ALASKA WORKERS' COMPENSATION BOARD

P.O. Box 115512 **Juneau, Alaska 99811-5512**

ALAN L. TOLMAN (DECEASED), Employee, Claimant, v. CHUGACH ELECTRIC ASSOCIATION, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	)	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201208306 AWCB Decision No. 15-0046 Filed with AWCB Anchorage, Alaska on May 1, 2015

Chugach Electric Association's (Employer) September 22, 2014 petition to join the Second Injury Fund (SIF) was heard on April 22, 2015, in Anchorage, Alaska. The hearing date was selected on March 23, 2015. Attorney Rebecca Holdiman Miller appeared and represented Employer. Assistant Attorney General Kimberly Rodgers appeared and represented the SIF. Attorney Eric Croft appeared and represented the estate of Alan Tolman (the Estate). There were no witnesses. As a preliminary matter, over the SIF's objection, an oral order allowed the Estate to present argument on joinder. This decision examinees the oral order and decides the timeliness of the joinder petition. The record closed at the hearing's conclusion on April 22, 2015.

ISSUES

As a preliminary matter, the SIF contends the Estate has no stake in the dispute over whether to join the SIF. Therefore, the SIF contends the Estate's arguments with respect to joinder should not be heard or considered. The SIF contends in the event it is joined, it does not become a defendant with respect to the Estate, but rather a third-party defendant with respect to Employer. The SIF contends the Act permits only employers - not injured employees or their representatives - to seek reimbursement where a claim is found compensable. The SIF contends causation is not at issue at this stage, and therefore none of the Estate's briefs or arguments regarding the joinder issue are relevant and should not be considered.

Employer contends the Estate's arguments are relevant, in part because the medical theory on which joinder, and ultimately recovery, may be based are provided by the Estate and its attorney. Employer contends information concerning the issue of notice of a possible claim against the SIF was in possession of the Estate and its attorney. Employer contends the Estate should be allowed to present argument with respect to joinder.

The Estate concedes pursuing SIF joinder is an employer's duty. However, the Estate contends multiple factors entitle it to argue with respect to joinder: 1) Practical matters concerning settlement negotiation may be impacted by adding a solvent defendant; 2) Legal strategy connected to causation is largely shaped by the Estate and its attorney; 3) Information about the medical theory on which the Estate's recovery may ultimately be based is in the Estate's and its attorney's possession; and 4) Personal reasons: Mr. Tolman's widow and surviving family have a right to be heard and to their "day in court."

After deliberation, an oral order issued allowing the Estate to present argument with respect to the joinder issue, over the SIF's objection.

1) **Was the oral order allowing the Estate to argue with respect to joinder of the Second Injury Fund correct?**

Employer contends Mr. Tolman's preexisting diabetes, when combined with the occupational injury, created a compensable condition greater than the occupational injury alone, entitling Employer to possible reimbursement from the SIF. Employer contends it gave timely notice of a possible claim against the SIF as soon as it had medical evidence meeting the test set out in AS 23.30.205 when it filed its notice of possible claim on September 22, 2014. Employer seeks an order stating its notice was timely, and joining the SIF.

The SIF contends Employer knew of a possible SIF claim as early as July 27, 2012, when interviews with Mr. Tolman's co-workers were conducted. Alternately, the SIF contends Employer had knowledge of a possible claim no later than October 11, 2012, the date Employer filed a controversion referencing diabetes as an "other significant contributing condition" in Mr. Tolman's death. One hundred weeks after October 11, 2012, would fall on September 11, 2014. Since Employer did not give notice of a possible claim against the SIF until September 22, 2014, the SIF contends Employer failed to give timely notice under AS 23.30.205(e) and its claim should be barred. The SIF seeks an order denying Employer's petition to join.

The Estate contends Employer's notice of a possible claim against the SIF was timely. The Estate contends it would be inappropriate to hold Employer to a notice date earlier than November of 2013, when a medical report from cardiologist Mintu Turakhia, M.D., first revealed a connection between preexisting diabetes and the heart attack which ultimately caused Mr. Tolman's death. The Estate contends the SIF should be joined.

2) Was Employer's September 22, 2014 notice of possible claim against the Second Injury Fund timely?

