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 LIABILITY, AND ASSESSMENT OF A CIVIL PENALTY AGAINST,	)	INTERLOCUTORY DECISION AND ORDER
	)	AWCB Case No. 700007715
DIVISION FIVE, LLC,	)	AWCB Decision No. 21-0053
Respondent.	)	Filed with AWCB Anchorage, Alaska on June 24, 2021

The Division of Workers' Compensation, Special Investigations Unit's (SIU) March 25, 2021 petition to enforce discovery was heard in Anchorage, Alaska on June 9, 2021, a date selected on May 4, 2021. An April 19, 2021 hearing request gave rise to this hearing. Investigator Doug Love appeared and represented the SIU. Non-attorney Ed Brown appeared and testified but stated he was uncertain if he had authority to speak for or represent Division Five, LLC. (Employer). The record closed on June 9, 2021.

ISSUE

The SIU contends Employer has repeatedly and willfully refused to cooperate with discovery. It further contends that to date, Employer has twice been ordered to comply but it has still provided no discovery. The SIU seeks an order enforcing the prior orders compelling discovery.

Brown contends he is not sure he has authority to represent Employer, needs more time to obtain the requested discovery and does not understand the formal legal documents the SIU served on Employer. He refuses to release confidential information about employees and sub-contractors,

considers some SIU requests over-burdensome or not relevant, and will not provide discovery unless and until Employer has sufficient funds to obtain an attorney and get legal advice. However, Brown further contends Employer has a substantial account receivable that should be paid within 60 days from the hearing date. He implied that upon receiving those anticipated funds, Employer may hire an attorney and produce the discovery.

Is the SIU entitled to an order compelling Employer to provide discovery?

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts and factual conclusions:

1) On July 27, 2020, the SIU alleged Employer was uninsured for workplace injuries on August 9, 2018, and from October 20, 2019 to May 9, 2020. (Cover letter; Petition, July 27, 2020).

2) On July 27, 2020, the SIU sent Employer a discovery demand, which required it to provide requested documents within 30 days or risk a higher civil penalty. Summarized, the requested documents included: a payroll summary with employees' names for the relevant dates; timecards, timesheets, work schedules or other documents showing hours and days worked by each individual for the relevant dates; contracts or agreements and 1099 forms for any person Employer hired as an independent contractor for the relevant dates; a completed "Calculation Form" for each employee for the relevant periods; Employer's 2018 and 2019 income tax returns; and its profit and loss statements and balance sheets from August 9, 2018, through July 27, 2020. (Discovery Demand, July 27, 2020).

3) In addition to requesting supporting documentation, the SIU's discovery demand required, "Work hours and work days must be calculated for all employees who worked during the lapse period(s), regardless of current employment status or whether supporting documentation exists." Once Employer completed the form with raw data, the SIU directed it to calculate the "Total Hours Worked," and then divide that number by eight to derive the "Total Days Worked." The SIU's request required Employer to repeat this process for every employee who worked for it during the relevant periods. (Discovery Demand, July 27, 2020).

4) On September 2, 2020, the SIU stated it had received no discovery from Employer. Brown contended Employer had "suffered severely" during the pandemic and he was unable to take time off work to gather discovery. He contended the mayor had revoked the statute requiring businesses

to maintain workers' compensation insurance during the pandemic and consequently Brown did not intend to participate in the discovery process "as they do not believe there was any wrongdoing." No one on Employer's behalf disputed the SIU's contention that Employer failed to respond to its discovery request. (Prehearing Conference Summary, September 9, 2020).

5) On October 1, 2020, the SIU requested an order compelling Employer to respond to its July 27, 2020 discovery demands. It asserted, "Employer has failed or refused to submit discovery . . . which was due on 8/31/2020." (Petition, October 1, 2020).

6) On October 29, 2020, Brown stated Employer had recently returned to business, was busy after the pandemic shut-down and he was not willing to stop work to gather discovery. However, Brown stated he could submit it by November 30, 2020. Nonetheless, the SIU requested a ruling from the board's designee on the SIU's October 1, 2020 petition to compel discovery. The board's designee granted the petition and ordered Employer to provide the requested discovery by November 30, 2020. (Prehearing Conference Summary, November 4, 2020).

