Employee's March 9, 2026 petition to the designee to make discovery orders, it will also direct the designee to withhold his jurisdiction to review and address this March 9, 2026 "discovery matter" until the Commission rules on the pending petition before it.

CONCLUSIONS OF LAW

- 1) The oral order accepting Employer's untimely brief was correct.
- 2) The oral order disallowing Employee to call Holdiman-Miller or the adjuster as witnesses was correct.
- 3) The panel does have jurisdiction to hear and decide some issues before it.
- 4) Employee's December 12, 2025, February 25, 2026 and March 23, 2026 petitions will be denied as moot.
- 5) Employee's November 11, 2025 petition for a referral to the Division of Insurance will be granted.
- 6) Employee's November 11, 2025 petition ("claim") for TTD benefits and related penalties and interest will be denied. Alternately, Employer's November 20, 2025 petition to dismiss her petition will be granted in part.
- 7) Employer's November 20, 2025 petition for a pre-litigation screening order will be denied.
- 8) Employee's March 9, 2026 petition for a protective order and to compel discovery will be remanded to the designee for a discovery order.

ORDER

- 1) Employer’s brief is accepted as filed.
- 2) Employee’s December 12, 2025, February 25, 2026 and March 23, 2026 petitions are denied as moot.
- 3) Employee’s November 11, 2025 petition for a referral to the Division of Insurance is granted in accordance with this decision.
- 4) Employee’s November 11, 2025 petition (“claim”) for TTD benefits and related penalties and interest is denied.
- 5) Alternately, Employer’s November 20, 2025 petition to dismiss her petition is granted in part in accordance with this decision.
- 6) Employer’s November 20, 2025 petition for a pre-litigation screening order is denied.
- 7) Employee’s March 9, 2026 petition for a protective order and to compel discovery is remanded to the designee for a discovery order. The designee is directed to withhold his jurisdiction to review and address this March 9, 2026 “discovery matter” until the Commission rules on the pending petition before it.

Dated in Anchorage, Alaska on June 15, 2026.

ALASKA WORKERS’ COMPENSATION BOARD

\_\_\_\_\_  
/s/  
William Soule, Designated Chair

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/s/  
Sara Faulkner, Member

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/s/  
Randy McLellan, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers’ Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service

of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accordance with 8 AAC 45.050. The petition requesting reconsideration must be filed with the board within 15 days after delivery or mailing of this decision.

MODIFICATION

Within one year after the rejection of a claim, or within one year after the last payment of benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, a party may ask the board to modify this decision under AS 23.30.130 by filing a petition in accordance with 8 AAC 45.150 and 8 AAC 45.050.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Interlocutory Decision and Order in the matter of Sabrina M. Martino, employee / claimant v. Alaska Asphalt Services, LLC., employer; The Ohio Casualty Insurance Company, insurer / defendants; Case No. 202007450; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on June 15, 2026.

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/s/  
Rosie Ambrose, Workers' Compensation Technician