BRB No. 08-0857

FRANCISCO ZAMORA	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
FRIEDE GOLDMAN HALTER, INCORPORATED	)	
	)	
Employer	)	
	)	
and	)	
	)	
TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION	)	DATE ISSUED: 11/25/2009
	)	
for	)	
	)	
RELIANCE NATIONAL INDEMNITY COMPANY	)	
	)	
Carrier-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney's Fee and the Order Denying Motion for Reconsideration of Supplemental Decision and Order Awarding Attorney's Fee of Lee J. Romero, Jr., Administrative Law Judge, United States Department of Labor.

Ed W. Barton, Orange, Texas, for claimant.

Peter Thompson (Thompson & Reilley, P.C.), Houston, Texas, for Texas Property and Casualty Insurance Guaranty Association.

Jeffrey S. Goldberg (Deborah Greenfield, Acting Deputy Solicitor; Rae Ellen Frank James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Texas Property and Casualty Insurance Guaranty Association (hereinafter TPCIGA)[1] appeals the Supplemental Decision and Order Awarding Attorney's Fee and the Order Denying Motion for Reconsideration of Supplemental Decision and Order Awarding Attorney's Fee (2007-LHC-1953) of Administrative Law Judge Lee J. Romero, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant worked for employer as a welder and, on November 9, 1999, sustained injuries to his back. Claimant, employer and its carrier, Reliance National Indemnity Company (Reliance) reached a tentative agreement to settle the claim for compensation under the Act, but on April 20, 2001, employer declared bankruptcy. In October 2001, TPCIGA declared Reliance "impaired," and subsequently, Reliance became insolvent. Dir. Brief at 2-3. On May 27, 2008, the administrative law judge approved a Section 8(i), 33 U.S.C. §908(i), settlement between claimant, employer, and TPCIGA, wherein

[1]TPCIGA, created under the Texas Property and Casualty Insurance Guaranty Act, was designed to protect claimants and policyholders from financial loss caused by the insolvency of an insurer. *See* Tex. Ins. Code Ann. Art. 21.28-C §§2(1)-(2), 5(8) (2001). The Act has since been amended and recodified in the Texas Insurance Guaranty Act (TIGA), Tex. Ins. Code Ann. Chapter 462.

claimant would receive a lump-sum payment of $200,000 and medical benefits would remain open.

On May 16, 2008, claimant's counsel filed a petition for an attorney's fee with the administrative law judge. He requested a total of $28,820.08, representing 92.25 hours of attorney work at an hourly rate of $275, plus $3,451.33 in expenses. The attorney services were provided between February 29, 2000, and April 4, 2000, when the case was remanded to the district director, and between August 14, 2007, and May 13, 2008. Following the filing of TPCIGA's objections,[2] counsel defended his fee petition and filed an additional fee request for $2,255, representing 8.2 hours of services at an hourly rate of $275.

The administrative law judge rejected TPCIGA's argument that it cannot be held liable for an attorney's fee pursuant to Chapter 462 of the Texas Insurance Code, *see* Tex. Ins. Code Ann. §462.302(c) (2007), and the Board's decision in *Canty v. SEL Maduro*, 26 BRBS 147 (1992). He found that Sections 462.002, 462.003, and 462.302(e) of the code, Tex. Ins. Code Ann. §§462.002, 462.003, 462.302(e), allow TPCIGA to be held liable for an attorney's fee because it is a fee related to the payment of workers' compensation.[3] The administrative law judge also found that, to the extent his interpretation is wrong, the Longshore Act preempts the state law because the two laws conflict. Supp. Decision and Order at 4. Thus, the administrative law judge held TPCIGA liable for claimant's attorney's fee. The administrative law judge addressed all of TPCIGA's objections to the requested hours and hourly rate, and he awarded an attorney's fee of $25,109.71, representing 96.35 hours of work at an hourly rate of $225, plus $3,430.96 in expenses. *Id.* at 5-17. The administrative law judge denied TPCIGA's motion for reconsideration.

[2]The Director, Office of Workers' Compensation Programs (the Director), states that employer's assets were liquidated and the funds placed in a trust. Dir. Supp. Brief at 2 n.2. Accordingly, TPCIGA was the sole challenger to claimant's counsel's fee request.

