

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

SIRIUS BUSINESS COMPANY,)	Case No. 1893-2013
)	
Petitioner,)	
)	
vs.)	FINDING OF FACT,
)	CONCLUSION OF LAW
)	AND ORDER
DEPARTMENT OF LABOR AND)	
INDUSTRY, UNINSURED)	
EMPLOYERS' FUND,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On May 13, 2013, Sirius Business Company (“Sirius”) filed a protest against excessive \$50.00 per month late fees levied by the Uninsured Employers’ Fund (“UEF”) for months in which UEF found that Sirius had not made any payment against amounts previously assessed against Sirius, for penalties and/or claim reimbursements due for its failure to provide workers’ compensation insurance coverage of its employees during various months and years. On June 11, 2013, the Hearings Bureau received a request to schedule Sirius’ protest for an administrative hearing. On June 14, 2013, the Hearings Bureau issued its notice of hearing and of telephone scheduling conference, by U.S. Mail, postage prepaid, on counsel for Sirius and by State of Montana Interdepartmental mail service on counsel for UEF. Convening the telephone conference set by that notice, the Hearing Officer conferred with counsel regarding scheduling for this case. On behalf of their respective clients, counsel jointly agreed to waive formal hearing and to submit Sirius’ protest on stipulated facts, filing proposed decisions and either supporting briefs or extensive proposed conclusions of law, with appropriate citations to supporting authority.

On July 22, 2013, the parties filed their joint statement of agreed stipulated facts, numbered 1 through 49.

Thereafter, the parties completed their briefing, and the Hearing Officer began doing some legal research to prepare his decision. That research revealed that in 2003 the department had amended Admin. R. Mont. 24.29.2831, adding, in pertinent part, subsection (5) to that rule, specifically addressing late penalty fees.

Unfortunately, through some clerical error, this subsection was never incorporated into the published Administrative Rules of Montana (a problem the department is remedying). Nonetheless, the subsection became effective upon publication of its adoption.

The Hearing Officer gave notice to counsel of this legal authority, inviting both sides to address it with supplemental briefs. On September 30, 2013, the last timely supplemental brief was filed by Sirius, and the Hearing Officer deemed the matter submitted for decision.

II. ISSUE

Did the UEF properly assess monthly \$50.00 late fees against Sirius pursuant to the authority of Mont. Code Ann. § 39-71-504(2)(a)?

III. FINDINGS OF FACT

The following 49 agreed stipulated facts are found to be true for purposes of this decision.

1. On or around December 2, 2005, the department's Uninsured Employers' Fund received notice from the Montana State Fund that Sirius Business Company had been selected for an audit and as a result of noncompliance with the audit Sirius' workers' compensation policy was cancelled effective November 27, 2005.

2. On December 7, 2005, the UEF sent Sirius a notice regarding their uninsured status, requested proof of workers' compensation coverage, and informed them of the potential for a Cease and Desist Order as well as a penalty as provided by Mont. Code Ann. § 39-71-504.

3. On January 9, 2006, the UEF issued a Cease and Desist Order to Sirius.

4. On February 21, 2006, the UEF issued a Penalty Notice (No. 18851) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 11/27/2005 to 1/11/2006. The total penalty amount assessed was \$3,005.54. The penalty notice informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement.

5. The February 21, 2006, Penalty Notice informed Sirius that it had until 3/23/2006 (approximately 30 days) (1) to appeal the determination by requesting an administrative review; (2) to contact UEF to discuss payment plan options; or (3) to tender the amount owed in full by the due date. The Penalty Notice also informed Sirius that if nothing was done by the due date the account would be turned over to a private collection agency.

6. A penalty notice issued to an uninsured employer serves as the original billing to the employer for the amount owed and the Department of Labor and Industry electronic database State Accounting Budget Human Resource System (SABHRS) begins to track accrued monthly interest on any unpaid balance owed to the UEF and track any accrued late fees if the employer fails to make a timely penalty or claim reimbursement to UEF.

7. By the due date of 3/23/2006, Sirius had not appealed the February 21, 2006 Penalty Notice for an administrative review, had not requested a payment plan, and had not paid the total penalty assessed (or, indeed, made any payment at all). The UEF assessed interest and levied a \$50.00 late fee on April 17, 2006 and issued notice to Sirius that pursuant to Mont. Code Ann. § 39-71-506, if payment in full was not received, a lien would be filed for the penalty amount plus any accrued interest and late fees.

