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In the Matter of the Compensation of  
**ROBERT W. ROLLY, Claimant**  
WCB Case No. 03-06117, 03-02106  
**ORDER ON REMAND**  
Malagon Moore et al, Claimant Attorneys  
David L Runner, SAIF Legal, Defense Attorneys  
Mark P Bronstein, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

This matter is before the Board on remand from the Court of Appeals. Pursuant to the court's July 20, 2006 order, we have been directed to consider the parties' proposed agreement.

On July 26, 2006, we approved a "Claim Disposition Agreement" (CDA) between claimant and Kemper, in which claimant fully released her rights to all "non-medical service" benefits (with the exception of some specified penalty and attorney fee rights) relating to her 2002 claim with Kemper. The CDA included a provision that, on our approval of the CDA, this pending case "shall be dismissed."

In addition, the parties have submitted a proposed "Stipulated Order," which is designed to resolve their disputes, in lieu of all prior orders. Specifically, the parties stipulate that Kemper ("Broadspire") agrees to rescind its denial of claimant's L4-5 disc condition and to accept the claim for a lumbar strain condition and an L4-5 disc combined condition. The parties further agree that claimant's attorney is awarded a \$7,500, in lieu of the attorney fees previously granted by the Board and Administrative Law Judge's orders. Finally, the stipulation provides that claimant's requests for hearing and that the parties' appeals "shall be dismissed with prejudice."

By this order, we approve the parties' stipulation, thereby fully and finally resolving their disputes, in lieu of all prior orders.<sup>1</sup>

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<sup>1</sup> In granting this approval, we note that our prior Order on Review vacated that portion of the ALJ's order that upheld the SAIF Corporation's denial of claimant's "post-aggravation rights" new or omitted medical condition claim for claimant's L4-5 disc condition. In addition, in an Own Motion Order, we found that claimant's claim with SAIF was not compensable and declined to reopen the claim under ORS 656.278(1)(b).

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Accordingly, this matter is dismissed with prejudice.

IT IS SO ORDERED.

Entered at Salem, Oregon on August 7, 2006

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While this case was pending, the legislature amended ORS 656.267(2)(b) and (3) to provide that a claimant is entitled to request a hearing under ORS 656.283 from denials of new or omitted medical condition claims and that such “post-aggravation rights” new or omitted medical condition claims are subject to the Board’s Own Motion jurisdiction once such claims “have been determined to be compensable.” Because our orders have not become final, these amendments are applicable. (*See* House Bill 2294, Sect. 4(1), (2) (2005)).

In light of such circumstances, the ALJ was authorized to address the compensability of claimant’s “post-aggravation rights” new medical condition claim. Likewise, under ORS 656.295, we are authorized to review the ALJ’s decision. Consequently, by this order, we affirm that portion of the ALJ’s order that upheld SAIF’s denial of claimant’s “post-aggravation rights” new medical condition claim for a L4-5 disc condition. Furthermore, as explained in our Own Motion Order on Remand (WCB Case No. 03-0364M), issued this date, because claimant’s “post-aggravation rights” new medical condition has not been determined to be compensable, SAIF’s Own Motion recommendation has been rendered moot. Accordingly, the request for Own Motion relief has been dismissed.