

Alaska Workers' Compensation Appeals Commission

Sandra Rusch,
Appellant,

vs.

Southeast Alaska Regional Health
Consortium and Alaska National Insurance
Company,
Appellees.

Brenda Dockter,
Appellant,

vs.

Southeast Alaska Regional Health
Consortium and Alaska National Insurance
Company,
Appellees.

MEMORANDUM DECISION

Order on Remand of Order on Motion for
Attorney Fees

Decision No. 298 December 15, 2022

AWCAC Appeal No. 17-001
AWCB Decision No. 16-0131
AWCB Case No. 201210128

AWCAC Appeal No. 17-002
AWCB Decision No. 16-0132
AWCB Case No. 201403022

Appearances: J. John Franich, Franich Law Office, LLC, for appellants, Sandra Rusch and Brenda Dockter; Michael A. Budzinski, Meshke Paddock & Budzinski, PC, for appellees, Southeast Alaska Regional Health Consortium and Alaska National Insurance Company.

Board proceedings: *Rusch v. Southeast Alaska Regional Health Consortium*, Alaska Workers' Comp. Bd. Dec. No. 16-0131 (Dec. 21, 2016); *Dockter v. Southeast Alaska Regional Health Consortium*, Alaska Workers' Comp. Bd. Dec. No. 16-0132 (Dec. 21, 2016).

Commission proceedings: Appeals filed January 19, 2017; *Rusch v. Southeast Alaska Regional Health Consortium*, Alaska Workers' Comp. App. Comm'n Dec. No. 245 issued March 29, 2018; *Dockter v. Southeast Alaska Regional Health Consortium*, Alaska Workers' Comp. App. Comm'n Dec. No. 246 issued March 29, 2018.

Court proceedings: Appeals filed April 25, 2018; appeals consolidated November 26, 2019; *Rusch v. Southeast Alaska Regional Health Consortium* and *Dockter v. Southeast*

Alaska Regional Health Consortium, 453 P.3d 874 (Alaska 2019), issued December 6, 2019.

Commission proceedings: Order on remand issued January 6, 2020; order extending time to file motion for attorney fees issued January 21, 2020; motion for attorney fees filed December 3, 2020; opposition to motion for attorney fees filed December 17, 2020; order on motion for attorney fees issued March 8, 2021.

Court proceedings: Appeal filed April 7, 2021; *Rusch v. Southeast Alaska Regional Health Consortium*, 517 P.3d 1157 (Alaska 2022); jurisdiction returned to Commission effective October 11, 2022; record received by Commission October 19, 2022.

Commissioners: Michael J. Notar, S. T. Hagedorn, Deirdre D. Ford, Chair.

By: Deirdre D. Ford, Chair.

1. Introduction.

This matter is again before the Alaska Workers' Compensation Appeals Commission (Commission) on the second remand from the Alaska Supreme Court (Court) for an award of attorney fees to Sandra Rusch and Brenda Dockter for work performed by their attorneys before the Commission.

On March 29, 2018, the Commission issued Final Decision No. 245¹ and Final Decision No. 246,² affirming the findings of the Alaska Workers' Compensation Board (Board).

The Commission's decisions were timely appealed to the Court on April 25, 2018, and consolidated by the Court on November 26, 2019. On December 6, 2019, the Court issued its opinion in the consolidated appeals, which concluded:

We AFFIRM the Commission's decision that the presumption of compensability does not apply to the reasonableness of an attorney's requested fees. In all other respects, we REVERSE the Commission's

¹ *Rusch v. Southeast Alaska Reg'l Health Consortium*, Alaska Workers' Comp. App. Comm'n Dec. No. 245 (Mar. 29, 2018).

