

ALASKA WORKERS' COMPENSATION BOARD



P.O. Box 115512

Juneau, Alaska 99811-5512

IN THE MATTER OF THE PETITION)
FOR A FINDING OF THE FAILURE TO)
INSURE WORKERS' COMPENSATION) FINAL DECISION AND ORDER
LIABILITY, AND ASSESSMENT)
OF A CIVIL PENALTY AGAINST,) AWCB Case No. 700004184
)
JESUS L. GARCIA AND DARRYL E.) AWCB Decision No. 14-0088
WATERS d/b/a CORNERSTONE)
REMODEL & DESIGN,) Filed with AWCB Anchorage, Alaska
) on June 20, 2014
Employer,)
Respondents.)

The Division of Workers' Compensation Division (division) Special Investigations Unit's petition to assess Jesus L. Garcia and Darryl E. Waters d/b/a Cornerstone Remodel & Design (collectively, Employer) a civil penalty for failure to insure for workers' compensation was heard in Anchorage, Alaska on June 3, 2013, a date selected on March 12, 2014. Investigator Christine Christensen appeared, represented the division, and testified. Attorney William Artus appeared and represented Darryl E. Waters and Cornerstone Remodel & Design. Jesus L. Garcia did not appear. Witnesses included Mr. Waters and Alicia Mendez. The record closed at the hearing's conclusion on June 3, 2014.

ISSUES

The division contends Employer operated a business using employee labor without maintaining workers' compensation insurance, and a civil penalty should be assessed. The division does not object to a payment plan.

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Employer concedes it used employee labor without maintaining workers' compensation insurance, but contends it does not have the financial resources to pay more than a small penalty, and requests a payment plan if a penalty is assessed.

Should Employer be assessed a civil penalty for failure to insure for purposes of workers' compensation liability, and if so, in what amount?

FINDINGS OF FACT

The following facts and factual conclusions are either undisputed or established by a preponderance of the evidence:

- 1) On February 3, 2011, Mr. Waters and Mr. Garcia formed a partnership entitled Cornerstone Remodel & Design. Mr. Waters was a first-time business owner. The partnership's principal business was remodeling and specialty contracting. (Waters.)
- 2) From February 3, 2011 through January 30, 2013, Employer was uninsured for workplace injuries under the Alaska Workers' Compensation Act for a total of 727 calendar days and 324 uninsured employee workdays. (Stipulated at hearing.)
- 3) Cornerstone Remodel & Design's business license was active from May 9, 2011 to December 31, 2013. (*Id.*)
- 4) On August 22, 2012, employee Donald R. Hinkle fell about twelve feet from a ladder and fractured his left heel bone while working for Employer. (*Hinkle v. Cornerstone Remodel & Design*, AWCB Decision No. 14-0023 (February 28, 2014) (*Hinkle I*), factual finding 1.)
- 5) At a prehearing conference on October 25, 2012, Mr. Waters stated he was unaware he needed workers' compensation insurance because he thought Mr. Hinkle was an independent contractor. Mr. Waters further stated if found responsible, he would "meet his obligations." (*Id.*, factual finding 22.)
- 6) On December 11, 2012, the division served both Mr. Waters and Mr. Garcia with a petition for finding of failure to insure under AS 23.30.075, assessment of civil penalty under AS 23.30.080(f), and finding of employee status under 8 AAC 45.890. Also served were a discovery demand, an informative sheet titled "Selected Relevant Statutory Authority," and a cover letter stating:

The Alaska Workers' Compensation Act defines an employer as an individual or corporation employing one or more persons in connection with business operations

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conducted in Alaska. AS 23.30.075(a) requires employers to purchase and maintain workers' compensation insurance. . . . Failure to do so may result in assessment of civil pursuant to AS 23.30.080(f) and 8 AAC 45.176. The Alaska Workers' Compensation Board (AWCB) may assess a civil penalty of up to \$1,000 for each employee for every day an employee is working while the employer failed to insure or provide the security required by AS 23.30.075. . . . (Petition, December 11, 2012.)

