ALASKA WORKERS' COMPENSATION BOARD

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

MANUEL HERNANDEZ, Employee, Claimant, v. OCEAN BEAUTY SEAFOODS, LLC, Employer, and LIBERTY INSURANCE CORPORATION, Insurer, Defendants.	INTERLOCUTORY DECISION AND ORDER AWCB Case No. 201711427 AWCB Decision No. 25-0022 Filed with AWCB Anchorage, Alaska on April 4, 2025

Manuel Hernandez's (Employee) former attorney Justin Eppler's (Eppler) December 20, 2024 claim for attorney fees and costs, and Ocean Beauty Seafoods, LLC's (Employer) January 16, 2025 petitions to strike photographs and for a prelitigation screening order were heard on April 2, 2025, in Anchorage, Alaska, a date selected on February 26, 2025. A February 3, 2025 hearing request gave rise to this hearing. Employee appeared by Zoom, represented himself and testified. Attorney Krista Schwarting appeared and represented Employer and its insurer. Attorney Justin Eppler appeared by Zoom and represented himself on his claim for attorney fees and costs. The record closed at the hearing's conclusion on April 2, 2025.

ISSUES

Employer contends Employee repeatedly files pictures of his back, which it argues are duplicative of previous photographs he already filed. It contends the photographs lack foundation, show

nothing objectively relevant, lack context and should not be admissible as evidence. Employer further contends that every time Employee files duplicate of photographs it must move to strike them. It seeks an order striking the photographs.

Employee contends these date- and time-stamped photographs, which he testified he took using his timer on his cell phone, show swelling where he believes he needs trigger point injections to treat his work injury. He asks that the fact-finders review and consider the photographs.

Eppler had no position on this issue.

1) Shall Employer's petition to strike Employee's photographs be denied?

Employer contends Employee repeatedly files redundant documents that the Workers' Compensation Division (Division) considers "claims," and which the Division serves as such. It contends this requires Employer to answer each "claim," at considerable cost even though the "claims" are either unclear or duplicate issues Employee raised in his previous filings. It seeks an order requiring the Division to "screen" Employee's filings to prevent duplicative filings.

Employee contends his filings respond to documents Employer files to discredit his case. He argues that Employer does not have to answer or respond to everything he files; he is simply trying to make things clearer in his case. He opposes Employer's petition for a screening order.

Eppler contends Employee's pleadings and other filings result in part from Employer and the Division "dragging out" this case. He disagreed with the time a previous panel gave Employer to review records with its experts and noted this gave Employee more time to file things.

2) Shall Employer's petition for a screening order be granted?

Eppler contends that he and Employer came to a stipulated agreement to pay him attorney fees and costs for services rendered to Employee before Eppler withdrew as Employee's attorney. He seeks approval for the stipulation, or a decision and order awarding attorney fees and costs.

Employee objects to Eppler receiving any attorney fees. He especially objects to the amount and contends Eppler did not do a good job and does not deserve to be paid for his prior services. Employee seeks an order denying any additional attorney fees and costs.

Employer does not object to Eppler's request to approve the stipulated attorney fees and costs, to resolve at least one issue in this case.

3) Shall Eppler's and Employer's stipulation and his request for attorney fees and costs continue in abeyance?

FINDINGS OF FACT

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

1) On August 7, 2017, Employee reportedly had several alleged injuries after repetitively pushing or pulling heavy carts filled with canned salmon. (First Report of Injury, August 10, 2017).

2) Since his injury, Employee has filed 15 formal and informal "claims" for various benefits, as follows (unless otherwise stated, Employee filed these documents himself):

- On March 16, 2018, in a claim dated March 15, 2018, Employee claimed a compensation rate adjustment, an unfair or frivolous controversion and transportation costs. Attached was a lengthy letter explaining his situation, medical records, an injury report, a controversion notice, and earnings evidence he submitted to support his compensation rate adjustment claim. Employee also attached numerous receipts for taxi rides and pharmacy expenses. (Claim for Workers' Compensation Benefits, March 15, 2018).
- On December 26, 2018, Employee claimed temporary total disability (TTD) benefits, an unfair or frivolous controversion, and medical and related transportation costs. Attached was a letter he wrote expressing views on physicians involved in his case and itemizing alleged work-related transportation, lodging and medical expenses for his work injury. Employee also attached nearly 100 pages of medical records and a few transportation receipts. (Claim for Workers' Compensation Benefits, December 26, 2018).
- On January 8, 2019, in a claim dated January 7, 2019, Employee claimed TTD benefits, an unfair or frivolous controversion, medical and related transportation costs, a late-payment penalty and interest. (Claim for Workers' Compensation Benefits, January 7, 2019).

- On May 20, 2019, Employee claimed TTD benefits, an unfair or frivolous controversion, transportation costs and a late-payment penalty. Attached was a note from Employee explaining his situation, and several medical records. (Claim for Workers' Compensation Benefits, May 20, 2019).
- On December 23, 2019, in a claim dated December 20, 2019, Employee through Eppler amended his claims and sought TTD, temporary partial disability (TPD) and permanent partial impairment (PPI) benefits, a compensation rate adjustment, attorney fees and costs, medical costs and a second independent medical evaluation (SIME). (Claim for Workers' Compensation Benefits, December 20, 2019).
- On March 18, 2021, Employee through Eppler amended his claims and sought TTD, TPD, and PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion, attorney fees and costs, medical and related transportation costs, a late-payment penalty, interest, and "other," which apparently denoted an amendment to his December 20, 2019 claim. (Amended Claim for Workers' Compensation Benefits, March 18, 2021).
- On August 17, 2021, Employee through Eppler claimed an unfair or frivolous controversion, attorney fees and costs, a late-payment penalty, interest, and "other," which apparently denoted this claim was specifically addressing an August 11, 2021 stipulation to continue his hearing in exchange for payment of certain benefits. (Claim for Workers' Compensation Benefits, August 17, 2021).
- On November 6, 2023, in a claim dated November 7, 2023, Employee claimed TTD, TPD, permanent total disability (PTD) and PPI benefits, a compensation rate adjustment, an unfair or frivolous controversion, medical costs, a late-payment penalty, interest, and "other," in which he said he wanted Employer "investigated" to see if it "followed the laws." Attached were his injury report, medical records and payroll information. (Claim for Workers' Compensation Benefits, November 7, 2023).
- On December 4, 2023, Employee filed a typed document, which the Division considered an amendment to his November 7, 2023 claim. This explained Employee's injury and treatment in more detail and offered various calculations and periods for which he sought certain benefits. Employee cited various statutes as support. He included his attending medical providers' names, addresses and phone numbers. Attached were medical records, his injury report, payroll information, prescription receipts, and photographs depicting: racks holding canned

salmon in a warehouse setting, his hernia incisions, his back, "taping" on his back, and x-ray films. (Employee's letter, received December 4, 2023).

