

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In re: SPS Spindle Parts & Service
Docket No.: Ins 11-007-AP**

FINDINGS AND FINAL ORDER

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Decision and Order issued on August 29, 2011, by Hearing Officer Jennifer Patterson, is hereby ACCEPTED as a FINAL ORDER, with the following clarifications relating to SPS Spindle Parts & Service (SPS) claims contesting the fairness of NCCI's dispute resolution process.

The Commissioner upholds the hearing officer's finding that:

- (1) SPS has not presented legal arguments sufficient to allow the hearing officer to rule on the claim by SPS Spindle Parts & Service that consideration of additional confidential information by the NCCI New Hampshire Workers Compensation Classification and Rating Appeals Board (Board) violated SPS's constitutional right to due process.
- (2) Even assuming a due process violation occurred, the hearing officer's de novo factual findings and legal rulings and the discovery process that gave SPC access to all information provided on an *ex parte* basis to the Board, would cure any deficiency.

There is no finding of violation against any party in regard to the dispute resolution process utilized by the Board, however, the concerns of the hearing officer are duly noted and the following further clarification of the dispute resolution process is hereby incorporated in this Final Order to provide additional information to the parties to this action.

The dispute resolution process conducted under NCCI rules provides the insured with a forum to resolve disagreements arising under a worker compensation insurance policy and specifically, disputes relating to the insurance company's classification (though its

licensed statistical agent, NCCI) of the insured's employees under that policy. A nearly identical dispute resolution process is utilized across the country in states where NCCI is also employed by the insurance industry to act as the industry's statistical agent. The dispute resolution process is in this way, similar to other dispute resolution processes commonly used by the insurance industry, such as arbitration or insurance appraisal proceedings.

The NCCI dispute resolution process is provided *in addition to* a de novo state administrative review and affords the consumer with a first avenue of redress prior to requesting a more formal state administrative review or even judicial review. The dispute resolution process therefore, should provide an effective means of resolving disputes between the insured and insurer, thus avoiding the need of administrative or judicial appeal. Therefore, while there is no finding of violation against any licensee under this Final Order, staff is directed to review and work to improve the NCCI dispute resolution process to promote this objective.

The Proposed Decision and Order shall be attached to this Order and identified as a Final Decision in this appeal of SPS Spindle Parts & Service.

SO ORDERED.



October 24, 2011

Date

Roger A. Sevigny, Commissioner

Reconsideration

This is the final action of the Department. Pursuant to Ins 204.26(e) you have the right to appeal by requesting reconsideration of this final action *within 30 days of the date this Order is signed by the Commissioner*, in accordance with RSA 541. Your request for reconsideration must specify all grounds to support reconsideration by the Commissioner. The Commissioner will grant a request to reconsider if in his opinion, there is good reason to reconsider his decision.

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In re: SPS Spindle Parts & Service
Docket No.: Ins. 11-007-AP**

PROPOSED DECISION and ORDER

Procedural History

This case comes before the New Hampshire Insurance Department (“Department”) based on a May 5, 2011 filing by SPS Spindle Parts & Service (“SPS”) seeking Department review under RSA 400-A:17. SPS disputes the National Council on Compensation Insurance (“NCCI”) classification assigned to SPS by NCCI for purposes of workers’ compensation insurance after an inspection conducted by NCCI on April 29, 2009, and also raises concerns about the consistency of the NCCI’s assignment of classifications within the spindle repair industry.

The New Hampshire Workers Compensation Classification and Rating Appeals Board (“Board”), an entity created under NCCI’s dispute resolution process, held a hearing on SPS’s concerns on March 30, 2011, and on April 8, 2011, issued a decision affirming the NCCI decision to reclassify SPS’s operations. SPS filed its appeal to the Department on May 5, 2011. On July 6, 2011, the Department held a prehearing conference in this matter pursuant to Ins 204.13. A prehearing order summarizing the matters discussed was issued on July 11, 2011.

On July 27, 2011, the Department held a hearing on SPS’s appeal. SPS was represented at the hearing by its attorney Michael Mortimer and its president Michael Gunski; others in attendance on behalf of SPS were Jim Keenan and Gregory Shelley. Also participating in the hearing were NCCI, represented by its attorneys Harold Pachios and Christopher Nicolopolous and NCCI employees Ron Darna and Laura Backus Hall, and the Department, represented by Staff Advocates Deborah Stone and James Young. Others present were Bret Cote of Clark Insurance, Tom Hoenig of GTI Spindle, and Department legal intern Kathryn Naughton, serving as clerk.

All parties were given the opportunity to offer testimony, cross-examine witnesses, and make arguments. Four witnesses testified: Ron Darna, Thomas Hoenig, Michael Gunski, and Jim Keenan.¹ Both SPS and NCCI submitted extensive documentary exhibits. In addition, SPS made a PowerPoint presentation, and brought in a spindle with a cross-section cut away, to help demonstrate the spindle repair process.² The hearing was recorded, and lasted approximately two and a half hours.