- 7) At a prehearing conference on February 27, 2013, Mr. Waters said he told Mr. Hinkle Employer would pay his work-related medical bills, but Employer had not yet received any. (*Hinkle I*, factual finding 25.)
- 8) On April 1, 2013, Mr. Waters established Cornerstone Remodel & Design LLC, with himself as the sole member. (Business license, Alaska Department of Commerce, Division of Corporations, Business and Professional Licensing web page.)
- 9) On February 28, 2014, *Hinkle I* awarded Mr. Hinkle temporary total disability (TTD) from August 22, 2012, through July 29, 2013; permanent partial impairment (PPI) in the amount of \$8,850; \$49.68 in medical reimbursement; \$7,166.74 to his medical providers; a 20 percent penalty to Mr. Hinkle on all TTD and PPI awarded; a separate 25 percent penalty to Employee on all TTD and PPI awarded; and interest to Mr. Hinkle and his providers. (*Hinkle I* at 41.)
- 10) On March 12, 2014, the June 3, 2014 hearing issue in this case was established as Employer's liability for failure to have workers' compensation insurance. (Prehearing Conference Summary, March 13, 2014.)
- 11) On May 29, 2014, the division and Employer stipulated that Cornerstone Remodel & Design LLC was not a party to this action, and the respondents were Jesus L. Garcia and Darryl E. Waters d/b/a Cornerstone Remodel & Design. (Prehearing Conference Summary, May 29, 2014.)
- 12) On May 30, 2014, Employer conceded it had not paid any benefits awarded in *Hinkle I*. Employer was found to be \$38,118.36 in default to Mr. Hinkle and his medical providers. (*Hinkle v. Cornerstone Remodel & Design, a partnership, & Darryl Waters*, AWCB Decision No. 14-0073 (May 30, 2014) (*Hinkle II*) at 2, 7.)
- 13) On May 30, 2014, Employer was ordered to pay Mr. Hinkle and his medical providers a penalty totaling \$9,529.65, and to pay Mr. Hinkle \$352.50 in post-judgment interest. (*Hinkle v. Cornerstone Remodel & Design, a partnership, & Darryl Waters*, AWCB Decision No. 14-0074 (May 30, 2014) (*Hinkle III*) at 7.)

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14) The sum of the default award, penalty and interest owed by Employer in Mr. Hinkle's cases is \$48,000.51. (Observation.)

15) Cornerstone Remodel & Design LLC's current, annual workers' compensation insurance premium is \$3756.00 annually, or \$10.29 per day. Employer would have paid \$7,480.83 for WC insurance for 727 uninsured calendar days, had it been insured. (Stipulated at hearing.)

16) Employer conceded to the following 8 AAC 45.176(d) aggravating factors:

- (1) failure to obtain workers' compensation insurance within 10 days after the division's notification of a lack of workers' compensation insurance;
- (3) a violation of AS 23.30.075 that exceeds 180 calendar days;
- (7) failure to comply with the division's initial discovery demand within 30 days after the demand;
- (9) failure to provide compensation or benefits payable under the Act to an uninsured injured employee; and
- (10) a history of injuries or deaths sustained by one or more employees while Employer was in violation of AS 23.30.075. (*Id.*)

17) At hearing Mr. Waters disputed the division's contention under 8 AAC 45.176(d)(14)(C) Employer had demonstrated lapses in business practice that would be used by a reasonably diligent business person, including failure to gain a familiarity with laws affecting the use of employee labor. (Waters.)

18) Mr. Waters testified when he started his business, he thought workers' compensation insurance wasn't necessary: "I didn't realize that it was this serious a matter, for sure. . . I wasn't even aware of that." Mr. Waters testified he received the division's December 11, 2012 petition, but had no "knowledge or indication" that if he didn't comply with the discovery request or timely get workers' compensation insurance he could be penalized. "I think I, I just underestimated the situation. You know I, I took it, uh, lighter than it, than I should have, because I just didn't realize that workmans' compensation was, you know, that big a deal. . ." (*Id.*)

