ALASKA WORKERS' COMPENSATION BOARD

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

RICKIE D. FOREMAN, Employee, Claimant, v. NORTHSTAR CONSTRUCTION MANAGEMENT, Employer, and CINCINNATI INSURANCE CO., Insurer, Defendants.	)	FINAL DECISION AND ORDER AWCB Case No. 202406218 AWCB Decision No. 25-0041 Filed with AWCB Fairbanks, Alaska on July 11, 2025

Northstar Construction Management's (Employer) April 7, 2025 petition to dismiss was heard on the written record on June 12, 2025, in Fairbanks, Alaska, a date selected on April 17, 2025. An April 7, 2025 hearing request gave rise to this hearing. Non-attorney Rickie D. Foreman (Employee) represents himself; Missouri attorney Brian Weinstock represents Employer and its insurer. The record closed at the hearing's conclusion on June 12, 2025.

ISSUE

Employer contends that Employee is "forum-shopping" and that filing a claim in Alaska is inconvenient for all parties and witnesses and will cause unnecessary and unreasonable costs and expenses. It argues that Employee chose Alaska simply to harass Employer. Employer further contends that Employee has now moved from Missouri to Arkansas, and enforcing an Alaska

award in either state would be difficult. It adds that Missouri, Employee's and Employer's residence state when Employee was hired and when the injury occurred, has an interest in ensuring consistent decisions vis-à-vis Alaska, and notes Employee's initial and ongoing Missouri claim for the same injury and benefits. Employer further contends that Missouri has an interest in conducting judicial oversight of Missouri businesses and work injuries. Moreover, Employer argues that a claimant's domiciliary-forum choice should be considered "presumptively correct." When Employee filed his Missouri claim, he was domiciled in Missouri and not 3,580 miles away in Alaska. Employer relies on the legal doctrine called "forum non conveniens," otherwise known as an "inconvenient forum."

Employee's hearing brief mostly addresses his claims on their merits. He contends that the Alaska Workers' Compensation Board (Board) has jurisdiction over his case pursuant to AS 23.30.011 of the Alaska Workers' Compensation Act (Act). Employee otherwise did not address Employer's "inconvenient forum" arguments. He opposes Employer's petition.

Shall Employee's Alaska claim be dismissed under forum non conveniens?

FINDINGS OF FACT

A preponderance of the relevant evidence establishes the following facts and factual conclusions addressing the limited issue before the panel:

1) Employee alleges that on February 18, 2024, he was moving shelving while at work for Employer near Fairbanks, Alaska, when he heard a "pop" in his right shoulder. (Tanana Valley Clinic reports, February 19, 2024; First Report of Injury, May 14, 2024; Brief in Support of Workers' Compensation Claim, December 30, 2024).

2) On March 7, 2024, the Missouri Workers' Compensation Division (Missouri Division) received Employee's "Claim for Compensation." The claim listed Employee's address as Branson, Missouri and said the accident occurred on February 18, 2024. The injured body part was "right shoulder," and Employee stated, "While in the course and scope of employment employee was moving, pushing, shelving and employee heard a pop in his right shoulder." The claim listed Employer's address in Ozark, Missouri. Attorney Scott Taylor, whose address is in Springfield, Missouri, signed the claim on Employee's behalf. Employee claimed medical

treatment and temporary total disability (TTD) benefits. (Claim for Compensation, March 7, 2024).

3) On March 12, 2024, the Missouri Division advised Employee it had processed his claim for a February 18, 2024 injury with Employer. (Letter, March 12, 2024).

4) On April 17, 2024, the Missouri Division noticed a prehearing conference in Employee's Missouri claim. (Notice of Pre-Hearing, April 17, 2024).

5) On April 24, 2024, Employee filed a claim with the Alaska Workers' Compensation Division (Division). He listed his address in Branson, Missouri, Employer's in Ozark, Missouri and his attorney Taylor's in Springfield, Missouri. Employee claimed TTD, temporary partial disability (TPD), permanent total disability (PTD) benefits, permanent partial impairment (PPI) and medical benefits, an unfair or frivolous controversion, a penalty for late-paid compensation, interest, and attorney fees and costs. He stated:

> In the course of my duties we were pushing shelving out of the way so floor polishers could perform their duties overnight[.] Felt sharp pain in right shoulder [sic] felt pain.

As his reason for filing this claim, Employee said:

> Hurt at work[.] I need medical attention and living assistance until I can return to work[.] (Claim for Workers' Compensation Benefits, April 23, 2024).

6) On May 2, 2024, the Division notified Employee it had received his April 23, 2024 claim on April 24, 2024. (Letter, May 2, 2024).

7) On May 9, 2024, the Missouri Department of Labor, Division of Employment Security, determined Employee was disqualified from unemployment benefits because he was discharged by Employer on February 20, 2024, for "misconduct" connected to his work. Missouri determined the misconduct was, "The claimant was discharged because he used foul language directed at his supervisor. This is inappropriate behavior in the workplace." (Deputy's Determination Concerning Claim for Benefits, May 9, 2024).

8) On May 20, 2024, Employee's superior, Loren Olinger stated under oath in an affidavit, in relevant part, that Employer hired Employee in Missouri in December 2023. Employee traveled to Alaska to supervise a project beginning February 12, 2024, and was Employer's lead supervisor at that jobsite. Olinger began receiving complaints regarding Employee's "toxic

attitude and poor management," which resulted in slowed progress on the job. On February 19, 2024, in the early afternoon Employee texted Olinger and asked him to call Employee immediately. A few minutes later, Olinger called Employee and spoke with him for a little over one hour. Employee expressed multiple management concerns and tried to convince Olinger to hire another person to complete work on the project; the parties discuss these issues. As the call ended, Olinger told Employee to get some rest, as he would check out Employee's concerns and call him back. During that one-hour phone call, Employee never told Olinger that he was injured at work or needed medical care. (Affidavit of Loren Olinger, May 20, 2024).

9) Shortly after that call, Employee began sending Olinger "hostile text messages" and "tried to run a $6,800 expense" on Employer's credit card, which exceeded the card's limit. About 45 minutes later, Olinger called Employee back and found him "very aggressive." Olinger told Employee he was not "a good fit" for his position with Employer. He told Employee to return to the hotel and sleep, and Olinger would talk to him again before his shift started the next day. On this second call, Employee still did not tell Olinger that he was injured at work or needed medical care. (Affidavit of Loren Olinger, May 20, 2024).

10) Olinger said that at around 7:00 PM on February 19, 2024, Employee's direct supervisor received a text message from James Seals, site superintendent and Employee's subordinate at the job site. The text indicated that Employee was upset and worried about him and Seals being replaced. Olinger reviewed a reply from Employee's direct supervisor stating that the two would not be replaced. In reply to that, Seals texted that Employee was "currently heading to the doctor's office to get his shoulder looked at." Olinger noted that there was no indication in any text messaging or conversations to this point that Employee hurt his shoulder at work. Employee was, however, concerned about being replaced or terminated before his next job shift began. At around 7:47 PM on February 19, 2024, Olinger texted Employee that someone would cover his shift the next day, and they would speak in the morning. (Affidavit of Loren Olinger, May 20, 2024).

11) On February 20, 2024, Olinger texted Employee terminating his employment and told him how to arrange to return home to Missouri. Olinger said Employee initially refused to turn over his Employer-owned tablet, but ultimately did before he left Alaska. After being terminated, Employee used Employer's company credit card to upgrade two of three return flights from Alaska to Missouri to first-class and to purchase personal gifts for himself that Employer had not

authorized. Olinger stated that after termination, Employee "continued to remain hostile," including making threats. (Affidavit of Loren Olinger, May 20, 2024).

