

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

Nos. 2021-0071 and 2021-0072

Appeal of Javier Vasquez  
and  
Appeal of Matosantos International Corporation

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APPEAL PURSUANT TO RULE 10 FROM A DECISION OF THE  
NEW HAMPSHIRE COMPENSATION APPEALS BOARD

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BRIEF FOR THE NEW HAMPSHIRE  
DEPARTMENT OF LABOR

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The State requests five (5) minutes for oral argument.

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**ISSUES PRESENTED**

- I. Did the Workers' Compensation Appeals Board properly determine that RSA chapter 281-A does not confer jurisdiction on the New Hampshire Department of Labor to interpret provisions of an insurance policy to decide issues of insurance coverage?**
  
- II. Did the Workers' Compensation Appeals Board provide a constitutionally adequate process in determining that Matosantos violated RSA 281-A:5?**

## STATEMENT OF THE CASE AND FACTS

### **I. Statutory Scheme**

The division of workers' compensation was "established within the department of labor... to carry out the responsibilities of the commissioner under RSA 281-A:5 through 281-A:5-c and 281-A:11, or the regulation of public employer self-insured workers' compensation programs under RSA 5-B." RSA 273:4-a, I, III. According to RSA 281-A:5:

An employer... subject to this chapter shall secure compensation to employees in one of the following ways:

I. By insuring and keeping insured the payment of such compensation with a company licensed to write workers' compensation insurance in this state and filing with the commissioner, in a form prescribed by the commissioner, evidence of such coverage as the commissioner deems appropriate.

New Hampshire Department of Labor ("NHDOL") Administrative Rule ("Lab") 306.01 specifies the required evidence of coverage:

(a) As explained in this part, to show any changes in coverage, the appropriate party shall complete and file with the department the appropriate "Notice of Workers Compensation Insurance Coverage" form 6WC (4/2008).

(b) Each "Notice of Workers Compensation Insurance Coverage" form 6WC (4/2008) contained in appendix II shall be completed and filed either directly by a carrier, self-insured employer, homogenous self-insured group, or third party administrator, or the form shall be completed and filed on their

behalf by that party providing sufficient information to NCCI<sup>1</sup> so that NCCI can complete and file the form with the department to show any changes in coverage.

(c) “Notice of Workers Compensation Insurance Coverage” form 6WC (4/2008) contained in appendix II shall be filed as soon as possible after completion of arrangements to provide coverage, but no later than 10 calendar days after the date binder is issued.

(d) Insufficient information provided to NCCI shall render the filing invalid but shall not affect the insurance coverage of the employer.

(e) Insufficient information provided to NCCI shall constitute noncompliance and shall subject the carrier to the civil penalty...

(f) Notice of coverage shall be given in terms of coverage, not individual contract policy... Once notice of coverage has been filed coverage shall remain in force until a valid termination notice has been filed with the department or until a new notice of coverage is filed.

*See also* RSA 281-A:60, I (“The commissioner shall have the power to adopt rules under RSA 541-A relative to the following: (a) Content and format of all forms necessary under this chapter.”). Instead of the insurance policy being submitted to the NHDOL, the filing of a Form 6WC with NCCI, which is then provided to the department, serves as evidence of coverage. *See* Lab 306.01.

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<sup>1</sup> Lab 303.13: “National Council on Compensation Insurance” or “NCCI” means the nonprofit service organization for insurance companies at the mailing address of PO Box 3098, Boca Raton, FL 33431-0998.



If an employer or insurer fails to comply with RSA 281-A:5, the commissioner may assess penalties as specified in RSA 281-A:7.

## **II. Mr. Vasquez's Workers' Compensation Claim**

This case involves the workers' compensation claim of Javier Vasquez ("Mr. Vasquez"), who was an auditor for Matosantos International Corporation ("Matosantos"). SOF at ¶1.<sup>2</sup> Mr. Vasquez's job responsibilities required that he travel to retail stores throughout the United States. *Id.* at ¶¶2-3. On May 31, 2018, Mr. Vasquez was driving from his final New Hampshire store inspection when a drunk driver struck him head-on. CR at 21; SOF at ¶4. Mr. Vasquez sustained severe injuries requiring prolonged hospitalization and treatment and rendering him disabled and unable to work. SOF at ¶¶5-6.

