

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Workers' Compensation and
Safety Division, Petitioner

v.

Smith Company Enterprises LLC,
Respondent

Docket No. 06-23WCPen

By: Beth A. DeBernardi
Administrative Law Judge

For: Michael A. Harrington
Commissioner

OPINION AND ORDER

Hearing held via Microsoft Teams on September 13, 2024
Record closed on October 11, 2024

APPEARANCES:

Rebecca L. Smith, Esq., for Petitioner
Abdul Smith, *pro se*, for Respondent

ISSUES PRESENTED:

1. Did Respondent violate 21 VSA § 687 by failing to secure workers' compensation insurance coverage for the period from August 4, 2020 through December 2, 2021 and for the period from April 21, 2022 through June 16, 2022, inclusive of end dates?
2. If so, what administrative penalty is assessed for the violation?

EXHIBITS:

Petitioner's Exhibit 1:	Investigation Report dated November 16, 2022
Petitioner's Exhibit 2:	Respondent's Delaware Business Registration
Petitioner's Exhibit 3:	NCCI Proof of Coverage Database Record from May 2021
Petitioner's Exhibit 4:	Emails between Petitioner and Consolidated Communications
Petitioner's Exhibit 5:	Travelers Change Document Effective 12/3/2021
Petitioner's Exhibit 6:	Travelers Policy Effective 4/21/2021 to 4/21/2022
Petitioner's Exhibit 7:	State Farm Policy Effective 3/21/2022 to 3/21/2023
Petitioner's Exhibit 8:	Berkshire Hathaway Policy Effective 6/17/2022 to 6/17/2023
Petitioner's Exhibit 9:	Contract between Consolidated Communications and Respondent
Petitioner's Exhibit 10:	Sample Form Contract between Respondent and its Workers
Petitioner's Exhibit 11:	Investigator's Analysis of Payment Records
Petitioner's Exhibit 12:	Administrative Citation and Penalty dated August 21, 2023

FINDINGS OF FACT:

1. I take judicial notice of the Administrative Citation and Penalty issued against Respondent in the proposed amount of \$82,100.00 on August 21, 2023 (Docket No. 06-

23WCPen), with the error correction to \$81,100.00 described in Petitioner's direct testimony.¹ *See* Exhibit 12.

2. Respondent Smith Company Enterprises LLC is a limited liability company registered in Delaware and headquartered in Texas. *See* Exhibit 2. Abdul Smith is Respondent's owner and manager. Mr. Smith testified on Respondent's behalf at the hearing.
3. In May 2021, the Workers' Compensation and Safety Division (the "Division") received a complaint that Respondent had employees working in Vermont pursuant to a contract with Consolidated Communications Enterprise Services, Inc. ("Consolidated") but did not have workers' compensation coverage in Vermont. The Division assigned investigator Cassandra Edson to investigate the complaint, and Ms. Edson testified on Petitioner's behalf at the hearing. Her report was admitted into evidence as Exhibit 1.
4. Based on the investigation results, Petitioner alleges that Respondent had employees performing work in Vermont between August 4, 2020 and December 2, 2021 and between April 21, 2022 and June 16, 2022, inclusive of end dates, for whom it failed to provide workers' compensation insurance coverage.

Respondent's Operations

5. Respondent works in multiple locations throughout the United States, performing repair and maintenance of existing land lines for telecommunications providers.
6. In June 2020, Respondent entered into a written contract with Consolidated to provide such services in Vermont. The contract set forth the scope of the work to be performed by Respondent. *See* Exhibit 9.
7. Respondent hired workers to perform the work set forth in its contract with Consolidated in Vermont. *See* Exhibit 10. Comparison of the scope of work set forth in the Consolidated contract with the scope of work set forth in the agreements that Respondent entered into with its workers shows that the scope of work was identical.
8. In November 2021, Consolidated confirmed to the Division's investigator that Respondent was performing work for Consolidated in the State of Vermont. Consolidated reported that such work commenced on August 4, 2020. *See* Exhibit 4. Respondent does not dispute its operations in Vermont nor the starting date.
9. As of the date of the Division's investigation, Respondent had no reported work injuries in Vermont.

¹ Due to a typographical error, the Administrative Citation and Penalty stated a proposed penalty of \$82,100.00. The correct calculation, based on the credible testimony of Petitioner's witness, was \$81,100.00.

