RECEIVED
2009 OCT -7 PM 1:02
SECRETARY OF STATE

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

IN THE MATTER OF:	)	
	)	
JOB WORLD, INC.	)	
	)	**Docket No. 12.28-096676A**
and	)	
	)	**WC Appeal - Insurance**
LIBERTY MUTUAL INSURANCE COMPANY	)	
and BERKLEY RISK ADMINISTRATORS	)	

FINAL ORDER

This matter was heard on November 4, 2008 in Nashville, Tennessee before Administrative Judge Margaret Robertson, appointed by the Secretary of State, with Larry C. Knight, Assistant Commissioner of Insurance, sitting as Designee of the Commissioner of Commerce and Insurance. As Commissioner's Designee, Mr. Knight makes the final determination as to Findings of Facts and Conclusions of Law in this matter. The Petitioner, Job World, Inc. ("Job World") was represented at the hearing by Attorney James L. Pentecost; Liberty Mutual Insurance Company ("Liberty") was represented by Attorney Scott J. Crosby; and Berkley Risk Administrators ("Berkley") was represented by Attorney J. Michael Morgan.

The subject of the hearing was whether Liberty correctly adjusted the class code applicable to Job World employees working for two of its client companies, Calhoun Spotting Service, Inc. ("Calhoun") and Taylor Express ("Taylor"), at the Goodyear Tire and Rubber Company ("Goodyear") plant in Union City, Tennessee during the period(s) all or a part of four workers' compensation insurance policies were in effect and, more specifically, whether the class code assigned to such employees should be 7360 - Freight Handling or 4420 - Rubber Tire Manufacturing. After consideration of the record, including all relevant testimony, exhibits, and

proposed Findings of Fact and Conclusions of Law, it is determined that Liberty correctly adjusted the class code applicable to such employees to class code 7360 - Freight Handling. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Commissioner of Commerce and Insurance (the "Commissioner") has jurisdiction over this matter pursuant to Tenn. Code Ann. § 56-5-309(b).

2. Job World is a staffing company engaged in providing employees to businesses located in Kentucky and Tennessee. The principle office of Job World is located at 701 Reelfoot Avenue, Suite 600, P. O. Box 97, Union City, TN 38281.

3. Calhoun and Taylor were client companies of Job World. Such companies assigned Job World employees to work at the Goodyear plant in Union City, Tennessee, where they performed tasks of unloading, stacking, and re-loading tires onto trucks.

4. Liberty and Berkley each holds a certificate of authority to sell workers' compensation coverage in Tennessee and is in the business of providing workers' compensation to employers in Tennessee.

5. Liberty provided workers' compensation insurance coverage for Job World employees for: policy years March 15, 2004 through March 15, 2005 under policy number WC2-35S-319146-014; the policy period March 15, 2005 through March 15, 2006 under policy number WC2-35S-319146-025; and the policy period March 16, 2006 through March 15, 2007 under policy number WC2-35S-319146-026.

6. Berkley provided workers' compensation insurance coverage to Job World for the policy period March 19, 2007 through March 19, 2008 under policy number WC-41-41-009546-00.

7. Liberty provided workers' compensation coverage to Calhoun for the policy year August 4, 2003 through August 4, 2004 under policy number WC-2-35S-334302-013.

8. The National Council on Compensation Insurance ("NCCI") is the designated rate service organization for the State of Tennessee.

9. Workers' compensation classification codes are determined in accordance with the Basic Manual for Workers' Compensation Liability Insurance ("Basic Manual") and Scopes of Manual Classifications ("Scopes Manual") published by NCCI.

10. Rule 1-D-3-f of the Basic Manual provides as follows:

> Employee Leasing, Labor Contractors and Temporary Labor Services
>
> (1) Workers assigned to clients must be classified the same as direct employees of the client performing the same or similar duties.
>
> (2) If the client has no direct employees performing the same or similar duties, leased employees are classified as if they were direct employees of the client entity.

11. Calhoun and Taylor Express were, at all times pertinent, were engaged in the business of freight hauling or spotting, or freight handling. Neither company was in business of temporary staffing or employee leasing.

12. Based on audits of Calhoun conducted for policy periods specified in Paragraph 9, above, Liberty determined that the proper class codes applicable to Calhoun employees were 7219 - Freight Hauling and 7360 - Freight Handling. Calhoun accepted the applicability of such class codes with regard to its operations.

13. Liberty advised Job World by letter dated May 13, 2004 that it had completed a final audit of the Job World account and determined that there was a class code discrepancy, that the correct class code for Taylor was 7360. The letter further advised that class code 7360 would be effective March 15, 2004 with regard to Calhoun, that Job World employees working for Calhoun at the Goodyear plant had been

misclassified in prior years as class code 4420 because the auditor had not understood that Calhoun was Job World's client, rather than Goodyear.

14. By letter dated September 24, 2007, Job World filed an appeal, contesting the applicability of class code 7360 to its employees working for Calhoun and Taylor at Goodyear, arguing that the correct class code was 4420, that it was due a refund from Liberty in the amount of forty-one thousand nine hundred seventy-eight dollars and thirty-two cents ($41,978.32), and that it owed Berkley additional premium of sixteen thousand nine hundred fifty-six dollars and thirty-four cents ($16,956.34). Job World further argued that the applicable class code should be determined by the operations of its employees at Goodyear and that, since its employees were assessed, screened, trained and supervised by Goodyear on the same bases as direct employees of Goodyear, the applicable class code should be 4420.

CONCLUSIONS OF LAW

1. Pursuant to Tenn. Comp. R. and Regs. 1360-4-1-.02(7), the Petitioner, Job World, bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. Tenn. Code Ann. § 56-5-320 requires each insured to be a member of the designated rate service organization and to adhere to a uniform classification system filed by the designated rate service organization and approved by the Commissioner.

3. Pursuant to Tenn. Code Ann. § 56-5-320, NCCI is the Commissioner's designated rate service organization for workers' compensation insurance.

4. In accordance with the Basic Manual, employers of a temporary staffing or employee leasing company are classified as though they were direct employees of the client.

5. Job World failed to show by a preponderance of the evidence that the assignment of class code 7360 to Job World employees working for Calhoun and Taylor at Goodyear was incorrect.

6. Tenn. Comp. R. and Regs. 0780-1-82-10(2) provides that "[o]rders issued under this Rule shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party."

NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** as follows:

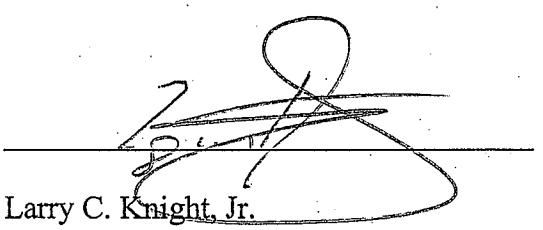
1. The proper class code applicable to employees of Job World employees working for its client companies, Calhoun and Taylor, at the Goodyear plant for policy periods in dispute in this matter was 7360 – Freight Handling;

2. Liberty owes no refund of premium to Job World;

3. Job World owes Berkley additional premium due for coverage under policy number WC414100954600 for the policy period March 19, 2007 through March 19, 2008 in the amount of forty-four thousand seven hundred seventeen dollars ($44,717); and

4. Costs of this proceeding are assessed against the Petitioner, Job World.

This Final Order is entered and effective this the 7 day of October, 2009.



Larry C. Knight, Jr.
Assistant Commissioner of Insurance

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 7th day of October, 2009.,

Thomas G. Stovall, Director
Administrative Procedures Division