- On December 4, 2024, Employee in a letter, incorrectly dated November 4 and December 4, 2025, which the Division considered an amendment to prior claims, offered calculations for certain benefits he requested. He attached several prescription receipts. (Employee's letter, dated November 4 and December 4, 2025).
- On January 13, 2025, Employee in a letter, which the Division considered an amendment to prior claims, requested certain attachments be appended to his "claim." His email amended his pending "claim," and the letter offered calculations for certain benefits to which Employee believed he was entitled. Employee attached pictures of his back taken on different days. (Employee's letter, January 13, 2025).
- On February 3, 2025, Employee in an email, which the Division considered an amendment to prior claims, filed a Subsequent Report of Injury form, and a January 13, 2025 letter with calculations of certain benefits to which Employee believed he is entitled, including a compensation rate adjustment. (Employee's letter, January 13, 2025).
- On February 5, 2025, Employee filed a letter, which the Division considered an amendment to prior claims, asking Employer to pay for a pain clinic. He attached an itemized statement from Neuroversion, Inc., and two photographs of Employee's back taken on different days. (Employee's letter, February 5, 2025).
- On February 18, 2025, in an email dated February 16, 2025, and in a letter dated February 17, 2025, which the Division considered an amendment to prior claims, Employee provided calculations for his PTD benefits claim. He also attached one medical record. (Employee's letter, February 17, 2025).
- On February 24, 2025, Employee re-filed his November 7, 2023 claim and his February 17, 2025 letter. He also attached a February 24, 2025 letter, which the Division considered an amendment to prior claims, and which slightly amended Employee's February 17, 2025 letter. (Employee's letter, February 24, 2025).

3) On January 21, 2022, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 22-0005 (January 21, 2022) (*Hernandez IV*) addressed, among other things, Eppler's request for attorney fees and costs. *Hernandez IV* found this was a "complex case with voluminous medical records."

It found that since Employer controverted Employee's claim, the Board could award actual attorney fees under §145(a), but Eppler had to follow the regulation that required an affidavit "itemizing the hours expended as well as the extent and character of the work performed." Eppler sought attorney fees and paralegal costs totaling $105,908.94; attorney hours were billed at $425 per hour; the paralegal rate was $185 per hour. *Hernandez IV* also found that only Alaska Rule of Professional Conduct Rule (Rule) 1.5(a)(1), (3), (4) and (7) applied. It found Employee had claimed a compensation rate adjustment, but Eppler had not presented any evidence to support it, and at hearing, Eppler initially withdrew that issue but reinstated it when Employee protested. Still, no evidence was presented to support the rate adjustment claim. Employee did not provide specific dates or amounts for his TPD benefits claim and instead referred the panel "to the record." Employee claimed transportation expenses, but did not present evidence or argument for that at hearing. *Hernandez IV* criticized Eppler's hearing brief, which did not "cover all hearing issues" and provided insufficient assistance to the panel to ascertain factual or legal bases to support Employee's claims. Given these findings, *Hernandez IV* found Eppler's lack of experience and "work quality" justified $350 rather than $425 per hour. It further found Eppler's fee and cost itemizations raised "questions about the trustworthiness of his billing practice." *Hernandez IV* further questioned the paralegal's time entries for what the panel considered routine tasks. Editing errors, including listing another claimant's name in Eppler's fee affidavit, and the panel's estimate of how long it should take an attorney to perform routine matters, resulted in *Hernandez IV* finding that Eppler's and his paralegal's itemizations showed overbilling and unreasonable and excessive charges that were "not credible." Accordingly, *Hernandez IV* reduced the requested attorney fees and costs from the original amount to $27,584.48 "based on inefficiency and consistent overbilling of tasks at four to five times the reasonable time to complete them." (*Hernandez IV*).

4) Employee appealed to the Alaska Workers' Compensation Appeals Commission (Commission) and on February 21, 2023, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCAC Dec. No. 300 (February 21, 2023) (*Hernandez VI*) remanded the case to the Board but did not reverse *Hernandez IV*. Not directly relevant to the issues addressed in this decision and order, *Hernandez VI* stated that Employer at the merits hearing did not provide an alternative explanation for causation of Employee's "chronic pain, depression or anxiety." After a lengthy explanation it added, "Based on *Vue* and *Huit*, [Employer] did not rebut the presumption because no alternative cause for the chronic pain were discussed." *Hernandez VI* concluded, "the Commission remands this issue for

further discussion regarding whether the work injury is the substantial cause of the diagnosis of chronic pain, whether additional treatment is needed, and whether [Employee] is medically stable from the chronic pain condition." However, in its "order" section, the Commission stated the Board "further needs to consider whether the presumption of compensability of ongoing disability and need for medical treatment for the chronic pain condition and/or the anxiety/panic attacks was overcome with substantial evidence as required. . . ." It stated that none of the medical experts upon which *Hernandez IV* relied, had addressed the "relative causes" of the need to treat these three conditions: (1) chronic pain; (2) anxiety attacks; and (3) panic attacks. *Hernandez VI* said, "Once the Board reconsiders these issues, the Board will then need to readdress the issue of attorney fees" pursuant to Rule 1.5(a). (*Hernandez VI*).