[3]Section 462.002 states the purpose of the act; Section 462.003 states that the act is to be liberally construed; Section 462.302(e) states: "This section does not exclude the payment of workers' compensation benefits or other liabilities or penalties authorized by Title 5, Labor Code, arising from the association's processing and paying workers' compensation benefits after the designation of impairment." The administrative law judge also noted, but did not rely on, the Board's decision in *Ambo v. Friede Goldman Halter*, BRB Nos. 05-0665, 05-0666 (May 8, 2006) (unpubl.), stating that TPCIGA's status as an "association" rather than an "insurer" does not prevent it from being held liable for an attorney's fee. Supp. Decision and Order at 4.

TPCIGA appeals, and claimant and the Director, Office of Workers' Compensation Programs (the Director), respond, urging affirmance.[4]

TPCIGA contends the administrative law judge's decision contravenes the Texas law precluding it from being held liable for an attorney's fee. TPCIGA also argues that the Longshore Act does not preempt the Texas insurance code. Alternatively, TPCIGA contends the fee award is excessive and should be reduced. Claimant responds, urging affirmance, arguing that fee liability is appropriately the responsibility of TPCIGA under Longshore and Texas law and that the administrative law judge addressed all objections and no further reduction of the fee is warranted.[5] The Director asserts that TPCIGA's

[4]This case was held in abeyance pending decisions by the United States Court of Appeals for the Fifth Circuit in *Levingston Shipbuilding Co. v. Pelaez*, 312 F. App'x 711 (5th Cir. 2009), and *Friede Goldman Halter, Inc. v. Escareno*, 326 F. App'x 276 (5th Cir. 2009).

[5]Claimant argues that the Board has affirmed the liability of TPCIGA previously, in *Pelaez* and *Escareno*, and should do so now, and that the Board's decision in *Canty* is distinguishable. Review of *Canty*, *Pelaez*, and *Escareno* reveals that they are all distinguishable and, hence, not controlling. *Canty* arose within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit and involved the liability of the Florida Insurance Guaranty Association (FIGA). The statute which created FIGA contained a specific clause precluding that association from being held liable for penalties and interest. As the employer in that case was not insolvent, the Board held it liable for the Section 14(e), 33 U.S.C. §914(e), assessment and interest. Liability for an attorney's fee was not addressed. *Canty*, 26 BRBS at 152-157. In *Pelaez*, the Board affirmed TPCIGA's liability for a Section 14(e) assessment because *Canty* was inapplicable and the Texas statute provided that TPCIGA is liable for workers' compensation as well as penalties and other liabilities associated therewith. *Pelaez v. Levingston Shipbuilding Co.*, BRB No. 06-0821 (June 25, 2007). The Fifth Circuit affirmed TPCIGA's liability for an attorney's fee, interest and penalties because, before the administrative law judge and the Board, TPCIGA repeatedly referred to itself as the employer's "carrier" or did not dispute such a designation. A "carrier" under the Longshore Act is obliged to pay penalties, interest and fees. Because TPCIGA never objected to being designated as the "carrier," the court determined that TPCIGA is estopped from contesting that designation and remains so liable. *Pelaez*, 312 F. App'x 711. In *Escareno*, the Board reiterated its rationale from *Pelaez*, holding that *Canty* is distinguishable and TPICGA is liable for the Section 14(e) assessment and interest. The Board did not address TPCIGA's challenge to fee liability because TPCIGA failed to properly appeal the fee award, and the issue was not properly before the Board. *J.E. [Escareno] v. Friede Goldman Halter, Inc.*, BRB No. 07-0565 (Dec. 17, 2007). The Fifth Circuit declined to address the attorney's fee issue for the same reason. It affirmed liability for the assessment and interest on the grounds

status as a guaranty association does not exempt it from fee liability under the Longshore Act. However, he states that TPCIGA can be held liable only for fees incurred after Reliance became insolvent. The Director presents no opinion on TPCIGA's argument that the fee award is excessive.