12) On February 21, 2024, Employee texted Olinger and claimed he "tore his bicep working" and made a vulgar demand regarding an email. (Affidavit of Loren Olinger, May 20, 2024).

13) Olinger stated that after February 21, 2024, Employee attacked and threatened Employer and its employees in what Olinger believed was retaliation for being terminated. On February 27, 2024, Employer received from Seals an unsigned "Form 5" for Employee, which is a Missouri workers' compensation form. (Affidavit of Loren Olinger, May 20, 2024).

14) Olinger said Employer first received February 19, 2024 medical records from Employee's provider in April 2024, which said "2 days ago," the symptoms arose, placing the alleged work injury at February 17, not 18, 2024. (Affidavit of Loren Olinger, May 20, 2024).

15) Thereafter, Employee filed for unemployment benefits in Missouri. He also applied for new construction jobs with Employer. (Affidavit of Loren Olinger, May 20, 2024).

16) On May 30, 2024, Alexis Zahn, PA, at Mercy Clinic Orthopedics in Ozark, Missouri saw Employee for his alleged work injury. (Zahn report, May 30, 2024).

17) On July 3, 2024, Employee had a right-shoulder arthrogram at Mercy Hospital in Springfield, Missouri. (Mercy Hospital report, July 3, 2024).

18) On July 23, 2024, Employee emailed the Division and filed several documents including a lengthy explanation about his case. Pertinent to the instant hearing, Employee stated his family was on the verge of becoming homeless and he had pawned his wedding bands and other family heirlooms "to survive." (Email, July 23, 2024).

19) On August 1, 2024, the parties appeared before a Board designee for a prehearing conference. Employer contended that both Missouri and Alaska had jurisdiction over his alleged work injury. Employee said he had three pending claims, one in Missouri, one in Alaska, and one with the "federal government." When asked where he wanted his case adjudicated, Employee asserted he had the right to have his case adjudicated in all three jurisdictions. Employer disagreed with this position and contended Employee does not get "three bites at the apple." The designee noted that the parties did not come to an agreement on jurisdiction, but the designee set a hearing for October 17, 2024, in Fairbanks, Alaska on the merits of Employee's Alaska claim. (Prehearing Conference Summary, August 1, 2024).

20) On August 8, 2024, Employee received an email from an undisclosed person (the sender's name was whited-out) summarizing what the author proposed sending Weinstock regarding Employee's payroll dispute from January 2024, and his alleged February 18, 2024 work injury. The email asked Employee to review and approve the following, stated here only in summary: The document summarized Employee's apparent contention that Employer was "skirting" the Davis-Bacon rule regarding hourly wages for workers on government projects. It also stated that while working in Fort Wainwright, Alaska, Employee injured his shoulder "at night" while pushing shelving. He reportedly told his "superintendent" Seals immediately, who reportedly asked Employee if he wanted to go to the clinic, which he refused, wanting to wait to see if the alleged injury resolved. The email said that by February 19, 2024, Employee realized his alleged injury was more serious, went to the clinic, and asked Seals to complete the incident report for him. The email also detailed that Employee was trying to hire a person for painting and drywalling and was "frustrated" because a supervisor had advised Employee that "regulations" did not allow that. Employee suggested that the supervisor was a lying "son of a bitch." The email detailed that Employee was very frustrated with Employer. The author of this email suggested that Employee believed he was fired because he was about to report Employer for alleged Davis-Bacon violations, and because he was injured on the job. Moreover, the email's author noted that Employee got so "frustrated" about his pay stubs that he would "knock someone's teeth out" if he did not get the pay stubs more promptly. (Email, August 8, 2024).

21) On August 8, 2024, Employee emailed an undisclosed recipient and apologized that his girlfriend's car would not make it to and from St. Louis for his Employer's Medical Evaluation (EME), because its inspection and registration tags were expired and "we" could not afford to pay insurance and get "all legal." He emphasized, "BUT WE DO NOT HAVE THE ABILITY TO TRAPSE [SIC] ALL OVER THE COUNTRY HERE IN TANEY AND GREENE COUNTY. . . ." Employee said his family was struggling financially and he did not have cash to buy gas to get to his EME. (Email, August 8, 2024).

22) On September 10, 2024, Richard Lehman, MD, saw Employee in St. Louis, Missouri, for an EME. He told Dr. Lehman that he injured his right shoulder at work pushing pallets repetitively across the floor. (Lehman report, September 10, 2024).

23) On September 13, 2024, Employee emailed the Division's Fairbanks, Alaska office:

> I would prefer for Weinstock not to know anything about my surgery[.] [He] has done all in his power to harm me and my family[.] I would appreciate you not sharing that information with him please[.] (Email, September 13, 2024).

24) On September 19, 2024, the parties appeared by phone at a prehearing conference before a Board designee. Employee stated his view that Employer was letting Medicaid pay for his work-related medical care in Missouri. He further asserted, in regard to Employer's request to continue the previously scheduled hearing, that he was "almost homeless," and asserted he would soon not be able to defend himself because he "will not have a phone." Employee also conceded that he was scheduled for right-shoulder surgery the next day, September 20, 2024. The designee found this would require additional discovery, and vacated the October 17, 2024 hearing subject to a party filing a hearing request in accordance with the statutes and regulations. (Prehearing Conference Summary, September 19, 2024).

25) On September 20, 2024, Employee had right-shoulder surgery at Mercy Orthopedic Hospital Springfield, in Ozark, Missouri. (Mercy Orthopedic Hospital report, September 20, 2024).

26) On November 1, 2024, Employee emailed Weinstock:

> Am I required to answer anything to you in this format[?] I am not beholding to you[;] it is your job to know these things not my job to tell you[.] [Y]ou are my adversary[,] my enemy [;] you and your insurance companies are evil[.] [U]nless ordered by the court[,] I do not believe I owe you any information. . . . (Email, November 1, 2024).

27) On November 8, 2024, Employer emailed Employee asking, pursuant to statute, where he was receiving physical therapy so it could obtain his records with an authorization or release. (Email, November 8, 2024).

28) On November 12, 2024, Employer petitioned for an order compelling Employee to provide discovery. In its accompanying memorandum, Employer detailed the difficulties it had with obtaining names and addresses for Employee's medical providers. (Petition; Employer's Petition to Compel Discovery Employer's Exhibit 1, November 12, 2024).

29) On December 6, 2024, Larissa Waldorf, a Litigation Specialist with Cincinnati Insurance Companies, emailed Employee, "Stop sending these emails to me. As I told you before I have nothing to do with your claim." (Email, December 6, 2024).

30) On December 12, 2024, Thomas Rogers, MD, saw Employee in follow-up at Mercy Orthopedic Clinic in Ozark, Missouri, after his right-shoulder surgery. (Rogers report, December 12, 2024).

31) On January 8, 2025, Employee emailed Weinstock and among other things stated:

> Sorry Brian they did not perform a complete investigation and now hopefully Loren and Howard will get sentenced to a minimum of TWENTY YEARS IN FEDERAL PRISON each if they told u [sic] they had insurance prior to my injury[.] I believe they lied[.] My true opinion is that you have coached them in the retroactive dating to the fantastic story of me somehow intentionally injuring my shoulder in retaliation for getting fired prior to being fired. Here is the letter that I will be sending out later today. If I am not contacted by 3:00 PM today. You people all know the time date of payment and have concealed it for 11 months now. (Email, January 8, 2025).