19) Mr. Waters testified he hired Mr. Hinkle to try to help him out because Mr. Hinkle was "down on his luck" and had numerous personal problems. "We gave him a chance and I'm getting a \$50,000 bill at the end of the day for it. It doesn't show right, but it is what it is." Mr. Waters testified he understood Mr. Hinkle fell off ladder, hurt his ankle, and incurred medical expenses. Mr. Waters testified he gave Mr. Hinkle a pay check, but no money to cover his medical bills, and

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tried to help him again by offering him a different job after the injury. “I tried to be a good guy about it and, you know, tried to, you know, uh, do the right thing,” but “it didn’t work out.” (*Id.*)

20) Mr. Waters testified Cornerstone Remodel & Design LLC does not have the ability to pay the \$48,000.51 Employer owes to Mr. Hinkle and his medical providers. Mr. Waters testified he hopes to generate more business, but has “nothing on the horizon,” and is considering shutting Cornerstone Remodel & Design LLC down because of his workers’ compensation debts. “As a small business person, \$50,000 is a lot of money.” “[My home] will be under a bridge if I, um, pay the \$50,000 today.” “The business is being shot in the face here. . .it doesn’t have \$50,000.” “If we’re gonna have another big, giant penalty on top of a \$50,000 penalty when the, when the guy had a \$7,000, um, uh medical bill, so I’m, I guess I’m just a little ignorant to this process.” (*Id.*)

21) When asked how much he was paid by his business, in salary or other compensation, since February, 2011, Mr. Waters answered, “That’s a hard question -- not a lot.” He testified he received no regular paycheck, but took compensation when funds were available. For 2011-2012, he estimated his total compensation to be about \$60,000 maximum. (*Id.*)

22) Mr. Waters produced his 2011 and 2012 federal personal income tax returns. In 2011, Mr. Waters reported total gross business receipts of \$235,128 and a \$4,012 net profit, which was his only reported income. In 2012, Mr. Waters reported total gross business receipts of \$220,816 and a \$32,839 net profit, which was his only reported income other than his Alaska Permanent Fund Dividend. When questioned about the discrepancy between his testimony and written evidence, Mr. Waters testified the profits reported in the income tax returns were correct. (Waters; Forms 1040 and Schedules C, 2011 and 2012.)

23) When asked how he lived on \$4000 in 2011, Mr. Waters replied he was married and his wife’s income was not included in his income tax returns, because she filed separately. He also testified in 2011 and 2012 he took cash side jobs outside of Cornerstone Remodel & Design, from which he estimated he made a few thousand dollars, but not tens of thousands. (Waters.)

24) Mr. Waters’ “outside” cash income is not reported in his 2011 or 2012 income tax returns. (Observations, judgment.)

25) Mr. Waters testified he had “no idea” how much compensation he personally received in 2013. “I’m not an accountant and I’m not that great with numbers, which is why the business is not doing a lot better than it’s doing.” Mr. Waters stated he was in the process of improving his accounting and business practices. (Waters.)

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26) Mr. Waters produced a 2013 Profit & Loss statement (P&L) for Cornerstone Remodel & Design LLC, dated May 14, 2014, which indicated the LLC entity had \$51,384.47 net income in 2013. The statement was prepared by Alicia Mendez, who started working as Employer's Office Manager in February, 2013, the month after the uninsured period ended. Ms. Mendez testified the 2013 P&L was inaccurate because she had not completed entering receipts; the company's actual net income was less than \$51,384.47, but she was not able to give an estimate of how much less. She later revised her testimony to estimate Mr. Waters received about \$30,000 in 2013 net income. Ms. Mendez testified Mr. Waters took owner draws from the company. Mr. Waters testified when there was money available, he took owner draws to contribute to his family, but he doesn't know how much money he has taken. Ms. Mendez and Mr. Waters testified Mr. Waters also made owner contributions to the company, but those amounts too are unknown. (Waters; Mendez.)