² *Dockter v. Southeast Alaska Reg'l Health Consortium*, Alaska Workers' Comp. App. Comm'n Dec. No. 246 (Mar. 29, 2018).

decisions and REMAND the cases to the Commission with instructions to remand to the Board for further proceedings consistent with this opinion.³

On December 3, 2020, Ms. Rusch and Ms. Dockter filed identical motions for attorney fees and costs for work on their appeals to the Commission, requesting:

1. A total of \$36,637.40 in Ms. Rusch's appeal, consisting of \$33,900.00 in attorney fees billed at the rate of \$594.74 per hour for work performed before the Commission by attorney John Franich, \$1,225.00 in paralegal fees billed at the rate of \$175.00 per hour, and costs of \$1,512.40;
2. A total of \$5,868.50 in Ms. Dockter's appeal, consisting of \$5,220.00 in attorney fees billed at the rate of \$600.00 per hour for work performed before the Commission by attorney John Franich, and costs of \$648.50; and
3. Attorney fees for attorney David A. Graham for 23.9 hours of work performed before the Commission in both appeals; 14.2 hours in Ms. Rusch's appeal and 9.7 hours in Ms. Dockter's appeal. Mr. Graham currently charges \$450.00 per hour for his services; however, he requests a "lodestar" rate, to be determined by the Commission, for his work performed before the Commission.

On December 17, 2020, Southeast Alaska Regional Health Consortium and Alaska National Insurance Company filed an Opposition to Motion for Attorney Fees and Costs, objecting to the requested "modified lodestar" rate of \$600.00 per hour, and contending that "there is nothing in the Supreme Court's decision that compels the Commission . . . to utilize a 'modified lodestar' concept to determine a reasonable fee award."

On March 8, 2021, the Commission issued its order on the motion for attorney fees:

Therefore, Ms. Rusch is awarded \$25,650.00 (57.0 hours x \$450.00) as fully compensatory and reasonable attorney fees for the work Mr. Franich performed in this matter before the Commission. Ms. Rusch is awarded costs of \$2,737.40 which includes paralegal expenses of \$1,225.00 (7.0 hours at \$175.00 per hour). Ms. Dockter is awarded \$3,915.00 (8.7 hours x \$450.00) as fully compensatory and reasonable attorney fees. Ms. Dockter is also awarded costs of \$648.50.

Ms. Rusch is awarded \$6,390.00 (14.2 hours x \$450.00) for the work Mr. Graham performed for Mr. Franich in this matter before the

³ *Rusch v. Southeast Alaska Reg'l Health Consortium*, 453 P.3d 784 (Alaska 2019)(*Rusch* 2019).

Commission. Ms. Dockter is awarded \$4,365.00 (9.7 hours x \$450.00) for the work Mr. Graham performed for Mr. Franich in this matter before the Commission.⁴

Ms. Rusch and Ms. Dockter appealed the Commission's order on attorney fees to the Court on April 7, 2021.

On September 30, 2022, the Court issued Opinion No. 7623, concluding:

On remand the Commission must evaluate the claimants' arguments about both the overall contingent nature of representing claimants and the difficulties of each claimant's appeal, among the Rule 1.5(a) factors, in determining whether enhancement under the modified lodestar method is appropriate.⁵

. . . .

On remand the Commission should evaluate the claimants' requests and evidence, and make findings that explain how it considered the Professional Conduct Rule 1.5(a) factors in determining fees, understanding that it is permitted, but not required, to enhance fees under a modified lodestar approach.⁶

. . . .

We REVERSE the Commission's attorney's fee decision, VACATE its fee award, and REMAND the case to the Commission for further proceedings consistent with this opinion.⁷

2. Standard of review.

The Commission may award fees to a successful claimant pursuant to AS 23.30.008(d), which states:

In an appeal, the commission shall award a successful party reasonable costs and, if the party is represented by an attorney, attorney fees that the commission determines to be fully compensatory and reasonable

The Commission's regulation at 8 AAC 57.260 further provides:

⁴ Order on Appellants' Motion for Attorney Fees and Costs on Remand at 14 (Mar. 8, 2021).

⁵ *Rusch v. Southeast Alaska Reg'l Health Consortium*, 517 P.3d 1157, 1166 (Alaska 2022)(*Rusch* 2022).