7) On December 15, 2020, the SIU contended Employer had still failed to submit discovery as promised, and ordered, by November 30, 2020. Invoking Civil Rule 36, the SIU advised Employer it had 30 days to respond to the SIU's "First Set of Requests for Admission to Employer." It advised that failure to respond "will be deemed an admission by the employer." The SIU again asked for responses to its July 27, 2020 requests. (Love letter, December 15, 2020).

8) On December 15, 2020, the SIU sent Employer 17 pages of formal discovery containing 33 requested admissions. The admissions seek information related to the SIU's petition and Employer's potential defenses. This request stated if Employer "fails to admit, deny or object to each statement of which an admission is requested, within thirty (30) days of service of the request for admission, the statement is deemed admitted." The responses were required to be made under oath and notarized. (Petitioner's First Set of Requests for Admission to Employer, December 15, 2020; observations).

9) On February 4, 2021, the SIU added additional lapses by Employer from August 2, 2020 to August 15, 2020, and from November 6, 2020 to the date Employer secured new coverage. The SIU also added to its petition a request for a stop work order, a penalty for violating a stop work order and a finding that Employer failed to report an injury. Brown contended there was no work-related injury. The board's designee granted the SIU's October 1, 2020 petition to compel responses to discovery. (Prehearing Conference Summary, February 12, 2021).

10) On February 9, 2021, the SIU stated Employer again failed to respond to discovery, and requested a designee's order compelling it to provide "answers or objections" to the SIU's December 15, 2020 Requests for Admission. (Petition, February 9, 2021).

11) On March 4, 2021, the board's designee granted the SIU's February 9, 2020 petition to compel answers or objections to the SIU's December 15, 2020 Requests for Admission. No one on Employer's behalf disputed that it had failed to respond to the Requests for Admission. (Prehearing Conference Summary, March 4, 2021).

12) On March 25, 2021, the SIU requested a Board order "enforcing the Board designee's 10/29/2020 and 03/04/2021 discovery orders." The SIU contended Employer had still failed or refused to comply with both orders. (Petition, March 25, 2021).

13) On May 4, 2021, the board's designee scheduled the SIU's March 25, 2021 petition for an in-person June 9, 2021 hearing; the SIU wanted a written-record hearing but Brown requested and obtained an in-person hearing. (Prehearing Conference Summary, May 10, 2021).

14) At hearing on June 9, 2021, the SIU reiterated arguments set forth in its hearing brief. It further contended the requested discovery was relevant to determine uninsured employee workdays, employee status and Employer's ability to pay a civil penalty. It sought an order enforcing the previous discovery orders entered at prehearing conferences by the Board's designee. The SIU had no problem with Employer redacting personal information including employees' birthdates and similar personally identifiable information in its discovery responses. It suggested an order requiring Employer to provide discovery within seven to 10 days, including complete responses to its formal Requests for Admission. The SIU was not aware of a statute, regulation or case law that authorized the use of formal Requests for Admission in a workers' compensation case. (Petitioner's Memorandum in Support of the March 25, 2021 Petition for a Board Order Enforcing the Designee's 10/29/2020 and 03/04/2021 Discovery Orders, May 25, 2021; record).

15) At hearing, Brown testified he was not sure he had authority to represent Employer. However, he admitted that in a previous appearance before the Board, he and his son "represented themselves," though he made a distinction between "appearing and representing." He suggested giving Employer time to see if it remained in business because its customers had stopped paying, it had no cash flow and could not pay its bills. Brown said when he received the SIU's discovery demand, he did not have time to prepare the discovery. Employer, who has a bookkeeper on payroll and uses QuickBooks, has a "huge" account receivable owed to it and Brown expects Employer will

receive payment within 60 days from the hearing date. Brown testified he does not understand legal language used in the SIU's documents. He said Employer needed legal advice and he was not sure if it is appropriate to give the SIU the information sought in the discovery demands. Brown questioned why the SIU needed the requested information but admitted lapses in Employer's workers' compensation insurance coverage, though he disputed the length of the alleged lapses. He implied the SIU's discovery demands were too burdensome and required too much time to complete during periods when Brown was trying to earn a living and pay his bills. He refused to provide names of Employer's contractors, or its employees' personally identifiable information. (Brown).