In reply, TPCIGA argues that attorney's fees are not "covered claims" under TIGA and that the Director incorrectly relies on an isolated phrase in the definition of "covered claim" to include them. Rather, TPCIGA argues that the statute must be read as a whole and, in doing so, it is clear that attorney's fees are not "covered." Additionally, TPCIGA asserts that attorneys do not have standing to recover a covered claim. It agrees that it may not be held liable for any fees incurred prior to the date Reliance was determined to be impaired. The Director asserts that employer, not TPCIGA, is liable for the pre-impairment fees, as Section 4(a) of the Act, 33 U.S.C. §904(a), makes employer primarily liable, and a declaration of bankruptcy does not absolve its primary liability.[6] *Marks v. Trinity Marine Group*, 37 BRBS 117 (2003); *Canty*, 26 BRBS at 156-158.

Preemption

TPCIGA first argues that the McCarran-Ferguson Act, 15 U.S.C. §1011 *et seq.*, precludes the Texas Insurance Code from being preempted by the Longshore Act. Claimant argues that nothing precludes the Longshore Act from preempting the state law, as the Longshore Act "relates as much to the business of insurance as does any purpose of the Texas Guaranty Act" and the Texas act was not created for the sole purpose of regulating the business of insurance. Cl. Brief at 5. The Director states that the administrative law judge improperly found Texas law preempted by the Longshore Act because the Longshore Act "does not address guarantee associations at all," hence, nothing in the Longshore Act precludes a state "from setting the conditions under which an insurance guaranty association assumes an insolvent insurer's liabilities." Dir. Brief at

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that TPCIGA never disputed its designation as the "carrier." *Escareno*, 326 F. App'x 276. In this case, however, TPCIGA has gone to great lengths to identify itself as an "association" or an "entity" and not an "insurer" or "carrier" so as to distinguish this case from *Pelaez* and *Escareno*. Thus, TPCIGA has avoided the label which the Fifth Circuit held estopped it from denying liability previously and neither *Pelaez* nor *Escareno* controls whether TPCIGA is liable for the fee in this case.

[6]Because employer's assets were liquidated and put into a trust, the Director states that claimant may seek payment from the trust, and upon demonstrating proof that the trust will not pay the fee, the Special Fund will entertain a request for payment provided there is a compensation order holding employer liable. Dir. Supp. Brief at 2 n.2; *see* 33 U.S.C. §918(b).

5 n.5. The Director states that TPCIGA is liable for an attorney's fee because it is obligated under state law to satisfy the Longshore Act obligations imposed on the now-defunct longshore carrier. Specifically, he states that, under TIGA, the TPCIGA must substitute for an insolvent carrier "to the extent that the policy obligations are 'covered claims' under this Act." Dir. Brief at 5-6; Tex. Ins. Code Ann. Art. 21.28-C §8(b) (2001).

State law is preempted by federal law in three circumstances: 1) when federal law explicitly states that Congress intends to preempt state law; 2) when state law regulates conduct in a field exclusively the domain of federal law; or 3) when state law conflicts with federal law. *See Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982); *Atkinson v. Gates, McDonald & Co.*, 838 F.2d 808 (5th Cir. 1988); *Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc.*, 68 F.Supp.2d 455 (DNJ 1999). Insurance matters are regulated by the states, 15 U.S.C. §§1011, 1012(a), and TIGA is an insurance statute whereas the Longshore Act is a workers' compensation statute. Therefore, there is no conflict between the Longshore Act and the Texas insurance code, and the administrative law judge erred in finding that the Longshore Act preempts TIGA.[7] As the Director properly avers, both statutes apply to this case, and it is the application of the state statute that mandates whether and to what extent TPCIGA must satisfy Reliance's obligations under the Longshore Act. *Marks*, 37 BRBS 117. Accordingly, we reverse the administrative law judge's finding that the Longshore Act preempts TIGA. TPCIGA is liable for the attorney's fee in this case if it is authorized to make such payments under the Texas statute.

[7]Additionally, Congress passed the McCarran-Ferguson Act which provides:

> No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance. . . .

15 U.S.C. §1012(b); *see U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491 (1993). Under *Fabe*, the Supreme Court stated there will be no federal preemption of the state law if the state law specifically relates to the business of insurance, the federal law does not specifically relate to the business of insurance, and application of the federal law would "invalidate, impair, or supersede" the state law. *Fabe*, 508 U.S. at 500-501.