At the time of the incident, Matosantos had a workers' compensation and employers' liability business insurance policy issued by The Hartford. *Id.* at ¶7; Matosantos App. at 44-95. The Hartford denied Mr. Vasquez's workers' compensation claim, taking the position that the policy did not apply to Mr. Vasquez's case since it did not provide coverage to Matosantos in New Hampshire. SOF at ¶¶8-9; Vasquez App. at 17.

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<sup>2</sup> Citations to the record are as follows:

"CR" refers to the Certified Record;

"SOF" refers to the Joint Statement of Facts filed by the parties to this dispute;

"Matosantos Br." refers to the Brief of Petitioner/Appellant Matosantos;

"Matosantos App." refers to the Appendix attached to the Brief of Petitioner/Appellant Matosantos;

"Vasquez Br." refers to the Brief of Petitioner/Appellant Vasquez; and

"Vasquez App." refers to the Appendix attached to the Brief of Petitioner/Appellant Vasquez.

On March 26, 2019, Mr. Vasquez requested a hearing at the NHDOL pursuant to RSA 281-A:2, XI, XII; RSA 281-A:5; RSA 281-A:7, III; RSA 281-A:23; and RSA 281-A:48 “to establish the work-related nature and extent of his injury, and request that an order issue for weekly indemnity benefits.” SOF at ¶10; Vasquez App. at 14-15. The NHDOL held the hearing on June 18, 2019, but Matosantos failed to attend and was defaulted. Matosantos App. at 27-34; Vasquez App. at 18-27. Matosantos successfully moved to strike the default and a new hearing was scheduled for November 19, 2019. *Id.*

At the time of the November hearing, Mr. Vasquez remained unable to work. SOF at ¶6. Matosantos had stipulated to causation and was paying indemnity benefits pursuant to a Memo of Payment filed with the NHDOL on October 29, 2019. CR at 48-52; SOF at ¶¶13-15. The parties agreed to accept the order of the first hearing as to RSA 281-A:2, RSA 281-A:23, and RSA 281-A:48. Matosantos App. at 33-34; Vasquez App. at 19-27. At issue, however, was whether The Hartford was responsible for payment pursuant to RSA 281-A:5 and RSA 281-A:7, III. SOF at ¶14. Mr. Vasquez and Matosantos sought interpretation of the contract by the NHDOL to find that The Hartford must indemnify Matosantos and provide coverage. CR at 42-43.

On January 3, 2019, the hearing officer found that Matosantos “failed to provide any evidence that [Matosantos] had secured coverage in New Hampshire in the manner prescribed in the Department of Labor [ ] Rules.” *Id.* at 45. In violation of RSA 281-A:5 and N.H. Admin. R. Lab 304.04, “there was no evidence presented that the carrier electronically

provided to NCCI the necessary information.” *Id.* The insurance policy was entered into evidence,<sup>3</sup> but the hearing officer declined to:

review the contract of insurance between the employer and The Hartford to ascertain whether the contract provides coverage in New Hampshire, [since] that request is beyond the jurisdictional powers of this Department. While RSA 281-A:43 permits the Hearing Officer to rule on controversies as to the responsibility of an employer or an employer’s insurance carrier for the payment of compensation and other benefits, it does not permit the Hearing Officer to interpret a contract among parties to determine whether the insurance company is an employer’s insurance carrier. That determination lies in a court of equity that does possess the jurisdiction to provide a declaratory judgment on the matter.

*Id.* The hearing officer found that Matosantos “failed to comply with the requirements of RSA 281-A:5 as the employer was conducting business in the state of New Hampshire with employee(s) without workers’ compensation insurance coverage” at the time of the incident and referred the case “for review of potential civil penalty.” *Id.*

Petitioners Mr. Vasquez and Matosantos appealed the decision to the Workers’ Compensation Appeals Board (“CAB”) pursuant to RSA 281-A:43, I(a). CR at 38-39. The CAB held a *de novo* hearing on August 25, 2020, and the parties filed written closings and supplemental memoranda. *Id.* at 19. The CAB panel issued an unanimous decision on November 25, 2020, finding that Matosantos “failed to prove that it had a valid workers’

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<sup>3</sup> The rules of evidence do not typically apply in NHDOL administrative hearings. *See* Lab 204.07(k): “The hearing officer shall conduct the hearing in such a manner as to best ascertain the rights of the parties and shall not be bound by common law or other rules of evidence or by common law or other rules of procedure other than those specified under Lab 200 and RSA 541-A.”

compensation policy in effect that provided coverage to the claimant to cover the injuries that he suffered on May 31, 2018,” and referred the matter to “the Director of the Workers’ Compensation Division... [for] further action against it as appropriate under the statute.” *Id.* at 26-27.

