

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)	FINAL DECISION AND ORDER
INSURE WORKERS' COMPENSATION)	
LIABILITY, AND ASSESSMENT)	AWCB Case No. 700004492
OF A CIVIL PENALTY AGAINST,)	
)	AWCB Decision No. 14-0143
DAVID R. SHERMAN AND VALERIE J.)	
SHERMAN d/b/a BIG GREEN LAWN)	Filed with AWCB Anchorage, Alaska
MAINTENANCE,)	on October 27, 2014
Respondents.)	
)	

The Division of Workers' Compensation (division) Special Investigations Unit's (SIU) October 7, 2013 petition for failure to insure for workers' compensation liability, and assessment of a civil penalty, was heard in Anchorage, Alaska on September 16, 2014, a date selected on June 25, 2014. Investigator Douglas Love appeared, represented the division, and testified. David R. Sherman and Valerie J. Sherman appeared, testified and represented themselves and Big Green Lawn Maintenance (collectively, Employer). There were no other witnesses. As a preliminary matter, Employer moved for a continuance, which the panel denied. This decision examines the oral order to proceed with the hearing, and decides the division's petition on its merits. At hearing the record was left open through September 17, 2014, to allow Employer to submit additional evidence it testified was readily available. On September 18, 2014, the record was further left open until September 25, 2014 to allow the SIU to file its response to Employer's post-hearing evidence.

ISSUES

Employer contended it needed a continuance to allow it time to better prepare for hearing.

The SIU objected to a continuance, noting that Employer already had ample time to prepare, because the SIU brief and evidence was served in May, 2014, and the hearing date was set in June, 2014.

1) Was the oral decision denying Employer's motion for a continuance proper?

The SIU contended Employer operated a business using employee labor without maintaining workers' compensation insurance, and a civil penalty should be assessed. The SIU did not object to a payment plan, but noted Employer had not complied with the payment plan ordered in its previous civil penalty for failure to insure.

Employer contended it paid for, and believed it was covered by, workers' compensation insurance during the period at issue. Employer contended it should not be assessed a civil penalty but, if it was, it could make small monthly payments.

2) Should Employer be assessed a civil penalty for failure to insure for workers' compensation liability and, if so, in what amount and under what payment terms?

FINDINGS OF FACT

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

- 1) Since approximately October 20, 2008, Employer conducted business as a partnership owned by David R. Sherman and Valerie J. Sherman. As a partnership, David and Valerie Sherman are exempt from the Alaska Workers' Compensation Act and need not file an executive waiver. (Stipulated at hearing.)
- 2) Employer uses employee labor to provide lawn maintenance during spring, summer and fall. During the winter, Employer provides snow removal services and has no employees, and therefore is not required to carry workers' compensation insurance. (*Id.*)
- 3) Employer had a prior failure-to-insure case, AWCB No. 700003829, which resulted in Decision and Order No. 13-0009. Aggravating factors in that case included an injury

during the uninsured period in 2011, for which Employer did not pay the workers' medical expenses. Due to mitigating circumstances, including Employer's limited financial resources and numerous family health crises, Employer was assessed the minimum allowable civil penalty, \$20,910.00. Taking into account the seasonal nature of the business and the amount Employer testified it was able to pay, Employer's request for a seasonally-adjusted payment plan was granted: Employer was ordered to pay \$500.00 monthly from May through October, and \$250.00 monthly the rest of the year. (AWCB Decision No. 13-0009 (January 18, 2013) (*Big Green I.*))

4) On January 5, 2013, Employer's workers' compensation policy WC5395316003012, effective May 2, 2012, was cancelled due to non-payment of premium. On January 10, 2013, the policy was reinstated without lapse of coverage. (Liberty Mutual letter, January 10, 2013, submitted by Employer as supplemental evidence on September 17, 2014.)

5) On January 11, 2013, Liberty Mutual notified Employer its workers' compensation policy WC5395316003012 was cancelled pro-rata effective February 5, 2013, due to nonpayment of premium. (National Council on Compensation Insurance (NCCI) printouts; division proof-of-coverage database; Liberty Mutual letter, January 11, 2013, submitted by Employer as supplemental evidence on September 17, 2014.)

6) Employer operated a business using employee labor for 120 uninsured calendar days, from May 17, 2013 to September 14, 2013, without carrying workers' compensation insurance. Five employees worked a total of 205 uninsured employee work days. (SIU Uninsured Employer Worksheet; National Council on Compensation Insurance (NCCI) printouts; division proof-of-coverage database; Employer-provided payroll information; ESD database.)