8. On May 11, 2006, the UEF issued a Certificate of Lien. In July 2006 the UEF sent a collection notice to Sirius, and by August 2006 the UEF transferred the account to Collection Bureau Services (CBS) with interest and late fees continuing to accrue every month that Sirius failed to make any payments on the penalty.

9. From the date of original billing/penalty notice on February 21, 2006 through December 2008, Sirius did not make any payment to the UEF and monthly interest and late fees were assessed. From April 2006 through December 2008, Sirius was assessed a total of (30) \$50.00 late fees. Despite nonpayment the UEF did not assess Sirius a \$50.00 late fee in September 2006 thru November 2006 as a result of a glitch with the SABHRS system.

10. On November 20, 2007, the UEF issued a second Penalty Notice (No. 23954) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 6/12/2007 to 9/30/2007. The total penalty amount assessed was \$5,039.40. The penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination, to make a payment plan, or to pay the penalty amount in full.

11. Sirius did not timely appeal the second Penalty Notice, did not timely request a payment plan for the second penalty amount, and did not timely pay the second penalty amount owed. As a result, liens were again filed and the account was again transferred to CBS.

12. The UEF received its first payment from Sirius through CBS in January 2009 in the amount of \$9,691.02, still leaving an amount left owing. As an apparent result of this payment by Sirius, no \$50.00 late fee was assessed in January 2009.

13. Sirius did not make any reimbursements to UEF in February 2009 or March 2009 and they were assessed a \$50.00 late fee for each month.

14. The UEF received its second payment from Sirius through CBS in April 2009 in the amount of \$1,570.31, and there was still an amount left owing. As an apparent result of this payment, Sirius was not assessed a \$50.00 late fee in April 2009.

15. Sirius did not make any reimbursements to UEF May 2009 through August 2009 and they were assessed a \$50.00 late fee for these four months.

16. During the time period of May 2009 through August 2009, an employee of Sirius was injured during the course and scope of employment on June 20, 2009 and as a result of Sirius being uninsured at the time of the injury, the claim was adjudicated by the Uninsured Employers' Fund (UEF).

17. The UEF issued a determination on August 20, 2009, accepting the claim for benefits and informing Sirius that pursuant to Mont. Code Ann. § 39-71-504, they were obligated to indemnify the UEF for all benefits paid on the claim with the accrual of interest on any unpaid balance and \$50.00 late payment fee for each untimely reimbursement. Sirius did not appeal the UEF determination.

18. On November 20, 2007, the UEF issued a third Penalty Notice (No. 26036) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 4/26/2009 to 7/30/2009. The total penalty amount assessed was \$5,401.12. The penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination, to make a payment plan, or to pay the penalty amount in full.

19. Sirius did not timely appeal the third Penalty Notice, did not timely request a payment plan for the third penalty amount, and did not timely pay the third penalty amount owed. As a result liens were again filed and the account was again transferred to CBS.

20. As a result of the accepted claim for benefits, the UEF started billing Sirius claim costs in September 2009 along with outstanding penalty costs owing.

Sirius did not make any reimbursements to UEF the month of September 2009 and they were assessed a \$50.00 late fee for this month.

21. On October 29, 2009, the UEF revised the third Penalty Notice for (Penalty No. 26036) for the uninsured period of 4/26/2009 to 7/30/2009 and revised the penalty amount to \$5,064.08. The revised penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination asking for an administrative review, make a payment plan, or pay the penalty amount in full.

22. Sirius did not timely appeal the revised third Penalty Notice, they did not timely request a payment plan for the revised third penalty amount, and they did not timely pay the revised third penalty amount owed. As a result liens were again filed and the account was again transferred to CBS. Sirius also did not make any reimbursements to the UEF in the month of October 2009 and they were assessed a \$50.00 late fee for this month.

23. Sirius did not make any reimbursement to UEF in November 2009 and they were assessed a \$50.00 late fee for this month.

24. The UEF received its third payment from Sirius through CBS in December 2009 in the amount of \$319.46, and there was still an amount left owing. As an apparent result of this payment, Sirius was not assessed a \$50.00 late fee for the month of December.

25. Sirius did not make any reimbursements to UEF in January 2010 or February 2010 and they were assessed a \$50.00 late fee for each month.

26. The UEF received its fourth payment from Sirius through CBS in March 2010 in the amount of \$210.48, and there was still an amount left owing. As an apparent result of this payment Sirius was not assessed a \$50.00 late fee for the month of March.

