

# 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. 700006172  
OF A CIVIL PENALTY AGAINST, )  
RIAD SICILY'S PIZZA, LLC, ) AWCB Decision No. 21-0116  
Respondent(s). ) Filed with AWCB Fairbanks, Alaska  
on December 7, 2021  
)

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The Division of Workers' Compensation, Special Investigations Unit's October 16, 2017; October 9, 2018; May 2, 2019; and October 6, 2020 petitions seeking findings of failure to insure for workers' compensation liability and assessments of civil penalties were heard in Fairbanks, Alaska on June 17, 2021, a date selected on April 21, 2021. A March 19, 2021, hearing request gave rise to the hearing. Investigator Wayne Harger represented the Alaska Division of Workers' Compensation, Special Investigations Unit (Division) and testified on its behalf. Riad Makhtoub did not appear on behalf of Raid Sicily's Pizza, LLC, or himself, and the hearing proceeded in his absence. The hearing record was reopened on August 31, 2021 to obtain additional briefing, clarification of evidence and additional evidence from the parties. The hearing resumed and was concluded on November 4, 2021. Mr. Harger represented the Division and testified on its behalf. Riad Makhtoub appeared and testified on his own behalf and on behalf of Riad Sicily's Pizza, LLC. Mr. Makhtoub's bookkeeper, Julie Byman, also testified on behalf of Riad Sicily's Pizza, LLC, and Mr. Makhtoub. The record closed at the hearing's conclusion on November 4, 2021.

ISSUE

The Division contends Riad Sicily's Pizza, LLC failed to insure for workers' compensation liability, as required by law, for four time periods, totaling 1636 calendar days. It further contends the State of Alaska Department of Commerce, Community and Economic Development involuntarily dissolved Riad Sicily's Pizza, LLC, and its sole member, Riad Makhtoub, continued business operations without workers' compensation insurance for an additional 70 calendar days. The Division contends at least 10 aggravating factors apply to Riad Sicily's Pizza, LLC under the applicable regulation, and at least two aggravating factors apply to Riad Makhtoub. It seeks a civil penalty of \$650 per day multiplied by 5,237 uninsured employee workdays, for a total civil penalty of \$3,404,050 against Riad Sicily's Pizza, LLC; and a civil penalty of \$26 per day multiplied by 107 uninsured employee workdays, for a total civil penalty of \$2,782 against Riad Makhtoub.

Riad Makhtoub contends he could not afford to pay workers' compensation insurance premiums because he was financially "behind on too many things." He cited increased costs for ingredients as a problem and contended it is difficult for his business to just break even. Mr. Makhtoub contends he has supported his business operations through loans, and when he does not have enough money to pay bills, he thinks about closing his business, but he is reluctant to do so because he would lose his initial investment in the business. He submitted personal tax returns along with profit and loss statements to support his positions.

**Should Riad Sicily's Pizza, LLC, and Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, be assessed civil penalties for failure to insure for workers' compensation liability?**

FINDINGS OF FACT

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

1) On December 15, 2014, Riad Sicily's Pizza, LLC, was organized as a domestic limited liability company. (Articles of Organization, December 15, 2014; Certificate of Organization, December 15, 2014). Riad Makhtoub was the only member and 100 percent owner. (Initial Biennial Report, December 15, 2014). On that same date, the State of Alaska Department of Commerce, Community and Economic Development also issued Riad Sicily's Pizza a business license to conduct business in the State of Alaska. (Business License Details, undated).

- 2) Riad Sicily's Pizza, LLC, operates a year-round fast-food restaurant that includes delivery services in Fairbanks, Alaska. Riad Sicily's Pizza, LLC, is a franchisee of Sicily's Pizza. (Harger).
- 3) Since opening for business, Riad Sicily's Pizza, LLC, has utilized between four to 12 employees each month. (*Id.*).
- 4) On August 24, 2017, during an onsite visit, the Division notified Riad Sicily's Pizza, LLC, in person that it was in violation of AS 23.30.075. (*Id.*).
- 5) On October 13, 2017, Alaska National Insurance Company issued Riad Sicily's Pizza, LLC, Policy Number 17HWW75086, with an effective date of August 28, 2017. This policy was cancelled by the insurer, with an effective date of April 13, 2018, for "Failure to Comply with the Terms and Conditions or Audit Failure," and later reinstated with an effective date of April 25, 2018. The policy was then cancelled again, with an effective date of May 23, 2018, for "Nonpayment of Premium." (National Council on Compensation Insurance (NCCI) Policy Information Report 17HWW75086, May 25, 2021).
- 6) On October 16, 2017, the Division petitioned for a finding of failure to insure for workers' compensation liability and assessment of civil penalty against Riad Sicily's Pizza, LLC. It contended the company's insurance lapsed on December 15, 2014 and was not reinstated until August 28, 2017, a lapse of 987 days. The Division also requested Employer produce discovery. (Division's Petition, October 16, 2017).
- 7) At a November 8, 2017 prehearing conference, Mr. Harger contended Employer had not provided his requested discovery. Mr. Makhtoub provided the Division with the email address and phone number of his bookkeeper and, although he did not dispute the facts alleged by Mr. Harger, he contended he was not going to pay any penalty. (Prehearing Conference Summary, November 8, 2017). On that same date, Mr. Makhtoub's bookkeeper, Julie Byman, delivered employee payroll reports in response to the Division's October 16, 2017, discovery request. (Byman email, November 8, 2017).
- 8) On October 9, 2018, the Division amended its October 16, 2017 petition to include additional lapses from April 13, 2018 to April 25, 2018, and from May 23, 2018 to August 3, 2018, periods of 13 days and 72 days, respectively. It also sought discovery. (Division's Amended Petition, October 9, 2018; Certified Mail Envelope, October 9, 2018).
- 9) The number of calendar days between the cancellation of Policy Number 17HWW75086 on April 13, 2018, to the date of its reinstatement on April 25, 2018, is 12. (Observations).