Workers' Compensation Insurance Coverage

10. A search of the NCCI Proof of Coverage Database in May 2021 did not find any workers' compensation insurance coverage for Respondent's operations in Vermont.²
11. At the investigator's request, Respondent provided a copy of its then-current workers' compensation and employer's liability policy, with Travelers, with a policy period of April 21, 2021 to April 21, 2022 (the "Travelers Policy"). See Exhibit 6.
12. The Travelers Policy had two separate sections relevant to workers' compensation coverage. Item 3.A. provided for workers' compensation coverage in the State of Texas. Item 3.C. listed a number of other states, including Vermont, to which the "Other States Insurance" provision applied for workers' compensation coverage.
13. The Other States Insurance provision provides that, if the insured is working in one of the other listed states, and if the insured is not otherwise insured for that work, then the policy will provide workers' compensation coverage as if the state were listed in Item 3.A. However, to effectuate this coverage, the insured must notify Travelers that it is operating in the other state. If the insured is already working in the other state when the policy takes effect, then it must notify Travelers within thirty days. If the insured begins work in another state after the policy has taken effect, then the insured must tell Travelers of that fact "at once." Upon receiving such notice, Travelers will issue certain endorsements specific to that state. See Exhibit 6 (Travelers Policy) and Exhibit 5 (Travelers Change Document).
14. Although Respondent began doing business in Vermont on August 4, 2020, it did not notify Travelers that it was working in Vermont, as required by the Other States Insurance provision, in order to effectuate its coverage in Vermont.
15. After communicating with the Division's investigator, Respondent notified Travelers that it was operating in Vermont and obtained the amendments to the Travelers Policy detailed in the Travelers Change Document. See Exhibit 5. The changes were effective December 3, 2021 and included specifically adding Vermont to Item 3.A. of the policy. Following receipt of the Change Document, the NCCI Proof of Coverage database reflected that Respondent had workers' compensation coverage in Vermont, effective December 3, 2021.
16. In June 2022, a follow up review of the NCCI Proof of Coverage database found that Respondent ceased to have workers' compensation coverage in Vermont following the April 21, 2022 expiration of the Travelers Policy. Accordingly, the Division investigator

² Under 21 V.S.A. § 690, an employer who has secured workers' compensation coverage pursuant to § 687 must file a certificate of insurance with the Commissioner of Labor, with information including the policy effective date and expiration date. Workers' Compensation Rule 24.1100 designates the National Council on Compensation Insurance ("NCCI") as the Commissioner's agent for the purpose of receiving these certificates.

contacted Consolidated and confirmed that Respondent was still performing work in the State of Vermont pursuant to its contract with Consolidated.

17. Respondent's then-current workers' compensation policy was with State Farm Fire and Casualty Company, with a policy period from March 21, 2022 to March 21, 2023 (the "State Farm Policy"). *See* Exhibit 7.
18. The State Farm Policy used the same standard template as the Travelers Policy. Once again, only Texas was listed in Item 3.A. for workers' compensation coverage, while Item 3.C. for "Other States Insurance" included Vermont. The Other States Insurance section contained language identical to that found in the Travelers Policy. *See* Exhibit 7.
19. There is no evidence that Respondent notified State Farm that it was working in Vermont, as required by the applicable provisions of the State Farm Policy, in order to effectuate its workers' compensation coverage in Vermont.
20. After further communications with the Division investigator, Respondent obtained a wholly separate policy, from Berkshire Hathaway, with a policy period of June 17, 2022 to June 17, 2023 (the "Berkshire Hathaway Policy"). This policy listed Vermont in Item 3.A., reflecting that it provided coverage for Respondent's employees in Vermont. *See* Exhibit 8.
21. To summarize the periods during which Respondent had coverage for any Vermont employees, it had coverage with Travelers from December 3, 2021 through April 20, 2022,³ and with Berkshire Hathaway from June 17, 2022 to June 17, 2023.
22. Respondent began work in Vermont on August 4, 2020. *See* Finding of Fact No. 8 *supra*. I therefore find that Respondent was performing work in Vermont without workers' compensation coverage from August 4, 2020 through December 2, 2021 and from April 21, 2022 through June 16, 2022, inclusive of end dates.