7) Mr. Sherman received the SIU's petition and discovery demand on October 8, 2013. (USPS tracking printout.)

8) Employer paid \$1,000.00 of the \$20,910.00 penalty assessed in *Big Green I.* On October 21, 2013, the Alaska Department of Public Safety served Employer with a Notice and Declaration of Default for non-payment of \$19,910.00. (Love; Notice and Declaration of Default; State Trooper Directions for Service.)

9) Discovery was due by noon, December 31, 2013, pursuant to an extension granted by the division. (Love letter, October 30, 2013.)

10) Employer hand-delivered discovery to the SIU on February 18, 2014, which was late.

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(Love.)

11) Employer's current insurance policy, effective August 2, 2014 to August 2, 2015, has a \$1,506.00 estimated annual premium. (WCIP American Interstate Insurance policy.)

12) The pro-rated premium for the current policy is \$4.13 per day, which equates to \$495.60 for the 120 uninsured calendar days. (SIU Uninsured Employer Worksheet.)

13) Twice the pro-rated premium for the uninsured calendar days is \$991.20. (*Id.*)

14) No reports of injury were filed against the Employer since the 2011 injury considered in *Big Green I*. (Division database.)

15) The per day penalty range for the 205 uninsured employee workdays is \$51.00 to \$499.00 per day, or between \$10,455.00 and \$102,295.00. (8 AAC 45.176(a)(4); SIU Uninsured Employer Worksheet.)

16) David R. Sherman and Valerie J. Sherman's average individual adjusted gross income between 2010 and 2012 was \$102,645.66. (Income tax returns.)

17) Employer's average gross annual earnings between 2010 and 2012 were \$121,226.00. (*Id.*)

18) Employer's average annual net profits between 2010 and 2012 were \$12,213.66. (*Id.*)

19) On May 5, 2014, the SIU served Employer with its hearing brief and evidence. (Division computer record.)

20) Employer did not attend a June 25, 2014 prehearing conference in this case. The conference summary indicates Employer had told the SIU they "could not make" the prehearing; but requested a hearing after the middle of September, as this was when the partners would be available. At hearing Mr. Sherman stated the late September date was requested because business might slow down then, though actually it turned out he still had a lot of work to do. The board designee granted Employer's scheduling request, and the hearing was set for September 16, 2014. (Prehearing conference summary, June 25, 2014, served June 26, 2014; Mr. Sherman; Ms. Sherman.)

21) At hearing Employer testified each year it paid a broker the full annual premium for workers' compensation insurance, but that in 2011 and 2013 there were "audit delays" that resulted in lapses in coverage. Employer further testified in both instances it was not notified when the insurance had been cancelled, and it thought it was covered until it received notice of the inadequate audits, well after the cancellation had taken effect. (Ms. Sherman; Mr. Sherman.)

22) At hearing, Employer testified it stopped making payments on its *Big Green I* penalty because it could not afford them; Mr. Sherman had retired from teaching, which cut the family's income by about half. (Ms. Sherman.)

23) Responding to testimony about only paying \$1,000.00 of its \$20,910.00 penalty, and the Notice and Declaration of Default for the remaining \$19,910.00, Mr. Sherman testified, "This just kinda makes you wanna . . . stop doing business. This is ridiculous." When reminded that the *Big Green I* penalty was the regulatory minimum, Ms. Sherman testified she believed it was very harsh. "I am not educated in all of this, I don't, I'm not privy to all this. . . We're just little hillbilly, country bumpkin business people and here we are, we're getting slammed up against the wall and, um, I guess it's how they say businesses, small businesses go down." (Mr. Sherman; Ms. Sherman.)

24) Ms. Sherman testified, "We don't deliberately not try to insure people, it's just, um, I don't know, we suck at doing the audit paperwork stuff, I do, and I just got a boatload. I guess we just have no business doing business . . . we're not super-educated business people." (Ms. Sherman.)

25) Referring to the division and the hearing, Ms. Sherman opined, "It's gotten way too complex, I mean look at how many people are in this office right here just watching all this, and listening to our stupid, sad story so that *you* can get paid, so that *you* can take our money, so that we have more of a difficult time in *doing* business and providing a service so that we can feed our family." She continued, "I want that in the record because . . . I thought the last one was extremely harsh and . . . workmans' comp didn't have to pay a dime for that guy [the worker injured in 2011] when he hurt his toe, so nothing was extracted except for *we* were penalized because *we* are not super paperwork people, educated, I don't know, whatever." (*Id.*; emphasis original.)