¹ Department staff advocate Deborah Stone also spoke briefly, to clarify that the NCCI dispute resolution procedure has been approved by the Department, and to explain the membership of the Board.

² All exhibits other than the spindle have been retained by the Department as part of the record.

General Facts and Procedural History

SPS repairs spindles. Testimony presented at the hearing, primarily by Mr. Hoenig and Mr. Gunski, explained that while spindles come in many sizes and varieties, generally speaking a spindle is a mechanical device that turns on a central axis, driven by a motor that is not part of the spindle but typically is attached to the spindle with some type of belt. Spindles are part of a larger machine; when a malfunctioning spindle is sent to SPS for repair, it is removed from that larger machine by the machine owner (or a contractor) and delivered to SPS, which does not perform work on the larger machine. Spindle repair involves diagnosis and correction of the cause of failure. The process typically includes disassembly of the spindle, repair and/or refitting of the smaller parts within the spindle, reassembly, and testing to be sure the repaired spindle functions properly.

SPS does not manufacture any spindle parts itself; typically it orders the necessary new parts from parts manufacturers, then performs any necessary machining and adjustment itself. SPS's customers include auto manufacturers, aerospace manufacturers and medical companies. SPS employees are highly skilled and work in tolerances not visible to the naked eye. The employees use micrometers, making measurements and working in tolerances of less than one ten-thousandth of an inch. Approximately five percent of the employees' work involves machining; of that, one hundred percent involves tolerances well below the tolerance set forth in the NCCI classification (.001 inches or less).

This case arose because NCCI, as part of an initiative (described in testimony by Mr. Darna) to ensure that businesses classified to NCCI code 3629 (Precision Machine Parts Manufacturing – NOC) were in fact properly classified, selected SPS for inspection by an NCCI inspector, Kathy Pond. Following inspection, NCCI determined that SPS's classification should be changed from 3629 to 3632 (Machine Shop – NOC).

Summary of Issues

On appeal to the Department, SPS makes three arguments. First, SPS argues that NCCI classification 3629, not 3632, best describes its spindle repair business. Second, SPS argues that NCCI has not classified identical spindle repair businesses similarly, in that some identical businesses retain the 3629 classification. Finally, SPS asserts that the Board's consideration of its appeal did not comply with administrative procedure standards and due process requirements.

Standard of Review/Burden of Proof

As noted above, this appeal comes before the Department under the NCCI Dispute Resolution Process, effective January 1, 2010 ("NCCI Process"). The NCCI Process, a copy of which is attached as Exhibit A, is intended to provide a means by which New Hampshire policyholders may obtain a review of the application of NCCI rules to a particular workers' compensation policy. The NCCI Process, like all NCCI rules in effect in New Hampshire, has been approved by the Department.³ Under the NCCI Process, a policyholder who disagrees with an NCCI

³ During the hearing, NCCI's counsel asked the hearing officer to take administrative notice of the NCCI rules as set forth in the Basic Manual, and of the fact that NCCI's rules are approved by the Department,

classification decision may ask the NCCI, in writing, to refer the dispute to the Board, which holds an informal hearing and issues a decision. Any party may appeal the Board's decision to the Department within 30 days.

In this appeal to the Department, SPS as the appealing party bears the burden of proof, by a preponderance of the evidence. Ins 204.05. In view of the concerns SPS raises about the fairness of the process before the Board, the hearing officer's findings of fact are made de novo, based on the evidence presented at the July 27, 2011 hearing. The hearing officer gives no deference to any factual finding or legal ruling made by the Board.

1. Classification of SPS's Operations

The central issue in this case is whether the NCCI inspector acted properly in changing Spindle's NCCI classification from 3629, Precision Machine Parts Manufacturing NOC,⁴ to 3632, Machine Shop NOC. The NCCI groups together employers with similar operations for risk classification purposes. Under the NCCI Basic Manual, "it is the business of the employer . . . that is classified, not separate employments, occupations or operations within the business." NCCI Rule 1-A-2. The goal of the classification procedure "is to assign the one basic classification that best describes the business of the employer . . ." NCCI Rule 1-D. If no basic classification clearly describes the business, "the classification that most closely describes the business must be assigned." NCCI Rule 1-D-2.

Thus, the question is whether classification 3629 or 3632 best describes SPS's business. Answering this question involves a careful analysis of the language of the two classifications, and a basic understanding of the activities SPS conducts as part of its business. This issue is far from being clear cut, and both SPS and NCCI made thorough and persuasive arguments during the hearing about which classification best described the spindle repair business. For the reasons outlined below, the hearing officer concludes that SPS did not meet its burden of demonstrating that NCCI's decision to assign the 3632 classification to SPS's operations was erroneous.