32) On January 9, 2025, Division staff with the Special Investigations Unit (SIU) emailed Employee and stated:

> So now that you have called every office in the state. So what is it you would like me to investigate? There is nothing under Alaska law that requires an out of state insurance company to date stamp a policy. Whatever the AI source is that you used is not official Alaska law. According to the insurer[,] insurance was in place at the time you claim you were injured on 18 Feb 24. Where or what is the fraud? Who is the victim? No time stamp or lack of a time stamp is going to change that. You need to prove your case before the AWCB [Alaska Workers' Compensation Board] and they will determine if it is a compensable claim. Just because you are hoping a time stamp or lack of a time stamp will say that there is no policy in place and then the BGF [Alaska Workers' Compensation Benefit Guaranty Fund] will step in and pay all your bills. I seriously doubt that will happen. They would also controvert your claim and make you prove it. I have already briefed my supervisor concerning your behavior and she has been aware of [the] entire investigation since day 1. . . . I informed you of the process of obtaining the time/date stamp in my previous email. Your best solution is to probably request a subpoena through the AWCB for the insurer. But[] once again utilize the right process or it will be rejected. (Email, January 9, 2025).

33) On January 21, 2025, *Foreman v. Northstar Construction Management*, AWCB Dec. No. 25-0003 (January 21, 2025) (*Foreman I*) ordered Employee to attend a second independent medical evaluation (SIME) at his request, over Employer's objections. It also found because he provided Employer with timely written notice of his alleged injury, Employee's claim was not barred, and Employer's notice defense had no effect on the SIME issue. (*Foreman I*).

34) On March 5, 2025, Employer petitioned for an order dismissing Employee's Alaska claim for "forum shopping" or on "forum non conveniens" grounds, and to provide Employer and its insurer with their constitutionally protected due process rights, and to set-aside the previously ordered SIME. In its accompanying memorandum, Employer relied on *Kent V. v. State Dept. of Health*, 233 P.3d 957 (Alaska 2010), which suggests allowing a party to try a case in multiple tribunals is an invitation for forum shopping and "nuisance litigation." Employer said at least four fact witnesses for Employee and Employer and at least four medical expert witnesses including Employee's attending physician and Employer's EME are in Missouri. The parties had already appeared live in court in Springfield, Missouri before any hearings in Alaska. Employer noted the large discrepancy in distance, time and expense between traveling to Alaska for a hearing and attending one a few minutes away in Missouri. By contrast, only one potential medical witness is in Alaska. Employer noted a significant possibility that Employee is simply harassing Employer. It also accused Division staff of improperly giving Employee "legal advice." Employer noted enforceability of any award or judgment would be in a Missouri court where Employer is located, because it has no physical presence in Alaska. It again objected to the SIME process as unfair and burdensome. Employer contended that the Division has allowed Employee free rein to file untruthful and irrelevant information, and he had engaged in so much "fraud on the Court" that the Board would be hopelessly prejudiced against Employer and it could never receive a fair hearing in Alaska. It further argued that an unnamed person or persons, which may be a State of Alaska official practicing law without a license, was giving Employee advice and that person may have committed one or more crimes. Employer also pointed to antisemitic rhetoric Employee sent in an email. (Petition; Employer/Insurer's Petition/Motion to Dismiss Employee's Claim for Workers' Compensation Benefits for Forum Shopping and/or Forum Non Conveniens, to Provide Employer/Insurer With Constitutionally Protected Due Process Rights, to Set Aside the SIME Award for Fraud on the Court and Sanction Employee for Hate Speech and Unauthorized Practice of Law and/or Aiding and Abetting the Unauthorized Practice of Law, March 5, 2025).

35) On April 7, 2025, Employer again petitioned for an order dismissing Employee's Alaska claim for the reasons stated in its March 5, 2025 petition. (Petition, April 7, 2025).

36) On April 17, 2025, the parties appeared telephonically for a prehearing conference before a Board designee. Employee stated in summary:

> Employee contended he did not know how to respond to Employer's March 5, 2025 petition to dismiss so he called the [Division] office, and no one ever got back to him to provide him with guidance. The designee pointed out that, although the agency record shows Employee called the [Division] office numerous times seeking guidance on completing the SIME binder process, it does not show that he ever called seeking guidance on how to answer Employer's petition. He [the designee] then explained to Employee that no form is required to answer Employer's petitions, and that Employee may answer Employer's petition by filing his written arguments why Employer's petitions should not be granted.

The designee identified issues for the June 12, 2025 written-record hearing as Employer's March 5, 2025 petition to dismiss. The designee ordered the parties to file and serve their hearing briefs by June 5, 2025, and any evidence upon which they wanted the Board to rely on by no later than 20 days prior to the hearing. (Prehearing Conference Summary, April 17, 2025).

37) On April 28, 2025, Employee changed his mailing address to Omaha, Arkansas. (State of Alaska Division of Workers' Compensation Change of Address, April 28, 2025).

38) On May 23, 2025, Employee by email requested from the Missouri Division a subpoena duces tecum for numerous documents, directed to Employer's insurer in Cincinnati, Ohio. (Email, May 23, 2025; Subpoena Duces Tecum, May 23, 2026 [sic]).

39) Meanwhile, on May 23, 2025, Employee filed and served on Weinstock a document setting forth his position on Employer's petition to dismiss his Alaska claim. He contended that Alaska has clear and proper jurisdiction over his claim and Employer's arguments to the contrary were without merit. As support, Employee cited AS 23.30.020, which he argued makes the Alaska Act apply to all injuries occurring within Alaska, employment contracts made within Alaska and employees hired for work in Alaska. He also cited: *Chugach Elec. Assoc. v. Price*, 46 P.3d 663 (Alaska 2002), which does not exist; *Doyon Universal Services v. Gagnon*, 182 P.3d 1066 (Alaska 2008), which does not exist; *Thomas v. Washington Gas Light Co*., 448 U.S. 261 (1980); *Industrial Comm. v. McCartin*, 330 U.S. 622 (1947); *Usibelli Coal Mine v. Vowel*, 952 P.2d 1337 (Alaska 1998), which does not exist; *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Kemp v. State*, 892 P.2d 1191 (Alaska 1995), which does not exist; *John v. Superior Court*, 33 Cal. App. 4th 271 (1995), which does not exist; *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); and AS 23.30.110, which he argued makes Alaska venue for injuries occurring in Alaska; and made various constitutional

arguments. He contended that Employer's petitions to dismiss were designed simply to delay his medical treatment. Employee further argued that he is entitled to pursue a concurrent claim in Alaska where the injury occurred, and in Missouri (his then-current residence) "until adequate relief is obtained." He argued that this protects him from "jurisdictional gamesmanship." He sought an order both denying Employer's motions to dismiss and moving his case forward to an SIME and a hearing. (Claimant's Reply in Opposition to Motions to Dismiss Jurisdiction and Venue Properly Established, May 23, 2025).

40) On May 24, 2025, Employee again opposed Employer's motions to dismiss his Alaska claim. He asked the Board to find that Alaska had proper jurisdiction and to confirm his right to pursue "concurrent proceedings." He asked the Board to expedite processing his SIME and underlying claim, and to sanction Weinstock for "frivolous motions" and to award Employee attorney fees and costs for defending against "baseless motions." He cited the same federal and Alaska court opinions to support his requests. (Claimant's Reply in Opposition to Motions to Dismiss Jurisdiction and Venue Properly Established, May 24, 2025).