5) In respect to Eppler's attorney fees and costs, *Hernandez VI* relied on the *Rusch* Alaska Supreme Court (Court) decisions and found *Hernandez IV* had "abused its discretion" (1) by reducing Eppler's hourly fee based on his limited experience before the Board; (2) when it denied him "an opportunity to explain" what the Board considered "excessive billings"; (3) when it did not explain how it applied the Rule 1.5(a) factors in determining Eppler's fees; and (4) when it did not address the contingent nature of representing injured workers in these cases. The Commission stated the Board must consider an attorney's "entire legal experience" when calculating a reasonable hourly fee. It also noted that *Hernandez IV* had overlooked several Rule 1.5(a) factors when evaluating Eppler's attorney fee request. Moreover, *Hernandez VI* stated:

> The Commission remands the issue of attorney fees due to the abuse of discretion by the Board. Since other issues are also being remanded, the issue of attorney fees will need to be revisited as well. On remand the Board needs to apply Rule 1.5 and discuss how the factors are used in coming to a reasonable fee for [Eppler]. The Board needs to address the contingent nature of representing claimants and how that is factored into determining a reasonable rate for the representation.

6) Employee sought reconsideration of *Hernandez VI* from the Commission. On April 11, 2023, in *Hernandez v. Ocean Beauty Seafoods, LLC*, Order on Motion for Reconsideration (April 11, 2023) (*Hernandez VII*), Employee contended that, based on *Hernandez VI*'s statement that Employer had not rebutted the raised presumption of compensability, *Hernandez VI* should not have remanded the issue to the Board for further consideration, but instead should have reversed *Hernandez IV*. He also said the Commission overlooked or failed to consider Employee's unfair and frivolous controversion argument. Employer agreed the case should be remanded to the Board

because the "Commission cannot reweigh evidence." It further argued that the Commission had addressed both the reemployment issue and the psychological compensability issue "in detail" and there was no indication it had ignored the "controversion issue." Rejecting Employee's reconsideration petition, *Hernandez VII* clarified *Hernandez VI* and stated:

> [Employee] requests reconsideration, contending the Commission found that [Employer] had not rebutted the presumption of compensability, and the Commission should have reversed the Board. The Commission, he asserts, should not have remanded the issue for further consideration. However, the Commission addressed the legal analysis the Board need[ed] to apply, but did not. It is not for the Commission to reweigh the evidence presented in order to choose between doctors' reports and testimony. . . .
>
> The issue of unfair or frivolous controversion was not overlooked by the Commission. The Commission remanded issues of reemployment and compensability to the Board to address the facts and utilize the correct legal standards. The issue of an unfair or frivolous controversion could not be considered by the Board nor the Commission until the issues remanded are reconsidered by the Board. (*Hernandez VII*).

In short, *Hernandez VII* added the unfair or frivolous controversion issue as part of its remand since this issue derives from the Board's other findings on the merits. (Observations).

7) On August 4, 2023, Employer and Eppler jointly signed and filed a stipulation seeking approval for $63,250 in attorney fees for Eppler's services before the Board. This agreement occurred during a Hearing-Officer-provided mediation, which was not fully successful, and resolved only Eppler's attorney fees and costs subject to Board approval. The stipulation stated:

> (1) . . . The sole purpose of this joint stipulation is to secure the approval of the Board for [Eppler] to receive the attorney fees and costs in accordance with AS 23.30.145 and AS 23.30.260. Nothing in this stipulation shall be interpreted as modifying, changing, supplementing, or in any way affecting [Employee's] claim for compensation nor any defenses that the employer/adjuster may have.
>
> (2) [Eppler] is an attorney licensed to practice law in the State of Alaska and provided valuable services to the employee in this matter and his efforts expedited the receipt of benefits by the employee.
>
> (3) Considering the nature, length, and complexity of the services performed, the sums to be paid to [Eppler] is a reasonable attorney's fee. . . . It is his intent to withdraw as counsel for [Employee] following the approval of this stipulation. . . . (Stipulation for Approval of Employee's Attorney Fees, August 4, 2023).

In the order section, the stipulation added:

> **STATEMENT OF THE BOARD**
>
> In light of the parties' agreement and stipulation above, we have examined the record of this case, and the written stipulation of fees. Having considered the nature, length, and complexity of the services performed, the resistance of the employer, as well as the benefits resulting from the services obtained, we find the compromised fees are reasonable for this claim. *Thompson v. Alyeska Pipeline Service Co.*, AWCB Decision No. 98-0315 (December 14, 1998). Under AS 23.30.145, we will award the employee attorney fees of **$63,250.00**.

Schwarting and Eppler both signed the stipulation on August 4, 2023. (Stipulation for Approval of Employee's Attorney Fees, August 4, 2023).

8) On August 18, 2023, Eppler filed his second amended attorney fee and cost affidavit. He described his law school training and clerking for a workers' compensation law firm representing injured workers. Eppler further described his legal experience after passing a bar in November 2012. He then addressed the *Rusch* factors, highlighting his workers' compensation experience. Eppler gave other statements supporting his claim for attorney fees and costs. His affidavit said he billed at $425 per hour for his legal services and his attached itemized billing statement totaled $85,336.96, which he said, "accurately reflects the extensive time expended and costs incurred" by him representing Employee "in this claim now on remand before the Board." Eppler also said this requested amount "reflects payment" from Employer of $27,584.48 [$20,639.85 in attorney fees and $6,944.63 in costs = $27,584.48], pursuant to *Hernandez IV*. Eppler's attorney fee and cost statements totaled $103,358.94, less $27,584.48 paid from Employer, resulted in a "$75,774.46" balance owing. (Second Amended Affidavit of Attorney's Fees and Costs, August 18, 2023, with attached itemization).

9) On September 1, 2023, Employer and Eppler entered into an amended stipulation for Eppler's attorney fees and costs. The amended stipulation said those two parties jointly petitioned the Board for an order approving Eppler's fees and costs totaling $63,250 for fees "incurred through the date of this stipulation." This stipulation appears to differ from the first one only because it no longer stated that Eppler was to withdraw as Employee's counsel once the Board approved the stipulation. (Amended Stipulation for Approval of Employee's Attorney Fees, September 1, 2023).

10) Employer's prior $27,584.48 payment to Eppler, plus his requested additional $63,250, if awarded, would equal $90,834.48. (Observations).