16) Employer's agency file includes no formal or informal answer to the SIU's July 27, 2020 petition, or to any of its subsequent discovery-related petitions. Furthermore, there is no formal or informal communication between the SIU and Employer asserting any legal defenses to the SIU's petitions. No one has entered an appearance on Employer's behalf. There is no evidence Employer has responded to any request for discovery from the SIU and Brown implied at hearing that he had not provided anything. (Agency file; Brown; record).

17) Formal discovery methods such as Requests for Admission filled with legal terminology may be confusing to a layperson. (Experience; judgment; observations).

18) Employer is not represented by an attorney. (Observations).

PRINCIPLES OF LAW

The board may base its decision not only on direct testimony, medical findings 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, 531 (Alaska 1987).

> **AS 23.30.005. Alaska Workers' Compensation Board.** . . .
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> (h) . . . The department may by regulation provide for procedural, discovery, or stipulated matters to be heard and decided by the commissioner or a hearing officer designated to represent the commissioner rather than a panel. If a procedural, discovery, or stipulated matter is heard and decided by the commissioner or a hearing officer designated to represent the commissioner, the action taken is considered the action of the full board on that aspect of the claim. Process and procedure under this chapter shall be as summary and simple as possible. The

> department, the board or a member of it may for the purposes of this chapter subpoena witnesses, administer or course to be administered oaths, and may examine or cause to have examined the parts of the books and records of the parties to a proceeding that relate to questions in dispute. . . .
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> **AS 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance. . . .**
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> (c) At a prehearing on discovery matters conducted by the board's designee, the board's designee shall direct parties to . . . produce documents . . . if the parties present . . . documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the board's designee or the board concerning discovery matters, the board may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. . . .
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> **AS 23.30.115. Attendance and fees of witnesses.** (a) . . . but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure. . . .

Ranney v. Whitewater Engineering, 122 P.3d 214, 218 (Alaska 2005) held that when a statute lists things or people to which it applies, statutory construction principles establish an inference that "all omissions should be understood as exclusions."

> **AS 23.30.135. Procedure before the board.** (a) In making an investigation or inquiry or conducting a hearing the board is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. . . .
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> **8 AAC 45.054. Discovery.** (a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. . . .
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> (b) Upon the petition of a party, the board will, in its discretion, order other means of discovery.
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> (d) A party who refuses to release information after having been properly served with a request for discovery may not introduce at a hearing the evidence which is the subject of the discovery request.

> (e) If an employer petitioned for failure to insure for workers' compensation liability fails to comply with the division's discovery demand not later than 30 days after service, the division may petition the board for an order compelling the employer to provide the discovery. If the employer fails to comply with an order by the board or the board's designee concerning discovery matters, the board may impose appropriate sanctions, including dismissing the employer's defenses and accepting the division's proffered evidence regarding estimated uninsured employee workdays and workers' compensation insurance premiums the employer would have paid had it been insured.

A party who made no effort to comply with discovery orders is not entitled to special allowances based on *pro se* status. *DeNardo v. ABC, Inc. RV Motorhomes*, 51 P.3d 919 (Alaska 2002). Parties have a constitutional right to defend against claims or petitions. *Granus v. Fell*, AWCB Decision No. 99-0016 (January 20, 1999). A thorough investigation allows parties to verify information provided by the opposing party, effectively litigate disputed issues and detect fraud. *Id*. Information inadmissible at a civil trial may be discoverable in a workers' compensation case if it is reasonably calculated to lead to relevant facts. *Id*. Although *Granus* dealt with an injured worker's claim for benefits, its precepts apply to all cases.