27) Mr. Waters was unable to give a clear estimate of how much Employer could afford to pay for failure to insure, in part because he has not decided whether he will close Cornerstone Remodel & Design LLC in the wake of its debts stemming from Mr. Hinkle's injury. Mr. Waters testified he has "not a real great ability to pay a penalty now," but also stated, "I can always come up with, with a few hundred dollars extra a month." Mr. Waters acknowledged he would be able to pay a \$125.00-\$200.00 monthly civil penalty for failure to insure, but added such an amount would take the financial strength out of his current business if he still has to pay the Hinkle debts too. Ms. Mendez testified Employer would be able to pay \$300.00 - \$500.00 a month total, for both the failure to insure and the injured employee cases combined. Mr. Waters testified he has family, friends and a group of people he works with who would be able to help him pay a civil penalty. (*Id.*)

28) Though properly served, Mr. Garcia did not participate in any aspect of this investigation or hearing, and no evidence was produced regarding his finances. (Observations, judgment.)

PRINCIPLES OF LAW

Employers have a duty to insure their employees against work-related injury.

AS 23.30.001. Intent of the legislature and construction of chapter. It is the intent of the legislature that

(1) this chapter be interpreted . . . to ensure . . . quick, efficient, fair, and predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost to . . . Employers. . . .

The board may base its decision not only on direct testimony and other tangible evidence, but also on the board's "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). An adjudicative body must base its decision on the law, whether cited by a party or not. *Barlow v. Thompson*, 221 P.3d 998 (Alaska 2009).

AS 23.30.075. Employer's liability to pay.

(a) An Employer under this chapter, unless exempted, shall either insure and keep insured for the Employer's liability under this chapter in an insurance company or association . . . or shall furnish the board satisfactory proof of the Employer's financial ability to pay directly the compensation provided for. . . .

AS 23.30.080. Employer's failure to insure. . . .

. . .

(f) If an Employer fails to insure or provide security as required by AS 23.30.075, the division may petition the board to assess a civil penalty of up to \$1,000.00 for each employee for each day an employee is employed while the Employer failed to insure or provide the security required by AS 23.30.075. The failure of an Employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the Employer failed to insure or provide security as required by AS 23.30.075.

A penalty's primary goal under AS 23.30.080(f) is not to be unreasonably punitive, but rather to bring an Employer into compliance, deter future lapses, ensure the continued employment of the business' employees in a safe work environment, and satisfy the community's interest in penalizing an offender without vengeance. *Ivan Moore d/b/a Ivan Moore Research v. State of Alaska, Division of Workers' Compensation*, AWCAC Appeal No. 07-044 (November 17, 2008); referencing *Alaska R&C Communications, LLC v. State of Alaska, Division of Workers'*

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Compensation, AWCAC Appeal No. 07-043 (September 16, 2008). A penalty is not intended to destroy a business or reduce employment (*Alaska R&C* at 12). In assessing a civil penalty, consideration is given to the duration, scope and severity of the risk associated with the offending employer's conduct; the culpability of the employer's conduct; the impact on the community and employees; and the employer's ability to pay (*id.* at 22-27).

Minimum and maximum penalty benchmarks, based primarily on aggravating factors, were established by 8 AAC 45.176, effective February 28, 2010. Ordinarily, provisions providing penalties against employers will be strictly construed. *Petty v. Mayor, et al., of College Park*, 11 S.E.2d 246 (Georgia 1940).

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.

AS 23.30.395. Definitions. In this chapter,

...

(19) 'employee' means an employee employed by an employer as defined in (20) of this section;

(20) 'Employer' means the state of its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state;

AS 32.06.305. Partnership liable for partner's actionable conduct

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

...

AS 32.06.306. Partner's liability

(a) Except as otherwise provided in (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

...

AS 32.06.802. Partnership continuation after dissolution

(a) Subject to (b) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

...

8 AAC 45.176. Failure to provide security: assessment of civil penalties.

(a) If the board finds an Employer to have failed to provide security as required by AS 23.30.075, the Employer is subject to a civil penalty under AS 23.30.080(f), determined as follows:

...

(4) if an employer is found to have no more than six aggravating factors, the employer will be assessed a civil penalty of no less than \$51 and no more than \$499 per uninsured employee workday; however, the civil penalty may not be less than two times the premium the employer would have paid had the employer complied with AS 23.30.075; . . .