In issuing its decision, the CAB held that:

[n]either [RSA 281-A:5 nor RSA 281-A:7] authorizes the Department of Labor to determine a dispute regarding whether an insurer, who has issued a policy elsewhere, might be obligated to pay workers compensation benefits to an employee who was working in New Hampshire. Neither noticed statute establishes the authority of the Department to interpret the terms of a workers’ compensation insurance policy or to decide insurance coverage issues.

*Id.* at 22. The CAB understood RSA 281-A:43, I(a) to empower the NHDOL to adjudicate issues specifically defined in RSA 281-A “such as causal [sic] connection of injury to employment, extent of disability, issues regarding medical benefits, permanency impairment awards and other benefits specifically set out in different sections of the workers’ compensation statute.” *Id.* at 23. The CAB confirmed the limited jurisdiction of the department to “setting standards and procedures for workers’ compensation claims handling, reviewing applications for self-insurance, monitoring changes in employers’ coverage statutes, and adjudicating disputes arising under RSA 281-A.” *Id.* at 25.

Additionally, the CAB explained that certain subject matter is reserved to the New Hampshire Insurance Department including “rate setting and licensure of workers’ compensation carriers and adjusters doing business in the state.” *Id.* Finally, the CAB noted that employers and insurers have an avenue of relief for “[d]isputes about issues of insurance

coverage, interpretation of policy language, and resolution of factual issues affecting coverage” through “declaratory judgment actions under RSA 491:22, or... contract actions[s] between the parties.” *Id.* The CAB accordingly declined to “assert jurisdiction over the case and order the insurer to pay benefits to the claimants,” leaving the parties to then pursue corrective remedies, since “[t]hat argument puts the cart before the horse.” *Id.*

The petitioners filed motions for rehearing, with opposition from The Hartford. *Id.* at 6-18. The CAB denied the motions. *Id.* at 5. In so doing, the CAB found that:

[e]vidence of coverage is accomplished when NCCI has filed a completed Notice of Workers’ Compensation Coverage (Form 6WC) with the Department based on information provided to NCCI by the employer, insurance agent, and/or insurance carrier... [N]otice of coverage is given in terms that coverage is in place, but the individual insurance policy is not filed with the Department... Because neither NCCI nor the insurance carrier filed a 6WC with the Department of Labor demonstrating that Matosantos had obtained New Hampshire workers’ compensation coverage at the time of its employee’s injury, Matosantos was then in violation of RSA 281-A:5 and was subject to the liability provisions.

*Id.* at 2. The CAB pointed out that “[i]n New Hampshire, filing notice of coverage is the act that establishes a carrier/employer relationship under RSA 281-A and triggers the Department of Labor’s jurisdiction over the carrier on coverage and claims matters related to that employer.” *Id.* at 4. The CAB noted that it had “never previously adjudicated the interpretation of the language of a workers’ compensation policy to determine coverage.” *Id.* at 3. Since proof of coverage was not filed, The Hartford could not be

required by the NHDOL – or derivatively the CAB – to provide workers’ compensation benefits to Matosantos employees in New Hampshire. *Id.* at 5. The motions for rehearing were accordingly denied. *Id.* This appeal followed.

### **SUMMARY OF THE ARGUMENT**

The authority and responsibilities of the NHDOL with regard to workers' compensation has been delineated by the legislature through statute and codified through department administrative rules. *See, e.g.*, RSA 273:4-a; RSA chapter 281-A; N.H. Admin R. Lab PARTS 200-700. The NHDOL, and the CAB as administratively attached thereto, is tasked with resolving controversies "as to the responsibility of an employer or the employer's insurance carrier for the payment of compensation and other benefits under this chapter," including whether an employee is entitled to benefits and in what amount. *See* RSA 281-A:42-a, II; RSA 281-A:43, I(a); N.H. Admin R. Lab PART 200.