27. Sirius did not make any reimbursements to UEF in April 2010 through September 2010 and was assessed a \$50.00 late fee for each month, except for April 2010 due to another glitch in the SABHRS system.

28. On September 2, 2010, the UEF issued a fourth Penalty Notice (No. 29035) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 3/2/2010 to 6/6/2010. The total penalty amount assessed was \$5,066.10. The penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee

could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination, to make a payment plan, or to pay the penalty amount in full.

29. Sirius did not timely appeal the fourth Penalty Notice, did not timely request a payment plan for the fourth penalty amount, and did not timely pay the fourth penalty amount owed. As a result liens were again filed and the account was again transferred to CBS.

30. The UEF received its fifth payment from Sirius through CBS in October 2010 in the amount of \$211.36 and as an apparent result of this payment Sirius was not assessed a \$50.00 late fee for the month of October.

31. Sirius did not make any reimbursements to UEF in November 2010 through January 2011 and they were assessed a \$50.00 late fee for each month.

32. The UEF received payments from Sirius through CBS in February 2011 in the amount of \$6,001.40, March 2011 in the amount of \$744.92, and April 2011 in the amount of \$534.06 and there was still an outstanding balance. As an apparent result of these payments in these months Sirius was not assessed a \$50.00 late fee for any of these three months.

33. Sirius did not make any reimbursements to UEF in May 2011 through September 2011 and they were assessed a \$50.00 late fee for each month.

34. The UEF received a payment from Sirius through CBS in October 2011 in the amount of \$5,559.34 and there was still an amount left owing. As an apparent result of this payment Sirius was not assessed a \$50.00 late fee for October.

35. Sirius did not make any reimbursements to UEF in November 2011 through February 2012 and they were assessed a \$50.00 late fee for each month.

36. On February 16, 2012, the UEF issued a fifth Penalty Notice (No. 33476) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 8/10/2011 to 10/21/2011. The total penalty amount assessed was \$3,254.28. The penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination, to make a payment plan, or to pay the penalty amount in full.

37. Sirius did not timely appeal the fifth Penalty Notice, did not timely request a payment plan for the fifth penalty amount, and did not timely pay the fifth

penalty amount owed. As a result liens were again filed and the account was again transferred to CBS.

38. The UEF received a payment from Sirius through CBS in March 2012 in the amount of \$211.88 and there was still an outstanding amount owing. As an apparent result of this payment Sirius was not assessed a \$50.00 late fee for March.

39. Sirius did not make any reimbursements to UEF in April 2012 and May 2012 and they were assessed a \$50.00 late fee for each month.

40. The UEF received a payment from Sirius through CBS in June 2012 in the amount of \$1,000.00, July 2012 in the amount of \$211.24, and August 2012 in the amount of \$1,000.00, with outstanding amounts still owing. As an apparent result of these payments Sirius was not assessed a \$50.00 late fee for any of these three months.

41. Sirius did not make any reimbursements to UEF in September 2012 through November 2012 and they were assessed a \$50.00 late fee for each month.

42. On November 28, 2012, the UEF issued a sixth Penalty Notice (No. 35636) to Sirius pursuant to Mont. Code Ann. §§ 39-71-401(1) and 39-71-504(1), assessing a statutory civil penalty for failure to provide workers' compensation coverage for employees for the period of 8/10/2011 to 10/21/2011. The total penalty amount assessed was \$2,798.60. The penalty notice again informed Sirius that pursuant to Mont. Code Ann. § 39-71-504, a \$50.00 late payment fee could be assessed on any untimely reimbursement. Sirius was again given approximately (30) days to appeal the penalty determination, to make a payment plan, or to pay the penalty amount in full.

43. Sirius did not timely appeal the sixth Penalty Notice, did not timely request a payment plan for the sixth penalty amount, and did not timely pay the sixth penalty amount owed. As a result liens were again filed and the account was again transferred to CBS.

44. Sirius did not make any reimbursement to UEF in December 2012 and they were assessed a \$50.00 late fee for this month.

45. The UEF received a payment from Sirius through CBS in January 2013 in the amount of \$215.49, February 2013 in the amount of \$1,257.53, and March 2013 in the amount of \$2,474.63, with an outstanding amount still owing. As an apparent result of these payments Sirius was not assessed a \$50.00 late fee for these three months.

46. Sirius did not make any reimbursements to UEF in April 2013 and they were assessed a \$50.00 late fee for this month.

