BEFORE THE DEPARTMENT OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

IN THE MATTER OF:	)	
TRI-COUNTY GARAGE, INC.	)	**Doc. No.:12.28-089107A**
and	)	
BERKLEY REGIONAL INSURANCE	)	**WC Appeal - Insurance**
COMPANY	)	
	)	

NOTICE

THIS ORDER IS AN INITIAL ORDER RENDERED BY THE DEPARTMENT OF COMMERCE AND INSURANCE.

THIS INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. A PARTY FILES A WRITTEN APPEAL OR PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NOT LATER THAN FIFTEEN (15) DAYS AFTER THE ENTRY DATE OF THIS INITIAL ORDER.

2. THE AGENCY FILES A WRITTEN NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN FIFTEEN (15) DAYS AFTER THE ENTRY DATE OF THIS INITIAL ORDER.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION OR NOTICE OF REVIEW WITH THE ADMINISTRATIVE PROCEDURES DIVISION AT THE ADDRESS OF:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
312 EIGHTH AVE NORTH
NASHVILLE, TN 37243

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, 615-741-7008 OR 741-2078 OR FAX 741-4472. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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INITIAL ORDER

This matter came to be heard April 10, 2006, before Steve Darnell, Administrative Judge, assigned by the Secretary of State, along with Larry C. Knight, Jr., Assistant Commissioner for Insurance of the Tennessee Department of Commerce and Insurance. Mr. Knight sits as the Commissioner's designee and as such makes the final determination as to findings of fact in this matter. Tri-County Garage, Inc. had a co-owner, Scott Ogle, who participated in the hearing on Tri-County Garage Inc.'s behalf. Representing Berkley Regional Insurance Company in this matter was Mike Morgan, Attorney at Law.

INITIAL ORDER

The subject of this hearing was whether Tri-County Garage, Inc. (hereinafter referred to as "Tri-County Garage") owed the additional amounts of premium assessed by Berkley Regional Insurance Company (hereinafter referred to as "Berkley"). After consideration of the record in this case, it is determined that Tri-County Garage did not follow the proper procedures to have its officers' payroll excluded by Berkley in the calculation of Tri-County Garage's workers' compensation premiums. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commissioner of the Department of Commerce and Insurance for the State of Tennessee (hereinafter referred to as the "Commissioner") has her official residence in Nashville, Tennessee at Davy Crockett Tower, Fifth Floor, 500 James Robertson Parkway. The Commissioner has jurisdiction of this matter pursuant to Tenn. Code Ann. § 56-5-309(b).

2. Berkley currently holds a certificate of authority to sell workers' compensation insurance in this state and is in the business of providing workers' compensation insurance to employers in Tennessee.

3. Tri-County Garage is a company located in Nashville, Tennessee. Tri-County Garage is engaged in the installation and maintenance of garage doors. Tri-County Garage is owned by Scott Ogle and Gary Erwin (hereinafter referred to as "Ogle" and "Erwin").

4. From December 16, 2004 until February 9, 2005, Tri-County Garage received its workers' compensative coverage from Berkley.

5. For the policy period December 16, 2004 until February 9, 2005, Berkley performed an audit, which is the subject of this appeal and concerns whether the payroll of the owners, Scott Ogle and Gary Erwin were properly included in the payroll. The total amount of disputed premium is one thousand, six hundred, eight dollars ($1608).

6. On December 16, 2004, insurance producer, Jerry Harris (hereinafter referred to as "Harris") was present at Tri-County Garage and discussed procuring workers' compensation insurance for the employees of Tri-County Garage. At this time, it was decided that Ogle and Erwin should not be included in the workers' compensation coverage.