The petitioners are asking that the NHDOL exceed its statutory mandate by evaluating the provisions of an insurance policy issued by The Hartford to Matosantos. The department is not a party to insurance policies and does not regulate the insurance industry or interpret contracts. Indeed, this court has consistently held that these disputes fall squarely and solely within the judicial branch. The NHDOL and the CAB here found that Mr. Vasquez was legally entitled to the payment of compensation and benefits under RSA chapter 281-A, and properly declined to determine whether the insurance company would be liable for these costs based on the terms of the policy. *See* CR at 45. The employer's due process rights were adequately protected through these proceedings.

The petitioners have failed to demonstrate any basis for the expansion of the jurisdiction of the NHDOL and the CAB to interpret insurance contracts.

## ARGUMENT

### **I. Standard of Review**

According to RSA 281-A:43, I(c), “[a]ny party in interest aggrieved by any order or decision of the [CAB] may appeal to the supreme court pursuant to RSA 541.” “Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable.” RSA 541:13.

This Court:

will not disturb the CAB’s decision absent an error of law, or unless, by a clear preponderance of the evidence, we find it to be unjust or unreasonable. We review the CAB’s factual findings deferentially, and we review its statutory interpretation *de novo*. We construe the Workers’ Compensation Law liberally to give the broadest reasonable effect to its remedial purpose. Thus, when construing it, we resolve all reasonable doubts in favor of the injured worker.

*Appeal of Estate of Peter Dodier*, \_\_\_ N.H. \_\_\_, Case No. 2020-0185, 2021 WL 4783886, at \*3 (October 14, 2021) (internal citations omitted). “The CAB’s findings of fact will not be disturbed if they are supported by competent evidence in the record, upon which the CAB’s decision reasonably could have been made.” *Appeal of Pelmac Indus.*, \_\_\_ N.H. \_\_\_, Case No. 2019-0605, 2021 WL 4783994, at \*4 (October 13, 2021).



**II. RSA Chapter 281-A empowers the NHDOL to determine whether an employee is entitled to Workers' Compensation, not to resolve contractual disputes between employers and carriers.**

“[T]he Workers' Compensation Law is a purely statutory substitution of common law rights, remedies, and redress available to injured employees.” *McKay v. N.H. Compensation Appeals Board*, 143 N.H. 722, 728 (1999). It is premised on the employer-employee relationship and the relationship of the injury to the employment. *See* RSA 281-A:2, XI; RSA 281-A:19. This Court has repeatedly held that “all reasonable doubts in statutory construction [must be resolved] in favor of the injured employee in order to give the broadest reasonable effect to the remedial purpose of New Hampshire's Workers' Compensation Law.” *See Appeal of Pelmac Indus.*, Case No. 2019-0605, 2021 WL 4783994, at \*4.

An employer is required to “secure compensation to employees... [b]y insuring and keeping insured the payment of such compensation with a company licensed to write workers' compensation insurance in this state and filing with the [labor] commissioner, in a form prescribed by the commissioner, evidence of such coverage as the commissioner deems appropriate.” RSA 281-A:5, I. The required evidence of coverage is the Notice of Workers Compensation Insurance Coverage Form 6WC, which must be filed by the carrier upon “completion of arrangements to provide coverage” or “to show any changes in coverage.” N.H. Admin R. Lab 306.01(a), (b). Individual insurance policies are not accepted by the NHDOL to establish proof of coverage. *See* N.H. Admin R. Lab 306.01(f). Workers' compensation insurance policies are also not included in any of

the records required to be maintained and available to the department. *See* N.H. Admin R. Lab 504.02.

“The primary responsibility for coverage shall rest upon the employer.” N.H. Admin R. Lab 304.01(a). If an employer fails to secure payment of compensation as required by RSA 281-A:5, and an employee is deemed eligible by the NHDOL, “[t]he employer shall pay the compensation so determined to the person entitled to it.” RSA 281-A:7, III. Additionally, pursuant to RSA 281-A:7, I(a)(1), “[a]n employer subject to this chapter who fails to comply with the provisions of RSA 281-A:5 by not securing payment of compensation may be assessed a civil penalty.” Finally, “[i]n addition to the assessment of civil penalties, the commissioner may also proceed in the superior court to restrain and prohibit an employer subject to this chapter from conducting business in this state for so long as the employer fails to comply with the provisions of RSA 281-A:5 or any other provision of this chapter or for failure to comply with orders issued by the department under this chapter.” RSA 281-A:7, II.<sup>4</sup>

“Agents and carriers shall share in coverage responsibility by processing the necessary paperwork and advising each other and the employer of the status.” N.H. Admin R. Lab 304.03(a). Accordingly, RSA 281-A:7, II provides that “[a]n insurance carrier which insures an employer and fails to file with the commissioner a notice of coverage within a reasonable period of time as prescribed by rule shall be assessed a civil penalty.”