(b) A civil penalty assessed under (a) of this section may not exceed the maximum civil penalty allowed under AS 23.30.080(f).

...

(d) For the purposes of this section, 'aggravating factors' include

(1) failure to obtain workers' compensation insurance within 10 days after the division's notification of a lack of workers' compensation insurance;

(2) failure to maintain workers' compensation insurance after previous notification by the division of a lack of coverage;

(3) a violation of AS 23.30.075 that exceeds 180 calendar days;

(4) previous violations of AS 23.30.075;

(5) issuance of a stop order by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);

(6) violation of a stop order issued by the board under AS 23.30.080(d), or the director under AS 23.30.080(e);

(7) failure to comply with the division's initial discovery demand within 30 days after the demand;

(8) failure to pay a penalty previously assessed by the board for violations of AS 23.30.075;

(9) failure to provide compensation or benefits payable under the Act to an uninsured injured employee;

(10) a history of injuries or deaths sustained by one or more employees while Employer was in violation of AS 23.30.075;

(11) a history of injuries or deaths while the Employer was insured under AS 23.30.075;

(12) failure to appear at a hearing before the board after receiving proper notice under AS 23.30.110;

(13) cancellation of a workers' compensation insurance policy due to the Employer's failure to comply with the carrier's requests or procedures;

(14) lapses in business practice that would be used by a reasonably diligent business person, including

- (A) ignoring certified mail;
- (B) failure to properly supervise employees; and
- (C) failure to gain a familiarity with laws affecting the use of employee labor;
- (15) receipt of government funding of any form to obtain workers' compensation coverage under AS 23.30.075, and failure to provide that coverage.
- (e) In this section, . . .
 - (2) 'uninsured employee workday' means the total hours of employee labor utilized by the Employer while in violation of AS 23.30.075 divided by eight.

ANALYSIS

Should Employer be assessed a civil penalty for failure to insure for purposes of workers' compensation liability, and if so, in what amount?

Employer concededly operated a business using uninsured employee labor for 324 uninsured employee work days. Employer also conceded its conduct involved five aggravating factors considered in determining an appropriate civil penalty under 8 AAC 45.176(d). The only alleged aggravating factor Mr. Waters disputed was the division's contention Employer demonstrated lapses in business practice that would be used by a reasonably diligent business person, including failure to gain a familiarity with laws affecting the use of employee labor. 8 AAC 45.176(d)(14)(C). However Mr. Waters' own testimony supports the applicability of this sixth factor. Mr. Waters testified when he started his business, he thought workers' compensation insurance wasn't necessary: "I didn't realize that it was this serious a matter, for sure. . . I wasn't even aware of that." Mr. Waters testified he received the division's December 11, 2012 petition, which specifically alerted him to statutes and regulations stating his obligation to purchase and maintain workers' compensation insurance, as well as the potential assessment of a civil penalty if he failed to do so. Nonetheless, in testimony found to be not credible, Mr. Waters stated he had no "knowledge or indication" that if he didn't comply with the discovery request or timely get workers' compensation insurance he could be penalized.

Even if the pertinent workers' compensation laws had not been brought to Employer's attention, it is not the state's responsibility to educate business owners; rather, knowledge of all relevant statutes and regulations is imputed to them. Employers cannot be relieved of responsibility or liability

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because they are unaware of or misunderstand the published laws governing their enterprises. Six aggravating factors, including 8 AAC 45.176(d)(14)(C), are found applicable here.

In terms of establishing a civil penalty, whether Employer's conduct involved five or six aggravating factors is largely irrelevant, because the regulatory penalty range is the same. In either case, 8 AAC 45.176(a)(4) establishes a penalty of no less than \$51.00 and no more than \$499.00 per uninsured employee work day, but in no event less than two times the premium the employer would have paid had it complied with AS 23.30.075. At \$51.00 per uninsured employee workday for 324 days, the penalty would be \$16,524.00; at \$499.00, it would be \$161,676.00. Had Employer complied with AS 23.30.075, its premium for 727 uninsured calendar days, at \$2.20 per day, would have been \$1,599.40. Twice the prorated premium is \$3,198.80. The minimum civil penalty Employer may be assessed is therefore \$16,524.00.