With respect to the 3629 classification, the NCCI Manual states as follows:

PHRASEOLOGY PRECISION MACHINED PARTS MFG. NOC.

Applies only to risks where the plans or specifications require that not less than 50% of all machining operations performed by the risk shall be held to final tolerances of .001 inches or closer. Shall not be assigned to a risk engaged in

and the hearing officer duly takes such notice. See RSA 541-A:33, V(d). However, as a point of clarification, NCCI's rules are NOT adopted as rules of the Department, which would require that they go through the rulemaking process outlined in RSA chapter 541-A.

⁴ NOC means Not Otherwise Classified. As the NCCI Basic Manual explains, "if the classification wording uses the term NOC, that classification applies only if no other classification more specifically describes the insured's business." NCCI Rule 1-C-2-g.

operations described by another classification unless the operations subject to 3629 are conducted as a separate and distinct business.

...

SCOPE Code 3629, a "not otherwise classified" classification, applies to a risk which meets the following three conditions:

1. The machined parts manufactured by the risk are not described by another classification. Examples of operations described by another classification are indicated in the NOC summary below.
2. Fifty percent or more of all machining operations performed by the risk are held to tolerances of .001 inches or closer. This 50% criterion is intended to recognize that very few insureds within the precision machined parts manufacturing industry are engaged solely in precision machining and that a precision machine shop may engage in general machining work as described by Code 3632 – Machine Shop NOC, as well as Code 3629 activities.
3. If a risk is engaged in a multiple operation enterprise and one of the enterprises would ordinarily be assigned to Code 3629, the enterprise must be conducted as a separate and distinct business for Code 3629 to be applicable to it.

It should also be emphasized that this classification is intended to apply to precision machined parts manufacturing, not precision machine manufacturing.

As the machining operations assigned to Code 3629 involve close tolerances, the operations usually will require employees who are highly skilled toolmakers.

Additionally, Code 3629 risks will generally engage in significant amounts of both inspection and quality control work.

For classification 3632, the NCCI Manual provides as follows:

SCOPE Code 3632 applies to the manufacture or repair of machines as well as general job machining. It must be emphasized that Code 3632 is an NOC classification and is applied to operations only when such operations are not specifically contemplated by another manual classification(s).

Metal castings, forgings, bars rods, flats, tubing, angles, pipe and pipe fittings, chains, sockets, gears, shafting, pulleys, hardware, sheet metal and some lumber and paint may be used. A variety of processes may be involved such as boring, turning, planing, shaping, milling, punching, grinding, tapping, threading, shearing, bending, forming, riveting, welding, painting, inspecting and testing.

...

Additional representative operations that have been assigned to Code 3632 include the repair of diesel engines used as generators, risks engaged exclusively

in the repair of either inboard or outboard motors and other small engines such as those used in lawn mowers and snowmobiles, and axle unit assembly or manufacturing or repair.

The classification applies to automotive machine shops. The term "automotive machine shops" as used in this context refers to locations where work is performed on various automobile parts which have been removed from a vehicle by others. The "automotive machine shop" does not engage in any work on vehicles or on parts while the parts are attached to vehicles. . . .

The manufacture of woodworking machinery is additionally assigned to Code 3632.

As the language of the manual makes clear, there are certain similarities between the two classifications. Both are NOC codes, and both include references to the machining work that makes up part of SPS's business. However, neither refers directly to the disassembly, testing and reassembly that make up the majority of SPS's work.

Certain aspects of SPS's work bear a strong resemblance to activities described in the 3629 code. As the testimony of Mr. Hoenig and Mr. Gunski demonstrates, SPS clearly meets the second criterion for Code 3629, as one hundred percent of the business's machining work is held to tolerances of .001 inches or closer. Further, consistent with the descriptive language of Code 3629, the testimony supports a finding that SPS employees are highly skilled and engage in significant amounts of both inspection and quality control work.

The most problematic aspect of Code 3629 for SPS is the fact that it does not mention repair operations. It is true that the NCCI Manual allows certain repair operations to be classified under a manufacturing code: "Risks with shop operations that involve the *repair of a product for which there is no repair classification* are assigned to the classification that applies to the manufacture of the product, *unless this repair work is specifically referred to by another classification, footnote, or definition* in the manual." NCCI Rule 1-D-7 (emphasis added). However, there are strong indications in the code description that Code 3629 is intended to be applied only to manufacturing activities. Most significantly, the first criterion that must be met for classification under the code is that "the machined parts manufactured by the risk must not be described in another classification." It is difficult to understand how to apply this criterion to a company which, like SPS, does not manufacture any parts. Given SPS's lack of manufacturing operations, it is similarly difficult to apply the third criterion of Code 3629 (multiple operation enterprise as a separate business) to the business; are the non-machining activities "multiple operations," or are they all part of one machine parts repair business?