FINDINGS OF FACT

The following relevant facts are either undisputed or are established by a preponderance of the evidence:

1) On April 5, 2012, Alan Tolman suffered a heart attack while working at Employer's remote power plant in Beluga, Alaska. (Report of Occupational Injury or Illness, June 21, 2012). Mr. Tolman was eventually medevacked by helicopter to Providence Medical Center in Anchorage,

where he died. (Certificate of Death, May 1, 2012). The certificate of death was signed by William Kutchera, M.D. As to "immediate cause of death," Dr. Kutchera listed "acute myocardial infarction" and "coronary artery disease." At the line requesting "other significant conditions contributing to death but not resulting in the underlying cause," Dr. Kutchera listed, "diabetes mellitus, hypertension." (*Id.*).

2) On July 12, 2012, Employer denied all benefits. The notice stated:

> …The decedent has failed to attach the presumption of compensability that the death arose out of and in the course and scope of the employment with the employer. Pursuant to the Certificate of Death dated April 27, 2012, issued on May 1, 2012 by the State of Alaska, myocardial infarction and coronary artery disease, with diabetes mellitus and hypertension as other significant contributing factors. (Controversion Notice, July 12, 2012).

3) On July 27, 2012, an investigator for Employer's insurance adjuster sent a report of his findings to the insurer. The investigation included interviews with supervisors and managers at the Beluga plant. In the report, plant manager Michael Henrich stated he "knew Mr. Tolman suffered from diabetes . . . but appeared healthy otherwise." Mr. Henrich stated he recalled seeing a syringe in Mr. Tolman's room, but "didn't know if it was related to his diabetes or not." Gary Bunting, an operations supervisor, also stated he knew about Mr. Tolman's diabetes. Henrich and Bunting both told the investigator Mr. Tolman appeared in good health prior to the April 5, 2012 incident, with no complaints or signs of trouble as to his physical condition. Three other employees at the plant made no mention of diabetes or of Mr. Tolman appearing in distress or poor health prior to the April 5, 2012 incident. (Butcher Investigative Report, July 27, 2012).

4) On September 24, 2012, Mr. Tolman's widow, Leona Tolman, filed a claim seeking death benefits for herself and a dependent child, payment/reimbursement of medical expenses, and attorney's fees and costs. (Workers' Compensation Claim, September 24, 2012).

5) On October 11, 2012, Employer denied specific benefits, again referencing the contributing conditions described in the death certificate. (Controversion Notice, October 11, 2012).

6) On April 30, 2013, William Breall, M.D., performed an Employer's Medical Evaluation (EME) using Mr. Tolman's medical records. Dr. Breall opines:

> Cause of death: Acute ST elevation myocardial infarction due to severe atherosclerotic artery occlusive disease, leading to congestive heart failure, cardiac arrhythmias, and death.
>
> Conclusions: . . . The non-industrial atherosclerotic process within the coronary arteries of Mr. Tolman insidiously developed over the years in association with these various and sundry non-industrial risk factors entirely independent of an irrespective of his work. . . .
>
> The most significant and substantial factor that led to the death of Mr. Tolman on April 5, 2012, was his underlying atherosclerotic coronary artery occlusive disease which resulted in an acute ST elevation myocardial infarction, congestive heart failure, and death. The atherosclerotic coronary artery occlusive disease, as described previously in this report, was due to non-industrial risk factors. . . . (Breall EME Report, April 30, 2013).

7) Although Dr. Breall's April 30, 2013 report describes Mr. Tolman as having a history of type II insulin-dependent diabetes, Dr. Breall does not state Mr. Tolman's death occurred due to or because of the pre-existing diabetes. (*Id.*).