> **8 AAC 45.065. Prehearings.** (a) . . . At the prehearing, the board or designee will exercise discretion in making determinations on
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> (3) accepting stipulations, requests for admissions of fact, or other documents that may avoid presenting unnecessary evidence at the hearing;
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> (10) discovery requests; . . . .

> **8 AAC 45.120. Evidence**. . . .
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> (e) Technical rules relating to evidence and witnesses do not apply in board proceedings, except as provided in this chapter. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but it is not sufficient in itself to support a finding of fact unless it would be admissible over objection in civil actions.
> . . .

Brinkley v. Kiewit-Groves, AWCB Decision No. 86-0179 (July 22, 1986), denied an injured worker's formal discovery requests not otherwise provided for in the Act and noted the "larger question" concerned the necessity for the Board to adopt formal discovery procedures patterned after the Alaska Rules of Civil Procedure. Citing the "summary and simple" mandate in AS 23.30.005(h), *Brinkley* took "the legislature's direction seriously" and perceived "an increase in procedural formalities being injected into the workers' compensation system by the parties." *Brinkley* found this trend "ill-advised" and contrary to the Act. It also noted, "The Board is directed by the Act to apply the Rules of Civil Procedure as they apply to depositions and interrogatories." *Brinkley* declined "to adopt these Rules as they apply to other means of discovery." It also cited various ways to obtain discovery including answers, and prehearing conferences during which issues are simplified and parties can obtain stipulations or admissions. *Brinkley* found these discovery procedures were "generally effective." Most notably, "In our view, petitions for discovery must be supported by an explanation of what informal means were first attempted to obtain the information. Only then will the Board consider the relevance of the requested information and the method of discovery to be authorized."

Leineke v. Dresser Industries-Atlas, AWCB Decision No. 88-0049 (March 9, 1988), denied on relevance grounds an injured worker's formal discovery request, which required a corporation to appoint a person to be deposed. *Leineke* noted the Board does not "model our proceedings after the Rules of Civil Procedure," citing AS 23.30.005(h), AS 23.30.115 and AS 23.30.135, which provide statutory direction for discovery in workers' compensation cases.

The Alaska Supreme Court in *Bohlmann v. Alaska Construction & Engineering*, 205 P.2d 316, 320 (Alaska 2009) considered the board's duty to advise unrepresented claimants in workers' compensation cases how to preserve their claims:

> The board, as an adjudicative body with a duty to assist claimants, has a duty similar to that of courts to assist unrepresented litigants.

> **Rule 36. Requests for Admission.** (a) **Request for Admission**. A party may serve upon any other party a written request for the admission . . . of the truth of any matters . . . set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described

> in the request. . . . Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may . . . deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. . . .
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> (b) **Effect of Admission**. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. . . . [T]he court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

ANALYSIS

Is the SIU entitled to an order compelling Employer to provide discovery?

The agency file contains no evidence Employer provided discovery even after being ordered to do so twice. Statutes and regulations provide for discovery in these cases. AS 23.30.005(h). One legislative mandate is to make legal process and procedure including discovery under the Act as "summary and simple as possible." (*Id*.). Designees at prehearing conferences may direct parties to

produce relevant documents. 8 AAC 45.065(a)(3), (10). If a party refuses to comply with a designee's order concerning discovery, sanctions may be imposed in addition to "forfeiture of benefits, including dismissing the party's claim, petition or defense." AS 23.30.108(c).

This case does not involve an injured worker's claim; consequently, there is no "benefit" for Employer to forfeit. Employer has no "claim," and has not filed an answer asserting any defenses; thus, there are no claims or defenses to dismiss either. At hearing, Brown stated he was not sure if he had authority to represent Employer; no one has entered an appearance on its behalf. Nevertheless, Brown testified at hearing and implied the SIU's discovery demands were, in his view, unduly burdensome and some were irrelevant. The only issue decided here is the SIU's March 25, 2021 request for an order enforcing the "designee's 10/29/2020 and 03/04/2021 discovery orders." Those orders required Employer to provide "answers or objections" to the SIU's initial discovery demand and its subsequent Requests for Admission. Civil Rule 36(a), (b).