The Amounts that Respondent Paid to its Workers

23. Respondent provided Investigator Edson with records of the payments made to its workers in 2020, 2021 and 2022. Those records document continuous work within the State of Vermont between August 4, 2020 and June 17, 2022. Respondent had four to five workers in Vermont at any one time. *See* Exhibit 11.
24. Respondent characterized its workers as subcontractors. The payment records to these workers included 1099 tax forms for calendar years 2020 and 2021, and invoices for work performed during calendar year 2022.⁴ Some of the purported subcontractors were limited liability companies and limited liability partnerships; others were individuals.

³ The Travelers Policy expired on April 21, 2022 at 12:01 AM. Accordingly, there was no coverage on April 21.

⁴ Respondent did not have 1099s for 2022 because it provided the records before it issued 1099s for 2022.

25. One of the factors relevant to reducing any penalty for failure to maintain workers' compensation insurance is the amount of premium an employer would have paid had it provided such insurance. *See* Conclusion of Law No. 14 *infra*. When an employer does not pay premiums that it should have paid to secure workers' compensation insurance, the amount that the employer saved by not securing insurance is referred to as "premium avoidance." The calculation of premium avoidance, in turn, depends on the amount of the employer's payroll.
26. Ms. Edson analyzed Respondent's labor expenses to determine how much it would have paid for insurance premiums had it maintained workers' compensation insurance. *See* Exhibit 11. She reviewed the payment information about each of Respondent's Vermont workers between August 4, 2020 and June 16, 2022. She also considered whether each worker was covered by workers' compensation insurance from a source other than Respondent. If the worker was a separate legal entity who had its own workers' compensation insurance, Ms. Edson did not include the amounts paid to that worker in her calculations. In addition, if the worker was properly excluded from the requirement of workers' compensation insurance under an applicable state statute, Ms. Edson did not include the amounts paid to that worker in her calculations, either.⁵
27. After reviewing Exhibit 11, and in the absence of any contrary evidence, I accept Ms. Edson's summary as to which workers were covered by workers' compensation insurance from another source and which workers were excluded from workers' compensation insurance coverage requirements under a statutory exclusion provision.
28. Having excluded the payments made to the workers described above, Ms. Edson totaled the rest of the payments to the workers. She then pro-rated those payments to exclude the payments made for periods during which Respondent had workers' compensation insurance in Vermont. Specifically, Vermont coverage existed between December 3, 2021 and April 20, 2022 and from June 17, 2022 onward, when the Berkshire Hathaway Policy took effect.
29. Based on this calculation method, as summarized in the Premium Avoidance Calculation chart in Exhibit 1, Ms. Edson calculated that during the relevant uninsured periods, Respondent paid wages of approximately \$ 1,062,717.69 to its Vermont workers who were not otherwise covered by, or excluded from, workers' compensation insurance requirements. I accept Ms. Edson's calculation of this figure as accurate.

⁵ The Vermont Workers' Compensation Act, 21 V.S.A. § 601(14)(H), permits a corporation or an LLC to exclude up to four executive officers, managers or members from the required coverage for workers' compensation benefits. If all the executive officers of a corporation or all the managers and members of an LLC are properly excluded from coverage, and the business has no other employees, then the business is not required to purchase workers' compensation insurance in Vermont. *See also* Vermont Workers' Compensation Rule 25. Some other states have similar exclusion provisions that Ms. Edson reviewed.

Facts Relevant to the Mitigation of any Penalty under Workers' Compensation Rule 45.5520

30. In determining the amount of any penalty against an employer for failure to maintain workers' compensation insurance, Vermont law provides three factors that the Department may consider to mitigate, or reduce, the amount of the penalty.

First Mitigation Factor: Inadvertence/Excusable Neglect and Prompt Correction

31. Mr. Smith credibly explained that he thought his Vermont workers were independent contractors, not employees. He explained that his business performs work in multiple states and that he did not understand the Vermont nature-of-the-business test for whether a worker is an independent contractor or an employee. He noted that other states apply a control test for determining employee status, not the nature-of-the-business test. Mr. Smith did not intend to circumvent the law; rather, he failed to understand the applicable law.
32. Mr. Smith also thought that his workers' compensation insurance policies covered any employees he might have in Vermont. In fact, the policies specifically listed Vermont as a state to which the workers' compensation coverage applied. However, Mr. Smith failed to focus on the complex interplay of the policy provisions set forth in Items 3.A. and 3.C. and therefore did not realize that Vermont coverage was dependent on a notification provision set forth in Part Three of the policy. Mr. Smith testified that his failure to heed the notification provision was inadvertent, not intentional. He further testified that when he discussed Item 3.C. coverage with his insurer, the agent was not able to explain it to him and did not appear familiar with it, either. I find this testimony credible.
33. When Ms. Edson informed Mr. Smith that there was no coverage for any Vermont employees under the Travelers Policy in the fall of 2021, he promptly notified Travelers and obtained the Travelers Change Document to provide that coverage effective December 3, 2021. When the same problem arose in the spring of 2022, Respondent promptly obtained a new policy from Berkshire Hathaway with effective coverage in Vermont under Item 3.A. Thus, in both cases, he promptly corrected the deficiency.