7. In order to exclude Ogle and Erwin from the workers' compensation policy and premium, each was required to submit a "I-6, Notice of Corporate Officers to Employer of Election Not to Accept Provisions of 'Workers' Compensation Act' of Tennessee" form

(hereinafter referred to as "I-6 forms") to the Tennessee Department of Labor and Workforce Development. The instructions on the form state:

> File an original, a copy, and a self-addressed, stamped envelope (approved copy will be returned). The form must be complete, legible and notarized. If any information is missing, the form will be returned and will prolong the effective date until form is received complete. The effective date is 30 days after approved stamped date. Once approved the form is effective until withdrawn by the filing of "I-7 Notice of Corporate Officer's Revocation of Exemption" form. If the employer or corporate officer names change a new form should be filed.

8. Harris testified that after Ogle and Erwin completed the I-6 forms, he took them to "the office on Cool Springs Boulevard along with Tri-County Garage's premium check"[1]. Harris testified that he also mailed the original I-6 forms to Ray Lovelace at the Tennessee Department of Labor and Workforce Development.

9. Harris testified that at the time he procured workers' compensation coverage for Ogle and Erwin, he did not know that the I-6 forms took thirty (30) days to become effective.

10. Ogle and Erwin executed the I-6 forms on three (3) separate occasions: once on December 15, 2004; again on February 5, 2005; and again on July 20, 2005.

11. Only the I-6 forms signed on July 20, 2005, show an approval stamp from the Tennessee Department of Labor and Workforce Development.

12. Allen Utzig (hereinafter referred to as "Utzig"), testified on behalf of Berkley, and stated that the wages for Ogle and Erwin were included in the premium calculation because at the time the policy was applied for, Ogle and Erwin did not have approved I-6 forms in place with the Department of Labor and Workforce Development.

13. Utzig also testified that Berkley never received approved I-6 forms for Ogle and Erwin until after the policy period had ended.

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[1] Although not specifically referenced in Harris' testimony, Harris is referring to the office of AON Risk Services, which serves as the Plan Administrator for the Tennessee Workers' Compensation Insurance Plan.

14. Utzig stated that if Ogle or Erwin had become injured during the policy period, Berkley would have been responsible for their claim if it was determined that the claim was compensable because Ogle and Erwin did not have approved I-6 forms in place.

15. Utzig further testified that it is Berkley's policy to base the premium calculation on the payroll that was in effect during the time the policy was in place. Therefore, Tri-County Garage's premium calculation was based on the payroll in effect from December 16, 2004 until February 9, 2005.

CONCLUSIONS OF LAW

16. Tenn. Code Ann. § 50-6-104 permits an officer of a corporation to elect to be exempt from the operation of the Workers' Compensation Law.

17. In order to effectuate the election of exemption provide to officers of corporations, those individuals must submit a "I-6, Notice of Corporate Officers to Employer of Election Not to Accept Provisions of 'Workers' Compensation Act' of Tennessee" form (hereinafter referred to as "I-6 forms") to the Tennessee Department of Labor and Workforce Development.

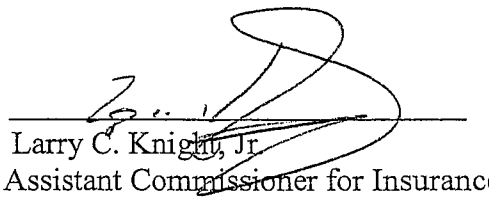
18. Tri-County Garage had the burden of proving that it had followed the procedures established by the Department of Labor and Workforce Development to be exempt from the Workers' Compensation Law.

19. Tri-County Garage failed to prove that it had I-6 forms approved by the Department of Labor and Workforce Development in place thirty (30) days before application was made to Berkley for workers' compensation coverage.

NOW THEREFORE, IN LIGHT OF THE FOREGOING, the following is hereby **ORDERED**:

1. Tri-County Garage shall pay one thousand, six hundred, eight dollars ($1608) to Berkley Regional Insurance Company as additional premium for the policy in effect from December 16, 2004 until February 9, 2005.

This Initial Order is entered and effective this the 30 day of May, 2006.



Larry C. Knight, Jr.
Assistant Commissioner for Insurance