47. On May 9, 2013, legal counsel for Sirius requested a hearing regarding the late fees that have been assessed by the UEF against Sirius. There was no payment this month by Sirius and the UEF assessed a \$50.00 late fee for May.

48. On June 11, 2013, the matter over the late fees was submitted to the Department's Hearings Bureau and by a letter dated the same date legal counsel for UEF notified legal counsel for Sirius that while the matter was pending before the Hearings Bureau that the UEF placed the outstanding amount owing in appeal status, stopping the accumulation of further interest and late fees, with the reservation of requesting any late fees and interest retroactively after resolution of the matter. As a result the UEF did not assess a \$50.00 late fee for June.

49. Exhibit 1 to this decision is the most recent account history from SABHRS showing the entire account history for Sirius Business Co.

From the foregoing 49 facts, the following more specific facts regarding pertinent are found to be true.

50. For all 86 months from April 2006 through May 2013, some penalty and/or claim reimbursement payments were due to the UEF from Sirius.¹ In 70 of those 86 months, Sirius made no payments of any kind on any penalties and/or claim reimbursements due to the UEF. The UEF levied a \$50.00 late penalty for the nonpayments in 66 of those 70 months. For the other 4 months, the UEF, by mistake, did not levy the \$50.00 late penalty it considered mandatory. Sirius made payments upon its penalties and/or claim reimbursement obligations to the UEF during the other 16 of the 86 months, and the UEF did not levy a late penalty in any of those 16 months. The total late fee the UEF actually assessed against Sirius to date, at \$50.00 per month for 66 months, is \$3,300.00.²

51. Sirius made 16 payments, every one of which was at least partially applied to debt that was then past due. The total late fee that must be levied against Sirius

¹ There is a period, documented in Exhibit 1, pp. 7-8, after April 2, 2009 until October 2009, when there are no interest charges against Sirius except for interest on late payment penalties [see footnote 2, below]. This certainly suggests that the only obligation owed to the UEF was for accumulated late penalty fees and accrued interest on those late penalty fees.

² Exhibit 1 also includes what appear to be interest charges on late penalty fees, commencing in May 2008, page 3, and appearing thereafter through June 2013, page 13. The "Item ID" for these entries is "LATE PENALTY CHARGE," which is the "Item ID" for the \$50.00 monthly penalty fees. The "Entry Reason" for these entries is "INT" [interest].

to date, if the statute authorizes assessment of the \$50.00 late penalty on each actual payment made late, at \$50.00 per payment for 16 payments, is \$800.00.

52. The total late fee that must be assessed against Sirius to date, if the statute requires the \$50.00 late payment penalty for every month in which the uninsured employer made no payment despite some payment for penalties and/or claim reimbursement being due, at \$50.00 per month times 70 months, is \$3,500.00.

53. The UEF is in a far better position than the Hearing Officer to make any necessary additional calculations regarding the proper credits for the payments made by Sirius, the proper interest amounts against which to charge interest, and the amounts due from Sirius or to Sirius as a result.

IV. DISCUSSION

A. Introduction

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 imposing upon employers the duty to obtain and maintain that coverage). A statutory penalty provision authorizes (but does not require) the UEF to impose a penalty of up to twice the State Fund's premium for coverage during the period the employer lacked insurance, or \$200.00, whichever is greater. Mont. Code Ann. § 39-71-504(1)(a). A claim reimbursement provision requires the UEF to collect from the uninsured employer an amount equal to all benefits the UEF paid or will pay to or on behalf of an injured employee of an uninsured employer. Mont. Code Ann. § 39-71-504(1)(b). Another statutory penalty provision authorizes (but does not require) the UEF to collect another \$200.00 penalty from an uninsured employer who does not obtain workers' compensation insurance within 30 days after notice of that requirement. Mont. Code Ann. § 39-71-504(1)(c).

All of these statutory obligations are subject to a late fee assessment of \$50.00. Mont. Code Ann. § 39-71-504(2)(a):

An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of \$50 for each late payment.

The meaning of Mont. Code Ann. § 39-71-504(2)(a) is really the only issue in this case. There is no dispute, under the agreed stipulated facts, about how many payments Sirius made, how much each payment was for, or when each payment was

made. There is no dispute regarding how many months Sirius, despite owing penalty and/or claim reimbursement dollars, made no such payment. Thus, the question is whether the language of the statute requires the UEF to collect a \$50.00 late fee:

- (1) For every month in which Sirius owed some presently due penalty and/or claim reimbursement dollars, but made no payment; or
- (2) For every payment Sirius made for penalty and/or reimbursement dollars, at least part of which had come due before the month in which it was paid.