11) On October 20, 2023, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 23-0057 (October 20, 2023) (*Hernandez VIII*) determined that the remand hearing originally held on August 1, 2023, on the written record, "was not completed." Among other things, *Hernandez VIII* noted that Employee objected to his attorney's stipulated attorney fees and costs. It stated, "The parties have a right to be heard on Eppler's fees and he has a right to explain his bills, with which *Hernandez IV* had difficulty." Accordingly, *Hernandez VIII* reopened the hearing record to address: (1) "Eppler's attorney fees, including but not limited to what effect if any does Employee's objection to his attorney's fees have on the pending fee stipulation"; (2) "If the panel should consider Employee's newly filed medical records on remand"; and (3) "If so, the additional time Employer needs to address those records." It directed the parties to appear at a prehearing conference to schedule an in-person hearing to address these issues. (*Hernandez VIII*).

12) On October 30, 2023, Employee fired Eppler, based on "many complications and disagreements" between them. (Employee letter, October 30, 2023).

13) On November 3, 2023, Eppler withdrew as Employee's attorney and filed a notice of an attorney lien for $63,250 based on the Eppler-Employer stipulation. (Notice of Withdrawal of Attorney; Affidavit of Justin S. Eppler and Notice of Attorney's Fee Lien, November 3, 2023).

14) On January 29, 2024, *Hernandez v. Ocean Beauty Seafoods, LLC*, AWCB Dec. No. 24-0002 (January 29, 2024) (*Hernandez IX*) decided that given the "unique procedural and substantive posture" of this case, Eppler's attorney fees and costs would be held in abeyance "until Employee's case is decided on its merits on remand." Employer did not object to Employee being heard on the Eppler-Employer fee stipulation; it was "not taking a position" on the Eppler attorney fee question and left it to the Board to decide the matter. *Hernandez IX* directed Eppler to file a claim for attorney fees. Eppler had been served with notice of the January 24, 2024 hearing that gave rise to *Hernandez IX* and was sent the Zoom link, but he "did not participate." *Hernandez IX*, in addition to holding Eppler's attorney fees in abeyance pending a merits hearing, ultimately decided to consider medical records filed after December 22, 2021, and gave Employer approximately six months for additional discovery. (*Hernandez IX*).

15) On February 5, and February 12, 2024, Employee and Employer, respectively, petitioned the Commission to review *Hernandez IX* and *X* (*Hernandez X* is not relevant to the issues addressed in the instant decision). (Notice of Appeal and Financial Statement Affidavit, February 5, 2024; Cross-Petition for Review, February 12, 2024).

16) On March 27, 2024, in *Hernandez v. Ocean Beauty Seafoods, LLC*, Order on Petition for Review and Cross-Petition for Review (March 27, 2024) (*Hernandez XI*) the Commission cited extensively from *Hernandez IX* and *X*. *Hernandez XI* denied both Employee's petition and Employer's cross-petition for review of *Hernandez IX* and *X*. Notably, *Hernandez XI* appears to have further clarified *Hernandez VI* and stated:

> Typically, when the Commission or the Court on appeal from a Board decision finds that an employer did not rebut the presumption of compensability, the decision will state that the injured worker is entitled to benefits based solely on the raised but unrebutted presumption. In some cases, appellate tribunals direct the panel on remand to decide any remaining issues on the record as it existed at the time of the decision from which the appeal or petition for review was taken. Although *Hernandez VI* remanded for "reconsideration" and "discussion," it did not expressly limit the evidence on remand to evidence in the agency file on December 22, 2021, the date the panel heard *Hernandez IV*.
> . . . .
>
> . . . The decision to postpone a ruling on the attorney fees stipulation also was prudent in case it might need to be revised after a hearing on the merits. . . .
> . . . .
>
> . . . The legal rights of both parties have been fully protected by the Board here and this decision moves forward [Employee's] claim as efficiently, quickly, and fairly as possible under the circumstances of this claim. . . . (*Hernandez XI*).

17) On December 20, 2024, Eppler filed a claim for his attorney fees and costs. "Undersigned asks the Board to approve the Stipulation for Approval of the Employee's Attorney's Fees submitted on August 4, 2023, and amended on September 1, 2023. . . Or in the alternative, issue a decision on the issue of attorney's fees and costs pursuant to AWCAC Memorandum Decision No. 300." Attached was the September 1, 2023 "Amended Stipulation for Approval of Employee's Attorney Fees" signed by Schwarting and Eppler. (Claim for Workers' Compensation Benefits, December 20, 2024, with attached September 1, 2023 Amended Stipulation).

18) On February 26, 2025, Employee, Schwarting and Eppler attended a prehearing conference. The designee scheduled an April 2, 2025 hearing on three issues: (1) Employer's January 16, 2025 petition to strike photographs; (2) Employer's January 16, 2025 petition for a prelitigation screening order; and (3) Eppler's December 20, 2024 claim for attorney fees and costs "(previous stipulation)." The designee also scheduled a hearing on the Commission's *Hernandez VI* remand for May 8, 2025. (Prehearing Conference Summary, February 26, 2025).

19) On March 26, 2025, Employer contended the Board should strike the pictures of Employee's back. It contended the photographs "lack foundation," which should include identifying the photographer and the context in which they were taken. Employer contended the photographs were duplicative, and every time he filed them, Employer had "to move to strike them." It sought an order finding that Employee's photos are not admissible unless he lays a proper foundation for them. Employer further contended Employee filed duplicative documents, which the Division has treated as "claims," and to which Employer must file an answer, incurring additional attorney fees and costs. It sought a prelitigation screening order to stop these "near-weekly" filings and relied on the *Parsons* and *Shoppenhorst* Board decisions for support. Lastly, Employer contended it "does not object" to Eppler's request to have his attorney fees awarded. (Employer's Hearing Brief, March 26, 2025).

20) Neither Employee nor Eppler filed a hearing brief for this hearing. (Agency file).

21) At hearing on April 2, 2025, Eppler was offered an opportunity to testify about his attorney fees and costs; he declined, although he did offer arguments addressing two issues. (Record).

22) At hearing, Employer reiterated its arguments set forth in its hearing brief. It further defined its "screening order" request to mean that Employer was "relieved from its burden" to respond to Employee's filings, unless a new requested benefit is filed in a pleading. If Employee filed a formal claim, then Employer should be required to respond if the Division served it. Employer expressed concern that Employee may simply use the Division's "claim" form to file repetitive requests and claims. It also responded to Eppler's and Employee's hearing arguments. Notably, Employer disputed Eppler's contention that Employee was likely to receive considerably more benefits following his remand hearing. (Record).