The primary goal of a penalty under AS 23.30.080(f) is not to be unreasonably punitive, but rather to bring an Employer into compliance, deter future lapses, ensure the continued employment of the business' employees in a safe work environment, and satisfy the community's interest in penalizing an offender without vengeance. *Ivan Moore; Alaska R&C Communications*.

A penalty is not intended to destroy a business or reduce employment. *Alaska R&C*. However here it was impossible to determine Employer's (Mr. Waters, Mr. Garcia, and the partnership) assets or viability. Mr. Waters' financial evidence and testimony were inconsistent and inconclusive, and no evidence was produced regarding the financial status of Mr. Garcia. The business license of the entity in question, Cornerstone Remodel & Design, expired December 31, 2013, so the issue of whether an unduly high civil penalty might put the partnership out of business is moot.

The challenges of starting and maintaining a small business, Employer's lack of prior failures to insure, and Mr. Waters' expressed interest in improving his business practices and learning more about workers' compensation law were all taken into consideration in determining an appropriate civil penalty. However numerous countervailing factors were also weighed.

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Mr. Waters' actions and statements to the division were frequently deplorable. As discussed above, part of his testimony regarding whether he was a reasonably diligent business person was found not credible. His testimony regarding cash income he did not report to the Internal Revenue Service raised questions about the veracity of his already inconsistent and opaque financial evidence and testimony.

Mr. Waters' credibility and business integrity were also rendered dubious by his conduct toward his injured employee. On October 25, 2012, Mr. Waters told a board designee if found responsible, he would "meet his obligations" with regards to Mr. Hinkle. On February 27, 2013, Mr. Waters told a designee he would pay Mr. Hinkle's work-related medical bills. Yet, even though *Hinkle I* held Cornerstone Remodel & Design liable, Mr. Waters never made a single payment towards the amount awarded to Mr. Hinkle and his medical providers. Instead, Mr. Waters' testimony in the current case implied he believes he was punished for his altruistic nature, and victimized by a system he simply didn't understand. "We gave [Mr. Hinkle] a chance and I'm getting a \$50,000 bill at the end of the day for it. It doesn't show right . . ." "I tried to be a good guy about it and, you know, tried to, you know, uh, do the right thing," but "it didn't work out." "The business is being shot in the face here. . .it doesn't have \$50,000." "If we're gonna have another big, giant penalty on top of a \$50,000 penalty when the, when the guy had a \$7,000, um, uh medical bill, so I'm, I guess I'm just a little ignorant to this process."

Also taken into consideration in the penalty determination was the severity of Employer's infraction, and the significant impact his failure to insure had or could have had on others. Home remodeling involves significant physical labor and the use of power tools, and therefore carries a high risk of work-related injuries; Employer is fortunate it has encountered only one. Forgoing insurance to cut costs and offer lower prices to consumers unfairly undercuts the ability of compliant businesses to successfully compete in the marketplace.

Given the circumstances in this case, a \$24,320.00 civil penalty, approximately 50 percent above the \$16,524.00 regulatory minimum and 50 percent less than the \$48,000.51 Employer owes Mr. Hinkle and his medical providers, is fair and not unreasonably punitive. Employer is advised this

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\$24,320.00 penalty is in addition to, and does not supersede or alter in any way, Employer's obligations under *Hinkle I, II and III*. Employer's request for a payment plan will be granted.

Mr. Waters is reminded his current business, Cornerstone Remodel & Design, LLC, is not a party to this action. Rather, the respondents are Mr. Waters and Mr. Garcia d/b/a Cornerstone Remodel and Design. Mr. Garcia did not participate in any aspect of this investigation or hearing, and no evidence was produced regarding his finances. Nonetheless, both partners are jointly and severally liable for all obligations of the now-defunct partnership entity. AS 32.06.306(a). Likewise, Cornerstone Remodel & Design is liable for any penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of either Mr. Waters or Mr. Garcia acting, as here, in the ordinary course of business of the partnership. AS 32.06.305(a). The fact Cornerstone Remodel & Design's business license became inactive on December 31, 2013 does not absolve the entity from financial responsibility here; a partnership is not terminated until it winds up its business. AS 32.06.802(a).