The Act expressly provides for parties to take depositions and use interrogatories according to the Rules of Civil Procedure; no other formal discovery is authorized. AS 23.30.115(a). AS 23.30.115(a) lists formal discovery applicable to cases arising under the Act. Statutory construction rules generally establish an inference that "all omissions should be understood as exclusions." *Ranney*. In other words, parties may not add other formal discovery means to those listed in the applicable statute. Hearing panels are not bound by common law or statutory rules of evidence or formal procedure except as provided in the Act. 8 AAC 45.120(e). Another legislative mandate is for panels to conduct investigations, inquiries and hearings so all parties' rights may be best ascertained. AS 23.30.135(a). Informal discovery is preferred and may be accomplished through letters, emails, answers to claims or petitions, and oral requests at prehearing conferences or hearings, which result in stipulations and factual admissions. *Brinkley*; *Leineke*; 8 AAC 45.065(a)(3), (10). The panel may order "other means of discovery," if informal means fail, but only upon a party's prior petition. 8 AAC 45.054(b).

Brown's stated timidity arising from formal discovery is understandable as Requests for Admission are daunting. *Rogers & Babler*. The rules expressly allowed the SIU to send Employer a "discovery demand," which may also be intimidating. 8 AAC 45.054(e). However, the SIU did not

petition for permission to use Requests for Admission in this case before sending them to Employer. Nevertheless, Brown made it clear at prehearing conferences that he was either not going to produce the requested information, or did not produce it after Brown said he would. It is immaterial for this decision whether or not Brown has authority to speak for or represent Employer; he testified as a witness. Neither Employer, nor anyone on its behalf has provided the SIU's discovery; yet someone has authority to provide it and this decision and order is directed to that person. Given Employer's three failures or refusals to respond to the SIU's discovery requests and the designee's orders, this decision will treat the SIU's March 25, 2021 petition as a request seeking authority to use "other means of discovery" to compel Employer's responses. AS 23.30.135(a); 8 AAC 45.054(b).

The SIU's initial discovery demand seeks information related to its petition because it will likely lead to relevant, admissible evidence at hearing. *Granus*. The SIU has a right to obtain from Employer a payroll summary with employees' names for the relevant dates; timecards, timesheets, work schedules or other documents showing hours and days worked by each employee for the relevant dates; contracts or agreements and 1099 forms for any person Employer hired as an independent contractor for the relevant dates; Employer's 2018 and 2019 income tax returns; and its profit and loss statements and balance sheets from August 9, 2018 through July 27, 2020. Employee payroll, timecards and similar documents will allow the SIU to calculate uninsured employee work days, which is relevant to a civil penalty calculation. Contracts and 1099 forms for independent contractors are relevant for the SIU to determine if contractors were actually "employees" under the Act and thus includable in uninsured employee workdays. *Granus*. Employer's income tax and profit and loss statements are relevant because they will help the SIU and panel determine whether or not Employer has financial resources to pay a civil penalty, which must be taken into account. To this extent, the SIU's petition will be granted and Employer will be ordered to provide this information. It may redact its employees' last names, birthdates, Social Security numbers and similar personally identifiable information to protect confidentiality.

However, the SIU's initial discovery demand also required Employer to provide a completed "Calculation Form" for each employee for the relevant periods. Nothing in the discovery rules requires a party to "create" evidence; the rules only require a party to produce evidence that already

exists. The SIU's petition on this point will be denied and Employer need not calculate uninsured employee workdays for each employee for the relevant periods. Once Employer provides raw data, the SIU can perform these calculations.
Requests for Admission are "other means of discovery" that may be authorized, but they have not been authorized in any previous decision of which this panel is aware. 8 AAC 45.054(b); *Brinkley*; *Leineke*. Regardless of his role with Employer, Brown made it clear he does not intend to produce the requested discovery, no matter how it was presented; given Brown's hearing testimony, it is likely he would not have responded to discovery questions had the SIU taken his deposition or asked each question at the hearing. 8 AAC 45.054(a). Employer filed no answers to the SIU's petitions and no responses to its discovery requests; it provided no admissions or stipulations to relevant facts at prehearing conferences. 8 AAC 45.065(a)(3), (10). It made no effort to provide informal discovery and is thus not entitled to special considerations simply because it has no attorney. *DeNardo*.