23) At hearing, Employee testified that he took pictures of his back himself, using the timer function on his cell phone. He filed documents including photographs that he needs to prove his claim and to respond to Employer's filings and other allegations. Employee contended that Employer does not have to answer everything he files; they simply choose to do so. His filings were trying to clarify the issues in his claims. Employee opposes Employer's two petitions as well as Eppler's request for additional attorney fees and costs. As for Eppler's fees and costs, Employee said Eppler did not complete his representation. He did not provide the evidence or get Employee the higher compensation rate he sought. Employee initially stated that Eppler did not get him any

money, but when the designated chair pointed out the benefits Employee had received, he clarified his statement and stated Eppler did not get him "enough." (Record).

24) Photographs may be useful to fact-finders. (Experience; judgment; observations).

25) At hearing, Eppler asked for an order approving the attorney fee stipulation between him and Employer; he noted Employer did not oppose the request. He stated Employee only opposed the fee stipulation for two reasons: (1) Employee misunderstood the law and thought he would have to pay a new attorney out of his own money should he win at a hearing, to make up for the attorney fees and costs Eppler claimed. Eppler contended that was not correct, as the Board must approve all attorney fees. (2) Employee incorrectly believed that Eppler did not obtain any compensation benefits for him. Eppler contended he obtained more temporary total disability benefits, medical payments, vocational reemployment "stipend" benefits, a referral to the Rehabilitation Benefits Administrator for an eligibility evaluation and permanent partial impairment benefits for his hernias. He noted *Hernandez IV* slashed his original fees. Eppler asked for an order approving the fee stipulation to resolve at least "one issue" in this "complex case." He opined that at the remand hearing Employee was likely to receive significantly more benefits based on Eppler's work. Eppler confirmed that Employer had previously paid him $27,584.48 as ordered in *Hernandez IV*. When asked specifically about *Hernandez IV*'s credibility findings regarding his and his paralegal's billing practices, Eppler suggested the panel look back at the work he did and consider how complex this case was and what it took to get Employee the enumerated benefits. He considered his work performed and the litigation costs expended "reasonable." (Record).

26) At hearing, the designated chair carefully explained to Employee the difference between filing a formal "claim" requesting benefits, clearly identifiable to Division staff as such, and filing "evidence." Once Employee filed a claim for specific benefits, it was unnecessary to repeatedly claim those same benefits. The chair noted that it appears Employee has already requested every benefit available to him on the Division's formal claim. If, however, there is some additional benefit to which he could be entitled, then he may file a claim requesting that benefit. Employee acknowledged that he had previously filed a formal claim on a Division form and knew how to do so. The chair directed him to the Division's website and the "Forms" menu. He directed Employee to use the "Notice of Intent to Rely" form when he had evidence such as photographs or medical bills to file with the Division and emphasized that he should save an exact copy and serve exact

copies of whatever he files with the Division on Employer, and on Eppler so long as Eppler is a party. The chair also explained to Employee how to label his "brief" for the May 8, 2025 remand hearing and how to attach the most important documents to his hearing brief, including medical records, so the panel does not have to dig through his extensive file trying to find documents on which Employee relied. Employee thanked the chair for this explanation. (Record).

PRINCIPLES OF LAW

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

> (1) this chapter be interpreted so as 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 Board may base its decision on direct testimony, medical findings, tangible evidence, and on the Board's "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).

> **AS 23.30.145. Attorney fees**. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board. . . . When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. . . . In determining the amount of fees the board shall take into consideration the nature, length, and complexity of the services performed . . . and the benefits resulting from the services to the compensation beneficiaries.
>
> (b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including reasonable attorney fees. The award is in addition to the compensation or medical and related benefits ordered.

Rusch v. Southeast Alaska Regional Health Consortium, 453 P.3d 784 (Alaska 2019) (*Rusch I*) is an appeal involving two injured workers with "contentious" workers' compensation claims against the same employer. Both claims were resolved, with exception of attorney fees, with "substantial settlements" through mediation. *Rusch I* held: In awarding attorney fees for a successful claimant's lawyer, the Board cannot measure the attorney's experience based only on information from the Division's databases and completely discount the attorney's experience in other areas. The Board cannot reduce an attorney fee without providing adequate notice to the attorney and by solely using evidence from the Division's Incident and Claims Expense Reporting System to gather evidence without giving the attorney an opportunity to respond to that evidence. An attorney may testify to supplement his fee affidavit. The Board may not exclude all testimony from attorney witnesses testifying to the claimant's lawyer's experience. The statutory presumption of compensability does not apply to "reasonableness" of attorney fees. Reducing an attorney's hours solely based on quarter-hour increments and block-billing is improper. *Id*.

Rusch I reiterated holdings from prior Court decisions: Because the Alaska Workers' Compensation Act (Act) restricts fee arrangements between claimants and their lawyers, the Act's fee provisions are construed to require "adequate" fee awards to ensure that competent counsel are available to represent injured workers. *Id*. at 793. Claimant's counsel's fees may not be tied to hourly rates paid to defense counsel. The fact that higher fees for claimant lawyers will only be awarded when they win may justify higher fees than defense counsel get paid. The overall objective, to ensure that competent counsel are available to represent injured workers, is not furthered by a system in which claimants' counsel receive nothing more than an hourly fee when they win while receiving nothing at all when they lose. Without an attorney, an injured worker's chance of success on a workers' compensation claim may be decreased. *Id*. at 794.

Rusch I stated that under AS 23.30.145 a claimant's attorney in a controverted case "is entitled to a percentage fee under subsection (a) but may seek reasonable fees under subsection (b)." *Id*. The attorney fee statute "in its entirety" reflects "the legislature's intent that attorneys in compensation proceedings should be reasonably compensated for services rendered to a compensation claimant." *Id*. *Rusch I* noted the various methods the Board used in past cases to determine a reasonable fee

were inconsistent. It further stated the Board's regulations set out factors to consider in awarding fees but do "not say how those factors are to be applied to a request for fees." *Id*.

