

**Case:** *City of Kenai and Alaska Public Entity Insurance vs. Kathleen Watson, beneficiary, Chelaine Rust, beneficiary, Renetta Hensler, minor beneficiary, of John P. Watson, deceased*, Alaska Workers' Comp. App. Comm'n Dec. No. 127 (January 25, 2010)

**Facts:** John Watson was killed in 2003 working as a police officer for the City of Kenai (the City). Three beneficiaries received death benefits: his widow, Kathleen Watson (Watson); his widow's daughter and his stepdaughter, Chelaine Rust (Rust); and his daughter of a former marriage, Renetta Hensler (Hensler), for whom he was paying child support prior to his death. Hensler's share of the death benefits was set based on the child support order per the requirements of AS 23.30.215(h).

A couple of years after Rust reached the age of majority, the City, Watson, and Rust reached a settlement agreement. The agreement provided for payment of a lump sum to Watson, purchase of an annuity for monthly payments to her, waiver of Rust's rights to future benefits if she were to attend college, trade school, or vocational school, and a full release of the City's liability to Watson and Rust. Hensler, who was still in high school, was not a party to the settlement. The agreement assumed that Hensler's share of the death benefits would revert to Watson upon her graduation from high school. Hensler's mother stated, however, that Hensler planned to attend college after graduation, in which case she would remain a "child" under AS 23.30.395(8) and continue to be eligible for death benefits. The City explained that this assumption that Hensler's benefits would end in 2011 was necessary so that it could purchase an annuity and it argued that because Hensler's child support order would expire, she would not continue to be eligible for death benefits if she went to college. Regardless of whether Hensler's or the City's interpretation was correct, the City and Watson maintained that the agreement would not affect Hensler's rights to death benefits; the City acknowledged that it was assuming the risk of overpayment if Hensler was deemed eligible for death benefits when she goes to college when it had already paid Hensler's share to Watson under the terms of the agreement. In addition, the revised agreement stated in two different places that "[b]enefits [payable] to Ms. Hensler are not affected by this settlement [or] release."

The board denied approval of the settlement because settlement agreements must be in the best interests of all beneficiaries, not just beneficiaries who are parties to the agreement; as a beneficiary, Hensler was a necessary party to the settlement and the settlement was not in the best interest of Hensler because the City could use the agreement as a shield to avoid paying her death benefits should she decide to attend college, trade, or vocational school. The City sought an evidentiary hearing before the board but the board did not schedule one. The board entered a final order denying approval of the settlement. The City and its insurer appealed.

**Applicable law:** AS 23.30.215 lays out how death benefits are allocated among beneficiaries. AS 23.30.215(h) provides:

In the event a deceased worker is survived by children of a former marriage not living with the surviving widow or widower, then those

children shall receive the amount being paid under a decree of child support; the difference between this amount and the maximum benefit payable under this section shall be distributed pro rata to the remainder of those entitled.

AS 23.30.395(8) defines a child, in part, as “persons of any age while they are attending the first four years of vocational school, trade school, or college[.]”

AS 23.30.012 provides that the employer and the employee’s beneficiary or beneficiaries “have a right to reach an agreement in regard to a claim for injury or death under this chapter, . . .”

A workers’ compensation compromise and release agreement is a contract “subject to interpretation as any other contract.” *Seybert v. Cominco Alaska Exploration*, 182 P.3d 1079, 1093 (Alaska 2008). Contracts are interpreted so as “to give effect to the reasonable expectations of the parties, that is, to give effect to the meaning of the words which the party using them should reasonably have apprehended that they would be understood by the other party.” *Craig Taylor Equip. Co. v. Pettibone Corp.*, 659 P.2d 594, 597 (Alaska 1983) (citations omitted). “The words of the contract are. . . the most important evidence of intention,” although the parties’ conduct, the contract’s purposes, and the surrounding circumstances at the time of contract formation also may be relevant. *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 712 (Alaska 2003).

**Issues:** Are children whose death benefits are established by a child support order, upon expiration of the support order, eligible for death benefits while attending the first four years of vocational school, trade school, or college? Did the board err in concluding the revised agreement affected Hensler’s rights? Did the board err in not holding a hearing?

**Holding/analysis:** First, the commission interpreted AS 23.30.215(h) as not limiting the time for which death benefits may be paid to a child; so that a child of a former marriage may receive post-majority death benefits while attending the first four years of college or vocational school. Thus, once Hensler’s child support order expired, she would be entitled to continuing death benefits as long as she met the definition of “child” under AS 23.30.095(8). The commission rejected the City’s arguments that Hensler was only entitled to what the support order provided and because it was silent on post-majority support, Hensler would not receive benefits during college. The commission referred to the Act’s legislative history and distinguished the Act’s understanding of “child” from the understanding of “child” for the purposes of child support to conclude that death benefits could continue when a child support order expired:

The right to receive post-secondary death benefits is not limited to natural children, but extends, if there is no spouse or children, to brothers, sisters, and grandchildren dependent on the worker at the time of his or her death. It includes *any* child, related or not, to whom the deceased had stood “*in loco parentis*” at least a year prior to death.

In contrast, child support is a right of a minor child. Adult children who are not unable to work to maintain themselves have no legal right to support from their parents, regardless of the status of their parents' marriages. . . . Unlike death benefits paid during minority, post-majority death benefits do not compensate the child of the deceased worker for loss of what the child has an enforceable right to claim from the deceased parent during the parent's lifetime. Dec. No. 127 at 18-19.

Second, the commission concluded that the board erred in denying approval of the revised settlement agreement over concerns for Hensler's rights. The commission understood the agreement as plainly stating that it did not affect Hensler's rights; moreover, contracts bind only the parties to the agreement. "The board was concerned that if the settlement was approved, the City of Kenai could assert a defense under AS 23.30.155(j) against Hensler since it would have already paid the share of the death benefits it might owe to her after June 1, 2011, to Watson. However, because Hensler is not bound by the contract, the City of Kenai and its insurer cannot use the settlement agreement as a shield to avoid liability to her." *Id.* at 26.

Hensler could not be joined as a necessary party under 8 AAC 45.040 because no claim was filed; the only "action" before the board was the petition to approve the settlement. The employer was not required to settle with all the beneficiaries at once.

The commission also concluded that the board misinterpreted the Alaska Supreme Court's holding in *Barrington v. Alaska Communications Systems Group, Inc.*, 198 P.3d 1122, 1132 (Alaska 2008). The commission described *Barrington* as follows: "*Barrington* held that when an ambiguous settlement agreement bears a 'real risk' of disposing of a third party's interest, that third party must be notified and given an opportunity to present his claim." Dec. No. 127 at 28. "Unlike the situation in *Barrington*, Hensler has been notified of the proposed settlement, the revised settlement is not ambiguous, and there is no 'real risk' that Hensler's rights are disposed of in the revised agreement given its explicit terms excluding Hensler's benefits from the scope of the release." *Id.* at 29. Moreover, the employer was aware of the risk of overpayment of benefits to the beneficiaries signing the agreement and accepted this risk. Thus, the board's denial unfairly burdened the rights of the City, Watson, and Rust to agree to a settlement.

The board erred in not holding a hearing as it was required to do under 8 ACC 45.160(d) upon the City's request. Thus, the commission remanded to the board to hold a hearing and determine whether the settlement was in the best interests of the signatory beneficiaries (Rust, Watson, and the City).

The commission also discussed Hensler's equal protection arguments, even though the commission acknowledged that it lacked jurisdiction to decide constitutional issues and that those arguments were mooted by the commission's interpretation of AS 23.30.215(h). *Id.* at 20-23.