10) On September 11, 2018, State Farm Fire and Casualty Company issued Riad's Sicily's Pizza, LLC, Policy Number 92BHR1099, with an effective date of August 3, 2018. This policy was later cancelled by the insurer, with an effective date of February 6, 2019, for "Nonpayment of Premium." (NCCI Policy Information Report 92BHR1099, undated).

11) On May 30, 2019, an employee filed a workers' compensation claim against Riad Sicily's Pizza, LLC, contending she was injured in a motor vehicle collision while delivering pizzas. (Workers' Compensation Claim, Case No. 201906346, May 30, 2019).

12) On May 2, 2019, the Division amended its October 16, 2017 petition against Riad Sicily's Pizza, LLC, to include an additional lapse from February 6, 2019, and continuing. It also sought discovery. (Division's Amended Petition, May 2, 2019).

13) On June 3, 2019, Mr. Makhtoub failed to appear for a properly noticed prehearing conference. (Prehearing Conference Summary, June 3, 2019; Prehearing Conference Notice, May 3, 2019; observations).

14) On August 25, 2020, the State of Alaska Department of Commerce, Community and Economic Development involuntarily dissolved Riad Sicily's Pizza, LLC. (Certificate of Involuntary Dissolution, August 25, 2020). Riad Makhtoub was the only member and 100 percent owner of Riad Sicily's Pizza, LLC, during the period of its existence. (Biennial Reports, December 15, 2014; May 3, 2016; June 28, 2018).

15) Mr. Makhtoub continued to conduct business as Riad Sicily's Pizza, LLC, following its August 25, 2020, involuntary dissolution. (National Council on Compensation Insurance (NCCI) Federal Employer Identification Number (FEIN) report, undated; NCCI Policy Information Report 92BJX9834, undated).

16) On October 6, 2020, the Division petitioned for a finding of failure to insure for workers' compensation liability, issuance of a stop order, and assessments of civil penalties against Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC. It contended Employer's insurance lapsed on August 25, 2020 and was continuing. The Division also sought discovery from Mr. Makhtoub. (Division's petition, October 6, 2017).

17) On October 26, 2020, Mr. Makhtoub failed to appear for a properly noticed prehearing conference. (Prehearing Conference Summary, October 26, 2020; observations).

18) On December 8, 2020, State Farm Fire and Casualty Company issued Riad Sicily's Pizza, LLC, Policy Number 92BJX9834, with an effective date of November 3, 2020 to November 3,

2021. The estimated annual premium is \$5,385. (NCCI Policy Information Report 92BJX9834, undated).

19) On December 31, 2020, Riad Sicily's Pizza, LLC's business license expired and there is no record of renewal. Its business license also previously lapsed from January 1, 2017 to June 27, 2018 and from January 1, 2019 to August 27, 2019. (License Details, undated). As of June 10, 2021, there was no record the State of Alaska Department of Commerce, Community and Economic Development had issued Mr. Makhtoub a business license to conduct business in his personal capacity or as Riad Sicily's Pizza, LLC. (Business License Details, undated; Harger).

20) On January 14, 2021, Mr. Makhtoub's bookkeeper, Julie Byman, delivered employee payroll reports in response to the Division's October 9, 2018 and May 2, 2019 discovery requests for Riad Sicily's Pizza, LLC, as well as payroll reports in response to the Division's October 6, 2020 discovery request for Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC. (Payroll Summaries, January 14, 2021; Harger).

21) On January 13, 2021, Mr. Makhtoub was joined as a party in the administrative proceedings against Riad Sicily's Pizza, LLC, and the administrative cases against Riad Sicily's Pizza, LLC, and Riad Makhtoub were also joined. (Prehearing Conference Summary, January 13, 2021).

22) On March 9, 2021, the Division requested a hearing on its October 16, 2017, October 9, 2018, May 2, 2019 and October 6, 2020 petitions. (Affidavit of Readiness for Hearing, March 9, 2021).

23) On April 21, 2021, Mr. Makhtoub failed to appear for a properly noticed prehearing conference. The Division's October 16, 2017, October 9, 2018, May 2, 2019, and October 6, 2020 petitions were scheduled for hearing on June 17, 2021. (Prehearing Conference Summary, April 21, 2021; observations).

24) On May 5, 2021, the Division amended its October 6, 2020 petition against Riad Makhtoub d/b/a Sicily's Pizza, LLC, alleging another lapse beginning on May 4, 2021. (Amended Petition, May 5, 2021). This petition was not an issue for the June 17, 2021 hearing. (Prehearing Conference Summary, April 21, 2021).

25) The Division contends Riad Sicily's Pizza, LLC, failed to insure for workers' compensation liability during the following time periods: from December 15, 2014 to August 28, 2017, a period of 987 calendar days; from April 13, 2018 to April 25, 2018, a period of 13 calendar days; from May 23, 2018 to August 3, 2018, a period of 72 calendar days; and from February 6, 2019 to the date of

its involuntary dissolution, a period of 565 calendar days. (Division's Hearing Brief, June 10, 2021; SIU Worksheet for Riad Sicily's Pizza, LLC).

26) The number of calendar days between the cancellation of Policy Number 92BHR1099 on February 6, 2019, to the date of Riad Sicily's Pizza, LLC's involuntary dissolution on August 25, 2020, is 566. (Observations).

27) The Division contends 10 aggravating factors under the applicable regulation apply to Riad Sicily's Pizza, LLC, including: failure to obtain workers' compensation insurance within 10 days after the Division's notification of a lack of workers' compensation insurance; several instances of failure to maintain workers' compensation insurance after previous notification by the Division of a lack of coverage; two instances of a violation that exceeds 180 calendar days; two instances of failure to comply with the Division's discovery initial discovery demand within 30 days of the demand; a history of injury sustained by an employee while uninsured; and cancellation of a workers' compensation insurance policy due to failure to comply with the carrier's requests or procedures. (Division's Hearing Brief, June 10, 2021).