⁶ *Id.* at 1167.

⁷ *Id.*

(a) A party may request an award of attorney fees and costs on appeal by filing a motion

(b) A request under (a) of this section for an award of attorney fees must include an affidavit of the party's attorney itemizing the services performed, the amount of time devoted to those services, and the amount sought.

. . .

(e) The commission may award attorney fees and costs to a successful party on appeal, with or without a hearing

In *Rusch* 2019, the Court reiterated that attorneys who successfully represent claimants "should be reasonably compensated for services rendered to a compensation claimant."⁸ In determining a reasonable fee, the Board should construe and apply the Alaska Workers' Compensation Act (Act) "to ensure that competent counsel are available to represent claimants."⁹

In *Rusch* 2022, the Court added that the Commission, pursuant to *Wise Mechanical Contractors v. Bignell*, may enhance fees payable to a claimant, but is not required to do so.¹⁰ The Commission, on remand, should consider in detail Alaska Rule of Professional Conduct 1.5(a) (Rule 1.5(a)) along with the contingent nature of workers' compensation cases, the complexity and novelty of the issue, an attorney's legal experience in all areas (not only workers' compensation), credibility of evidence presented, fee structure in smaller markets, and difficulty of claimants finding competent counsel.¹¹

3. Discussion.

The issue before the Commission on this second remand is whether the amount of attorney fees awarded by the Commission should be increased. The Commission, after thorough consideration of the Court's decision, an analysis of Rule 1.5(a), review of the legislative history behind the Act's changes in 2005, and the evidence the appellants

⁸ *Rusch* 2019, 453 P.3d 784, 794 (Alaska 2019).

⁹ *Id.* at 806.

¹⁰ *Rusch* 2022, 517 P. 3d 1157, 1164, citing *Wise Mech. Contractors v. Bignell*, 718 P.2d 971, 973 (Alaska 1986).

¹¹ *Id.*

submitted in support of their fee request, now reaffirms its original award of the modified lodestar rate of \$450.00 per hour to each attorney.

The appellants, in their motion to the Commission, first stated that the rate of \$450.00 per hour was a non-contingency lodestar rate to which they wished an additional lodestar to bring the rate to \$600.00 per hour. Later in their motion, the appellants stated that both attorneys had significant practice in the areas of personal injury and workers' compensation, which are primarily areas handled as contingent fee cases. In workers' compensation cases, an attorney representing an injured worker receives fees, after approval by the Board, upon successfully obtaining some benefit for the worker. The Commission also understands that most, if not all, representations in personal injury cases where the attorney is not retained by an insurance company are likewise contingent on the outcome for the client. Therefore, the assertion by Mr. Graham and Mr. Franich that \$450.00 per hour is not a contingent based hourly rate is not accurate.

Moreover, based on the Commission's attorney fees awards in 2022, discussed below, \$450.00 per hour is indeed what experienced attorneys have requested as a reasonable hourly rate for representing injured workers, which work is done on a contingent basis. Therefore, \$450.00 per hour appears to be a contingent based hourly rate in workers' compensation cases. The Court asked the Commission to reconsider this issue utilizing Rule 1.5(a) criteria. The Court did not mandate the Commission to increase the rate to \$600.00 per hour, but advised it had the authority to do so.

Rule 1.5(a) states, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."¹² The first criterion is the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.¹³ The issues involved in the compensation claim before the Board were not novel nor difficult and were resolved through settlement. The appellants agreed that the time and labor spent on briefing the

¹² Rule 1.5(a).

¹³ Rule 1.5(a)(1).

appeal issues did not justify an award upward or downward from the modified lodestar rate of \$450.00 per hour.