41) On June 4, 2025, Employee emailed Weinstock:

> I am contacting the Springfield office of the FBI today to look into what I perceive as federal wire fraud across state lines. The retroactively dated Workers[']compensation of Alaska rider may be [a] moot point in the Workers[']compensation hearings[,] but [it] does not negate the criminal complaint from being filed. (Email, June 4, 2025).

42) In an undated document, Employee listed his Alaska and Missouri claim numbers and a Department of Defense retaliation case number in a "To Whom It May Concern" document. He stated this was a "criminal complaint regarding insurance fraud" involving Alaska and Missouri. Employee claimed fraud regarding alleged retroactive dating of Employer's insurance policy and claimed related civil and criminal violations. He also cited the alleged violations, the statutes prohibiting the behavior and associated punishments. Employee purportedly sent this document to the Alaska and Missouri Attorney Generals' offices; the United States Justice Department, Criminal Division; the Department of Defense Inspector General; the Springfield, Missouri FBI office; the Alaska State Troopers Insurance Fraud Unit; the Missouri Department of Insurance Fraud Unit; the Office of Special Counsel (for whistleblower claims); the United States Department of Labor Whistleblower Protection Program; and the United States Department of

Labor, Wage and Hour Division. (Criminal Complaint - Insurance Fraud Across Multiple Jurisdictions and DoD Contract Retaliation, undated).

43) On June 5, 2025, in a document dated June 4, 2025, Employee filed his hearing brief. It focused mainly on his injury and pending claim. Relevant to Employer's petition to dismiss based on an inconvenient forum argument, Employee contended that Alaska has jurisdiction over his injury under §.011, and he cited an irrelevant case. He did not otherwise address Employer's arguments. (Pleading for Hearing on the Briefs, June 4, 2025).

44) On June 5, 2025, Employer filed its brief, which set forth basic facts regarding Employee's hiring, residence and alleged work injury. It suggested Employee displayed a "toxic attitude and poor management," which caused the job to lag. It also provided details implying that Employer doubted Employee's alleged February 18, 2024 work injury. Employer noted that following the alleged work injury, Employee saw Peter Dillon, MD, at Tanana Valley Clinic in Fairbanks, Alaska, for his "only medical visit in Alaska," on February 19, 2024. It also set forth allegations regarding Employee's termination, and his improper use of a company credit card post-termination, and hostile emails and threats. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

45) Employer noted that upon returning to Missouri, Employee retained Attorney Taylor who on April 17, 2024, promptly filed a Missouri workers' compensation claim for the alleged Alaska injury. It further noted that Employer was located in Ozark, Missouri, attorney Taylor was located in Springfield, Missouri and Employee's mailing address was Branson, Missouri. The Missouri Division assigned Employee's case venue to the Springfield, Missouri office, which Employer stated was a 20-minute drive for Employee, Employer and Taylor. Employer further noted that Employee is currently litigating his open Missouri claim. His pending Missouri claim includes but is not limited to TTD benefits and medical care for his alleged injury. Employer further noted that on April 24, 2024, Employee filed an Alaska claim, listed Taylor as his attorney, but Taylor never entered an appearance in Alaska and did not sign the claim. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

46) Regarding medical care, Employer noted that upon returning to Missouri, Employee sought extensive medical care at Mercy Clinic Orthopedics in Ozark, Missouri, Mercy Clinic

Family Medicine in Branson, and Missouri and Mercy Hospital Springfield in Springfield, Missouri with numerous medical providers. He ultimately had surgery on September 20, 2024, at Mercy Orthopedic Hospital in Ozark, Missouri. Moreover, Employer noted that prior to surgery Employee had an EME with Richard Lehman, MD, in St. Louis, Missouri. After February 19, 2024, Employee obtained all medical care for his alleged work injury in Missouri. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

47) On February 13, 2025, Employee was in court in Missouri to argue his Missouri claim before Administrative Law Judge Burks, who continued the case until June 3, 2025. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

48) Employer stated that on April 28, 2025, Employee changed his residence from Missouri to Omaha, Arkansas. However, that residence is about a 56-minute drive to the Springfield, Missouri office where venue is established for Employee's Missouri claim. Employer's office is approximately a 20-minute drive to the Springfield workers' compensation venue. Employee's current residence in Arkansas is about 3,642 miles from the Division's Fairbanks, Alaska office; Employer and its lawyer's offices are roughly the same distance. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

49) Employer argued that as late as May 23, 2025, Employee attempted to obtain a Missouri subpoena for the Ohio insurer in this case. The next day, Employee filed a pleading in his Alaska claim. Employer noted that the four Alaska state cases cited in Employee's May 24, 2025 pleading are "fake and do not exist." Nevertheless, on May 31, 2025, Employee emailed Missouri Judge Burks and stated he needed a Missouri subpoena for his Missouri claim to proceed. A June 3, 2025 prehearing in Missouri was continued for a date to be determined by a court clerk. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

50) Employer, relying primarily on Alaska and United States Supreme Court case law contends that the Board should apply forum non conveniens to this matter, and cited applicable

Crowson factors. It further noted that Employee has advised the Board that he has no phone and is "homeless," and Employer queried how requiring him to litigate a case in Alaska would be better for Employee than doing it in Missouri. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

51) Employer's hearing brief detailed threats, bad feelings and negative interactions between Employee and Employer and its agents. These included Employee's threats to engage the FBI and the Missouri and Alaska Attorney Generals' offices in investigations against Employer and its representatives. Employer argued that Employee's actions suggest he filed his Alaska claim simply to harass Employer and its insurer. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non Conveniens and/or Forum Shopping, June 5, 2025).

52) Employer contended Employee's initial forum choice should be considered "presumptively correct." It noted that the "convenience of the parties" and "the ends of justice" determine where an action should be maintained. Therefore, Employer argued that the "presumptively correct forum" is Missouri where Employee was domiciled when he worked for Employer and is where he initially filed his first claim. It suggested there is no "rational reason" for Employee to file a claim in Alaska given the above circumstances. Employer cited the high financial costs for both Employee and Employer to travel to Alaska, pay for witnesses to travel here for a hearing and otherwise litigate a case where most material facts, expert medical witnesses and documents are all located in Missouri, and within at most a 56-minute drive to the current Missouri venue for Employee's pending claim there. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non-Conveniens and/or Forum Shopping, June 5, 2025).

53) Further, Employer contended there is no doubt Missouri has jurisdiction over Employee's Alaska injury under its workers' compensation act. Therefore, Employee is protected and may receive benefits in accordance with Missouri law on the claim that he chose to file in Missouri. There is no employment contract vis-à-vis Employer and Employee directing a work claim be pursued outside Missouri in event of injury. Employer stated Missouri law allows for the same benefits Employee requested in his Alaska claim including permanent partial disability (PPD), which it likens to Alaska's PPI benefits, and PTD and TPD benefits. Missouri law also provides

for attorney fees and costs. Therefore, Employer contended that dismissing Employee's Alaska case will not prejudice him, but will actually be more convenient for Employee. (Brief of Employer/Insurer or Petition (Motion) to Dismiss Employee's Alaska Claim for Workers' Compensation Benefits for Forum Non-Conveniens and/or Forum Shopping, June 5, 2025).

54) On June 12, 2025, the panel heard the matter on the written record. (Agency file: Judicial, Prehearings and Hearings, Hearing tabs, June 12, 2025).