Second Mitigation Factor: Premium Avoidance

34. As set forth above, another relevant factor in determining the amount of any penalty is the premium that an employer avoided paying by not having insurance. *See Finding of Fact No. 25 supra.*
35. To calculate premium avoidance in any investigation, Ms. Edson determines the amount of wages paid to the workers and applies the relevant premium rates published by the NCCI on an annual basis. The NCCI publishes its annual rates on April 1 of every year. Thus, the premium calculations are performed based on an employer's payroll from April 1 to March 31 for each applicable year.
36. The NCCI rate varies depending on the employer's business, with more dangerous occupations commanding higher rates than less dangerous ones. Here the parties agree

that the relevant NCCI rates are those published for Class Code 7600, which represents *Telecommunications Co. -- Cable TV, or Satellite -- All Other Employees and Drivers*.

37. Ms. Edson calculated the premium avoidance for Respondent’s business as follows:

Dates	NCCI Rates for Class Code 7600	Wages	Premium Avoidance
8/4/20 – 3/31/21 ⁶	6.99%	\$176,752.17 (2020) + \$238,946.83 (2021)	\$29,057.36
4/1/21 – 12/2/21 ⁷	7.69%	\$566,340.22	\$43,551.56
4/21/22 – 6/16/22 ⁸	6.44%	\$80,678.17	\$5,195.67
Totals		\$1,062,717.69	\$ 77,804.59

38. I accept Ms. Edson’s calculation of premium avoidance in the amount of \$77,804.59.

Third Mitigation Factor: Size and Nature of the Business

39. Based on Ms. Edson’s investigation report, I find that Respondent had four or five workers in Vermont at any one time. *See Exhibit 1.*
40. The North American Industry Classification System (NAICS) is the federal system for classifying businesses for various statistical purposes. NAICS classifies businesses that repair telephone lines as Industry Sector Code 23 (construction). Under Vermont law, businesses classified under Code 23 are in the most hazardous risk category. *See Workers’ Compensation Rule 45.5513 and Appendix.*

Citation and Appeal

41. On August 21, 2023, Petitioner issued an Administrative Citation and Penalty to Respondent for failing to maintain workers’ compensation insurance coverage for its employees for the periods August 4, 2020 through December 2, 2021 and April 21, 2022 and June 16, 2022, inclusive of end dates, a period of 543 days. The proposed penalty was \$81,100.00. *See footnote 1, supra.*
42. Respondent appealed the Administrative Citation and Penalty, and the Department of Labor held a hearing on the appeal on September 13, 2024.

⁶ August 4, 2020 is the date when Respondent commenced work in Vermont. March 31, 2021 is the end of the NCCI rate year.

⁷ April 1, 2021 is the start of the new NCCI rate year. December 2, 2021 is the last date on which Respondent did not have workers’ compensation coverage, as it secured such coverage effective December 3, 2021.

⁸ April 21, 2022 is the date on which Respondent’s coverage expired. June 16, 2022 is the last date on which Respondent did not have workers’ compensation coverage, as it secured such coverage again on June 17, 2022.

CONCLUSIONS OF LAW:

Requirement to Maintain Workers' Compensation Insurance and Statutory Employees

1. Under Vermont law, unless an employer is approved to self-insure, it must maintain workers' compensation insurance coverage for its employees. 21 V.S.A. § 687; *In re Chatham Woods Holdings, LLC*, 2008 VT 70, ¶ 3.
2. There is no evidence that Respondent was approved to self-insure, nor does Respondent contend that it was.
3. To determine whether Respondent violated § 687 by failing to maintain workers' compensation coverage for its workers, I must determine whether those workers were employees or independent contractors under Vermont law. *See Workers' Compensation and Safety Division v. On the Rise Construction, LLC*, 08-19WCPen and 09-19WCPen (September 15, 2020). If the workers were employees, then Respondent was required to insure them.
4. The Vermont Workers' Compensation Act defines "employer" as including "the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed." 21 V.S.A. § 601(3).
5. Under that definition, statutory employer status is determined by the nature of the putative employer's business. *See Marcum v. State of Vermont, Agency of Human Services*, 2012 VT 3, ¶ 9, citing *Chatham Woods Holdings, supra* at ¶ 11. Specifically, the "nature of the business" asks whether the work contracted for is "a part of, or process in, the trade, business or occupation" of the putative employer. *Id.*; *see also Frazier v. Preferred Operators, Inc.*, 2004 VT 95, ¶ 11 (acknowledging preference for the "nature of the business" test over the "right to control" test for determining the existence of a statutory employer relationship). If the work contracted for is a part of, or process in, the trade, business or occupation of the putative employer, then the workers are employees.
6. Applying the "nature of the business" test here, the workers providing telephone line repair and maintenance services for Respondent were performing the exact same service set forth in the scope of work provision of Respondent's contract with Consolidated. As such, the nature of the work performed by the workers was identical to the work that Respondent was in business to provide. I therefore conclude that the workers were employees under the nature of the business test.

Violation of 21 V.S.A. § 687

7. Respondent had employees who provided services that were in the nature of its business from August 4, 2020 through June 16, 2022.

8. Respondent had workers' compensation insurance coverage for those employees from December 3, 2021 through April 20, 2022. However, it did not have such coverage from August 4, 2020 through December 2, 2022, nor from April 21, 2022 through June 16, 2022.
9. I therefore conclude that Respondent violated 21 V.S.A. § 687 by failing to maintain workers' compensation insurance coverage for its employees from August 4, 2020 through December 2, 2021 (486 days) and from April 21, 2022 through June 16, 2022 (57 days). Together, Respondent failed to maintain workers' compensation insurance for its employees for a total of 543 days.

Calculation of the Penalty for Non-Compliance with 21 V.S.A. § 687

10. Failure to comply with the workers' compensation insurance requirement set forth in 21 V.S.A. § 687 carries a statutory penalty of up to \$100.00 per day for the first seven days of violation and up to \$150.00 per day thereafter. 21 V.S.A. § 692(a).
11. Workers' Compensation Rule 45 implements the penalties provided for by statute. The rule provides a formula for calculating penalties based on the NAICS industry sector code for the employer and the number of the employer's prior offenses within the last three years. *See Workers' Compensation Rules 45.5510 – 45.5513.*
12. Respondent's business falls under NAICS Industry Sector Code 23 (Construction). *See Finding of Fact No. 40 supra; Workers' Compensation Rule 45, Appendix.* For employers in this industry sector, Rule 45.5513 provides that the penalty "shall" be \$50.00 per day for each day without insurance for an initial violation. The penalty for subsequent violations is substantially higher.⁹ *See Workers' Compensation Rule 45.5513.*
13. This is Respondent's first violation. The applicable penalty is \$50.00 per day for 543 days under Workers' Compensation Rule 45.5513. Thus, the penalty amount is \$27,150.00.

Mitigating Factors

14. The Workers' Compensation Rules provide the Commissioner with discretion to reduce the amount of any penalty if the employer demonstrates any of the following:
 - That the failure to secure or maintain Workers' Compensation insurance was inadvertent or the result of excusable neglect and was promptly corrected;
 - That the penalty amount significantly exceeds the amount of any premium expenditures that would have been paid if an insurance policy had been properly secured or maintained; or

⁹ The penalty for a second violation within three years is double the penalty for a first violation. The penalty for a third violation is the full statutory maximum of \$100.00 per day for the first seven days and \$150.00 per day for each day thereafter. *See 21 V.S.A. § 692(a) and Workers' Compensation Rule 45.5513.* Had this been Respondent's third violation, the penalty would have been \$81,100.00.

- That the small size of the employer and the non-hazardous nature of the employment presented minimal risk to employees.