Nonetheless, Ms. Rusch and Ms. Dockter contended that the novelty of the issue in both appeals, regarding how and why specific attorney fees should be granted to the claimants' attorneys, merited an increase in the modified lodestar rate. This was a single issue. In the first appeal, the primary issue was exclusion of evidence at hearing from witnesses who would have testified to the difficulty unrepresented injured workers have in finding counsel and about the hourly rates of attorneys relative to the experience of Mr. Graham. This discovery issue and the right of the Board to control the evidence presented are issues previously presented to the Board and to the Commission, although with different facts and asserting a constitutional right of due process.

In the second appeal, the issue was more complex because Ms. Rusch and Ms. Dockter requested not only the modified lodestar rate of \$450.00 an hour, but an additional \$150.00 per hour since workers' compensation is a contingent fee situation.¹⁴ While the issue of an additional lodestar to increase the already high hourly rate was a first-time consideration for the Commission, this factor alone does not justify an increase from the lodestar rate of \$450.00 to \$600.00 per hour. The fact that this issue was new to the Commission is not unusual or different from other appeals which also raise new or unusual issues to be heard by the Commission.

The modified lodestar fee of \$450.00 per hour is in line with what other attorneys have asked for and received as discussed below. Therefore, since \$450.00 per hour is in line with what other attorneys, with similarly complex issues on appeal and with similar experience and expertise, asked for and received in the last year, the Commission believes \$450.00 per hour in this matter is a reasonable and fully compensable hourly rate for work before the Commission.

¹⁴ The Commission understands this modified lodestar rate of \$450.00 implicitly is based on the contingent nature of workers' compensation fees.

The second criterion is the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.¹⁵ In the experience of the Commission,¹⁶ attorneys representing claimants in workers' compensation cases are not precluded from accepting other work. Further, Mr. Graham and Mr. Franich stated that this criterion generally applies to conflicts of interest and there were no conflicts of interest involved in their representation of the injured workers here and, thus, this was not a factor in the appeal.¹⁷ They agreed this point does not support an upward or downward adjustment of the fees sought. This criterion does not weigh for or against the request for fees.

The third criterion to consider is the fee customarily charged in the locality for similar legal services.¹⁸ Mr. Graham and Mr. Franich, in the briefing on this issue, stated that Mr. Graham worked on a contingency fee basis and Mr. Franich regularly charged \$350.00 per hour for "his services" and \$450.00 for appeals.¹⁹ They also stated, "The Court is in a better position than counsel to know what hourly rates the Court currently awards. . . ." ²⁰ The Commission reviewed the affidavits attached to the motion for fees.

¹⁵ Rule 1.5(a)(2).

¹⁶ In discussing the formation of the Commission, Governor Frank H. Murkowski's transmittal letter, dated March 3, 2005, to Senate President Ben Stevens, stated, "Appeals would be heard by a panel both knowledgeable in workers' compensation matters and available to produce consistent, legally precedential decisions in an expeditious manner." (Governor's Transmittal Letter dated March 3 [2005] at 1; 2005 Senate Journal at 465 (March 3, 2005)). Workers' Compensation Director Paul Lisankie testified to the Legislature that the Commission was designed to "have a single site as where you would go to have your appeals heard by people who have experience in workers' compensation." (Minutes of Senate Labor and Commerce Committee, March 10, 2005). The Legislature, in passing the 2005 revisions, expected that the workers' compensation expertise of the Commission would be utilized in deciding appeals to the Commission. At the present time, the Commission panel hearing this appeal has a combined total of more than 70 years' experience in workers' compensation matters.

¹⁷ Rusch Motion for Attorney Fees and Costs on Remand at 14.

¹⁸ Rule 1.5(a)(3).

¹⁹ Rusch Motion for Attorney Fees and Costs on Remand at 14.

²⁰ Rusch Motion for Attorney Fees and Costs on Remand at 14.