26) Mr. Sherman testified to the difficulty of operating a small business. (Mr. Sherman.)

27) Ms. Sherman testified, "Dave works about 18 hours a day, I know you guys could care less, you guys are on salary and you make a ton of money, but, um, we're just trying to get along. We're just trying to get by." She continued, "What do you want? We don't have a lot of money. Crucify us." (Ms. Sherman.)

28) When asked how Employer found itself in a second failure-to-insure case, apparently under very similar circumstances, Ms. Sherman said, "Do you not understand having a lot on one's plate? If you've never been there, you could never understand." (*Id.*)

29) Employer testified it could afford to pay \$50.00 to \$100.00 monthly, if assessed a civil penalty. When asked what assurance Employer could offer that it would comply with a payment plan, when it failed to do so previously, Employer testified their word was their bond, and they had been sworn in. (Mr. Sherman; Ms. Sherman.)

30) The record was held open until close of business, September 17, 2014, to allow Employer to submit additional evidence supporting its contention it paid for, and believed it was covered by, a workers' compensation insurance policy from May 17, 2013 to September 14, 2013. Employer testified this evidence was readily available, but not in their possession at hearing. (Record.)

31) At the hearing's conclusion, both Mr. and Ms. Sherman testified they believed it had been fair. (Mr. Sherman; Ms. Sherman.)

32) On September 17, 2014, Employer submitted as supplemental evidence a May 2013 Northrim Bank statement for a Business Edge Checking Account held by David R. Sherman d/b/a Big Green Lawn Maintenance. The statement recorded the following transaction: "05-20; Electronic Withdrawal NCCI WRKS COMP – DEP PREM 30263560; \$1,505.00." Employer provided no explanation or additional evidence indicating what this withdrawal represented, and nowhere in the division's records is there any evidence Employer was insured for workers' compensation liability from May 17, 2013 to September 14, 2013. (Employer May 2013 bank statement and supplementary evidence, filed September 17, 2014; observation.)

33) On September 25, 2014, the division stated its review of Employer's supplementary evidence did not change its position in this case. The division further stated on September 24, 2014, a Customer Account Assistant with the Commercial Service Operations – Wausau Underwriting unit of Liberty Mutual Insurance Company confirmed that Employer's workers' compensation policy WC5395316003012 was cancelled effective February 5, 2013, with no reinstatement. (Division's Reply to Employer's Supplemental Evidence, September 25, 2014.)

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).

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’ 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 23.30.395. 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 or 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;

8 AAC 45.074. Continuances and cancellations.

...

(b) Continuances or cancellations are not favored by the board and will not be routinely granted. A hearing may be continued or cancelled only for good cause and in accordance with this section. For purposes of this subsection,

(1) good cause exists only when

(A) a material witness is unavailable on the scheduled date and deposing the witness is not feasible;

(B) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(C) a party, a representative of a party, or a material witness becomes ill or dies;

(D) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically;

(E) the hearing was set under 8 AAC 45.160(d);

(F) a second independent medical evaluation is required under AS 23.30.095(k);

(G) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and all parties waive the right to a hearing within 30 days;

(H) the board is not able to complete the hearing on the scheduled hearing date due to the length of time required to hear the case or other cases scheduled on that same day, the lack of a quorum of the board, or malfunctioning of equipment required for recording the hearing or taking evidence;

(I) the parties have agreed to and scheduled mediation;

(J) the parties agree that the issue set for hearing has been resolved without settlement and the parties file a stipulation agreeing to dismissal of the claim or petition under 8 AAC 45.050(f)(1);

(K) the board determines that despite a party's due diligence in completing discovery before requesting a hearing and despite a party's good faith

belief that the party was fully prepared for the hearing, evidence was obtained by the opposing party after the request for hearing was filed which is or will be offered at the hearing, and due process required the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(L) the board determines at a scheduled hearing that, due to surprise, excusable neglect, or the board's inquiry at the hearing, additional evidence or arguments are necessary to complete the hearing;

(M) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, the agreed settlement has not been put into writing, signed by the parties, and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues set to be heard, and the parties appear at the scheduled hearing to state the terms of the settlement on the record; or

(N) the board determines that despite a party's due diligence, irreparable harm may result from a failure to grant the requested continuance or cancel the hearing;

...