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<sup>4</sup> Criminal penalties may also be imposed if “[a]ny employer, individual, or corporate officer required to secure payment of compensation under this chapter [] purposely, as defined in RSA 626:2, II(a), fails to secure such payment.” RSA 281-A:7, VI.

The legislature placed responsibility with the NHDOL to enact rules to provide compensation to employees in the case of “accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment.” *See* RSA 273:4-a; RSA 281-A:2, X; RSA 281-A:60. These policies and procedures ensure that “parties in the workers’ compensation process substantially comply with the duty to compute and pay compensation, the method of record keeping and filing of forms, the content and format of forms, the content and handling of medical information, and the procedures for assuring all parties’ rights throughout the workers’ compensation process including hearings and appeals.” N.H. Admin R. Lab 501.01.

Under New Hampshire law:

[a]dministrative agencies are granted only limited and special subject matter jurisdiction. That jurisdiction is dependent entirely upon the statutes vesting the agency with power and the agency cannot confer jurisdiction upon itself. Furthermore, a tribunal that exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation.

*Appeal of Campaign for Ratepayers’ Rights*, 162 N.H. 245, 250 (2011) (internal citations omitted). Accordingly, when a controversy does arise “as to the responsibility of an employer or the employer’s insurance carrier for the payment of compensation and other benefits under this chapter, any party at interest may petition the commissioner in writing for a hearing and award.” RSA 281-A:43, I(a). If the party is not satisfied with the decision of the commissioner or designee, the matter may be appealed for a *de novo* hearing at the CAB. RSA 281-A:43, I(b).

The petitioners argue that RSA 281-A:43 grants the NHDOL the authority to resolve their contractual dispute. However, the only matters properly within the jurisdiction of the department are those specifically prescribed by the legislature. Markedly absent from RSA chapter 281-A is any allocation of authority to the NHDOL to review the content of insurance policies, the circumstances in which policies are entered, the validity of their execution, whether a breach has occurred, or any other contractual matter.

The purpose of workers' compensation adjudications at the NHDOL is to determine whether an employee is entitled to benefits under the statute – not to enter substantive disputes between employers and carriers regarding insurance policies. In fact, the statutory scheme was designed to prevent the department from being mired by such legal issues. For instance, instead of requiring or even permitting evidence of coverage to be demonstrated through the submission of insurance policies to the NHDOL, proof of coverage is admissible solely through a standardized form. *See* RSA 281-A:5, I; N.H. Admin R. Lab 306.01(a), (b), (f).

This Court has affirmed this understanding of the workers' compensation statute and the corresponding jurisdiction of the NHDOL and the CAB in hearing matters in dispute.

The legislature [] acts within its constitutional authority when it empowers an administrative body to resolve factual issues underlying a purely statutory right. It is well-settled that the rights and remedies provided by the Workers' Compensation Law are purely statutory... The nature and extent of [] redress is governed by the express statutory language and that which can be fairly implied therefrom.

*McKay*, 143 N.H. at 727 (internal citations omitted). In contrast, “[w]ith respect to the judicial branch, resolving questions of legal right and the function of trying and deciding litigation is strictly and exclusively its domain.” *Id.* (internal citations omitted).

Contractual disputes, and specifically those involving insurance policies, do not fall within the jurisdiction of the NHDOL. “The interpretation of insurance policy language is a question of law for this court to decide.” *See Bates v. Phenix Mut. Fire Ins. Co.*, 156 N.H. 719, 722 (2008) (quoting *Tech–Built 153 v. Va. Surety Co.*, 153 N.H. 371, 373 (2006)). Even the most basic facial review of the terms of an insurance policy is reserved to the judicial branch.

Policy terms are construed objectively, and where the terms of a policy are clear and unambiguous, we accord the language its natural and ordinary meaning. We need not examine the parties’ reasonable expectations of coverage when a policy is clear and unambiguous; absent ambiguity, our search for the parties’ intent is limited to the words of the policy.

*Bates*, 156 N.H. at 722 (quoting *Oliva v. Vt. Mut. Ins. Co.*, 150 N.H. 563, 566 (2004)).