28) The Division contends Riad Makhtoub failed to insure for workers' compensation liability from August 25, 2020 to November 3, 2020, a period of 70 calendar days. (Division's Hearing Brief, June 10, 2021; SIU Worksheet for Riad Sicily's Pizza, LLC).

29) The Division contends two aggravating factors under the applicable regulation attach to Riad Makhtoub, including: failure to obtain workers' compensation insurance within 10 days after the Division's notification of a lack of workers' compensation insurance; and failure to comply with the Division's discovery initial discovery demand within 30 days of the demand. (Division's Hearing Brief, June 10, 2021).

30) On May 27, 2021, the Division provided three payroll summaries in support of its penalty calculation worksheet for Riad Sicily's Pizza, LLC. The payroll summaries show employee hours worked for the periods of December 14, 2014 through August 28, 2017; May 23, 2018 through August 3, 2018; and February 19, 2019 through August 24, 2020. (Division's Hearing Evidence, May 27, 2021). The Division did not provide a payroll summary evidencing the number of employee hours worked during the period of April 13, 2018 to April 25, 2018. (Observations). The three payroll summaries provided show Riad Sicily's Pizza, LLC, utilized a total of 28,882.58 hours of employee labor from December 14, 2014 through August 28, 2017, which equates to 3,610 employee workdays; a total of 2,330.12 hours, of employee work hours from May 23, 2018 through

August 3, 2018, which equates to 291 employee workdays; and a total of 10,130.45 hours of employee labor from February 19, 2019 through August 24, 2020, which equates to 1,266 employee workdays. (*Id.*; Division's Supplemental Calculation Worksheet, September 28, 2021). The Division also provided a payroll summary to support its penalty calculation worksheet for Riad Makhtoub, which shows Riad Makhtoub utilized a total of 859 hours of employee labor from August 25, 2020 through November 3, 2020, which equates to 107 employee workdays. (Division's Hearing Evidence, May 27, 2021; Division's Calculation Worksheet, undated).

31) On June 17, 2021, Mr. Makhtoub failed to appear for the properly noticed hearing on the Division's petitions and the hearing proceeded in his absence. (Record; observations). Mr. Harger testified, to the best of his knowledge, the allegations contained in the Division's hearing brief were true and correct. He further testified, even after the Department of Commerce involuntarily dissolved Riad Sicily's Pizza, LLC, Mr. Makhtoub continues to operate as an LLC to this very day. He opened the case against Riad Sicily's Pizza, LLC, on August 24, 2017, and the case is still not resolved due to Mr. Makhtoub's noncooperation. Mr. Makhtoub's failure to appear for this hearing is representative of how he does business. In Mr. Harger's 10-years' experience as an SIU investigator, he has investigated over 500 cases of employers who failed to insure for workers' compensation liability. He characterized the egregiousness of Mr. Makhtoub's cases as a "9 ½ out of 10" and added, even after Mr. Makhtoub knew he had an uninsured injury claim, he still did not obtain workers' compensation insurance for over 500 days. The number of proposed aggravating factors in Mr. Makhtoub's cases are the highest Mr. Harger has ever encountered as an investigator. Mr. Harger does not have any specific information regarding Mr. Makhtoub's ability to pay a civil penalty. The Division is not seeking a stop order at this hearing because Mr. Makhtoub is currently insured. (Harger).

32) At the June 17, 2021 hearing, the Division was seeking a civil penalty "on the higher side" of the penalty range and expressly requested a penalty amount of \$650 per uninsured employee workday. In support of its request for a higher penalty amount, the Division contended Mr. Makhtoub knowingly operated his business utilizing employee labor without workers' compensation insurance for extended time periods; Mr. Makhtoub's lack of cooperation with the Division is evidenced by the prolonged time periods it took him to provide employee payroll records; Mr. Makhtoub failed to take action to prevent three lapses of workers' compensation insurance and his lack of action resulted in an uninsured injury claim being filed by one of his

employees; Mr. Makhtoub gained a sizable unfair business advantage by not obtaining workers' compensation insurance as required by law; and Mr. Makhtoub continued to conduct business as Riad Sicily's Pizza, LLC in violation of the State's dissolution order. (Division's Hearing Brief, June 10, 2021). The Division was also seeking a civil penalty of \$26 per uninsured workday against Riad Makhtoub, which it contended was slightly more than the regulatory minimum penalty of two times the pro-rated premium for Mr. Makhtoub's lapse period. Unlike the penalty amount sought for Riad Sicily's Pizza, LLC, the Division did not provide a rationale for the penalty amount sought against Riad Makhtoub. (*Id.*; observations).

33) Based on the panel's prior experiences with Mr. Harger, his presentation at this hearing, and his testimony, which was consistent with the documentary evidence, he is credible. (Experience, judgment, observations, and inferences drawn therefrom).

34) On August 31, 2021, the hearing record was reopened to address evidentiary issues raised by the Division's documentation and to afford Mr. Makhtoub an additional opportunity to present evidence of mitigating factors and his ability to pay an assessed penalty. A September 15, 2021, prehearing conference was scheduled. (Vollmer letter, August 31, 2021).

35) On September 15, 2021, a prehearing conference was held to "obtain clarification of the Division's hearing evidence, to elicit the parties' positions on the hearing panel's evidentiary concerns and to ensure the hearing panel is afforded an opportunity to consider Employer's ability to pay when fashioning a penalty." A detailed discussion ensued concerning the Division's documentary evidence:

Discussions between Mr. Harger and the designee confirmed, though the Division is seeking penalties for four lapse periods, payroll summaries evidencing employee work hours were only provided for three of the four lapse periods. Mr. Harger also clarified, employee work hours for the missing payroll summary were not included in the calculation of employee work hours on the Division's calculation worksheet.

Mr. Harger also confirmed, one of the payroll summaries provided only includes employee work hours for a portion of the lapse period.

....

The designee noted that two of the three payroll summaries filed as evidence included employee work hours "through" the date when Employer again became insured, thus including an extra day of employee work hours in the lapse period. He also pointed out, since the payroll reports are only summaries setting forth the



total number of employee work hours for the report period, he could not manually subtract out a single day's work hours. Consequently, the designee explained, including an extra day of employee work hours in calculating a penalty from a day where Employer was insured would unfairly penalize Employer.

The participants discussed possible ways to address the evidentiary infirmity. Mr. Harger suggested, since a payroll summary for one of the lapse periods was not filed at all, and since the payroll summary from another lapse period did not cover the entirety of the lapse period, the number of days of employee work hours missing in evidence during lapse periods far exceed the two "extra" days of employee work hours incorrectly included in the summaries, so Employer would not be unfairly penalized by utilizing the payroll summaries filed. Mr. Makhtoub agreed with this rationale and stipulated to calculating penalties based on the payroll summaries filed as evidence.

The designee also pointed out, by not appearing for June 17, 2021 hearing, Employer may have incurred a tenth [sic] aggravating factor, which would potentially place the penalty calculation under 8 AAC 45.176(a)(6). Since this subsection of the regulation relies exclusively on employee work days, versus other subsections, which can either rely on employee work days or multiples of the amount of premium an uninsured employer should have paid had they been insured, an inability to accurately calculate employee work hours would prevent any penalty assessment under 8 AAC 45.176(a)(6). Therefore, the designee explained, prior to the parties' stipulation above, he had intended to ascertain whether the Division would have objected to a penalty calculation under (a)(5) of the regulation instead of (a)(6). Ms. Gerharz contended the Division would agree to utilizing subsection (a)(5) instead of (a)(6), but the designee thought the issue was now moot.

The designee also addressed Mr. Makhtoub's absence on the initial hearing date and reminded him his business was potentially facing a multimillion-dollar penalty assessment under the applicable regulation. He explained a hearing panel has authority to order a payment plan or to suspend a portion of a penalty but given Mr. Makhtoub's absence on the initial hearing date, the panel had no rational basis to do so. The designee encouraged Mr. Makhtoub to appear on the next hearing date, along with his bookkeeper, and testify regarding his ability to pay an assessed penalty. He also encouraged Mr. Makhtoub to submit documentary evidence such as tax returns and profit and loss statements to assist the panel in fashioning an appropriate civil penalty. Mr. Makhtoub contended he was planning on attending the original hearing but overslept, and he would appear on the next hearing date, along with his bookkeeper.

Mr. Harger also clarified the Division's position regarding any penalty suspension:

Mr. Harger contended there should be conditions attached to the amount any penalty suspended and proposed, if Employer remains continuously insured for one year, a certain amount of the suspended penalty could be dismissed, and if Employer remains continuously insured for another year, an additional amount of the suspended penalty could be dismissed. He contended, structuring orders in such a way would provide a financial incentive for Employer to maintain workers' compensation insurance.

The parties agreed to continue the hearing on November 4, 2021. (Prehearing Conference Summary, September 15, 2021).

36) On October 15, 2021, the Division provided a payroll summary for the period of April 13, 2018 through April 25, 2018, which it had omitted from its May 27, 2021 evidentiary filing. (Division's Supplemental Hearing Evidence, October 13, 2021). The summary shows Riad Sicily's Pizza, LLC utilized 550.63 hours of employee labor during that period, which equates to 68.83 employee workdays. (*Id.*; Division's Supplemental Calculation Worksheet, September 28, 2021).

37) On October 22, 2021, Mr. Makhtoub provided federal tax returns, including profit and loss statements for Riad Sicily's Pizza, LLC, from 2015 to 2020, as evidence. His profit and loss statements show an \$82,227 loss on \$636,022 in sales for 2020; a \$90,506 loss on \$622,930 in sales for 2019; a \$12,540 profit on \$900,567 in sales for 2018; an \$84,670 loss on \$612,541 in sales for 2017; an \$85,707 profit on \$685,860 in sales for 2016; and a \$50,167 loss on \$769,286 in sales for 2015. Mr. Makhtoub's 1040s also show he had negative adjusted gross incomes and zero taxable incomes for each of the past six years, save one. (Makhtoub's evidence, October 22, 2021). All six years' tax returns bear the same signature date of May 3, 2021. (Observations). At hearing, Mr. Makhtoub's bookkeeper explained Mr. Makhtoub had not previously filed federal income taxes for those years. (Record).

38) On November 4, 2021, Riad Makhtoub testified he did not have money to cover workers' compensation insurance premiums. However, he does not just have problems paying workers' compensation insurance premiums, he is also financially "behind on too many things." Mr. Makhtoub cited increased costs for ingredients as a problem and stated he needs to do over \$800,000 in sales just to break even. He has six or seven loans and recently borrowed another \$200,000 to "buck up" his business, and that is the only reason he is "fine" right now. Mr. Makhtoub does not want to borrow anymore because he is not getting ahead if he is borrowing money. When there is no money to pay bills, Mr. Makhtoub thinks about closing the business, but he invested \$485,000 of his own money to start the business. If he closes, he will lose his

investment. If he continues with the business, it will be so he can recoup his investment. Mr. Makhtoub does not want a penalty to “mess with” his credit or his personal life. He wants to be clear of any penalty if he gets rid of his store. Mr. Makhtoub is here today to “clear up this whole mess.” If he cannot clear it up, he will give the panel the keys to his business. (Makhtoub).

39) Mr. Makhtoub thinks he sees a way where he can maintain workers’ compensation insurance moving forward. If ordered to pay a civil penalty, he thinks he can pay \$300 per month towards a civil penalty. Mr. Makhtoub explained, he spends about \$10 per day on cigarettes, and he could quit smoking, which would enable him to pay \$300 per month toward a penalty. He will keep paying a penalty as long as the business is open, but if he closes, he does not want to be personally responsible for penalty payments. (*Id.*).

40) On November 4, 2021, Mr. Makhtoub’s bookkeeper, Julie Byman, testified her duties involve picking up timecards, receipts and bills that need to be paid from Mr. Makhtoub, then printing checks for Mr. Makhtoub to sign once he approves the payments. She does not have authority to sign business checks for Mr. Makhtoub. She and Mr. Makhtoub have investigated obtaining COVID relief funds, but Restaurant Revitalization funds effectively require Mr. Makhtoub to close his doors, and since he did not close during the pandemic, they are ineligible for the funding. Recently, she and Mr. Makhtoub have been busy trying to get caught up on past-due obligations. Ms. Byman filed the necessary document to renew Mr. Makhtoub’s business license about two months ago and she is now waiting to hear back from the State. Ms. Byman “thinks” she has also addressed Mr. Makhtoub’s involuntarily dissolved LLC. (Byman).

41) At hearing, both Mr. Makhtoub and Ms. Byman agreed the lapse periods alleged in the Division’s petitions were correct. Neither disputed the factual bases for the alleged aggravating factors. (Record).

42) At hearing, Mr. Harger testified, to the best of his knowledge, the allegations contained in the Division’s supplemental hearing brief were true and correct. He contended the civil penalty should be structured to ensure Mr. Makhtoub has no more insurance lapses and no missed penalty payments. Mr. Harger contended Mr. Makhtoub is an “egregious” offender who “needs motivation” to meet his obligations. Mr. Makhtoub has had repeated lapses of his workers’ compensation insurance and other business obligations such as his business license and his LLC’s status. Mr. Makhtoub would not answer his calls and he could only track down Mr. Makhtoub at his store, which is not the way Mr. Harger prefers to handle these matters. However, more recently,

Mr. Harger has seen improvement in Mr. Makhtoub, which he characterized as a “big change for the better.” For example, Mr. Makhtoub now answers his calls. In regards to the civil penalty, Mr. Harger contended this is a “tough case.” He realizes this panel must follow the statutes and regulations but applying them would result in a penalty amount greater than Mr. Makhtoub’s business is probably worth. (Harger).

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, 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 . . . .

(b) If an employer fails to insure and keep insured employees subject to this chapter . . . upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence of imprisonment for not more than one year. . . .

**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.

(g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f) of this section within seven days after the date of service of the order upon the employer, the director may declare the employer in default. The director shall file a certified copy of the penalty order and declaration of default with the clerk of the superior court. The court shall, upon the filing of the copy of the order and declaration, enter judgment for the amount declared in default if it is in accordance with law. Anytime after a declaration of default, the attorney general shall, when requested to do so by the director, take appropriate action to ensure

collection of the defaulted payment. Review of the judgment may be had as provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the judgment may be had by writ of execution.

When an employer subject to AS 23.30.075 fails to insure for workers' compensation liability, the law grants discretion to assess a civil penalty of up to \$1,000 for each employee for each day an employee is employed while the employer fails to insure. The legislature has made its intentions clear; uninsured employers are subject to a severe penalty when employees are permitted to work without workers' compensation liability insurance in place. *Miller's Market v. State of Alaska*, AWCAC Decision No. 161 (May 14, 2012) at 5 (quoting the board's decision with approval) (citation omitted).

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, provide for the continued employment the business's employees in a safe work environment, and satisfy the community's interest in fairly penalizing an offender. *Alaska R&C Communications, LLC v. State of Alaska, Division of Workers' Compensation*, AWCAC Appeal No. 07-043 (September 16, 2008) at 22. A penalty is not intended to destroy a business or cause the loss of employment. *Id.* at 27. On the other hand, while there is a strong public interest in preserving employment opportunities where possible, there are employers so grossly incompetent in business or so exploitive of their employees that there is little public interest in their continued viability. *Id.* at 28.

The board has discretion to suspend part of a penalty, such as when ordering an entire penalty to be paid would jeopardize the continued viability of the business. *Miller's Market* at 7-8. However, suspending an entire penalty amount is incompatible with the deterrent and punitive purposes of AS 23.30.080(f), and absent a finding that such a suspension is necessary in order to provide for continued, safe employment, a minimum civil penalty should be imposed. *State of Alaska v. Lawn Ranger of Alaska, LLC*, AWCAC Decision No. 224 (March 7, 2016) at 9, 10-11. If part of a penalty is conditionally suspended, the employer's liability for the suspended portion must be discharged on satisfaction of the conditions. *Moore v. State of Alaska*, AWCAC Decision No. 092 (November 17, 2008) at 23.

It is inconsistent with the restorative purposes of AS 23.30.080(f) to impose on an individual an unconditional and unsuspended penalty that is beyond the individual's ability to pay when the penalty imposed is unconnected to the individual's future conduct as an employer. *Titan Enterprises, LLC v. State of Alaska*, AWCAC Decision No. 227 (July 11, 2016) at 27.

**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.

The board's credibility findings and weight accorded evidence are "binding for any review of the Board's factual finding." *Smith v. CSK Auto, Inc.*, 204 P.3d 1001; 1008 (Alaska 2009).

**AS 23.30.128. Commission Proceedings.**

....

(b) . . . . The board's findings of fact shall be upheld by the commission if supported by substantial evidence in light of the whole record. . . .

The boards factual findings are reviewed under the substantial evidence standard. "Substantial evidence" is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion in light of the record as a whole. *Smith*.

**8 AAC 45.050. Pleadings.**

....

(c) **Answers.**

(1) An answer to a claim for benefits must be filed within 20 days after the date of service of the claim and must be served upon all parties. A default will not be entered for failure to answer, but, unless an answer is timely filed, statements made in the claim will be deemed admitted. The failure of a party to deny a fact alleged in a claim does not preclude the board from requiring proof of the fact.

....

**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:

....

(3) if an employer has not previously violated AS 23.30.075, and is found to have no more than three aggravating factors, the employer will be assessed a civil penalty of no less than \$10 and no more than \$50 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 (2) of this subsection;

....