B. The Statute Mandates Assessing a \$50.00 Late Penalty Fee on Each Late Payment.

When a statute is clear on its face, the only statutory construction to be done is to read it and to declare what it clearly says, not to insert into it what is not there. *In Matter of the Mental Health of E.T.*, ¶21, 345 Mont. 497, 191 P.3d 470, 2008 MT 299.

In interpreting a statute, we look first to the plain meaning of the words it contains. *Clarke v. Massey* (1995), 271 Mont. 412, 416, 897 P.2d 1085, 1088. Where the language is clear and unambiguous, the statute speaks for itself and we will not resort to other means of interpretation. *Clarke*, 897 P.2d at 1088. “In the search for plain meaning, ‘the language used must be reasonably and logically interpreted, giving words their usual and ordinary meaning.’ ” *Gaub v. Milbank Ins. Co.* (1986), 220 Mont. 424, 427, 715 P.2d 443, 445 (*quoting In re Matter of McCabe* (1975), 168 Mont. 334, 339, 544 P.2d 825, 828).

Werre v. David (1996), 275 Mont. 376, 386, 913 P.2d 625, 631.

The statute at issue here, Mont. Code Ann. § 39-71-504(2)(a), speaks of “a late fee of \$50 for each late payment” (*emphasis added*). On its face, this authorizes a single late fee assessed for each payment made late – “a late fee of \$50 for each late payment.”

The only regulation that the UEF appears to have adopted regarding this late fee will appear (now that it has been found) in Admin. R. Mont. 24.29.2831(5), which reads, in its entirety:

An account balance is considered past due for the purposes of assessing a late fee if the payment is not received within 30 days after the original billing or notice of requirement of workers’ compensation coverage.

In 2003, this subsection was added to Admin. R. Mont. 24.29.2831, as part of an amendment to the rule. *See*, 2003 MAR, Issue 16 (8/28/03), No. 3, p. 1838, “Notice of Public Hearing on Proposed Amendment,” Notice No. 24-29-173; *and* 2003 MAR, Issue 19 (10/6/03), No. 3, p. 2296, “Notice of Amendment,” No. 3: “After consideration of the comments, the Department has amended ARM 24.29.2831 exactly as proposed.”

Despite adoption, subsection (5) was not printed in the replacement pages, and did not receive a history note. A subsequent amendment to 24.29.2831 likewise omitted subsection (5). 2006 MAR, Issue 13 (6/26/06), No. 3, p. 1703, “Notice of Public Hearing on Proposed Amendment,” Notice No. 24-29-208) [correctly noting that subsection (4) “remains the same” and making no mention of omitted subsection (5)]; *and* 2006 MAR, Issue 16 (8/14/06), No. 3, p. 2040, “Notice of Amendment,” No. 3: “The department has amended ARM 24.29.2831 exactly as proposed.”

An administrative rule is effective upon its publication in the Montana Administrative Register, unless a later date is required by statute or by the rule itself. Mont. Code Ann. § 2-4-306(4). Section (5) of 24.29.2831 was effective after the published announcement in M.A.R. of its adoption, on October 6, 2003, even though the subsection never subsequently appeared in the printed Admin. R. Mont.

The entire correct text of Admin. R. Mont. 24.29.2831 also can be found in LEXIS, including subsection (5). That is where the Hearing Officer first found it.

The operative question under the rule is whether “the payment” is received “within 30 days after the original billing or notice of requirement of workers’ compensation coverage.” This on its face is consistent with Sirius’ interpretation that only upon the making of a payment is a penalty provision triggered. UEF argues that this can be read to authorize a \$50.00 penalty for every month in which NO PAYMENT IS MADE even though there are penalties or claim reimbursements due, after the initial 30 days following notification of the penalties or claim reimbursements due. This is not a tenable reading.

The Legislature could have adopted a law that once 30 days passed after a penalty notice or claim reimbursement demand, thereafter a \$50.00 penalty fee was mandatory for every month in which no payment was made on the money due and owing. That is not the plain meaning of the statute the Legislature actually passed, which requires the \$50.00 penalty fee on each payment made late.

UEF’s interpretation and conduct is not consistent with the language of the rule, either. The rule, like the statute, defines the penalty as a payment penalty. The rule speaks of determining whether “[a]n account balance is considered past due” and

makes that determination depend upon whether “the payment is not received within 30 days after the original billing or notice of requirement of workers’ compensation coverage” (emphasis added).