The petitioners’ proposed expansion of the jurisdiction of the NHDOL and the CAB to review insurance policies would undermine both the function and the intent of the statutory scheme. Converting the CAB to a forum for the resolution of disputes between employers and carriers would deluge the CAB, skewing its attention to those businesses and issues. It would subvert employees’ rights and cause unnecessary delays in their receiving compensation to which they are deemed entitled. In the present matter, the grievously injured and permanently disabled employee was able

to receive compensation prior to resolution of the dispute between the employer and the carrier as to who was ultimately responsible for the cost. *See* CR at 25. Instead, under the petitioners' plan, the resolution of contractual disputes would be a prerequisite and would delay an award of compensation.<sup>5</sup>

The change in jurisdiction would require the implementation of legislation and administrative rules to establish requirements for the content, execution, binding, proof, notification, and review of workers' compensation policies since the NHDOL would no longer be able to rely on the Form 6WC as evidence. *See* RSA 281-A:5; N.H. Admin R. Lab 306.01. Such a finding would also require an overhaul of the credentials of the persons to be appointed by the governor and council to the CAB, since RSA 281-A:42-a, I presently requires "at least 5 years' experience in the area of workers' compensation or human resources or administrative law" – instead of mandating expertise in insurance contracts.

The petitioners rely on jurisprudence from other jurisdictions to establish that the NHDOL is misinterpreting and misapplying New

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<sup>5</sup> Alternatively, Mr. Vasquez asserts that "the Board had authority to order benefits paid by the employer's insurance carrier pending a further coverage determination in another forum... it is the statute that governs the relationship between the carrier and the injured worker." Vasquez Br. at 38-46. This argument fails to recognize that the statute does not govern the carrier-employee relationship – the foundation of workers' compensation is the employer-employee relationship and the relationship of the injury to the employment. *See, e.g.*, RSA 281-A:19 (notice of injury is based upon the "nature of the injury and its possible relationship to the employment"). The NHDOL ordered the only remedy it could grant Mr. Vasquez: that the employer provide compensation. Additionally, RSA 281-A:7, IV entitles employees to pursue alternate available relief: "an employee of an employer failing to comply with the provisions of RSA 281-A:5, or dependents of that employee if death ensues, may pursue any available remedy at law, free of the waivers and immunities conferred by RSA 281-A:8."

Hampshire statutes. However, the survey is unavailing. There is no demonstration that workers' compensation statutes from other states operate in the same manner as that of New Hampshire beyond isolated references to hearing authority. *See, e.g., Giersdorf v. A&M Construction, Inc.*, 820 N.W.2d 16 (Minn. 2012) (describing the Minnesota Workers' Compensation Court of Appeals); Vasquez Br. at 32. Furthermore, as cited in the order of the CAB, most of the decisions are premised on the employer having workers' compensation coverage in the state, as required to establish jurisdiction. CR at 4. *See, e.g., Northwestern Casualty & Surety Co. v. Doud*, 221 N.W. 766 (Wis. 1928); Matosantos Br. at 25; Vasquez Br. at 30-31. Proof of coverage is absent in the present matter without the Notice of Workers Compensation Coverage Form, thus the department is not permitted to assert jurisdiction over The Hartford regarding Matosantos. *See* CR at 5. Indeed, although both petitioners point to *Larson's Worker's Compensation Law* (Arthur Larson, 1990) to support their jurisdictional arguments, the one exclusion acknowledged by the treatise results from the lack of a valid insurance policy. *See* §150.02[4]; Matosantos Br. at 25-26; Vasquez Br. at 30, 40-42.

The petitioners have failed to set forth any reason that the court is not the appropriate or available forum to address the contractual claims raised in this matter or in any disputes in New Hampshire regarding the substance of workers' compensation insurance policies. Instead, the expansion of the jurisdiction of the NHDOL and the CAB would result only in inefficiency and unnecessary cost to the State, and further harm to injured employees.