Clyde E. Sniffen stated his rate for work for the State of Alaska varied from \$450.00 to \$600.00 per hour. This was on a contract for a total of \$50,000.00, but gave no indication as to the kind of legal services being rendered. Joshua A. Decker stated his rate was \$425.00 per hour, Matthew Singer's rate was \$500.00 per hour for personal injury work and he stated that he had knowledge that the rates of other Anchorage attorneys with ten or more years of experience was between \$375.00 and \$550.00 per hour, and Kevin G. Clarkson stated his rate was \$425.00 per hour. Judge Elaine M. Andrews charged \$400.00 per hour for mediation work. Thus, the modified lodestar rate for both Mr. Graham and Mr. Franich of \$450.00 per hour seems to be within the market rates for attorneys in Alaska.

The Commission also reviewed its fee awards in the last three years (2020-2022). The Court implied that the parties in the present case were unaware of the fees awarded in prior appeals. Fee awards by the Commission are not published, but the decisions are available upon request. A review of awards of fees from 2020 to 2022 revealed five orders. In two cases, very experienced attorneys (Eric Croft and Robert Beconovich) were awarded \$450.00 per hour in 2022.²¹ In 2020, Eric Croft was awarded \$400.00 per hour.²² In 2021, three experienced attorneys were awarded \$400.00 and \$425.00 per hour (Robert B. Groseclose, Zane D. Wilson, and Tasha M. Porcello).²³ In two cases, a less experienced attorney was awarded between \$225.00 and \$300.00 per hour (J. C. Croft in both cases).²⁴ Thus, the award of \$450.00 per hour to both Mr. Graham and Mr. Franich is in line with previous requests in 2022, and with what the Commission awarded to other experienced attorneys. Mr. Franich practices in Fairbanks where

²¹ *Roberge v. ASRC Construction Holding Co.*, Alaska Workers' Comp. App. Comm'n Order, Mar. 9, 2022 (*Roberge*); *Lynden, Inc. v. Dale*, Alaska Workers' Comp. App. Comm'n Order, Jan. 3, 2022.

²² *Vue v. Walmart Associates, Inc.*, Alaska Workers' Comp. App. Comm'n Order, Dec. 16, 2020 (*Vue*).

²³ *Williams v. Harnish Group, Inc.*, Alaska Workers' Comp. App. Comm'n Order, May 11, 2021; *Medical Park Family Care v. Hughes*, Alaska Workers' Comp. App. Comm'n Order, Dec. 10, 2021.

²⁴ *Vue; Roberge*.

Mr. Groseclose and Mr. Wilson also practice. Although no specific evidence was presented as to the general hourly rate sought by attorneys who practice in Sitka,²⁵ it is presumed those rates do not differ from other places in Alaska. The Commission notes that according to the Alaska Bar Association's list of attorneys, there are eleven non-governmental attorneys practicing in Sitka.²⁶

The Court suggested lawyers in small towns might have a different hourly rate than lawyers in larger communities. However, the Commission takes notice of the prevalence today of the Internet, Zoom, and multiple other electronic products available almost anywhere in Alaska. This availability has increased the access to legal research, to counsel with other attorneys in specialized practice areas, and to clients in other locales, which seemingly mitigates the distance and smallness factors from consideration as deterrents to practice in smaller communities.²⁷

The amount previously awarded of \$450.00 per hour is well in line with what other workers' compensation attorneys have asked for, and received, from the Commission for work on appeals. The Court did not mandate the Commission to award a specific hourly rate. Therefore, the Commission, after review, accepts the modified lodestar rate of \$450.00 per hour for each attorney as a reasonable and fully compensatory hourly rate for the work performed in this case on appeal to the Commission.

The fourth criterion is the amount involved and the results obtained.²⁸ At the Board level, the benefits for the injured workers had been previously resolved at mediation. The only issue has been a continuing dispute over the hourly rate to be awarded for Mr. Graham's work before the Board and for both Mr. Graham and

²⁵ All of the affidavits submitted by appellants as exhibits to their motion were from attorneys who practice in Anchorage. *Supra*, at 8-9.

²⁶ A review of the Alaska Bar Association's membership list online and the Alaska Directory of Attorneys (Spring 2022 Ed.) reveals that there are about fifteen active lawyers, in non-governmental positions, in Sitka, Alaska, the home of Mr. Graham.