Workers' Compensation Rules 45.5520 – 45.5550. The Rules place the burden to establish the applicability of any mitigating factors on the employer. *Id.*

First Mitigating Factor: Inadvertence/Excusable Neglect and Prompt Correction

15. Employers must establish *both* inadvertence or excusable neglect *and* prompt correction to be entitled to consideration of mitigation under the first factor. *Workers' Compensation Rule 45.5530.*
16. Respondent here was not well-versed in Vermont law and did not understand the nature-of-the-business test that Vermont uses to determine whether a worker is an employee or an independent contractor. Its lack of knowledge of the applicable law is understandable, but it does not constitute excusable neglect. Vermont has “long adhered to the legal maxim that everyone is presumed to know the law, and therefore, ignorance of the law is no excuse.” *Workers' Compensation and Safety Div. v. Peter Leo Goldsmith, LLC*, citing *Rule v. Tobin*, 168 Vt. 166, 175 (1998); *State v. Woods*, 107 Vt. 354, 356-57 (1935). *See also Workers' Compensation and Safety Division v. Michael Feiner d/b/a Vine Ripe Consulting & Creative Services*, Docket No. 20-19WCPen (April 6, 2020), affirmed by the Vermont Supreme Court, 2020 WL 5988552 (October 9, 2020) (respondent's incorrect belief that his workers were not employees does not constitute excusable neglect). Thus, I conclude that Respondent's mistaken belief here that its employees were independent contractors does not constitute inadvertence or excusable neglect under Workers' Compensation Rule 45.5530.
17. However, I must also consider Respondent's honest belief that it had workers' compensation insurance coverage in Vermont. Respondent's insurance policies specifically listed the State of Vermont under the workers' compensation coverage provisions. Texas was listed in Item 3.A., and Vermont was listed in Item 3.C. Mr. Smith credibly testified that he did not realize that he had to take any additional steps to effectuate the Vermont coverage that was expressly identified in his policy. I find that his failure to provide a particular notice was inadvertent and therefore Respondent's failure to maintain its Vermont workers' compensation insurance was, in this regard, inadvertent for purposes of Workers' Compensation Rule 45.5530.
18. Further, Respondent acted promptly to correct the problems with his Vermont insurance coverage. In December 2021, he contacted Travelers and provided the required notice for Vermont to be included under Item 3.A. In June 2022, he found a new policy with Berkshire Hathaway that listed Vermont under Item 3.A. Accordingly, I find that Respondent promptly corrected his lack of workers' compensation insurance coverage as contemplated by Workers' Compensation Rule 45.5530.

19. Having met both the inadvertence requirement and the prompt correction requirement of the first mitigating factor, Respondent is entitled to some mitigation of the penalty amount on this basis.

Second Mitigating Factor: Premium Avoidance

20. The premium avoidance here is \$77,804.59, and the penalty under Workers' Compensation Rule 45.5513 is \$27,150.00.
21. Under Workers' Compensation Rule 45.5540, the Department may reduce a penalty that is "significantly" higher than the premium avoidance. In this case, however, the penalty is already lower than the premium avoidance. Accordingly, the second mitigating factor does not apply here.

Third Mitigating Factor: Size and Nature of the Business

22. This factor requires the business to have both a small size *and* a non-hazardous nature. A business with fewer than ten employees is considered a small business for purposes of the penalty provision. *See Workers' Compensation and Safety Div. v. Michael Eno Painting LLC*, Docket No. 01-22WCPen (September 8, 2022). Respondent here had four to five employees and was therefore a small business.
23. However, the nature of its business is classified as hazardous, as indicated by its inclusion of Industry Sector Code 23 under Workers' Compensation Rule 45.550. Mitigation is therefore not available under the third factor.

Final Penalty Calculation

24. The penalty to be imposed in the absence of any mitigating factors here is \$27,150.00. However, Respondent is entitled to consideration of some mitigation of this penalty under the first mitigating factor.
25. After due consideration, I have determined that a reduction of \$3,000.00 is appropriate under the circumstances presented here. This amount is about ten percent of the total penalty. I conclude that the reduction of the total penalty from \$27,150.00 to \$24,150.00 fairly acknowledges the inadvertence of Respondent's error under the policy language, while not minimizing the seriousness of failing to maintain coverage for its employees for 543 days.

ORDER:

For the violations alleged in Petitioner's August 21, 2023 Administrative Citation and Penalty in Docket No. 06-23WCPen, failing to maintain workers' compensation insurance, Respondent is hereby assessed a penalty of \$24,150.00.

DATED at Montpelier, Vermont this 22nd day of October 2024.

Michael A. Harrington
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, Respondent may appeal to the Vermont Supreme Court. 3 V.S.A. § 815; V.R.Civ.P. 74. If an appeal is taken, Respondent may request of the Vermont Department of Labor that this Order be stayed pending the outcome of the appeal. No stay is in effect unless granted.