### **III. The NHDOL properly found in accordance with due process that Matosantos violated RSA Chapter 281-A.**

Petitioner Matosantos presents two further claims for relief. First, Matosantos asserts that “[t]he DOL is not authorized under RSA 281-A:7 to find that an employer violated of [sic] RSA 281-A:5 for a failure to file evidence of coverage with the commissioner... [P]enalties may be assessed against employers only if they violate RSA 281-A:5 ‘by not securing payment of compensation.’” Matosantos Br. at 28. However, this argument ignores the explicit language in RSA 281-A:5, I, which specifies that “an employer... shall secure compensation to employees... [b]y insuring and keeping insured the payment of such compensation... *and filing with the commissioner, in a form prescribed by the commissioner, evidence of such coverage* as the commissioner deems appropriate.” (Emphasis added.) The filing of the form is a fundamental element of securing compensation; therefore, failure of the employer to take sufficient steps to ensure that its insurance carrier files evidence of coverage with the NHDOL may subject the employer to penalties under RSA 281-A:7, I(a)(1).

Matosantos next claims that “the DOL’s rulings cannot stand because a finding of no coverage and a referral to the ‘director’ for assessment of penalties, without having reviewed the Policy, constitutes a deprivation of [Matosantos’] property without due process of law... The process provided in this case amounts to a determination that no coverage exists under the Policy on the basis that The Hartford claims that no coverage exists under the Policy.” Matosantos Br. at 29-30. This argument is based on the incorrect premise that the NHDOL determined that no



coverage exists under the insurance policy. The department did not make such a finding; rather, it found that Matosantos had failed to “secur[e] payment of compensation” as required by RSA 281-A:5. CR at 2, 26. As discussed above, in order to secure payment of compensation, an employer must ensure that evidence of coverage is filed with the NHDOL through NCCI on the prescribed form. The department concluded that Matosantos failed to ensure this filing obligation was met. It did not conclude that Matosantos, in fact, has no coverage under the insurance policy or is not entitled to seek indemnification or some other remedy from The Hartford if the insurance policy covered the event at issue in this case.

Moreover, Matosantos cannot meet the elements required to demonstrate a violation of due process.

For more than a century, the central meaning of procedural due process has been clear: Parties whose rights may be affected are entitled to be heard, and in order that they may enjoy that right, they must first be so notified. The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending hearing... Thus, our inquiry focuses upon whether notice was fair and reasonable under the particular facts and circumstances of the case.

*In re Blizzard*, 163 N.H. 326, 335-36 (2012) (internal citations omitted). Matosantos does not claim that it lacked notice of an opportunity for a hearing. Matosantos was provided with the March 25, 2019, Notice of Accidental Injury or Occupational Disease and the Notice of Hearing for the initial June 18, 2019, NHDOL proceeding. CR at 47; Matosantos App. at 27-32; Vasquez App. at 18. Matosantos was provided with notice of and participated in both the November 19, 2019, NHDOL hearing and the

August 25, 2020, CAB hearing. CR at 29; SOF ¶¶16-17. The workers' compensation statutory scheme ensures that the parties have adequate notice of their rights and obligations at each stage of a claim, and have an "opportunity to present objections" through hearings, written filings, and the appellate process. *See In re Blizzard*, 163 N.H. at 336.

There was also no deprivation of property since there is no evidence that Matosantos was assessed any penalties or fines. The NHDOL and the CAB referred the matter to the division director for contemplation of further action according to RSA 281-A:7, but the review was not completed due to the intervening appeals. *See* CR at 26, 45. Furthermore, even where civil penalties are assessed for a final determination of non-compliance, due process rights are protected. N.H. Admin R. Lab 512.01(c) provides that "[i]f the carrier or employer disputes the assessment, he or she may request a hearing before the commissioner to discuss the matter to consider prior history of compliance with the statute and with the rules and orders of the department." Accordingly, Matosantos' claim that the NHDOL has or will somehow violate its due process rights is without merit.

**CONCLUSION**

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests five (5) minutes of oral argument to be presented by Attorney Stacie M. Moeser.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF LABOR

By its attorneys,

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November 5, 2021

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**CERTIFICATE OF COMPLIANCE**

I, Stacie M. Moeser, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 5,209 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

November 5, 2021

*/s/ Stacie M. Moeser* \_\_\_\_\_

Stacie M. Moeser

**CERTIFICATE OF SERVICE**

I, Stacie M. Moeser, hereby certify that a copy of the State's brief shall be served on Jared P. O'Connor, Esquire for Javier Vasquez, Tracy McGraw, Esquire, for The Hartford, and Michael O'Neil, Esquire for Matosantos International Corporation, through the New Hampshire Supreme Court's electronic filing system.

November 5, 2021

*/s/ Stacie M. Moeser* \_\_\_\_\_

Stacie M. Moeser