8) On November 20, 2013, cardiologist Mintu Turakhia, M.D., performed a review of Mr. Tolman's medical records, done at the request of Mr. Tolman's widow. (Employer's Hearing Brief). After a discussion of efforts by first responders and emergency room personnel to save Mr. Tolman, Dr. Turakhia opines:

> I believe that there are several aspects to the case that meaningfully contributed to the patient's terminal outcome. The patient clearly had evidence of a massive myocardial infarction with cardiogenic shock and died several hours into his presentation before reperfusion therapy was considered. The delays in obtaining reperfusion therapy contributed to his death. More likely than not, the patient would have survived the acute event had the patient had timely reperfusion and hemodynamic support, such as with an intra-aortic balloon pump. . . .
>
> For these reasons, I believe that the delays in definitive treatment of severe acute myocardial infarction that occurred as a consequence of the remote location of Mr. Tolman's workplace were the substantial cause of his death. It is my opinion that more timely intervention due to faster prehospital care and time to reperfusion would, more likely than not, allowed Mr. Tolman to survive the acute heart attack. (Turakhia Report, November 20, 2013).

9) Dr. Turakhia's November 20, 2013 report makes no mention of diabetes as a contributing or related factor in Mr. Tolman's death; the word "diabetes" does not appear in the report. (*Id.*).

10) On March 27, 2014, Dr. Turakhia testified in deposition:

> Q: And what role - you mentioned Dr. Breall noted diabetes. What role does diabetes play in this kind of sudden rupture in a person like Mr. Tolman?
>
> A: Well, diabetes increases your risk factor for heart disease and a heart attack. That would be the role.
>
> Q: And does it play a role on [sic] rupture? As you describe it, the plaque buildup, and there's a sudden unpredictable rupture. And what role - or is there any way to say the diabetes creates a more predictable circumstance?
>
> A: No. I mean, the diabetes is a clear risk factor for heart attack and diabetes is a clear risk factor for ST elevation and MI heart failure and all these other things that can happen to your heart. . . .
>
> Q: . . . What's the key connection between this heart condition and diabetes?
>
> A: Diabetes accelerates atherosclerosis. . . .
>
> Q: Do blood sugars play any role in - I guess, blood sugars in somebody like Mr. Tolman who was on insulin, does that play any role in artery blockage, coronary artery disease?
>
> A: Diabetes causes coronary artery disease. . . . (Turakhia Deposition, March 27, 2014

11) On September 22, 2014, Employer filed a notice of possible claim against the SIF and also a petition to join the SIF. (Notice of Possible Claim, September 22, 2014; Petition, September 22, 2014). Employer's petition stated:

> Mr. Tolman's pre-existing diabetes (AS 23.30.205(b)) meets the "combined effects" test as reflected by the reports of Drs. William Breall and Mintu Turakhia, M.D. as well as the deposition testimony of Dr. Turakhia. (*Id.*).

12) Employer's September 22, 2014 petition attached a post-hire questionnaire, completed and signed by Mr. Tolman on March 26, 2012, indicating a personal and family history of diabetes. (Questionnaire, March 26, 2012).

13) On October 1, 2014, the SIF answered Employer's September 22, 2014 petition to join and disputed whether Employer demonstrated a qualifying subsequent injury combined with a

preexisting condition to give rise to a claim for SIF reimbursement. The SIF's answer also asserted an untimely notice defense. (Answer, October 1, 2014).

14) On March 9, 2015, the SIF filed a petition to dismiss Employer's September 22, 2014 petition to join the SIF and a memorandum in support. (Petition, March 9, 2015).

PRINCIPLES OF LAW

> **AS 23.30.001. Intent of the legislature and construction of chapter**. It is the intent of the legislature that
>
> > (1) this chapter be interpreted so as to ensure the quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to this chapter
> > . . . .
> >
> > (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.

A decision may be based not only on direct testimony and other tangible evidence, but also on "experience, judgment, observations, unique or peculiar facts of the case, and inferences drawn from all of the above." *Fairbanks North Star Borough v. Rogers & Babler*, 747 P.2d 528, 533-34 (Alaska 1987). The law has long favored giving a party his "day in court." *Sandstrom & Sons, Inc. v. State of Alaska*, 843 P.2d 645, 647 (Alaska 1992).

> **AS 23.30.010. Coverage.** (a) Except as provided in (b) of this section, compensation or benefits are payable under this chapter for disability or death or the need for medical treatment of an employee if the disability or death of the employee or the employee's need for medical treatment arose out of and in the course of the employment. . . . Compensation or benefits under this chapter are payable for the disability or death or the need for medical treatment if, in relation to other causes, the employment is the substantial cause of the disability or death or need for medical treatment.