55) From June 16 through June 30, 2025, the Designated Chair, below, was out-of-the-office for a previously planned vacation. (Observations).

56) On June 17, 2025, Employee called the Division to see if a decision had been rendered yet from the June 12, 2025 hearing. Staff advised him that the Board had 30 days to issue its decision. Employee requested to have the decision emailed to him as well as sent by certified mail. (Agency file: Judicial, Communications, Phone Call tabs, June 17, 2025).

57) On June 23, 2025, Employee called the Division concerned that Employer would not pay for his previously ordered SIME. He informed Division staff that Employer's attorney allegedly told him he would have to pay for the SIME travel from his own pocket and then be reimbursed. Employee stated he "cannot fly because he does not have a Real ID." Staff advised that he needed Real ID to travel and Employee said he knew that because he had spent four days in an airport because he did not have a Real ID, and added he does not have money for a Real ID, and requested a prehearing conference before the SIME appointment scheduled for July 10, 2025. (Agency file: Judicial, Communications, Phone Call tabs, June 23, 2025).

58) On June 24, 2025, Division staff missed a call from Employee but immediately emailed a response to his message. Staff enclosed a form Employee could use to request a prehearing conference. The staff member advised him that he could only schedule a prehearing conference 10 days out, and advised Employee to submit his form as soon as possible because his "SIME appt is coming up soon." (Agency file: Judicial, Communications, Email tabs, June 24, 2025).

59) On June 24, 2025, Employee called the Division again and spoke to staff who assured him he would be notified via email and certified mail when a decision was issued. (Agency file: Judicial, Communications, Phone Call tabs, June 24, 2025).

60) On June 25, 2025, knowing that the Designated Chair was on vacation through June 30, 2025, the Chief of the Adjudications (Chief) directed Division staff to cancel Employee's July 10, 2025 SIME, pending the Board issuing its decision on Employer's petition to dismiss. If the

decision went in Employer's favor, there would be no need for an expensive SIME. The Division made this decision to cancel the SIME because the Chief also knew that while the Board's decision would be issued timely, it could not be issued following the Designated Chair's return from vacation before the SIME cancellation deadline and Employer incurring a significant cancellation fee from the SIME physician's office. (Letter, June 25, 2025; observations, experience).

61) On June 25, 2025, Employee called the Division stating he had received the email canceling his SIME. He wanted to know how that "was possible?" Staff tried to explain, but Employee said, "the insurance company is corrupt," and he terminated the phone call. (Agency file: Judicial, Communications, Phone Call tabs, June 25, 2025).

62) On June 25, 2025, Employee called the Division again about the SIME being canceled and staff asked him to read the letter the Division had sent him. (Agency file: Judicial, Communications, Phone Call tabs, June 25, 2025).

63) Still later on June 25, 2025, Employee called and left several voicemail messages while the assigned staff member was assisting another claimant. He was upset that the SIME was canceled and asked "what grounds" did the Board have to do so. Staff explained that it was canceled due to the pending Board decision. He also asked other questions not related to the instant decision, but stated the Board was "always siding" with "the employer." Staff advised Employee that the Board has a duty to be neutral between both parties but, Employee "did not seem to want to hear it." (Agency file: Judicial, Communications, Phone Call tabs, June 25, 2025).

64) On June 26, 2025, Employee filed but did not serve on Weinstock, a lengthy email and "Brief." The arguments raised in these documents are irrelevant to the issue before the Board in this hearing. (Email; Brief for Alaska AWCB 202406218, June 26, 2025; observations).

65) On June 26, 2025, in another email dated June 25, 2025, Employee filed but did not serve on Weinstock an email with "many questions" about Employer's controversion and why his SIME was canceled. He argued these delays were "planned and designed by the Alaska board and the insurance companies" to "kill many of us" "homeless" and "phoneless" people who have no ability to fight, enabling our "masters," the "big insurance" companies, to have "record profits." (Email, June 25, 2025).

66) On June 26, 2025, in an email dated June 25, 2025, Employee requested a conference call to arrange travel to his canceled SIME. He added, "I cannot fly have no Real ID or birth certificate I am homeless and indigent due to this process." (Email, June 25, 2025).

67) Still later on June 26, 2025, Employee filed but did not serve on Weinstock another email complaining that the Board was assisting Employer in alleged fraudulent activities and abuse. (Email, June 26, 2025).

68) On June 26, 2025, Employee also filed but did not serve on Weinstock a brief that addresses the merits of his claim. (Email; Claimant's Comprehensive Brief in Support of Compensation Claim, Request for Statutory Penalties, and Criminal Referral, June 26, 2025).

69) On June 26, 2025, in the early afternoon, Employee filed but did not serve on Weinstock an email stating, "May Jehovah look upon your deeds and your heart and judge you accordingly again I will force myself to pray for you." (Email, June 26, 2025).

70) On June 27, 2025, Employee filed did not serve on Weinstock an email stating, "When will this wonderful process tell me their [sic] decision and what mountain I have to climb next after meeting all reporting requirements and still sorry for forgetting I am insane going to the doctor today." (Email, June 27, 2025).

71) On June 30, 2025, Employee filed but did not serve on Weinstock an email stating that he wanted immediate compensation for his work injury and for his wage-and-hour claim. (Email, June 30, 2025).

72) Although the Division uses Zoom to create its official hearing record, in cases involving credibility issues, it is beneficial for the fact-finders to see and hear witnesses in-person to assist in judging their credibility and weighing their testimony. Parties have a right to appear in person at a hearing, and many choose to exercise that right. (Experience).

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 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 the provisions of 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.

The Board may base its decision on direct testimony, tangible evidence, its "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 23.30.011. Extraterritorial coverage**. . . .
>
> (b) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to the benefits under this chapter is not a bar to a claim for benefits under this chapter; however, a claim under this chapter must be filed within the time limits set out in this chapter. If compensation is paid or awarded under this section
>
> (1) the medical and related benefits furnished or paid for by the employer under another workers' compensation law on account of the injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;
> (2) the amount of all income benefits paid or awarded the employee under another workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter had claim been made solely under this chapter;
> (3) the total amount of death benefits paid or awarded under another workers' compensation law shall be credited against the total amount of death benefits due under this chapter.

Beitman v. Wien Air Alaska, AWCB Dec. No. 86-0313(November 26, 1986) referred to §.011 as a "somewhat tortuous" statute and noted the Alaska Supreme Court (Court) had not yet construed this section. The Court has still not construed it.

Gibeau v. Kollsman Instrument Co., AWCB Dec. No. 92-0041 (February 24, 1992) held that the Board may constitutionally assert jurisdiction over a claim even though another state's jurisdiction has also been asserted and payments made under the laws of that state. Double recovery is avoided by crediting the other payments against any award made under the Alaska Act.

> **AS 23.30.020. Chapter part of contract of hire.** This chapter constitutes part of every contract of hire, express or implied, and every contract of hire shall be construed as an agreement on the part of the employer to pay and on the part of the employee to accept compensation in the manner provided in this chapter for all personal injuries sustained.
>
> **AS 23.30.110. Procedure on claims.** (a) Subject to the provisions of AS 23.30.105, a claim for compensation may be filed with the board in accordance with its regulations at any time after the first seven days of disability following an injury, or at any time after death, and the board may hear and determine all questions in respect to the claim. . . .