Rusch I recognized the difference between calculating attorney fees through settlement and those in a "contested case." *Id*. at 795. It noted the difficulty determining who was the "prevailing party" when there was a "settlement." To resolve the "prevailing party" attorney fee issue when parties settled their disputes, *Rusch I* adopted the *Singh* test, which placed the burden on the party opposing attorney fees to show lack of merit. *Id*. at 796. In other words, if a defendant alleged that certain claims and issues were frivolous or worthless, and thus the claimant's lawyer should not be compensated on those issues, it had the duty to explain why it paid the claimant considerable money to resolve those issues through settlement. *Id*.

Rusch I also addressed "assessing a reasonable fee." It found nothing in the statutes, regulations or case law tied an attorney's hourly rate solely to experience in Alaska workers' compensation law. Setting a new standard for determining "a reasonable attorney's fee," *Rusch I* held "the Board must consider all of the factors set out in Alaska Rule of Professional Conduct 1.5 (a). . . ." *Id*. at 798. It further noted some Rule 1.5(a) factors "mirror those set out in the Act, such as the amount involved, and the results obtained." The Board must consider each factor and either make findings related to it or explain why a factor is not relevant. *Rusch I* reiterated and underscored the importance of the contingent fee factor in workers' compensation cases. The Board may not rely on "extra-record information" about other lawyers' attorney's fees, *i.e*., a disputed fact at issue in a given case, without providing the claimants an opportunity to see and respond to it before the Board decided the fee issue. *Id*. at 801.

Rusch I also said the Board erred by reducing an employee's hourly fee to a paralegal rate for work the attorney did that could be considered a paralegal task. This discouraged rather than encouraged lawyers to represent injured workers. *Rusch I* found by "any measure" the fees the Board had awarded in these consolidated appeals were "unreasonably low," because the claimants received in settlements far more than their employer ever offered before their attorney entered an appearance. Notably, *Rusch I* compared the defense lawyer's fees to the claimants' lawyer's fees and found the defense lawyer actually received more attorney fees from the employer in one case

and a similar amount in the companion case. The Court suggested this was contrary to the notion that employee's attorneys need to earn more than a normal hourly fee on successful cases because they receive nothing on unsuccessful ones. *Id*. at 805.

Rusch v. Southeast Alaska Regional Health Consortium, 517 P.3d 1157 (Alaska 2022) (*Rusch II*) held the Act authorizes "enhanced" attorney fee awards for work before the Commission to account for the contingency fee factor in workers' compensation cases. This appeal arose from the Commission's attorney fee award to the two workers injured in *Rusch I*. When seeking attorney fees from the Commission, the claimants' attorneys asked the Commission to apply the "modified lodestar" approach the Court had adopted in other cases. The Commission refused and the claimants' lawyers appealed the resultant attorney fee order. *Id*. at 1161.

Rusch II noted the Act with minor exceptions regulates fees attorneys can charge for representing claimants, and the fees must be awarded by the Board, the Commission or a court. The Court has refused to enforce fee agreements that did not comply with the Act. On appeal, a claimant attorney must prevail on a significant issue on appeal to be awarded fees for that appeal. By contrast, "Board-awarded fees depend on success on the claim itself." In both instances the fees are contingent. The Commission must award a successful claimant's appellate attorney fees the Commission determines to be "fully compensatory and reasonable." *Rusch II* noted the Court had consistently construed the Act's attorney fee statute as requiring "fully compensatory and reasonable" fees in both court and administrative proceedings, to ensure that competent counsel will be available to represent injured workers. *Id*. at 1162-63. It further noted that injured workers living outside Anchorage have more difficulty finding a competent attorney to represent them in workers' compensation claims, than those who reside in or near Anchorage. *Id*. at 1163.

Rusch II rejected the Commission's determination that $450 per hour was fully compensatory, reasonable and accounted for the contingency fee factor. It was concerned that the Commission did not engage with the evidence presented but simply relied on past appeals and amounts attorneys were awarded in those successful cases. *Id*. at 1166. *Rusch II* reversed the Commission's attorney fee decision, vacated the award and remanded the case to the Commission to apply Rule 1.5(a)

factors. It added that on remand the Commission was permitted, but not required, to "enhance" those fees under a "modified lodestar approach." *Id*. at 1167.

Rusch v. Southeast Alaska Regional Health Consortium, 563 P.3d 2 (January 17, 2025) (*Rusch III*) addressed the same parties' appeal from the Commission's attorney fee award to their attorneys on remand from *Rusch II* and the Commission's refusal to award enhanced attorney fees. On remand, the Commission awarded the same fees, and the claimant lawyers appealed again.

Rusch III noted that unlike the Board-awarded attorney fee dispute in *Rusch I*, subsequent *Rusch II* and *III* decisions addressed Commission errors in deciding a reasonable attorney fee for work done on appeal. It reiterated, "Unlike fees awarded by the Board, which require success on the underlying claim and take into consideration 'the benefits resulting from the [attorney's] services,' appellate attorney fees in workers' compensation" are based on who was the successful party on a "significant issue." *Id.* at 10. *Rusch I* had rejected the Board's and the employer's "tiered approach" in which an attorney's hourly rate increased depending upon their experience. *Rusch III* explained again the "modified lodestar approach," which allows the fact-finders to "first calculate a baseline attorney's fee award by determining the reasonable number of hours the attorney worked and multiplying that by a reasonable hourly rate." *Id*. at 11. It also noted that the fact-finder can consider a variety of factors including the *Johnson-Kerr* aspects, which are similar to factors set forth in Rule 1.5(a), which must be considered pursuant to *Rusch I*, but which include "the undesirability of the case and awards in similar cases." *Rusch III* said the contingency factor may be considered twice, as a "risk premium" necessary to induce competent counsel to represent injured workers. *Id*. It found the Commission's attorney fee award on appeal was manifestly unreasonable and remanded it with an order to enhance the lodestar amount based on the Commission's factual findings. *Id.* at 17.

> **AS 44.62.460. Evidence rules**. . . .
>
> (b) Each party may
>
> . . . .
> (2) introduce exhibits;
> . . . .

> (d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action. . . . Irrelevant and unduly repetitious evidence shall be excluded.

DeNardo v. Maassen, 200 P.3d 305 (Alaska 2009) upheld the superior court's prelitigation screening order, after reviewing it for abuse of discretion, stating that such an order would be affirmed only if it was narrowly tailored and based on adequate justification in the record. The screening order upheld by the Court stated that permission to file new complaints against the named defendants would only be granted if the complaint did not restate a cause of action that has already been asserted or could have been asserted in a prior case against the same parties; and the complaint is definitive, detailed and legally sufficient to survive a motion to dismiss.