If Mr. Waters intends to continue to function as an employer as defined in AS 23.30.395(20), and particularly if he intends to hire subcontractors, it is recommended he attend one of the division's Employer Education Workshops to enhance his understanding of his rights and obligations under the Alaska Workers' Compensation Act. The 2014 Employer Education Workshop Schedule is available at http://labor.state.ak.us/wc/notices/SI_Training_Sessions_2014.pdf or by calling (907) 269-4002.

CONCLUSIONS OF LAW

1) Employer will be assessed a civil penalty of \$24,320.00 for failure to insure for purposes of workers' compensation liability.

ORDER

1) The division's petition to assess JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN a civil penalty for failure to insure for workers' compensation is granted.

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- 2) At any time JESUS L. GARCIA, DARRYL E. WATERS, or CORNERSTONE REMODEL & DESIGN has employees, they shall maintain workers' compensation insurance coverage in accord with AS 23.30.075, and shall file evidence of compliance in accord with AS 23.30.085.
- 3) Pursuant to AS 23.30.060(a), JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN are personally, jointly, severally and directly liable for any and all benefits payable under the Act for compensable injuries to employees who may have been injured during the uninsured period.
- 4) Pursuant to AS 23.30.080(f), JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN are assessed a civil penalty of \$24,320.00. JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN must timely pay \$24,320.00.
- 5) A payment plan is ordered.
- 6) **JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN shall pay \$2000.00 within seven (7) days of this decision in accord with AS 23.30.080(g). Thereafter, on the 15th day of each month JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN shall make monthly payments in the sum of \$372.00 for 60 months until the total civil penalty of \$24,320.00 is paid in full.**
- 7) JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN are ordered to make all payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. **JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN are ordered to make checks payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCB Case Number 700004184, and AWCB Decision Number 14-0088.** If JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN fail to make timely civil penalty payments as ordered in this decision, the entire \$24,320.00 shall immediately be due and owing and the director may declare the entire, assessed civil penalty in default and seek collection. Pending full, civil penalty payment under AS 23.30.080(f) in accord with this Decision and Order, jurisdiction is maintained.

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8) The Special Investigations Unit is directed to monitor JESUS L. GARCIA, DARRYL E. WATERS, and CORNERSTONE REMODEL & DESIGN for five (5) years from this decision's date for continued compliance with the Act's insurance requirements.

9) The division's Collection Officer is ordered to prepare a proposed Liability Discharge Order within 30 days of JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN's full, timely, civil penalty payment as set forth in this decision and order. The proposed order will be addressed in accord with 8 AAC 45.130.

In re JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN

Dated in Anchorage, Alaska on June 20, 2014.

ALASKA WORKERS' COMPENSATION BOARD

Margaret Scott, Designated Chair

David Kester, Member

APPEAL PROCEDURES

This compensation order is a final decision and becomes effective when filed in the board's office, unless it is appealed. Any party in interest may file an appeal with the Alaska Workers' Compensation Appeals Commission within 30 days of the date this decision is filed. All parties before the board are parties to an appeal. 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 because the board takes no action on reconsideration, whichever is earlier.

A party may appeal by filing with the Alaska Workers' Compensation Appeals Commission: (1) a signed notice of appeal specifying the board order appealed from; 2) a statement of the grounds for the appeal; and 3) proof of service of the notice and statement of grounds for appeal upon the Director of the Alaska Workers' Compensation Division and all parties. Any party may cross-appeal by filing with the Alaska Workers' Compensation 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 grounds upon which the cross-appeal is taken. Whether appealing or cross-appealing, parties must meet all requirements of 8 AAC 57.070.

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.

In re JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of JESUS L. GARCIA and DARRYL E. WATERS d/b/a CORNERSTONE REMODEL & DESIGN; Employer / respondents; Case No. 700004184; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served upon the parties on June 20, 2014.

Kimberly Weaver, Office Assistant