Federal cases:

Koster v. Lumbermen's Mutual Casualty Co., 330 US 518, 524 (1947) was a stockholder derivative action by a plaintiff who lived in New York. The defendant insurer did business in 48 states but its home and principal business was in Illinois. There, all records were kept and no witnesses were shown to be necessary to either party outside Illinois. Two lower courts concluded the case should not be tried in New York because there were ample remedies available in Illinois. The plaintiff obtained certiorari. *Koster* was a forum non conveniens case. It concluded:

> Where there are only two parties to a dispute, there is good reason why it should be tried in the plaintiff's home forum if that has been his choice. He should not be deprived of the presumed advantages of his home jurisdiction except upon a clear showing of facts which either (1) establish such oppressiveness and vexation to a defendant as to be out of all proportion to plaintiff's convenience, which may be shown to be slight or nonexistent, or (2) make trial in the chosen forum inappropriate because of considerations affecting the court's own administrative and legal problems. In any balancing of conveniences, a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown.

In determining the proper forum, the plaintiff's residence is a fact of "high significance." *Id*. at 525. *Koster* added, "But the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Id*. at 527. It affirmed the lower courts.

Industrial Comm. of Wisconsin v. McCartin, 330 U.S. 622 (1947) held that a state workers' compensation act must have "unmistakable language" that requires a workers' compensation

award in one state to preclude a subsequent award in another state, to prevent a successive award. It was a "full faith and credit clause" case and did not discuss forum non conveniens.

The Boeing Co. v. Van Gemert, 444 U.S. 472 (1980) was an attorney fee "common fund" case in a class action matter. It does not mention or discuss forum non conveniens.

Thomas v. Washington Gas Light Co., 448 U.S. 261 (1980) involved a District of Columbia resident who received a disability award under Virginia's workers' compensation act. The claimant had received injuries in Virginia while employed by a company that was principally located in the District of Columbia, where the claimant was hired. The claimant subsequently received a supplemental award under the District of Columbia workers' compensation act over the employer's contention that since as a matter of Virginia law, the Virginia award excluded any other recovery on account of the injury in Virginia, the District of Columbia's obligation to give the Virginia award "full faith and credit" precluded a second, supplemental award and the District of Columbia. The Court reversed and remanded the matter. *Thomas* held that the Full Faith and Credit Clause did not preclude successive workers' compensation awards. It did not mention or discuss forum non conveniens.

Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) was a wrongful death action arising from a plane crash in Scotland, brought in California state court against a Pennsylvania plane manufacturer and an Ohio propeller maker. The state court removed the matter to federal district court, which transferred the suit to Pennsylvania. The Pennsylvania federal court dismissed the action on forum non conveniens grounds and the plaintiff appealed. The Court of Appeals reversed and remanded; the plane manufacturer obtained certiorari. *Reyno* on appeal held that a plaintiff may not defeat a motion to dismiss on forum non conveniens grounds "merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiff than that of the chosen forum." The district court did not act unreasonably in concluding that fewer evidentiary problems would exist if the trial was held in Scotland because "a large proportion of the relevant evidence" was located there and "public interest factors favored" the trial in Scotland.

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) is an oil and gas royalty class-action case. It does not mention or discuss forum non conveniens.

State cases:

Kemp v. State, 892 P.2d 1191 (Alaska 1995), *John v. Superior Court*, 33 Cal. App. 4th 271 (1995), *Usibelli Coal Mine v. Vowel*, 952 P.2d 1337 (Alaska 1998), *Chugach Elec. Assoc. v. Price*, 46 P.3d 663 (Alaska 2002), and *Doyon Universal Services v. Gagnon*, 182 P.3d 1066 (Alaska 2008) are not actual cases and exist only in Employee's pleadings.

Crowson v. Sealaska Corp., 705 P.2d 905 (Alaska 1985) was a forum non conveniens case, which set forth five factors to consider and stated that a court should decline to exercise jurisdiction over a matter only if the selected forum is a "seriously inconvenient place" to conduct the litigation. The court must consider the public's interest as well as the private litigants' interests. *Crowson* affirmed the lower court's refusal to dismiss on forum non conveniens grounds where the plaintiff was an Alaska corporation with its principal business location in Juneau, Alaska.

Bromley v. Mitchell, 902 P.2d 797 (Alaska 1995) applied the five *Crowson* factors a court should consider on a motion for forum non conveniens dismissal: (1) access to proof; (2) availability and cost to obtain witnesses; (3) the possibility a forum was chosen to harass an opposing party; (4) judgment enforceability; and (5) the community's burden from litigating matters with which it is not concerned. A court's decision on a forum non conveniens motion will be overturned only if the court abused its discretion.

Baypack Fisheries, LLC v. Nelbro Packing Co., 992 P.2d 1116, 1119-20 (Alaska 1999) stated that a court abuses its discretion in a forum non conveniens case only where its determination is "manifestly unreasonable." A plaintiff's "choice" of forum should rarely be disturbed on forum non conveniens grounds unless the balance of private and public interests weighs strongly in favor of dismissing the case. For example, dismissing a case near the close of discovery and only seven months before trial was inappropriate where the parties had invested significant time and resources litigating in Alaska by the time the motion to dismiss was filed.

Kent V. v. State Dept. of Health & Social Services, 233 P.3d 597, 600-01 (Alaska 2010) is a parental-rights-termination case and states the general proposition that, "We have noted that '[t]o the extent that a litigant is allowed to try his case in multiple tribunals, the court is inviting forum shopping and nuisance litigation.'"

Rosalind M. v. Dep't of Family & Community Servs., 555 P.3d 505 (Alaska 2024) was an Indian Child in Need of Aid proceeding heavily affected by sovereign tribal law. It was a "modified" forum non conveniens case involving state versus tribal courts, and a request for permissive intervention to challenge transfer of jurisdiction to a tribal court.

> **AS 23.30.122. Credibility of witnesses**. The board has the sole power to determine the credibility of a witness. A finding by the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of the board are subject to the same standard of review as a jury's finding in a civil action.

In *Elliott v. VECO, Inc*., AWCB Dec. No. 86-0213 (August 15, 1986) the claimant who lived out-of-state had testified by deposition, so he did not appear at his hearing. The Board stated:

> Since employee was not a witness at the hearing, we are not able to personally observe him to assist us in determining his credibility. AS 23.30.122. The only testimony we have from Elliott is from his deposition. . . .

The Board found it could not decide whether the claimant was credible until he addressed certain discrepancies. To remedy this, the claimant flew to Anchorage for another hearing.

> **AS 23.30.135. Procedure before the board**. (a) . . . 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. . . .

ANALYSIS

Shall Employee's Alaska claim be dismissed under forum non conveniens?

This panel has authority to hear and decide Employer's March 5, 2025 petition to dismiss Employee's Alaska claim under forum non conveniens, under AS 23.30.110(a). That section gives this panel authority to "hear and determine all questions in respect to the claim."

Based on the entire agency file in this case, which for brevity is not cited fully in the factual findings above, it is apparent that this is a hotly contested case with extreme animosity between the parties' representatives. Those representatives have spent considerable time and effort casting aspersions upon each other, often on matters not relevant to the case. Moreover, Employer questions whether Employee actually injured himself in February 2024 as he alleges, and suggests that the Division and its staff are inappropriately assisting him. On the other hand, Employee has convinced himself that the Division, its employees, the insurer and Employer are all conspiring against him to render him a pauper. Against this contentious backdrop, the panel must decide Employer's March 5, 2025 petition to dismiss. This is the only issue decided in this matter today because it was the only issue set for hearing and ripe for hearing.