In *Parsons v. Craig City School District*, AWCB Dec. No. 23-0069 (November 21, 2023), an employer sought a prelitigation screening order and contended the injured worker had repeatedly attempted to relitigate old injury benefits, and her attempts were frivolous and cost the employer ongoing litigation fees. The Board in *Parsons* determined:

> A prelitigation screening order is an extreme remedy to be used only in exigent circumstances. . . . While Employee is unrepresented, she has been advised the evidence she submitted was insufficient and she needed to provide new medical evidence addressing causation several times. Yet, on September 12, 2023, she made a third attempt to relitigate her case by filing another claim seeking the same relief without any new evidence addressing whether the work injury was a substantial factor in her disability and need for medical treatment. . . . Employee has a history of frivolous and duplicative pleadings, which has resulted in eight decisions, three from the Board, three from the Commission, and two from the Court. . . .
>
> Employee's motive in filing claims and petitions is clear -- she intends to pursue benefits until they are awarded. She believes the past decisions by the Board, Commission and Court are incorrect and that justice and due process will not be provided until she obtains a decision in her favor. She believes she has already "proven" her case. Employee feels victimized and refuses to accept prior rulings and follow advice from Division staff to preserve and pursue her case. Her duplicative filings are deliberate and spiteful as she intends to vindicate a denial of benefits she feels was unfair even as she rejects and ignores the legal requirements of the Act. . . . Employee's duplicative and frivolous pleadings have imposed

> significant cost on Employer, as it answered each and defended against them before the Board, Commission, and the Court. Her duplicative and frivolous pleadings have also unreasonably burdened the Board and its staff because it is required to attend to, address and analyze each pleading. . . . Other sanctions are not available under the Act for frivolous, vexatious, or duplicative pleadings by employees. To adhere to the mandate to ensure quick, efficient, fair, and predictable delivery of benefits at a reasonable cost to Employer, and without specific sanctions for duplicative claims, the Board is not bound by technical or formal rules of procedure. . . . Employer's request for a prelitigation screening order is justified and will be granted. . . . The prelitigation screen order will be narrowly tailored to provide Employee permission to file a new claim against Employer only if the claim does not restate a claim that has already asserted, or could have been asserted. . . .

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

Shoppenhorst granted the employer's request and issued a screening order. *Id*. at 31.

> **8 AAC 45.050. Pleadings.** . . .
>
> (c) For answers to claims and petitions under this subsection,
>
> (1) an answer to a claim must be filed not later than 20 days after the date of service of the claim and served upon all parties; if an answer is not timely filed, default will not be entered, but statements in the claim will be deemed admitted; however, failure of a party to deny a fact alleged in a claim does not preclude the board from requiring proof of the fact; . . .
> . . . .
>
> (f) For stipulations under this subsection,

(1) a stipulation of facts signed by all parties may be filed if the parties agree that there is no dispute as to any material fact and agree to the dismissal of a filed claim or petition or the dismissal of a party; by filing a stipulation of facts under this paragraph, 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;
. . . .

(4) notwithstanding any stipulation to the contrary, the board may base its findings upon the facts as they appear from the evidence, may cause further evidence or testimony to be taken, or may order an investigation into the matter as prescribed by AS 23.30.

8 AAC 45.120. Evidence. . . .

(b) . . . All proceedings must afford every party a reasonable opportunity for a fair hearing.

(c) Each party has the following rights at hearing:

. . . .
(2) to introduce exhibits;
. . . .

(e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. . . . Irrelevant or unduly repetitious evidence may be excluded on those grounds.
. . . .

(*l*) Unless a genuine question is raised as to the authenticity of the original or, in the circumstances, it would be unfair to admit the duplicate in place of the original, a duplicate is admissible in accordance with this section to the same extent as an original.

(1) For purposes of this subsection, a duplicate is a counterpart produced . . . by means of photography . . . that accurately reproduce the original.
(2) The following duplicates are admissible to the same extent as an original:
. . . .

(B) a duplicate of the contents of a . . . photograph is admissible if

> (i) all originals are lost or have been destroyed, unless the party in bad faith lost or destroyed them;
> (ii) an original cannot be obtained by any available judicial or administrative process or procedure;
> (iii) at a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at hearing; or
> (iv) the writing, recording, or photograph is not closely related to a controlling issue.

Alaska Rule of Professional Conduct, Rule 1.5. Fees. (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
> (2) the likelihood, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;
> (4) the amount involved and the results obtained;
> (5) the time limitations imposed by the client or by the circumstances;
> (6) the nature and length of the professional relationship with the client;
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) whether the fee is fixed or contingent.

ANALYSIS

1) Shall Employer's petition to strike Employee's photographs be denied?

Employer contends Employee's photographs of his back lack foundation and should not be admissible as evidence. It further contends it "must" object every time Employee files such pictures. Employee opposes the petition and contends the photographs show consistent, repeated swelling in his back that is useful to the fact-finders as they review his case on remand.

Each party may introduce exhibits at hearing and have a right for their "evidence to be fairly considered" by a hearing panel AS 23.30.001(4); AS 44.62.460(b)(2); 8 AAC 45.120(b), (c)(2), (f). Formal evidence rules generally do not apply in workers' compensation administrative hearings. AS 44.62.460(d); 8 AAC 45.120(e). Photographs are "the sort of evidence on which

responsible persons are accustomed to rely in the conduct of serious affairs." *Rogers & Babler*. Employee testified his photographs show swelling in his back that he attributes to his work injury with Employer. It is unclear what if any weight will be accorded to them; those determinations will be made at hearing. Employer will have an opportunity to cross-examine Employee about these pictures on May 8, 2025. 8 AAC 45.120(*l*)(1), (2)(B)(i)-(iv). But it has presented no convincing legal argument authorizing an order striking the pictures from the record, and its January 16, 2025 petition to strike the photographs will be denied.

2) Shall Employer's petition for a screening order be granted?