> **AS 23.30.040. Second injury fund.** (a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund

must be made by the commissioner in accordance with the orders and awards of the board. . . .

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. Declarations of a deceased employee concerning the injury in respect to which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and are, if corroborated by other evidence, sufficient to establish the injury. . . .

AS 23.30.205. Injury combined with preexisting impairment. (a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of the employment resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or the insurance carrier shall in the first instance pay all awards of compensation provided by this chapter, but the employer or the insurance carrier shall be reimbursed from the second injury fund for all compensation payments subsequent to those payable for the first 104 weeks of disability.

(b) If the subsequent injury of the employee results in the death of the employee and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the employer or the insurance carrier shall in the first instance pay the compensation prescribed by this chapter, but the employer or the insurance carrier shall be reimbursed from the second injury fund for all compensation payable in excess of 104 weeks.

(c) In order to qualify under this section for reimbursement from the second injury fund, the employer must establish by written records that the employer had knowledge of the permanent physical impairment before the subsequent injury and that the employee was retained in employment after the employer acquired that knowledge.

(d) The second injury fund may not be bound as to any question of law or fact by reason of an award or an adjudication to which it was not a party or in relation to which the director was not notified at least three weeks before the award or adjudication that the fund might be subject to liability for the injury or death.

> (e) An employer or the employer's carrier shall notify the commissioner of labor and workforce development of any possible claim against the second injury fund as soon as practicable, but in no event later than 100 weeks after the employer or the employer's carrier has knowledge of the injury or death.
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> (f) In this section, "permanent physical impairment" means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed. A condition may not be considered a "permanent physical impairment" unless
>
> (1) it is one of the following conditions:
> . . . .
> (B) diabetes. . . .

The Alaska Supreme Court has held, regarding an employer's duty to file notice of a possible claim against the Second Injury Fund in a case concerning a workplace injury:

> "[A]n 'injury' does not become an 'injury' for SIF purposes until the 'combined effects' test of AS 23.30.205(a) is met. Injuries subsequent to the underlying impairment, but which do not result in a greater disability than existed before, do not give rise to a claim for SIF reimbursement. . . . The mere knowledge that an injury has occurred does not suffice to trigger the 100-week notice period. Only after knowledge of the possibly SIF-compensable harm to the employee can the employer be expected to notify SIF. Otherwise the employer would be required to report every injurious event to SIF, even if that harm clearly failed to meet the 'combined effects' test." *Second Injury Fund v. Arctic Bowl*, 928 P.2d 590, 595 (Alaska 1996).

Arctic Bowl upheld a Board decision finding the employer's attorney lacked the requisite knowledge for a possible SIF claim until the attorney spoke with the employee's doctor. *Id.* at 595. The Court held the employee's attorney could not have known the "mechanisms and response" of the injury and resulting surgery, even though the employee's attorney also happened to be a physician. *Id.*

In *North Slope Borough v. Melvin Wood, et al.,* AWCAC Decision No. 048 (July 13, 2007), the SIF contended the employee's medical record contained repeated references to prior or preexisting conditions which should have led the employer to recognize a possible claim against the SIF. Rejecting the SIF's argument, the Commission held:

> We do not consider that the mere mention of arthritis in a single vertebra of the lumbar spine, with nothing more, must, as a matter of law, inform the employer that the combined effects of that lumbar spine arthritis, which had not resulted in disability, and the employee's later, and much more severe, neck and shoulder injury would result in substantially greater disability than the later injury alone would do. *Id*. at 10.

Discussing the "combined effects" test of AS 23.30.205(a), the Commission held:

> "[I]njury" does not become an "injury" for SIF purposes until the "combined effects" test of AS 23.30.205(a) is met. The statute requires that notice be given of "any possible" claim "as soon as practicable," but in no event later than 100 weeks after knowledge of the injury – not after knowledge of the possibility of a claim. Because an 'injury' for SIF purposes occurs when the combined effects test is met, the 100 weeks that mark the outside limit for notice must begin after the combined effects test is met and after the employer's knowledge of the injury. *Id.* at 7.