Fee Liability

The Director and the private parties agree that the law in effect at the time Reliance became "impaired" in October 2001 is the appropriate law to use in assessing TPCIGA's liability under the Longshore Act.[8] *See Latter v. Autry*, 853 S.W.2d 836, 837 (Tex. App. 1993) (citing *Durish v. Channelview Bank*, 809 S.W.2d 273 (Tex. App. 1991, *writ denied*). The 2001 version of the Texas law provides that TPCIGA "shall pay covered claims that exist before the designation of impairment [of the insurer] or that arise within 30 days after the date of the designation of impairment[.]" Tex. Ins. Code Ann. Art. 21.28-C §8(a). A "covered claim" is "an unpaid claim of an insured or third-party liability claimant" that is within the coverage and limits of the insurance policy as well as the limits set by TIGA. Tex. Ins. Code Ann. Art. 21.28-C §5(8). "[T]he association shall pay the full amount of any covered claim arising out of a workers' compensation claim made under a workers' compensation insurance policy." *Id.* Although there are no monetary limits on workers' compensation claims, there are limits on TPCIGA's overall coverage. For example, the 2001 statute specifically states that a "'[c]overed claim' shall not include supplementary payment obligations, including . . . attorney's fees and expenses . . . *incurred prior to the determination that an insurer is an impaired insurer under this Act*." *Id.* (emphasis added).

Despite this language, TPCIGA maintains that attorneys' fees are not included as "covered claims" under the 2001 Act. It contends that relying on a limited portion of the definition of "covered claim" ignores the rest of the statute, whereas reading the statute as a whole establishes that attorneys' fees are excluded. It also contends that attorneys do not have standing to recover a "covered claim." We reject TPCIGA's arguments. First, TPCIGA improperly equates Section 8(a)'s use of the term "benefits," Tex. Ins. Code Ann. Art. 21.28-C §8(a), to "disability compensation" under the Longshore Act.[9] However, the word "benefits" is not used to define what is a "covered claim." Tex. Ins.

[8]Although the parties now agree on this issue, TPCIGA initially cited the 2005 version of the Texas Insurance Guaranty Act, a recodification of the earlier code, and the administrative law judge cited the 2007 version. In contrast to the applicable 2001 version, the later versions state that the association's liability is limited to "covered claims" and "covered claims" do not extend to any attorney's fees, interest or penalties, regardless of when they were incurred. Tex. Ins. Code Ann. §462.302(c) ("association is not liable for . . . a claim for . . . attorney's fees, prejudgment or postjudgment interest, or penalties").

[9]Section 8(a) states that the "obligation [of the association] is satisfied by paying to the claimant the full amount of a covered claim for benefits." Tex. Ins. Code Ann. Art. 21.28-C §8(a).

Code Ann. Art. 21.28-C §5(8). Additionally, Section 8(b) provides that TPCIGA has the duty to discharge the obligations of the impaired insurer, and although the association will not stand in place of the insurer, it will investigate, settle, compromise and pay covered claims. Tex. Ins. Code Ann. Art. 21.28-C §8(b), (d). As TPCIGA must pay "covered claims," the definition of "covered claim" determines the extent of TPCIGA's liability. As the definition of "covered claim" under the 2001 version of the law specifically excludes "attorney's fees and expenses . . . incurred prior to the determination that an insurer is an impaired insurer under this Act[,]" but does not specifically exclude fees incurred *after* the determination of impairment, we hold that post-impairment fees are included in "covered claims."[10] Thus, we agree with the Director that under the 2001 Act TPCIGA may be held liable for an attorney's fee for services performed after Reliance was declared impaired in October 2001 but cannot be held liable for fees incurred prior thereto. *See Scherer v. Texas Property & Casualty Guaranty Ass'n*, 958 S.W.2d 413 (Tex. App. 1997) (attorney's fee incurred prior to carrier's impairment were not association's responsibility).[11]

Moreover, TPCIGA's assertion that attorneys have no standing lacks a statutory foundation. Without citing any authority, TPCIGA states that an attorney representing a claimant under the Longshore Act is neither an "insured" nor a "third-party liability claimant." The term "insured" is not specifically defined by TIGA; however, a "claimant" is "any insured making a first-party claim *or* any person instituting a liability claim." Tex. Ins. Code Ann. Art. 21.28-C §5(5) (emphasis added). "Person" is defined as "any individual, corporation, partnership, association, or voluntary organization." Tex. Ins. Code Ann. Art. 21.28-C §5(12). Claimant's counsel fits within the statute's definitions of "claimant" and "person." Thus, TPCIGA's argument that a longshore claimant or his counsel do not have standing to assert a claim for an attorney's fee lacks merit.