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; without a board hearing, if an employer agrees to a stipulation of facts and executes a confession of judgment without action, the employer will be given a 25 percent discount of the assessed civil penalty; however, the discounted amount may not be less than any civil penalty that would be assessed under (3) of this subsection;

...

(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

...

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

...

(4) previous violations of AS 23.30.075;

...

(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;

...

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

...

(C) failure to gain a familiarity with laws affecting the use of employee labor;

...

ANALYSIS

1) Was the oral decision denying Employer’s motion for a continuance proper?

Continuances are not favored by the board and are not granted in the absence of good cause under 8 AAC 45.074(b)(1). The record indicates Employer was served the SIU’s brief and hearing evidence on May 5, 2014, and learned of the hearing date in the June 25, 2014 prehearing conference summary, served June 26, 2014. Employer had far more time to prepare than most litigants in workers’ compensation hearings. Employer demonstrated no good cause for a continuance, and the request for one was properly denied.

2) Should Employer be assessed a civil penalty for failure to insure for workers’ compensation liability and, if so, in what amount and under what payment terms?

Employers are not absolved from compliance with the Alaska Workers’ Compensation Act because they do not understand their obligations or the actions necessary to maintain insurance coverage. 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 because they are unaware of or misunderstand the published laws governing their enterprises, or because, as Ms. Sherman testified, they are not “super-educated business people.”

Less than two years ago, Employer participated in a hearing and was assessed a \$20,910.00 civil penalty for failure to insure. A reasonably diligent business person would not have defied the prior order and simply stopped making payments. Moreover, being aware of limitations in ability to manage the paperwork aspect of an enterprise, a reasonably diligent business person would have

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either worked with an insurance broker to ensure no more lapses in coverage ensued, or hired someone else to do so. 8 AAC 45.176(d)(14)(C), 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, is found to be an applicable aggravating factor here.

Three aggravating factors relating back to *Big Green I* also apply:

- failure to maintain workers' compensation insurance after previous notification by the division of a lack of coverage;
- previous violations of AS 23.30.075; and
- failure to pay a penalty previously assessed by the board for violations of AS 23.30.075. 8 AAC 45.176(d)(2), (4), (8).

A fifth aggravating factor stems from Employer's failure to comply with the SIU's discovery demand within 30 days after the December 31, 2013 extended deadline. 8 AAC 45.176(d)(7).

With five applicable aggravating factors, 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 for 205 uninsured employee workdays, the penalty would be \$10,455.00; at \$499.00, it would be \$102,295.00. Had Employer complied with AS 23.30.075, its premium for 120 uninsured calendar days, at \$4.13 per day, would have been \$495.60. Twice the prorated premium is \$991.20. The minimum civil penalty Employer may be assessed is therefore \$10,455.00.

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*. Further, according to the Commission, a penalty is not intended to destroy a business or reduce employment. *Alaska R&C*.

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Here the challenges of operating a small business, Employer's limited financial resources, and personal stressors were all taken into consideration in determining an appropriate civil penalty. However numerous countervailing factors were also weighed.

The division has already exercised considerable leniency towards Employer. Under the guidance of *Ivan Moore* and *Alaska R&C*, *Big Green I* assessed the minimum allowable penalty, required no initial good-faith lump sum payment, and granted the exact terms Employer requested for a structured payment plan. In the current case, the SIU extended Employer's discovery deadline by a month. Moreover, the current hearing was scheduled at Employer's convenience, in order not to disrupt business during the most lucrative season.

In return, Employer has repeatedly demonstrated blatant disregard for the law. Employer failed to fulfill its obligations to the division, paying only \$1,000.00 of the \$20,910.00 assessed in *Big Green I*, and then, just two years after the first infraction, again failed to insure its workers for four summer months. Employer's understandably frayed nerves do not ameliorate the open disrespect for workers' compensation laws displayed at the current hearing. Referring to the unpaid \$19,910.00, Mr. Sherman testified, "This just kinda makes you wanna . . . stop doing business. This is ridiculous." Ms. Sherman testified, "It's gotten way too complex, I mean look at how many people are in this office right here just watching all this, and listening to our stupid, sad story so that *you* can get paid, so that *you* can take our money, so that we have more of a difficult time in *doing* business and providing a service so that we can feed our family." Moreover, she expressed her belief she is being victimized by a system she should not be expected to understand: "We're just little hillbilly, country bumpkin business people . . . getting slammed up against the wall" and "What do you want? We don't have a lot of money. Crucify us."