UEF also argues from the rule’s language that once the 30 days has elapsed the penalty applies. However, the statute authorizes assessment of the penalty when a payment is received, not when a month goes by without any payment. The rule, applied under that statute, is quite clear as well that when an actual payment is received more than 30 days after the original billing or notice of requirement of workers’ compensation, that is a late payment, and the \$50.00 penalty fee is then assessed on that particular late payment.

Under the plain language interpretation of the statute and the rule, Sirius made 16 late payments, for which 16 \$50.00 late payment penalties must be assessed.

The Hearing Officer understands the ongoing context of all the amendments to the law regarding penalties and claim reimbursements required of uninsured employers. The fund created to cover the compensable losses of workers with industrial injuries suffered in the service of uninsured employers is often depleted and cannot cover those costs. Increasing the penalties assessed against uninsured employers is really the only method for increasing the money coming to the fund, and the harsher the penalty the stronger incentive there is to comply with the law and pay for coverage for workers. However, the department is not empowered to “interpret” the law beyond its manifest legislative intent. UEF presented neither evidence nor authority that the express late payment penalty was actually intended to be a monthly penalty on delinquent amounts due, applicable every month in which past due money was owed and no payment made to satisfy or reduce that past due amount. Certainly, UEF’s interpretation would result in situations that are far more lucrative for the fund, and far more punitive toward the uninsured employer. However, the plain language of the statute and the plain language of the rule make it clear that this is a late payment penalty. Given that plain meaning, inquiry into the legislative intent is unnecessary and improper.

V. CONCLUSIONS OF LAW

1. The department’s Hearings Bureau has jurisdiction to review the penalty determinations and assessments made against Sirius Business Company by the department’s Uninsured Employers’ Fund. Mont. Code Ann. §§ 39-71-504 and 2401(2).

2. The Uninsured Employers’ Fund is authorized to assess a \$50.00 late penalty for every payment by an uninsured employer of any amount of penalties

and/or claim reimbursements, received more than 30 days after the original billing/penalty notice regarding any part of the penalties and/or claim reimbursements paid. Sirius Business Company made 16 such late payments to the Uninsured Employers' Fund for penalties and/or claim reimbursements, from March 23, 2006 to June 11, 2013, for which 16 \$50.00 late payment penalties apply. Mont. Code Ann. § 39-71-504(2)(a). Any \$50.00 late payment penalties charged against Sirius Business Company for months in which it failed to make any payment of amounts due (whether past due or due) were not authorized. Any interest charged on late payment penalties, which should by statute be collected by deduction from the payment against which the late penalty is assessed, was not authorized. Mont. Code Ann. §39-71-504(2).

VI. ORDER

1. Sirius Business Company made 16 late payments of money due to the Uninsured Employers' Fund for penalties and/or claim reimbursements, between March 23, 2006 and June 11, 2013, for which 16 \$50.00 late payment penalties must be assessed.

2. The Uninsured Employers' Fund must:

- (a) Remove every \$50.00 penalty fee assessed against Sirius Business Corporation for months in which no payment was made for amounts past due, between March 23, 2006 and June 11, 2013;
- (b) Reduce the credit against amounts due from Sirius Business Company for each of the 16 payments made, on the date of each such payment, by \$50.00, thereby assessing and collecting the \$50.00 penalty fee for each payment; and
- (c) Recalculate the interest accrued on the amounts actually due from Sirius Business Company between March 23, 2006 and June 11, 2013, using the correct amounts due after the adjustments required by subparagraphs (a) and (b) above.

3. For any amounts due as of June 11, 2013, the Uninsured Employers' Fund must calculate the amounts currently due for unpaid penalties and/or claim reimbursements as of the date of this order, together with the amount of interest accrued on those unpaid amounts, giving credit in the calculation process for any overpayments paid on the account.

4. After completing the calculation process, the Uninsured Employers' Fund must either.

(A) Provide to Sirius Business Company an itemized statement of any amounts currently due as of the date of this order, thereafter resuming its normal and legal collection process, with the changes delineated in this order; or

(B) refund any such overpayment, unless there are other obligations of Sirius Business Company against which the overpayment can first be applied.

DATED this 10th day of October, 2013.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ TERRY SPEAR
TERRY SPEAR, Hearings Bureau
Montana Department of Labor and Industry

* * * * *

NOTICE OF APPEAL RIGHTS: 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 mailing date of this Order. Mont. Code Ann. §39-72-612(2), Admin. R. Mont. 24.5.350. The address is:

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