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[10]The Director asserts that the doctrine of *expressio unis est exclusio alterius* applies. Dir. Brief at 8; *see Copeland v. Comm'r of Internal Revenue*, 290 F.3d 326, 334 (5th Cir. 2002); *see also Allstate Life Ins. Co. v. Miller*, 424 F.3d 1113 (11th Cir. 2005) (explaining that where the legislature has identified exceptions to a statute, the doctrine counsels against judicial recognition of additional exceptions). Section 5(8) contains a litany of exceptions including claims for various types of damages, pre- and post-judgment interest accruing after the declaration of impairment, the returns of premiums, *etc.*, but does not exclude post-impairment attorney's fees. Tex. Ins. Code Ann. Art. 21.28-C §5(8).

[11]The 1997 version, like the 2001 version, excluded "attorney's fees and expenses . . . incurred prior to the determination that an insurer is an impaired insurer[.]" Tex. Ins. Code Ann. Art. 21.28-C §5(8) (1997).

Accordingly, we affirm the administrative law judge's finding that TPCIGA is liable for an attorney's fee, albeit for reasons different than those given by the administrative law judge. We affirm the finding that TPCIGA is liable for claimant's counsel's fees incurred after October 2001, and we modify the decision to reflect that TPCIGA cannot be held liable for the fees incurred prior to Reliance's impairment in October 2001.[12] *Id.*; *Marks*, 37 BRBS at 118. As counsel requested and the administrative law judge approved a fee for 6.15 hours of work in 2000, we subtract those hours from TPCIGA's liability.

The Director argues that employer is liable for the fee for the 6.15 hours of pre-insolvency services as Section 4(a) of the Longshore Act makes an employer primarily liable for compensation and other payments, and a declaration of bankruptcy by its carrier does not absolve that liability.[13] *Marks*, 37 BRBS 117; *Canty*, 26 BRBS at 156-157. In *Marks*, the Board vacated the district director's finding that the claimant is liable for a fee of $200 as a lien against his compensation. The Board held that the fact that the Louisiana Insurance Guaranty Association could not be liable for the fee did not result in a holding that claimant was liable. Rather, the Board remanded the case for the district director to address whether the employer was liable for any fee under Section 28 before addressing whether the claimant is liable. *Marks*, 37 BRBS at 119.[14] In *Canty*, the Board held the employer liable for interest and a Section 14(e), 33 U.S.C. §914(e), assessment

[12]The Director argues that TPCIGA's payment of the attorney's fee comports with the purpose of TIGA which is to be construed liberally and is to "avoid financial loss to claimants or policyholders because of the impairment of an insurer[.]" Tex. Ins. Code Ann. Art. 21.28-C §§2(2), 4 (2001). To this end, TPCIGA's duty is to "discharge the policy obligations of the impaired insurer[,]" Tex. Ins. Code Ann. Art. 21.28-C §8(b) (2001), which would include attorney's fees incurred by the claimant. Requiring TPCIGA to pay an attorney's fee also is supported by the purpose of Section 28 of the Longshore Act, 33 U.S.C. §928, which is to ensure that a claimant's benefits are not eroded by legal fees. *See generally Bethenergy Mines, Inc. v. Director, OWCP*, 854 F.2d 632 (3d Cir. 1988).

[13]Section 4(a), 33 U.S.C. §904(a), provides in pertinent part:

> Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 907, 908, and 909 of this title.

[14]The Board noted that the employer's liability for the fees at issue must be determined under the Act and is not affected by its filing for bankruptcy protection. *Marks*, 37 BRBS at 119 n.3, *citing In re Mansfield Tire & Rubber Co.*, 660 F.2d 1108 (6th Cir. 1981).

as the guaranty association stepping in for the bankrupt carrier was statutorily relieved of the duty of making such payments. *Canty*, 26 BRBS at 155-157; *see* n.5, *supra*.