This is not a dispute over which state, Missouri or Alaska, has jurisdiction over Employee's injury. Both do. Under Alaska law, every contract for hire in Alaska includes the Act. AS 23.30.020. Rather, Employer's March 5, 2025 petition in essence requires the panel to decide whether Alaska should, in this panel's discretion, withhold exercising its jurisdiction over this matter, and defer to Missouri. This appears to be an issue of first impression. *Beitman*; *Gibeau.* Neither party argues that Missouri or Alaska lack jurisdiction; they both agree that both states have jurisdiction. Therefore, there do not appear to be any factual issues relevant to the March 5, 2025 petition. The pleadings Employee filed in Missouri and Alaska in his two cases, and his own statements regarding his personal and financial situation, speak for themselves. Thus, the presumption of compensability does not apply to Employer's March 5, 2025 petition because the petition raises a legal issue, not a factual one, and the relevant facts are undisputed.

Both parties cite statutes and case law supporting their positions. Employee's state case citations are fake and exist only in his pleadings. *Kemp*; *John*; *Vowel*; *Price*; *Gagnon.* They are likely the result of "artificial intelligence." Obviously, the legal principles Employee cited from these

"cases" are useless in deciding this matter. The federal cases Employee cites exist, but some do not discuss forum non conveniens and those that do cut against his position:

Koster concluded that there are good reasons why a case should be tried in the claimant's home forum "if that has been his choice." Here, Employee chose to first file a claim in Missouri, his "home forum" at the time he filed. When asked to choose between Missouri or Alaska, he declined, contending he had a right to have concurrent claims in two different states. But "concurrent claims" is not the issue either. This is a forum non conveniens issue.

Koster required a "clear showing of facts," which either established "oppressiveness and vexation" to the defendant that was out of proportion to the claimant's convenience, or a showing that a trial in the claimant's chosen forum is inappropriate due to the tribunal's own administrative and legal problems. A claimant has "presumed advantages" in his home jurisdiction. *Id*. The parties' positions in *Koster* were opposite the parties' positions here. Employer wants the hearing held in Missouri, which is Employee's chosen, home forum convenient to both parties, while Employee wants the hearing held in Fairbanks, Alaska, which is about 3,650 miles from his current residence. In most forum non conveniens cases, the defendant seeks to remove the case from the claimant's home forum to a place more convenient for the defendant. In any event, *Koster* said in balancing conveniences, "a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown." Here, Missouri was Employee's "home forum" until he moved a short distance away into Arkansas. Moreover, in determining the proper forum, the plaintiff's residence is a fact of "high significance." *Id*. *Koster* added, "But the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice." *Id*. Based on the undisputed facts, *Koster* favors Missouri.

McCartin was not a forum non conveniens case but addressed the effect of a compensation award in one state precluding or not precluding a subsequent award in another state. It is not helpful to resolve the instant issue. Likewise, *Van Gemert* was an attorney fee "common fund" case in a class action matter and is irrelevant to Employer's March 5, 2025 petition. *Thomas*,

like *McCartin*, was not a forum non conveniens case, and addressed the "subsequent award" issue.

Reyno is informative because it decided that a plaintiff may not defeat a motion to dismiss on forum non conveniens grounds "merely by showing that the substantive law that would be applied in the alternative forum is less favorable to the plaintiff than that of the chosen forum." Employee has made no showing comparing the benefits available in each state. Nevertheless, better benefits may be why Employee filed a claim in Alaska after filing one in Missouri. He may believe that benefits here are greater than they are in his former home state. Regardless, *Reyno* also held that the trial court did not act unreasonably in concluding that fewer evidentiary problems would exist if the trial were held in Scotland rather than in Pennsylvania because "a large proportion of the relevant evidence" was located there and "public interest factors favored" the trial in Scotland. Here, Employee saw one medical clinic once in Fairbanks, Alaska. Thereafter, all his medical care occurred in Missouri. Medical evidence will be key to his merits claim. He presented no evidence that non-medical fact-witnesses that could address any remaining issues in his case would be unable to testify in Missouri. *Foreman I* already resolved the "injury notice" issue so that is no longer a factual dispute. *Reyno* supports Employer's position, not Employee's.

Lastly, *Shutts* is an oil and gas royalty class-action case. It does not mention or discuss forum non conveniens and does not aid the panel in this matter.

By contrast, Employer cited Alaska law regarding the forum non conveniens doctrine. *Crowson* set forth five factors a court should consider and stated a court should decline to exercise jurisdiction over a matter only if the selected forum is a "seriously inconvenient place" to conduct the litigation. A court must consider the public's interest as well as the private litigants' interests. *Crowson* affirmed the lower court's refusal to dismiss on forum non conveniens grounds where the plaintiff was an Alaska corporation with its principal business location in Juneau, Alaska. Here, Employee is not an Alaska resident and while Employer does business in Alaska, it has no physical presence here. Employer's principal offices are in Missouri and the parties' attorneys reside in Missouri. Employee resided in Missouri until he recently moved to

Arkansas, but first filed a claim in Missouri for this injury. *Crowson* also supports Employer's position.

Bromley addressed the five *Crowson* factors a court should consider on a motion for forum non conveniens dismissal, which will be applied to the undisputed facts in the instant case:

(1) ***Access to proof***: Employer is the only party to actually address the *Crowson* factors, and argued that it is utterly inconvenient to both parties for this case to remain in Alaska for several reasons. It correctly notes, and the panel takes official notice, that before he moved to Arkansas, Employee lived within a 30-minute drive from the Springfield, Missouri Division offices where his Missouri case would be heard. The panel also notes that notwithstanding his move to Arkansas, his location, a 56-minute drive, is still far closer to Springfield, Missouri than it is to Fairbanks, Alaska. Alaska uses Zoom as the official record for workers' compensation hearings. However, while Zoom is used to record a hearing, parties have an absolute right to attend Alaska workers' compensation hearings in person, if they want to, and many do. This is an important factor because Employer questions whether Employee hurt himself on its job at all, which ultimately raises credibility issues. AS 23.30.122. In the panel's experience, it is easier to judge witnesses' credibility in-person where their body language can be observed by the fact-finders, than it is to judge credibility over a telephone or even with a Zoom image. *Rogers & Babler*; *Elliot*. Employee did not offer any convincing argument countering Employer's position on this factor.

(2) ***Availability and cost to obtain witnesses***: This factor is closely related to "access to proof." Employer notes that Employee's attending physician and other medical providers, as well as Employer's EME physician, are all in Missouri. Employer's principal business office in Ozark, Missouri is only a 20-minute drive to the Springfield, Missouri Division offices. Employee does not dispute this assertion. If Employer wanted to call either party's medical expert as a witness, both are practicing orthopedic surgeons, and traveling from Missouri to Fairbanks for a hearing would place a heavy burden on them, be a major inconvenience, and would not be cost-effective for either party. While a party may depose a medical witness, they are not required to do so and parties have a right to present live medical witnesses at the hearing, and many do. Moreover, in

his various emails, Employee has repeatedly stated that he is either nearly homeless or homeless, and would soon be "phoneless." He complained of not having a vehicle to travel to St. Louis, Missouri, for his EME. Employee has no birth certificate and no Real ID, so he cannot travel by air, even if he could afford to. It is unlikely that requiring Employee to appear in Fairbanks, Alaska for a merits hearing would be in his best interest given his financial situation. Having him appear by Zoom or phone would impede the panel's ability to judge his credibility. In previous cases, panels have necessitated out-of-state claimants to appear personally where credibility was a major issue, as it is here. *Elliott*. Factors (1) and (2) weigh heavily in favor of Missouri.

(3) ***The possibility a forum was chosen to harass an opposing party***: The evidence shows that Employee knew or probably suspected by February 19, 2024, that he was going to be terminated. Olinger had told him that he was not a "good fit" and that other workers had been complaining about him. The agency file is replete with Employee's threats regarding various issues. This decision does not fault Employee for pursuing any avenue he feels appropriate with any state or federal agency if he feels so inclined. However, his multiple emails and letters to various law enforcement and similar agencies cannot be ignored. Employee's animosity against Employer, its agents and Weinstock, for actual or imagined slights and offenses, similarly cannot be ignored. In this context, it makes no sense for Employee to litigate his case in Alaska when all but a scintilla of possible evidence is more conveniently available in Missouri. Therefore, the possibility that Employee is concurrently litigating his claim in two forums, thousands of miles apart, simply to harass Employer cannot be discounted. To be clear, this decision is not finding that Employee chose Alaska to harass Employer, but is simply recognizing it as a possibility.

(4) ***Judgment enforceability***: Employee is now in Omaha, Arkansas, which Employer says is less than 10 miles from the Missouri border. Employee does not dispute this fact. Were his case heard and decided in Missouri, and if he was awarded benefits, he would have little difficulty enforcing that judgment in Missouri. He offered no argument regarding his ability to enforce an Alaska order in Missouri. It would be legally possible to do so, but most likely at great time and expense. This factor likewise cuts in Employer's favor.

(5) ***The community's burden from litigating matters with which it is not concerned***. The panel takes official notice that Alaska and Missouri care about their injured workers and conducting oversight of businesses operating in their states. Employer agrees that both states have an interest in ensuring consistent decisions. Employee did not address this factor, but argues he has the right to litigate his claims in two states, concurrently. The panel found no law directly addressing this, especially where an employer has not paid the claimant any benefits and neither state has awarded benefits, as is the case here. Most cases involve the "successive award" question where an injured worker is receiving benefits from his employer in one state without objection or dispute, and then seeks additional benefits for the same injury from another claim in a different state. As is true of many states, Alaska has a provision that covers the latter issue by providing a "credit" against medical and other benefits obtained in another state. AS 23.30.011; *Gibeau*. However, that is not the issue before this panel; the issue is forum non conveniens.

Baypack Fisheries, LLC stated that a court's decision dismissing a case on forum non conveniens grounds is reviewed on appeal for "abuse of discretion." A court abuses its discretion in such case only where its determination is "manifestly unreasonable." Given the above analyses under *Crowson*, it would not be "manifestly unreasonable" for Alaska to decline to exercise its jurisdiction over this case, where Employee has an ample remedy in Missouri. Not only does he have a remedy, but he has also been actively pursuing it in the Missouri court. Alaska should decline to exercise its jurisdiction under forum non conveniens only if Alaska is a "seriously inconvenient place" to conduct the litigation. Employee's "choice" of forum should rarely be disturbed on forum non conveniens grounds unless the balance of private and public interests weighs strongly in favor of dismissing his case. The problem in this case is that Employee has not actually chosen a forum. He has chosen two and is litigating in both concurrently. As analyzed above, under the *Crowson* factors Alaska, in comparison to Missouri, appears to be a "seriously inconvenient" place for either party to conduct this litigation.

Moreover, concurrent litigation over the same injury in two states creates problems, for which the panel could find no remedies or resolution after a thorough case-law search. The opportunity exists for inconsistent decisions on evidentiary rulings, admissibility of evidence or testimony, entitlement to one or more benefits, and ultimately on whether the injury happened at all. Alaska

could find Employee not credible and thus entitled to no benefits, while Missouri could find him credible and entitled to all benefits, or vice-versa. It is not clear to this panel how these contradictory decisions would be handled on appeal given "full faith and credit" issues.

Employer's reliance on the general proposition from *Kent V.* that "'[t]o the extent that a litigant is allowed to try his case in multiple tribunals, the court is inviting forum shopping and nuisance litigation'" is highlighted here. *Rosalind M.* involved tribal law and is not helpful.

However, applying Alaska's Act is instructive. The first provision in Alaska's Act §.001(1) is most helpful. It sets forth the Alaska legislature's mandate that (1) the Act be interpreted to ensure quick, efficient, fair and predictable delivery of benefits to Employee if he is entitled to them, at "a reasonable cost" to Employer. As Division staff explained to Employee in the past, filing an injury report or a claim does not automatically entitle him to benefits. Employer has a right to defend itself against his claim. Notably, while Employee may assail this decision and Alaska's process overall as being anything but "quick, efficient, and fair" to him, he contributed to delays in this case. He, not Employer, filed a claim in Missouri and then filed another claim in Alaska and actively litigates both concurrently. Employee, not Employer, demanded an SIME, which further prolonged his case. He intentionally tried to withhold from Employer and its EME the fact that he had shoulder surgery. That slowed down discovery. Employee refused to provide discovery, forcing Employer to petition to compel. In short, requiring Employer to litigate the same case in two venues concurrently is not "a reasonable cost" under §.001(1).

AS 23.30.001(4) is also instructive on this issue. In Alaska, the legislature mandates that hearings in workers' compensation cases be impartial and fair to all parties. It does not seem "fair" to Employer or Employee to fight a battle on two fronts at great inconvenience and expense not only to Employer, but to Employee as well. Alaska law in §.001(4) requires the parties be afforded due process and an opportunity to be heard and for their arguments and evidence to be fairly considered. Undoubtedly, Missouri has these same basic due process requirements.

Another goal under the Alaska Act in §.135(a) is for this panel to make its investigation and inquiries or conduct its hearings in the manner by which it may "best ascertain the rights of the parties." This is akin to the "interest of justice," which *Koster* said was the ultimate goal in forum non conveniens cases. Here, based on the above analyses and the relevant, undisputed evidence, the parties' rights will best be ascertained and the interest of justice best met by Alaska declining to exercise its jurisdiction. Employee has a remedy in Missouri that he is actively pursuing. Missouri is unequivocally the convenient and proper place to decide his claim, and Alaska is not. Therefore, Employer's March 5, 2025 petition to dismiss will be granted.

CONCLUSION OF LAW

Employee's Alaska claim shall be dismissed under forum non conveniens.

ORDER

Employee's April 23, 2024 claim is dismissed under forum non conveniens.

Dated in Fairbanks, Alaska on July 11, 2025.

ALASKA WORKERS' COMPENSATION BOARD

/s/
William Soule, Designated Chair

/s/
Sarah Lefebrve, Member

/s/
John Corbett, Member

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. If a request for reconsideration of this final decision is timely filed with the board, any proceedings to appeal must be instituted within 30 days after the reconsideration decision is mailed to the parties or within 30 days after the date the

reconsideration request is considered denied due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the Appeals Commission a signed notice of cross-appeal within 30 days after the board decision is filed or within 15 days after service of a notice of appeal, whichever is later. The notice of cross-appeal shall specify the board order appealed from and the ground upon which the cross-appeal is taken. AS 23.30.128.

RECONSIDERATION

A party may ask the board to reconsider this decision by filing a petition for reconsideration under AS 44.62.540 and in accord 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 accord 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 Final Decision and Order in the matter of Rickie D. Foreman, employee / claimant v. Northstar Construction Management, employer; Cincinnati Insurance Co., insurer / defendants; Case No. 202406218; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served on the parties by certified U.S. Mail, postage prepaid, on July 11, 2025.

/s/
Whitney Murphy, Office Assistant II