²⁷ The Commission takes note that some injured workers leave Alaska to return to their out of state homes or move out of Alaska, but still find Alaska attorneys to represent them in their workers' compensation claims and appeals.

²⁸ Rule 1.5(a)(4).

Mr. Franich for the appellate work. This appellate work has helped clarify how the Court wishes fees for claimant's attorneys to be calculated and what factors both the Board and the Commission need to consider. The work of both attorneys created new law regarding the use of Rule 1.5(a) in addition to the statutory mandate that the fees awarded are reasonable and fully compensatory based on the nature, length, and complexity of the services performed, and the benefits obtained.²⁹ This work supports the modified lodestar amount of \$450.00 per hour for appellate work before the Commission. All appellate work should be considered as being of value in clarifying the law applied by the Board and demonstrating that the facts determined by the Board supported the Board's decision. The Commission does not accept the premise that this work should support an increase in the hourly rate to \$600.00. Other parties in previous appeals have contended to the Commission that \$450.00 per hour is a proper lodestar amount. The Commission agrees.

The fifth criterion considers the time limitations imposed by the client or by the circumstances.³⁰ Mr. Graham and Mr. Franich agreed in their motion that there were no time restrictions to be considered here.³¹ The time limitations before the Board and the Commission were no different than in any other workers' compensation case. This factor does not merit an increase or decrease in the hourly rate.

Consideration in the sixth criterion is given to the nature and length of the professional relationship with the client.³² Ms. Rusch and Ms. Dockter assert in their joint motion for attorney fees that neither Mr. Graham nor Mr. Franich had any long-standing relationship with either Ms. Rusch or Ms. Dockter.³³ Therefore, this criterion does not justify any adjustment up or down to the request for fees.

²⁹ AS 23.30.145.

³⁰ Rule 1.5(a)(5).

³¹ Rusch Motion for Attorney Fees and Costs on Remand at 17.

³² Rule 1.5(a)(6).

³³ Rusch Motion for Attorney Fees and Costs on Remand at 19.

The seventh criterion looks to the experience, reputation, and ability of the lawyer or lawyers performing the services.³⁴ The Commission agrees that both attorneys have many years of legal experience. Mr. Franich has successfully represented many clients both before the Board and before the Commission. Mr. Graham asserts more than thirty-nine years of legal experience in Alaska and Colorado, and he has experience in handling workers' compensation cases before the Board and now before the Commission.³⁵ Their experience justifies the modified lodestar rate of \$450.00 per hour. The Commission does not consider their experience as supporting a greater hourly rate than what other experienced attorneys have asked for and were awarded by the Commission in 2022.

The last criterion in Rule 1.5(a) is whether the fee is fixed or contingent.³⁶ Fees in workers' compensation matters for attorneys representing injured workers are contingent fees since the attorney will be paid by the employer only if the attorney successfully obtains benefits for the injured worker. The modified lodestar rate of \$450.00 per hour implicitly is in recognition of the contingent nature of workers' compensation litigation. In agreeing that the modified lodestar rate of \$450.00 per hour is reasonable and fully compensatory for lawyers representing injured workers, the Commission acknowledges the contingent nature of such work.

Ms. Rusch and Ms. Dockter also ask the Commission to consider an additional criterion known as the Johnson-Kerr factor discussed in *Adkins v. Collens*.³⁷ That is, the Commission should determine the reasonable number of hours worked by the attorney and then the reasonable hourly rate. The appellants contend this is the first step in looking at the modified lodestar rate. The second step would be to decide if the rate should be increased. In its previous award, the Commission accepted as reasonable the number of hours both Mr. Graham and Mr. Franich asserted they worked on the appeals. The Commission accepted the modified lodestar rate of \$450.00 per hour as reasonable.

³⁴ Rule 1.5(a)(7).

³⁵ Rusch Motion for Attorney Fees and Costs on Remand at 18.

³⁶ Rule 1.5(a)(8).

³⁷ *Adkins v. Collens*, 444 P.3d 187 (Alaska 2019).