Although the administrative law judge did not address the liability of any other party under Section 28, we need not remand this case for his further consideration. The facts are undisputed: employer declared bankruptcy in April 2001; its carrier was declared "impaired" in October 2001, and, according to the Director, employer's assets were placed in a trust; and the private parties executed a Section 8(i) agreement. Therefore, the issue of liability for a fee is strictly a legal one, requiring application of the laws to these facts. First, the claim for benefits in this case was resolved via Section 8(i) settlement, making claimant successful in prosecuting his case. Thus, Section 28(a) of the Act, 33 U.S.C. §928(a), is applicable, and employer is liable for counsel's fee. Further, employer's carrier is bankrupt, and TPCIGA is statutorily relieved of the duty to pay fees incurred prior to Reliance's impairment. Tex. Ins. Code Ann. Art. 21.28-C §5(8). Thus, employer is the only potentially liable party for the pre-impairment fees, and pursuant to Section 4(a) of the Longshore Act, employer retains primary liability for those fees. Therefore, we modify the administrative law judge's decision to reflect employer's liability for the pre-insolvency fees for the 6.15 hours of services rendered in 2000. *See* n.6, *supra.*

Fee Amount

As TPCIGA is liable for an attorney's fee, we next address its contentions regarding the amount of the fee awarded by the administrative law judge. TPCIGA contends that the fee awarded by the administrative law judge is excessive. It asserts that the hourly rate of $225 is too high and that counsel should be awarded a rate between $150 and $175 per hour. TPCIGA also asserts that the administrative law judge's decision to allow five entries to withstand a challenge to the quarter-hour billing minimum is inappropriate in light of the Fifth Circuit's decision in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990) (unpubl.). Additionally TPCIGA asserts that the administrative law judge erred in failing to reduce the time for entries dated November 24, 2003, and January 7, 2004, and gave insufficient explanation for his ruling on the attorney's fee by summarily stating that he had reviewed 21 objections and found only six instances where the fee should be reduced.

We reject TPCIGA's arguments, as TPCIGA has not established that the administrative law judge abused his discretion in awarding this fee. First, TPCIGA cites only longshore cases from 2002 and 2004 as support for a lower hourly rate, and it has not shown that an hourly rate of $225 for services rendered in 2007 and 2008 is

unreasonable.[15] Next, with regard to the quarter-hour minimum billing contention, only one of the challenged entries involved post-insolvency work, and the administrative law judge scrutinized this charge pursuant to *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999), properly awarding the requested fee because the letter was four pages long.[16] Finally, the two remaining challenges do not apply to this fee award. Counsel's fee application pertains only to services rendered in 2000 and 2007-2008, as there are no entries for services rendered in 2003 and 2004. Additionally, the administrative law judge did not summarily dispose of TPCIGA's objections; he addressed each objection individually and reduced, denied, or granted the fee requested. Supp. Decision and Order at 5-17. Therefore, we affirm the fee awarded by the administrative law judge. *See generally Welch v. Pennzoil Co.*, 23 BRBS 395 (1990). TPCIGA is liable for an attorney's fee in the amount of $23,725.96, representing 90.2 hours of attorney services at an hourly rate of $225 and $3,430.96 in expenses for the work performed in 2007-2008, and employer is liable for an attorney's fee in the amount of $1,353.75, representing 6.15 hours of attorney services at an hourly rate of $225 for the work performed in 2000.

[15]Claimant's counsel originally requested an hourly rate of $275. The administrative law judge reduced the hourly rate to $225 based on his consideration of counsel's experience, the necessary work performed and the benefits obtained by claimant. The administrative law judge also stated that he previously awarded $225 per hour in this same geographical area (Houston). Supp. Decision and Order at 5.

[16]For the sake of judicial efficiency, we note that the administrative law judge properly rejected the quarter-hour minimum billing objection as it pertained to four of the pre-insolvency entries for work performed in 2000 as those entries involved the receipt and review of letters exceeding one page. Supp. Decision and Order at 6. Therefore, the hours approved comply with *Fairley*. *Prewitt*, 194 F.3d 684, 33 BRBS 187(CRT).

Accordingly, we affirm the finding that TPCIGA is liable for an attorney's fee under TIGA, albeit for reasons different from those set forth by the administrative law judge. However, the administrative law judge's fee award is modified to reflect that employer, not TPCIGA, is liable for the fee for services performed before Reliance was determined to be impaired in October 2001. Thus, employer is liable for a fee in the amount of $1,353.75, and TPCIGA is liable for a total fee of $23,725.96.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge