

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

<b>DEPARTMENT OF LABOR AND</b>	)	<b>Case No. 510-2005</b>
<b>INDUSTRY, UNINSURED</b>	)	
<b>EMPLOYERS' FUND,</b>	)	
Petitioner,	)	<b>FINDINGS OF FACT,</b>
vs.	)	<b>CONCLUSIONS OF LAW,</b>
<b>MMN CATTLE COMPANY, LLC.,</b>	)	<b>AND FINAL ORDER</b>
Respondent	)	

**I. INTRODUCTION**

MMN Cattle Company, LLC, (MMN) appeals from an Uninsured Employer's Fund (UEF) notice imposing a penalty due to MMN's failure to provide worker's compensation insurance for its employees from January 25, 2004 to May 14, 2004. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on October 29 and November 1, 2004. Joe Nevin, agency legal counsel, appeared on behalf UEF. Dan Barnes appeared on behalf of MMN. Bob Schied and Susan Morris testified under oath. The parties stipulated to the admission of Documents 1 through 13. After considering the evidence and argument of the parties, the hearing examiner makes the following findings of fact, conclusions of law, and order.

**II. ISSUE**

Did UEF properly assess civil penalties of \$3, 084.14 against MMN for its failure to provide worker's compensation insurance coverage for its covered employees between January 25, 2004 and May 14, 2004, pursuant to Mont. Code Ann. 39-71-504 (1) (a) and Admin. R. Mont. 24.29.2831?

**III. FINDINGS OF FACT**

1. MMN employs four workers in its Montana cattle operation.
2. Prior to January 25, 2004, MMN maintained worker's compensation insurance for its workers through the Montana State Fund (MSF).
3. In December 2003, MSF sent MMN a premium statement telling MMN that the premium for their worker's compensation insurance was due no later than December 26, 2003.
4. MMN's payment was not made in time to meet the December 26, 2003, due date. As a result, on January 2, 2004, MSF sent MMN a cancellation notice, notifying MMN that its worker's compensation insurance would be canceled effective January 25, 2004, unless the premium was received by the cancellation date.

5. MSF did not receive MMN's premium by the cancellation date. MSF canceled MMN's worker's compensation insurance on January 26, 2004.

6. MSF received MMN's premium check and deposited the check on January 29, 2004, three days after MSF had canceled MMN's worker's compensation insurance.

7. From January 25 until May 14, 2004, MMN's employees were not covered by unemployment insurance. During that period, the company had payroll totaling \$12,038.00 for its employees covered by the Worker's Compensation Act. The premium that MSF would charge for a payroll of that size was \$1,542.07.

8. On April 13, 2004, MMN received notice from MSF that its policy had lapsed. MMN instituted a new worker's compensation policy on May 14, 2004.

9. UEF field auditor Bob Schied verified the payroll, premium, and the fact of the lapse of the policy. UEF issued a penalty notice to MMN assessing the required 200% penalty, amounting to \$3,084.14. MMN rejected an offer to compromise and then requested this administrative hearing.

#### IV. DISCUSSION

##### Applicability of the Penalty

The definition of uninsured employer means an employer who has not properly complied with the requirement to have workers' compensation insurance coverage for its workers in this state under one of the three statutory plans authorized by the Montana Act. Mont. Code Ann. § 39-71-501 (requiring compliance with the provisions of Mont. Code Ann. § 39-71-401). The penalty provision authorizes the UEF to require a penalty of up to double the premium that the State Fund would have charged during the period that the employer lacked insurance, or \$200.00, whichever is greater. Mont. Code Ann. §39-71-504(1)(a).

##### Amount of the Penalty

Although the statute allows a discretionary penalty of "up to" double the premium, the UEF always imposes a penalty of double the premium, by regulation, unless the uninsured period was *de minimis*. **Compare** Admin. R. Mont. 24.29.2831 **with** Mont. Code Ann. §39-71-504(1)(a). In this contested case proceeding, the hearing officer must follow the department's regulation, by which the department has exercised the discretion accorded by statute in always requiring the 200% penalty. *Laudert v. Richland County Sheriff's Office*, 2000 MT 218, ¶¶ 40-41, 301 Mont. 114, 7 P.3d 386 (when the statute authorized discretionary monetary recovery against the respondent, and a properly adopted regulation exercised the agency's discretion by denying any such recovery upon proof of "mixed motive," the department properly followed its own regulation rather than the discretionary language of the statute and denied the recovery upon proof of mixed motive).

The company did not present any evidence that the penalty calculation was faulty. There is no evidence that a lower classification rate was proper and would have resulted in a lower premium.

The penalty amount was correct under the facts, the applicable law and the department's regulations.

MMN contends that imposition of the penalty in this matter is wrong because it sent in its premium in a timely fashion. In fact, MMN failed to pay the premium when due (December 26, 2003) and, despite being notified that the insurance policy would lapse on January 25, 2004, failed to send its premium to MSF in time to ensure receipt of the premium before the January 25, 2004, lapse date. The credible evidence in this matter demonstrates that MSF did not receive MMN's premium check until January 29, 2004, three days after the lapse of the insurance policy. It appears to the hearing examiner that MMN waited until the very last minute to provide its premium check to MSF and gambled that its premium check would arrive in time to prevent the lapse of the policy. MMN lost that gamble and now must face the statutory consequence - imposition of a penalty.

MMN also contends that had it been sooner notified, it would have acted more diligently to reinstate the premium. The problem with this argument, however, is that it fails to recognize the root cause of the premium lapse - the employer's failure to pay the insurance premium in a timely fashion in order to maintain the insurance policy. The fact that MSF failed to notify the employer more quickly about the lapse of the policy does not change the fact that the period of being uninsured is attributable to the employer, not MSF. Under these circumstances, the hearing examiner does not find MMN's argument to be a valid factual or legal excuse for elimination of the penalty.

## **V. CONCLUSIONS OF LAW**

1. The Department of Labor and Industry has jurisdiction to review the penalty determination in this matter. Mont. Code Ann. §§ 39-71-504 and 2401(2).

2. MMN was an uninsured employer from January 25, 2004 until May 14, 2004 in violation of Mont. Code Ann. §39-71-401.

3. The Uninsured Employers' Fund properly assessed a \$3,084.14 statutory penalty against MMN. Mont. Code Ann. § 39-71-504(1)(a) and Admin. R. Mont. 24.29.2831.

## **VI. ORDER**

Due to its failure to cover workers with workers' compensation insurance from January 24, 2004 through May 14, 2004, MMN Cattle Company, LLC, is **ORDERED** to pay to the Uninsured Employers' Fund a penalty of \$3,084.14.

DATED this 19th day of November, 2004.

DEPARTMENT OF LABOR & INDUSTRY HEARINGS BUREAU

By: GREGORY L. HANCHETT  
Hearing Officer

**Notice: This Order is signed by the Hearing Officer of the Department of Labor and Industry under authority delegated by the Commissioner. Any party in interest may appeal this Order to the Workers' Compensation Court within thirty (30) days after the date of mailing of this Order as provided in §39-72-612(2) and ARM 24.5.350. The Court's address is:**

**Workers Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537  
(406) 444-7794**