(5) if an employer is found to have no fewer than seven and no more than 10 aggravating factors, the employer will be assessed a civil penalty of no less than \$500 and no more than \$999 per uninsured employee workday; however, the civil penalty may not be less than four times the premium the employer would have paid had the employer complied with AS 23.30.075. . . .

(6) if an employer is found to have more than 10 aggravating factors, the employer will be assessed a civil penalty of \$1,000 per uninsured employee workday.

(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;

....

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

....

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

....

(e) In this section,

(1) "premium" means the current amount charged to the employer by a carrier for coverage under AS 23.30.075;

(2) "uninsured employee workday" means the total hours of employee labor utilized by the employer while in violation of AS 23.30.076 divided by eight.

The number of aggravating factors an employer has is an important consideration under the regulation. The penalty rate increases with the number of aggravating factors. *Anchorage Midtown Motel v. State of Alaska*, AWCAC Decision No. 159 (February 14, 2012) at 16.

The division has the burden of production and persuasion on facts and circumstances to support a particular penalty, including factors supporting an enhanced penalty. The employer has the burden to establish facts and circumstances that may be considered to excuse or mitigate a penalty. *Alaska R&C Communications* at 23.

**8 AAC 45.195. Waiver of procedures.** A procedural requirement in this chapter may be waived or modified by order of the board if manifest injustice to a party would result from a strict application of the regulation. However, a waiver may not be employed merely to excuse a party from failing to comply with the requirements of law or to permit a party to disregard the requirements of law.

#### ANALYSIS

**Should Riad Sicily's Pizza, LLC, and Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, be assessed civil penalties for failure to insure for workers' compensation liability?**

Employers in Alaska are required to maintain workers' compensation insurance. AS 23.30.075(a). Substantial evidence in the form of various NCCI reports shows that Riad Sicily's Pizza, LLC, failed to do so during four lapse periods, totaling 1,637 calendar days, and Riad Makhtoub then continued to utilize uninsured employee labor for an additional 70 calendar days following the



involuntary dissolution of his company. *Smith*. Substantial evidence set forth in this decision's factual findings also supports the 10 aggravating factors alleged by the Division against Riad Sicily's Pizza, LLC, and the two aggravating factors alleged against Mr. Makhtoub d/b/a Riad Sicily's Pizza, LLC. *Id.* Neither Mr. Makhtoub, nor his bookkeeper, dispute the lapse periods or aggravating factors. 8 AAC 45.050(c)(1).

Pursuant to the parties' agreement at the September 15, 2021 prehearing conference, only the payroll summaries filed as evidence for the June 17, 2021 hearing will be used for penalty calculation purposes. Those summaries document a total of 5,167 employee workdays for Riad Sicily's Pizza, LLC, and 107 employee workdays for Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC. With 10 aggravating factors, the applicable regulation specifies a penalty range between \$500 to \$999 per uninsured employee workday for Riad Sicily's Pizza, LLC, 8 AAC 45.176(a)(5); and with his two aggravating factors, a penalty range between \$10 to \$50 per uninsured employee workday for Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, 8 AAC 45.176(a)(3).

The Division has the burden of production and persuasion to support a particular penalty. *Alaska R&R Communications*. It contends Riad Sicily's Pizza, LLC, is an "egregious" offender and seeks a civil penalty of \$650 per uninsured employee workday. In support of its request for this penalty amount, the Division correctly points out Mr. Makhtoub knowingly operated his business utilizing employee labor without workers' compensation insurance for extended time periods; his lack of cooperation with the Division as evidenced by the prolonged time periods it took him to provide employee payroll records; his failure to take action to prevent three lapses of workers' compensation insurance, which resulted in an uninsured injury claim being filed by one of his employees; the sizable unfair business advantage he gained by not obtaining workers' compensation insurance; and his continuation of the business as Riad Sicily's Pizza, LLC, in violation of the State's dissolution order. *Id.* This panel additionally notes Mr. Makhtoub continued to conduct business after the expiration of his state business license, and he also failed to file federal income tax returns for five years. Given these considerations, a penalty appreciably greater than the \$500 starting point under the regulation is warranted, and although the Division's requested penalty of \$650 is not at "the high end of the penalty range," that amount is appropriate under these circumstances to carry out the legislature's intent of subjecting an uninsured employer to a severe

penalty when it fails to insure, especially one who's conduct has indeed been egregious, as the Division contends. *Millers' Market; Anchorage Midtown Motel; Rogers & Babler*. Riad Sicily's Pizza, LLC, will be assessed a civil penalty of \$3,358,550 (\$650 x 5,167 uninsured employee workdays). 8 AAC 45.176(a)(5).

The Division also requested a civil penalty of \$26 per uninsured workday for Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, an amount it contended was slightly more than the regulatory minimum penalty of two times the pro-rated premium for his lapse period. Unlike the penalty amount sought for Riad Sicily's Pizza, LLC, the Division did not provide a rationale for the penalty amount personally sought against Mr. Makhtoub. Nevertheless, given Mr. Makhtoub's relatively short 70-day lapse period, his recent demonstrations of more responsible business behavior, which are addressed in greater detail below, and including the fact that his business remains insured at the time of this hearing, the Division's requested amount is proportional and appropriate. *Alaska R&R Communications*. Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, will be assessed \$2,782 (\$26 x 107 uninsured employee workdays). 8 AAC 45.176(a)(3).