Thus, a possible claim is the starting point of obligation to provide notice. However, it is not the date "any possible claim" came into existence that defines the outer boundary of the notice period; the defining date is the date of knowledge of an injury for SIF purposes. *Id.* at 9.

Analyzing legislative intent behind AS 23.30.205, the Commission stated, "We do not believe that the legislature intended the SIF to be flooded with remotely possible, unlikely, or frivolous claims, or those without some evidentiary support." *Id*. at 8.

The Board in *Melvin Wood* found the employer was required to file a notice of possible claim against the SIF *prior* to a specific date in the record, but made no finding as to when the employer "had knowledge" of a possible claim. Finding this an error, the Commission remanded, directing the Board to "determine the date when the employer knew, or reasonably should have known, of the 'combined effects' injury, and the 100 weeks measuring the outer limit of opportunity to give notice of a possible claim began to run." *Id*. at 11.

> **8 AAC 45.040. Parties.**
> . . . .
>
> (j) In determining whether to join a person, the board or designee will consider

> (1) whether a timely objection was filed in accordance with (h) of this section;
> (2) whether a person's presence is necessary for complete relief and due process among the parties;
> (3) whether the person's absence may affect the person's ability to protect an interest, or subject a party to a substantial risk of incurring inconsistent obligations;
> (4) whether a claim was filed against the person by an employee; and
> (5) if a claim was not filed as described in (4) of this subsection, whether a defense to a claim, if filed by the employee, would bar the claim. . . .

ANALYSIS

1) Was the oral order allowing the Estate to argue with respect to joinder of the Second Injury Fund correct?

The parties agree employers - not injured employees or their representatives - seek reimbursement from the SIF where a claim is found compensable. AS 23.30.205(a). Because the only issue decided in this decision is SIF joinder, causation arguments or the "medical theory" of recovery are also not relevant. AS 23.30.010. However, hearings in workers' compensation cases shall afford *all parties* due process and an opportunity to be heard and for their arguments to be fairly considered. AS 23.30.001(4). The law favors giving each party its "day in court." *Sandstrom*. Hearings are conducted in the manner by which the rights of all parties may best be ascertained. AS 23.30.135(a).

It is debatable whether and to what extent SIF joinder will affect the Estate's position with respect to settlement negotiations. However, the Estate is clearly a party. As the partial dissent shows, the same result in this decision could likely be reached without considering the Estate's joinder arguments at all. The Estate's arguments are therefore likely not outcome-determinative. Any harm or prejudice resulting from allowing the Estate to argue the joinder issue are *de minimis*. Therefore, the oral order allowing the Estate to argue SIF joinder was correct. AS 23.30.001; AS 23.30.135; *Sandstrom*.

2) Was Employer's September 22, 2014 notice of possible claim against the Second Injury Fund timely?

Mere knowledge an injury has occurred does not trigger the 100-week notice period within which a claim against the SIF must be made. *Arctic Bowl*. For the 100-week notice period to begin, an employer or insurer must have knowledge of possible SIF-compensable harm to the employee. *Id.* But in this instance, Mr. Tolman died. Thus, this case is factually distinguishable from *Artic Bowl* and appears to be a case of first impression. Because the April 5, 2012 heart attack resulted in Mr. Tolman's death, the "except for" test in AS 23.30.205(b) applies. However, *Arctic Bowl*'s logic applies in this situation as well. In *Arctic Bowl*, the Court held an "injury does not become an 'injury' for SIF purposes until the 'combined effects' test of AS 23.30.205(a) is met." *Id.* at 595. Borrowing from *Arctic Bowl*'s reasoning, the 100-week notice period in a death case begins to run when the employer has knowledge that "except for" the preexisting condition, the death would not have occurred. As no medical evidence has yet offered this opinion, the 100-week period has not yet begun to run. AS 23.30.205(b), (e).

The SIF argues Employer should have known of a possible SIF claim as early as July 2012, after Employer received the certificate of death stating diabetes was an "other significant condition" and obtained interviews with Mr. Tolman's co-workers. Alternately, the SIF contends Employer had knowledge of a possible SIF claim by October 11, 2012, the date Employer filed a controversion referencing diabetes. The SIF points to interviews with Mr. Tolman's co-workers and supervisors, who spoke of his diabetes, and also to the post-hire questionnaire, where Mr. Tolman describes a personal and family history of diabetes, as giving Employer knowledge of a possible SIF claim. But none of these documents provided the connection between the preexisting condition and the death required under AS 23.30.205(b), which is standard different from the knowledge required for disability cases under AS 23.30.205(a).