The Commission reaffirms this finding, but declines to award any increase in the hourly rate. The Commission, based on the evidence and the Rule 1.5(a) factors discussed above, agrees that Mr. Graham provided valuable services to both Ms. Rusch and Ms. Dockter through obtaining a settlement of their respective claims before the Board. The Commission agrees the attorneys have contributed to workers' compensation law through having the Court clarify how the Board and Commission should discern a reasonable and fully compensatory fee. However, the Commission believes the modified lodestar rate of \$450.00 per hour is reasonable and fully compensatory for the work performed.

4. Conclusion and order.

The Commission has reviewed the evidence filed with the request for fees. The Commission has considered the directive of the Court as to the factors to consider in awarding fees. The factors in Rule 1.5(a) have been fully considered. Most of these factors the appellants agreed did not affect the hourly rate either to increase or decrease it. However, Ms. Rusch and Ms. Dockter contend that the novelty of how to calculate attorney fees using Rule 1.5(a) and the idea of increasing the modified lodestar rate entitle them to an increase in the hourly rate. As discussed above, the Commission does not accept that this appellate work was substantially different from other appellate work to merit an increase in the modified lodestar rate.

The Commission takes seriously the need for attorneys willing and able to handle workers' compensation disputes on behalf of injured workers. The Commission believes the award to Mr. Franich and Mr. Graham in the amount of \$450.00 per hour is a reasonable and compensatory fee for the amount of work expended based on the single question before the Commission. The Commission does not find it necessary to increase the modified lodestar rate of \$450.00 per hour, nor does it find it necessary to add an additional \$150.00 to that rate. Mr. Graham and Mr. Franich are awarded \$450.00 per hour for their work before the Commission.

Therefore, it is ORDERED that Mr. Graham and Mr. Franich are each awarded \$450.00 per hour for their work before the Commission, as previously ordered on March 8, 2021.

Date: 15 December 2022 ALASKA WORKERS' COMPENSATION APPEALS COMMISSION



Signed

Michael J. Notar, Appeals Commissioner

Signed

S. T. Hagedorn, Appeals Commissioner

Signed

Deirdre D. Ford, Chair

PETITION FOR REVIEW

A party may file a petition for review of this order with the Alaska Supreme Court as provided by the Alaska Rules of Appellate Procedure (Appellate Rules). *See* AS 23.30.129(a) and Appellate Rules 401 – 403. If you believe grounds for review exist under Appellate Rule 402, you should file your petition for review within 10 days after the date of this order's distribution.

You may wish to consider consulting with legal counsel before filing a petition for review. If you wish to petition for review to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*.

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone 907-264-0612

More information is available on the Alaska Court System's website:
<http://www.courts.alaska.gov/>

RECONSIDERATION

The Alaska Supreme Court ruled in *Warnke-Green vs. Pro West Contractors, LLC*, 440 P.3d 283 (Alaska 2019), that "AS 23.30.128(f) does not prohibit the Commission from reconsidering orders other than the final decisions described in AS 23.30.128(e) because the authority to reconsider is necessarily incident to the Commission's express authority to 'issue other orders as appropriate.'"

A party may ask the Commission to reconsider this order by filing a motion for reconsideration no later than 10 days after the date shown in the notice of distribution (the box below). If a request for reconsideration of this order is filed on time with the Commission, any proceedings to file a petition for review with the Alaska Supreme Court must be instituted no later than 10 days after the reconsideration decision is distributed to the parties.

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Memorandum Decision No. 298 issued in the matters of *Sandra Rusch v. Southeast Alaska Regional Health Consortium and Alaska National Insurance Company*, AWCAC Appeal No. 17-001, and *Brenda Dockter v. Southeast Alaska Regional Health Consortium and Alaska National Insurance Company*, AWCAC Appeal No. 17-002, and distributed by the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on December 15, 2022.

Date: December 21, 2022



Signed

K. Morrison, Appeals Commission Clerk