Two very challenging aspects of this case are now presented for adjudicative resolution: Mr. Makhtoub's future conduct as an employer; and his ability to pay the penalties. *Titan Enterprises*. 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, provide for the continued employment the business's employees in a safe work environment, and satisfy the community's interest in fairly penalizing an offender. *Alaska R&C Communications*. A penalty is also not intended to destroy a business or cause the loss of employment. *Id.* On the other hand, while there is a strong public interest in preserving employment opportunities where possible, there are employers so grossly incompetent in business or so exploitive of their employees that there is little public interest in their continued viability. *Id.*

For the reasons already detailed above, Riad Makhtoub's past business conduct evidences the type of gross incompetence and exploitive behavior mentioned in *Alaska R&C Communications* such that there might be little public interest in the continuance of his business. On the other hand, Mr. Harger also credibly testified to recent improvements in Mr. Makhtoub's conduct as an

employer, such as Mr. Makhtoub now taking Mr. Harger's telephone calls, whereas previously, Mr. Harger would have to track down Mr. Makhtoub at his place of business; and the fact that Mr. Makhtoub's business currently remains insured for workers' compensation liability. Similar improvements have also been demonstrated during these proceedings. At an early prehearing conference, although he was not disputing Mr. Harger's alleged facts, Mr. Makhtoub defiantly contended he was not going to pay any penalty; now he proposes quitting smoking so that he can pay the penalties. Mr. Makhtoub failed to appear for a number of prehearing conferences and the June 17, 2021 hearing; he now appears before this panel purporting his desire to "clear up this whole mess." Mr. Makhtoub also recently provided very sensitive personal and proprietary information in the form of his tax returns to assist this panel in assessing a penalty. Although these recent improvements in Mr. Makhtoub's business behavior are not guarantees of his future conduct as an employer, they do suggest there still may be a public interest in preserving the employment opportunities offered by his business. *Alaska R&C Communications*. Therefore, consistent with the restorative purposes of the penalty statute, Riad Makhtoub's ability to pay will also be examined. *Titan Enterprises*.

Mr. Makhtoub's profit and loss statements generally show Riad Sicily's Pizza, LLC, doing about \$600,000 in annual sales and posting \$80-90,000 in losses for four of its last six years. Mr. Makhtoub's Form 1040s also show he personally reported negative adjusted gross incomes and zero taxable incomes for each of the past six years, save for one. Mr. Makhtoub's testimony indicates he has sustained his business through loans, but also indicates he is reluctant to keep borrowing and has thought about closing his business. Given Mr. Makhtoub's precarious financial situation, fashioning an appropriate remedy will be difficult and certain accommodations will have to be made to ensure the continued, safe, employment of his employees. *Lawn Ranger*. As Mr. Harger recognized, this is a "tough case" because the penalty amounts specified by regulation are "more than [Mr. Makhtoub's] business is probably worth."

Discretion exists to suspend a portion of a penalty when ordering the entire penalty paid would jeopardize the continued viability of a business. *Miller's Market*. Based on the financial information provided, as well as common sense, Mr. Makhtoub, who runs a local pizza shop, is obviously not positioned to pay Riad Sicily's Pizza, LLC's, \$3.3 million penalty, or any amount

close to that, even if a payment plan was ordered. *Rogers & Babler*. Therefore, the regulatory minimum penalty of four times the pro-rated premium will be examined as starting point. 8 AAC 45.176(a)(5). In the case of Riad Sicily's Pizza, LLC, that amount is \$96,584 (4 x 1,637 uninsured days x 14.75 per day cost to insure), so a balance of \$3,261,966 (\$3,358,550 - \$96,584) on the penalty for Riad Sicily's Pizza, LLC, could be suspended. This decision will examine whether that should be done.

Mr. Makhtoub testified, under oath, to this panel, he could pay \$300 per month toward his civil penalties. Given the magnitude of Riad Sicily's Pizza, LLC's penalty, which is direct result of the egregiousness of Mr. Makhtoub's business practices, this amount is far less than would otherwise be expected and ordered. However, the previously discussed financial evidence in this case shows, ordering a greater penalty payment amount would likely jeopardize the continued employment of Mr. Makhtoub's employees. *Alaska R&C Communications; Rogers & Babler*. Plus, if Mr. Makhtoub's business practices can be reformed at all, this panel thinks it vitally important that he be given "buy-in" to the process, so his own, suggested, penalty amount will be used. *Rogers & Babler*. Monthly penalty payment installments of \$300 will be ordered for Riad Sicily's Pizza, LLC. However, given this conclusion, it will take Mr. Makhtoub nearly 29 years to pay even the unsuspended portion Riad Sicily's Pizza, LLC's penalty. Additional adjustments are still required to realize the restorative function of the penalty statute and a payment plan will be ordered. *Titan Enterprises*.

Given Mr. Makhtoub's precarious financial position discussed above, and to protect the continued viability of Mr. Makhtoub's business, as well as the continued employment of his employees, and his ability to remain insured for workers' compensation liability, this decision will only seek to collect a minimum civil penalty from Riad Sicily's Pizza, LLC. *Lawn Ranger*. Additionally, for these same reasons, and an additional reason explained below, Riad Makhtoub's d/b/a Riad Sicily's Pizza, LLC, \$2,782 assessed penalty will be conditionally suspended in its entirety. *Lawn Ranger*.

Riad Sicily's Pizza, LLC's pro-rated premium for the lapse periods is \$24,146. However, merely ordering Mr. Makhtoub to pay Riad Sicily's Pizza, LLC's pro-rated premium, something he should have been doing all along, would not satisfy the public's interest in punishing the offender. *Alaska*

*R&C Communications.* The actual penalty amount Mr. Makhtoub pays should be greater. *Id.* Consequently, a penalty amount of \$25,000 will be ordered as the objective of Mr. Makhtoub's payment plan for Riad Sicily's Pizza, LLC. Although this amount is less than the regulatory minimum penalty of four times the pro-rated premium prescribed under 8 AAC 45.176(a)(5), procedures will be waived to avoid a manifest injustice - that being the loss of Mr. Makhtoub's investment in his business and the loss of his employees' employment. 8 AAC 45.195. Therefore, \$3,333,550 will be suspended from Riad Sicily's Pizza, LLC's \$3,358,550 assessed penalty. *Miller's Market.*

Mr. Harger has repeatedly emphasized the need to structure penalty payments in this case to incentivize Mr. Makhtoub so that he has no more lapses in workers' compensation insurance and does not miss any penalty payments. Mr. Makhtoub "needs motivation" to meet his business obligations, according to Mr. Harger. This panel agrees. *Rogers & Babler.*