Also taken into consideration in the penalty determination was the significant impact Employer's failure to insure could have had on others. Lawn maintenance involves physical labor and the use of power tools, and therefore carries a significant risk of serious work-related injuries. *See, e.g.; Carter v. The Lawn Rangers, Inc.*, AWCB Decision No. 12-0148 (August 27, 2012). Employer is fortunate it has not encountered any injuries in the last three seasons.

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Considering the unique circumstances of this case, a penalty of \$15,375.00 (\$75.00 per uninsured employee workday -- \$24.00 more than the minimum, and \$424.00 less than the maximum allowable by law) is fair, not unreasonably punitive, and within the regulatory scheme. Given Employer's past failure to honor a payment schedule, \$7,775.00 will be due by November 15, 2014. Thereafter, Employer's request to pay \$100.00 monthly will be granted for 76 months (six years and four months.) Employer is advised this \$15,375.00 penalty is in addition to, and does not supersede or alter in any way, Employer's obligations under *Big Green I*.

Mr. and Ms. Sherman's testimony clearly indicated they do not understand the importance and purpose of workers' compensation laws, including the significant legal protection provided employers. If Mr. and Ms. Sherman intend to continue to function as an employer as defined in AS 23.30.395(20), it is recommended they attend one of the division's Employer Education Workshops to enhance their understanding of their 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. The oral decision denying Employer's motion for a continuance was proper.
2. Employer will be assessed a \$15,375.00 civil penalty for failure to insure for workers' compensation liability, and a payment plan will be ordered.

ORDER

- 1) The division's petition to assess DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE a civil penalty for failure to insure for workers' compensation is granted.
- 2) At any time DAVID R. SHERMAN, VALERIE J. SHERMAN, or BIG GREEN LAWN MAINTENANCE 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), DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE are personally, jointly, severally and directly liable for any

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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), DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE are assessed a civil penalty of \$15,375.00. DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE must timely pay \$15,375.00.

5) A payment plan is ordered.

6) **DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE shall pay \$7,775.00 by November 15, 2014 in accord with AS 23.30.080(g). Thereafter, on the 15th day of each month DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE shall make monthly payments in the sum of \$100.00 for 76 months until the total civil penalty of \$15,375.00 is paid in full.**

7) DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE are ordered to make all payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. **DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE 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 14-0143.** If DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE fail to make timely civil penalty payments as ordered in this decision, the entire \$15,375.00 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.

8) The Special Investigations Unit is directed to monitor DAVID R. SHERMAN, VALERIE J. SHERMAN, and BIG GREEN LAWN MAINTENANCE 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 DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE'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.

Dated in Anchorage, Alaska on October 27, 2014.

ALASKA WORKERS' COMPENSATION BOARD

Margaret Scott, Designated Chair

Pamela Cline, Member

If compensation is payable under terms of this decision, it is due on the date of issue. A penalty of 25 percent will accrue if not paid within 14 days of the due date, unless an interlocutory order staying payment is obtained in the Alaska Workers' Compensation Appeals Commission. If compensation awarded is not paid within 30 days of this decision, the person to whom the awarded compensation is payable may, within one year after the default of payment, request from the board a supplementary order declaring the amount of the default.

APPEAL PROCEDURES

This compensation order is a final decision. It becomes effective when filed in the office of the board unless proceedings to appeal it are instituted. Effective November 7, 2005 proceedings to appeal must be instituted in the Alaska Workers' Compensation Appeals Commission within 30 days of the filing of this decision and be brought by a party in interest against the boards and all other parties to the proceedings before the board. 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 due to the absence of any action on the reconsideration request, whichever is earlier. AS 23.30.127.

An appeal may be initiated by filing with the office of the Appeals Commission: 1) a signed notice of appeal specifying the board order appealed from and 2) a statement of the grounds upon which the appeal is taken. A cross-appeal may be initiated by filing with the office of the 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 ground upon which the cross-appeal is taken. AS 23.30.128.

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.

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of DAVID R. SHERMAN AND VALERIE J. SHERMAN d/b/a BIG GREEN LAWN MAINTENANCE, Employer / respondents; Case No. 700004492; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served on the parties on October 27, 2014.

Pamela Murray, Office Assistant