Dr. Breall's April 30, 2013 EME report does not make an "except for" connection between Mr. Tolman's diabetes and the heart attack, nor does Dr. Turakhia's November 20, 2013 records review. In his March 27, 2014 deposition, Dr. Turakhia does not state the heart attack would not have occurred "except for" the diabetes. Therefore, Employer did not have knowledge of a possible SIF claim satisfying the "except for" standard when it filed its September 22, 2014 notice; such a conclusion would have been merely speculative. AS 23.30.205(b); *Id*. The SIF's

reliance on the October 11, 2012 controversion as demonstrating knowledge is also misplaced: the notice simply re-stated what was written in the certificate of death as an "other significant condition." Further, the certificate of death says diabetes was an "other significant condition contributing to death *but not resulting in the underlying cause*." The last portion of this statement is inconsistent with an "except for" conclusion. *Id.*

The appearance of diabetes in Mr. Tolman's medical record, without some medical opinion "connecting the dots" to the death, is not sufficient to satisfy the "except for" test. *Id.* Moreover, it is very reasonable to suppose when a person dies, many conceivable contributing factors can be present in his medical history, without any of those necessarily rising to the level of an "except for" cause for SIF purposes. A contrary result would require employers and adjusters to file a notice of possible SIF claim in each death case at any mention of the conditions listed in AS 23.30.205(f)(1), flooding the SIF with speculative or hypothetical claims. It would also force employers and their insurance adjusters to make medical conclusions based on sparse or scant medical evidence. Such was not the legislative intent behind that section, and would not result in the Act being administered quickly, efficiently, and fairly. AS 23.30.001(1); *Melvin Wood.*

Employer filed its notice of a possible claim against the SIF on September 22, 2014. Because Employer has not yet produced evidence Mr. Tolman would not have died "except for" his pre-existing diabetes, Employer's notice was premature. Therefore, Employer's September 22, 2014 petition to join the Second Injury Fund will be denied without prejudice. AS 23.30.001(1), (4); AS 23.30.135; AS 23.30.205(b), (e); 8 AAC 45.040; *Arctic Bowl.*

CONCLUSIONS OF LAW

1) The oral order allowing the Estate to argue with respect to joinder of the Second Injury Fund was correct.

2) Employer's September 22, 2014 notice of a possible claim against the Second Injury Fund is premature.

ORDER

1) Employer's September 22, 2014 petition to join the Second Injury Fund is denied without prejudice.

2) The Second Injury Fund's March 9, 2015 petition to dismiss Employer's September 22, 2014 petition to join is held in abeyance.

Dated in Anchorage, Alaska on May 1, 2015.

ALASKA WORKERS' COMPENSATION BOARD

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Matthew Slodowy, Designated Chair

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Ron Nalikak, Member

DISSENT OF BOARD MEMBER RICK TRAINI

The dissent concurs in the result reached by the majority that Employer gave premature notice of a possible claim against the SIF when it filed its notice on September 22, 2014. However, the Estate should not have been permitted to argue with respect to the joinder issue. Under AS 23.30.205, an employer, not an injured worker or his representative, must file notice of a possible claim against the SIF. To receive reimbursement from the SIF, the *employer* must establish a work-related death would not have occurred except for a preexisting impairment. The Estate has no stake in the dispute over whether the SIF is to be joined, and has advanced no argument advocating its own interests at this stage. I agree with the SIF's contention that in the event it is joined, it would not be a defendant as against the Estate, but rather as a third-party defendant as against Employer. Therefore, the dissent declines to consider the Estate's arguments with respect to joinder.

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Rick Traini, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory of 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 ALAN L TOLMAN, employee / claimant; v. CHUGACH ELECTRIC ASSOCIATION, employer; LIBERTY INSURANCE CORPORATION, insurer / defendants; Case No(s). 201208306; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on May 1, 2015.

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Pamela Murray, Office Assistant