Therefore, Employer will be ordered to provide "answers or objections" to the SIU's discovery demand and to its Requests for Admission. However, since the SIU did not seek prior approval to use Requests for Admission, any prior order requiring Employer to respond to the Requests for Admission was premature. This decision and order is the first time Employer will be ordered to respond to them as a valid, approved request. Its responses may be "admit" or "deny," or it may provide objections to the 33 requested admissions. As a currently "unrepresented litigant," Employer is advised that if it fails or refuses to respond to the Requests for Admission as directed below in this decision and order, the requests will be deemed admitted. Civil Rule 36(b); *Bohlmann*.

A party that refuses to release information after having been "properly" served with a discovery request is prohibited from introducing at a hearing evidence subject of the request. 8 AAC 45.054(d). In this unique case where the SIU served unauthorized and thus "improper" discovery without first petitioning for approval, Employer will be given one more opportunity to provide "answers or objections" to the SIU's Rule 36 discovery. If Employer refuses to provide "answers or objections" to the SIU's initial discovery demand and Requests for Admission, it will be prohibited

from offering any evidence at hearing, subject of these discovery requests. 8 AAC 45.054(d); *Bohlmann*.

Employer is further advised that because it failed to comply with the designee's order "concerning discovery matters," as to the SIU's initial discovery demand, the panel at hearing may accept the SIU's evidence regarding estimated uninsured employee work days and the workers' compensation insurance premiums Employer would have paid had it been insured during the lapsed periods. *Bohlmann*; 8 AAC 45.054(e).

Brown testified Employer expected a large payment from a project within 60 days of the June 9, 2021 hearing. With these funds, Brown said Employer may seek legal advice concerning the SIU's discovery requests. Thus, Employer will be ordered to provide "answers or objections" to the SIU's initial discovery demand and its Requests for Admission by no later than August 9, 2021.

CONCLUSION OF LAW

The SIU is entitled to an order compelling Employer to provide discovery.

ORDER

1) The SIU's March 25, 2021 petition is granted in part and denied in part as stated below.
2) With one exception, Employer is ordered to provide responses to the SIU's initial July 27, 2020 discovery demand by no later than August 9, 2021.
3) The exception to order (2) is that the SIU's request for Employer to complete a "Calculation Form" for each employee for the relevant periods is denied.
4) Employer is ordered to provide "answers or objections" to the SIU's December 15, 2020 Requests for Admission by no later than August 9, 2021.

Dated in Anchorage, Alaska on June 24, 2021.

ALASKA WORKERS' COMPENSATION BOARD

/s/

William Soule, Designated Chair

/s/
Sara Faulkner, Member

/s/
Pam Cline, Member

PETITION FOR REVIEW

A party may seek review of an interlocutory or other non-final Board decision and order by filing a petition for review with the Alaska Workers' Compensation Appeals Commission. Unless a petition for reconsideration of a Board decision or order is timely filed with the board under AS 44.62.540, a petition for review must be filed with the commission within 15 days after service of the board's decision and order. If a petition for reconsideration is timely filed with the board, a petition for review must be filed within 15 days after the board serves the reconsideration decision, or within 15 days from date the petition for reconsideration is considered denied absent Board action, whichever is earlier.

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 Interlocutory Decision and Order in the matter of Division Five, LLC; Employer / respondent; Case No. 700007715; dated and filed in the Alaska Workers' Compensation Board's office in Anchorage, Alaska, and served upon the parties by certified U.S. Mail, postage prepaid, on June 24, 2021 .

/s/
Nenita Farmer, Office Assistant