At the September 15, 2021, prehearing conference, Mr. Harger proposed a penalty payment arrangement where, if Mr. Makhtoub's business remained continually insured for one year, a certain portion of the suspended penalty could be discharged and, if Mr. Makhtoub's business remained continually insured for another year, an additional portion of the suspended penalty could be discharged, etc. Mr. Harger's approach will be adopted. *Titan Enterprises.*

Riad Sicily's Pizza, LLC, will be ordered to pay \$25,000 as follows: \$300 per month until the total civil penalty is paid (84 months). After a year, if Mr. Makhtoub has timely made all 12-monthly penalty installments, and if Mr. Makhtoub does not have any lapse in his business's workers' compensation insurance, the Division will prepare a discharge order for \$476,222 from Riad Sicily's Pizza, LLC's \$3,333,550 suspended penalty. Mr. Makhtoub may, on the same conditions, for each of the next six years, secure additional annual discharges of \$476,222 from the remaining balances on Riad Sicily's Pizza, LLC's suspended penalty. Upon the successful completion of the above payment plan, Riad Sicily's Pizza, LLC's \$3,261,966 suspended penalty will be entirely discharged (\$476,222 discharged annually over seven years). *Moore.*

Concerning Riad Makhtoub's d/b/a Riad Sicily's Pizza, LLC, \$2,782 suspended penalty, Mr. Makhtoub explained he does not want a penalty to "mess with" his credit or his personal life. He wants to be clear of any penalty if he gets rid of his store. Given Mr. Makhtoub's sentiments in these regards, and in addition to protecting the continued viability of Mr. Makhtoub's business, the continued employment of his employees and his ability to remain insured as explained above, conditionally suspending the entirety of Riad Makhtoub's d/b/a Riad Sicily's Pizza, LLC, \$2,782 assessed penalty, with the prospect of its eventual discharge, will provide additional, personal incentive to Mr. Makhtoub to successfully complete his payment plan for Riad Sicily's Pizza, LLC. Upon successful completion of that payment plan, Riad Makhtoub's d/b/a Riad Sicily's Pizza, LLC, \$2,782 suspended penalty will be discharged as well. *Titan Enterprises*.

Structuring penalty payments this way, with modest monthly penalty payments over a prolonged period, will give Mr. Makhtoub his best opportunity for success and serve as an ongoing reminder of his legal obligations. Additionally, opportunities to earn \$476,222 annual discharges on Riad Sicily's Pizza, LLC's unsuspended penalty, as well as a final discharge of his own, nearly \$3,000, personal penalty, will serve as powerful incentives for Mr. Makhtoub to do as the law demands. He is advised, however, should he fail in meeting his obligations as set forth in this decision, the Division may declare him in default and seek additional legal remedies, such as civil judgment and writs of execution, AS 23.30.080(g), as well as a potential \$10,000 fine and one-year prison sentence of imprisonment, AS 23.30.075(b).

#### CONCLUSION OF LAW

Riad Sicily's Pizza, LLC, should be assessed a civil penalty of \$3,358,550 for its failure to insure for workers' compensation liability, and Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, should be assessed a civil penalty of \$2,782 for his failure to insure for workers' compensation liability.

#### ORDERS

1) The Division's October 16, 2017, October 9, 2018, May 2, 2019, and October 6, 2020 petitions are granted in part as set forth above.

- 2) At any time RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, 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), RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, are personally, jointly, severally and directly liable for any and all benefits payable under the Act for compensable injuries to employees during the uninsured periods.
- 4) Pursuant to AS 23.30.080(f), RIAD MAKHTOUB d/b/a Riad Sicily's Pizza, LLC, is assessed a civil penalty of \$2,782, which is suspended in its entirety. RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, are assessed a civil penalty of \$3,358,550 of which \$3,333,550 is suspended. RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, must timely pay \$25,000.
- 5) A payment plan is ordered and is set forth above.
- 6) **RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, shall pay \$300 within seven (7) days of this decision in accord with 23.30.080(g). Thereafter, on the 10<sup>th</sup> day of each month RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, shall make monthly payments in the sum of \$300 per month for 84 months until the total civil penalty of \$25,000 is paid in full.**
- 7) RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC are ordered to make all payments to the Alaska Department of Labor, Division of Workers' Compensation, P.O. Box 115512, Juneau, Alaska 99811-5512. **RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC are ordered to make its checks payable to the Alaska Workers' Compensation Benefits Guaranty Fund. Checks must include AWCBC Case Number 700006172, and AWCBC Decision Number 21-\_\_.** If RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, fail to make timely civil penalty payments as ordered in this decision, the entire assessed penalty of \$3,358,550 for Riad Sicily's Pizza, LLC, and the entire assessed penalty of \$2,782 for Riad Makhtoub d/b/a Riad Sicily's Pizza, LLC, 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 SIU is directed to monitor RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC, for eight (8) years from this decision's date for continued compliance with the Act's insurance requirements.

*In re* RIAD SICILY'S PIZZA, LLC, ET AL

9) The division's Collection Officer is ordered to prepare a proposed Liability Discharge Orders within 120 days of RIAD MAKHTOUB's and RIAD SICILY'S PIZZA, LLC's full, timely, civil penalty payments as set forth in this decision and order. The proposed orders will be addressed in accord with 8 AAC 45.130.





*In re* RIAD SICILY'S PIZZA, LLC, ET AL

CERTIFICATION

I hereby certify the foregoing is a full, true and correct copy of the Final Decision and Order in the matter of RIAD MAKHTOUB and RIAD SICILY'S PIZZA, LLC; Employer / respondents; Case No. 700006172; dated and filed in the Alaska Workers' Compensation Board's office in Fairbanks, Alaska, and served upon the parties by certified U.S. Mail, postage prepaid, on December 7, 2021.

/s/

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Ronald C. Heselton, OA II