Employer seeks an order requiring a prelitigation screening order on all pleadings and other documents Employee may file. *DeNardo*; *Parsons*; *Shoppenhorst*. Employee testified he files documents to support his claims and clarify his issues. Employer seeks an order relieving it from the burden of responding to documents Employee files that the Division treats as "claims." If Employee files a pleading seeking something different than he has already requested, Employer has no objection if the pleading is on a formal claim. Employee has filed numerous formal claims and amended claims. He also filed letters asking the Division to amend previous claims. Unlike his photographic evidence filings, to which Employer need not respond, Employer must answer any document the Division serves on it as a "claim," or risk having fact-finders deem "statements made" in Employee's letters "admitted." 8 AAC 45.050(c)(1).

Employee's case is distinguished from *Parsons* because not all of his requested benefits have been adjudicated in prior decisions; to the contrary, *Hernandez VI* remanded his case for further consideration. Likewise, *Shoppenhorst* is distinguished because Employee has filed nowhere near 176 petitions and there is no evidence that his filings are merely vexatious. At hearing, the designated chair explained to Employee how his letters mentioning amending his claims caused unnecessary expense for Employer; he said he understood. The chair explained to Employee that he has already claimed every benefit available to him, on his formal claims. Accordingly, at this point he simply needs to gather his relevant evidence and attach it to his hearing brief for the May 8, 2025 hearing to support his existing claims. He need not file more claims unless there is some issue not already claimed that he wants to add to his pending claims, which is unlikely. This advice and Employee's recognition at hearing should suffice to prevent additional problems.

Nonetheless, Employee is advised that the Division will not serve any document he files with the Division on Employer unless it is a claim on Form 07-6106. Therefore, Employer's January 16, 2025 petition for a prelitigation screening order will be granted in part.

3) Shall Eppler's and Employer's stipulation and his request for attorney fees and costs remain in abeyance?

Eppler requests an order approving the Eppler-Employer attorney fee stipulation, or in the alternative, an order awarding him attorney fees and costs. He acknowledged having already received from Employer $20,639.85 in attorney fees and $6,944.63 in costs, totaling $27,584.48. AS 23.30.145(a), (b). Employer does not oppose his request. Employee contends Eppler did not complete his representation and did not obtain all the benefits to which Employee believes he is entitled. He contends Eppler should be awarded no additional attorney fees or costs.

Employer and Eppler stipulated in writing to an order awarding Eppler an additional $63,250 in fees and costs. Employee opposes the stipulation. Parties may enter into a stipulation of facts "signed by all parties" and can agree to the dismissal of a filed claim or petition, or to the dismissal of a party. 8 AAC 45.050(f)(1). Stipulations may be in writing. 8 AAC 45.050(f)(2). Nonetheless, notwithstanding "any stipulation to the contrary," the factfinders may base their findings "upon the facts as they appear from the evidence." 8 AAC 45.050(f)(4).

Here, Employee is not signatory to the Eppler-Employer attorney fee and cost stipulation; he adamantly opposes it. Moreover, since Employee opposes the attorney fee and cost stipulation, under *Rusch I* the panel must apply Rule 1.5(a) factors to Eppler's fees. When a stipulation involves attorney fees and costs, and not all parties agree to it, the stipulation is not "automatically" approvable. The factfinders must base their findings "upon the facts as they appear from the evidence" notwithstanding "any stipulation to the contrary." 8 AAC 45.050(f)(4). Furthermore, *Hernandez IX* previously reviewed this same request for attorney fees and costs and held the issue "in abeyance" until the remand hearing on the merits was completed. That will happen on May 8, 2025, roughly a month from now. The Commission in *Hernandez XI* stated, "The decision to postpone a ruling on the attorney fees stipulation also is prudent in case it might need to be revised after a hearing on the merits." Other than Eppler filing his own claim for attorney fees and costs,

as directed, nothing has changed in this case since *Hernandez IX* held his attorney fee and cost request in abeyance. No convincing evidence or argument was presented at hearing to alter the *Hernandez IX* abeyance ruling on this issue. Therefore, Eppler's request for additional attorney fees and costs will continue in abeyance until the May 8, 2025 hearing, at which time the issue will be addressed and resolved.

Eppler was given the opportunity to testify about his attorney fees and costs at the April 2, 2025 hearing; he declined. Were this panel to award Eppler an additional $63,250 in attorney fees and costs, this combined with the $27,584.48 he has already received from Employer in *Hernandez IV*, would result in him obtaining $90,834.48 in attorney fees and costs for services rendered to Employee before this agency. This amount may or may not be "adequate" and "reasonable." However, the instant panel has many of the same concerns raised by the original panel in *Hernandez IV*. This decision gives Eppler notice that the panel may consider adjusting his stipulated fees in accord with *Rusch I, II* and *III*. At the May 8, 2025 hearing, he should be prepared to testify, justify his billing entries, and answer any questions the fact-finders may have regarding the reasonableness of his billed time for services performed and his hourly rate, and how the *Rusch* decisions, the additional *Johnson-Kerr* factors and Rule 1.5(a) apply to this instant matter. Hopefully, by May 8, 2025, the Alaska Supreme Court in a pending fee motion before it in *Rusch* will provide additional clarification and instruction to hearing panels on how to determine "reasonable time" for an attorney to perform legal services and a "reasonable hourly rate."

CONCLUSIONS OF LAW

1) Employer's petition to strike Employee's photographs will be denied.
3) Employer's petition for a screening order will be granted in part.
2) Eppler's and Employer's stipulation and his request for attorney fees and costs will continue in abeyance.

ORDER

1) Employer's January 16, 2025 petition to strike photographs is denied.
2) Employer's January 16, 2025 petition for a prelitigation screening order is granted in part.

3) The Division will not serve any document that Employee files with the Division on other parties unless it is a Claim for Workers' Compensation Benefits on Division on form 07-6106.

4) Eppler's December 20, 2024 claim for attorney fees and costs, and related stipulation for attorney fees and costs, will continue in abeyance until the May 8, 2025 hearing on remand.

Dated in Anchorage, Alaska on April 4, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Randy Beltz, Member

/s/
Pamela Cline, 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 Manuel Hernandez, employee / claimant v. Ocean Beauty Seafoods, LLC, employer; Liberty Insurance Corporation, insurer / defendants; Case No. 201711427; 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 April 4, 2025.

/s/
Rochelle Comer, Workers' Compensation Technician