By contrast, Code 3632 is clearly intended to include repair operations. Indeed, some of the types of operations described sound remarkably similar to, though perhaps less precise than, SPS's activities. For example, Code 3632 applies to "locations where work is performed on various automobile parts which have been removed from a vehicle by others" but does not apply to "any work on vehicles or on parts while the parts are attached to vehicles." Similarly, SPS only repairs spindles that have been removed from the larger machine of which they are a part.

During the hearing, SPS often reiterated the fact that it works exclusively on machine *parts*, not on machines themselves. The purpose of this focus was to support SPS's contention that its operations are best described by Code 3629, which addresses the manufacture of machine *parts*, rather than by Code 3632, which applies to the manufacture and repair of *machines*. In support of this distinction, SPS pointed to the NCCI manual language emphasizing that "this classification [3629] is intended to apply to precision machined parts manufacturing, not precision machine manufacturing."

After careful consideration of the issue, the hearing officer concludes that even if it is true that SPS works exclusively with machine parts rather than with machines, this distinction is not determinative of the proper NCCI classification. While Code 3629 does indeed make a distinction between machines and machine parts, there is ample language in Code 3632, particularly in the "automotive machine shop" paragraph, supporting a conclusion that some machine shops classified under Code 3632 may work exclusively with machine parts. Given this fact, and the lack of any clear legal guidance on the distinction between a machine and a machine part, the hearing officer declines to make a specific finding on the question of whether a spindle is a machine part as opposed to a machine.

Finally, SPS focused strongly at the hearing on the precision nature of spindle repair, arguing that because all of its work, including not only machining but also measuring, assembly, disassembly and quality assurance, is highly precise, the 3629 code describes the business better than the 3632 code. This argument, while stronger than the machine versus machine parts argument, faces similar obstacles. It may well be true that repairing a spindle involves more precision work than repairing small engines or automobile parts, both of which clearly fall within Code 3632. However, where one code expressly includes repairs and the other does not, it is difficult to conclude that the manufacturing code for precision machine parts describes the business better than the repair code that includes both machines and machine parts. The hearing officer is not convinced that the precision nature of the work is enough to make it fall under a code intended for manufacturing activities, when the work itself better fits the repair description.

In making a final determination on the classification issue, the testimony of Ron Darna and Jim Keenan was very helpful. Both testified as experts on the NCCI classification system, and both presented cogent, though different, interpretations of the rules involved.

Mr. Keenan testified as an expert witness for SPS. He is in the business of analyzing workers' compensation premium calculations and has worked since 1978 as an insurance premium auditor (in the workers' compensation field since 1997). To prepare for his testimony, Mr. Keenan conducted an inspection of SPS' business operations and spoke with Mr. Gunski, president of SPS. Mr. Keenan noted that according to SPS's time tracking, machining occupies approximately 5% of the company's time. The vast majority of employees' time is spent on testing and quality assurance.

Mr. Keenan testified that in his opinion, Code 3629 is the best classification for SPS's business, because, in his view, the business meets all three requirements in the NCCI Manual. SPS's work involves precision machined *parts*, not machines. By contrast, Code 3632 involves work with

machines, not machine parts. According to Mr. Keenan, both the NCCI inspector and the Board erred by classifying a spindle as a motor, which is incorrect in his view.

Mr. Keenan noted that classification under 3629 is appropriate because SPS employees are highly skilled toolmakers involved in a significant amount of inspection and quality control. Mr. Keenan also noted that under NCCI Rule 1-D-7, the code for manufacture of a product applies to repair of a product for which there is no distinct repair code. Because SPS exclusively repairs precision machine parts, as opposed to machines generally, in his view Code 3629 best describes its activities.

Mr. Darna, who has more than 35 years of experience in the insurance industry, including more than 7 years with NCCI, disagreed with Mr. Keenan and concluded that SPS should be classified under Code 3632. Mr. Darna conceded that a business that manufactured parts for a spindle would properly be classified under 3629. However, a spindle is a machine, and repairing a machine is properly classified under 3632. According to Mr. Darna, repair of a machine *part* also falls under 3632.

In NCCI's view, as expressed in Mr. Darna's testimony, in order to qualify for the 3629 code, a business must be engaged only in machining, not in other activities such as assembly or disassembly of machines or machine components.

When viewed in conjunction with the language of the rules and codes, Mr. Darna's view is the more persuasive of the two. As NCCI's attorney stated in closing, the NCCI manual requires identification of the *one* best classification that suits the entire operation. Code 3632 is about repair; it refers directly to the repair of parts removed from a vehicle or other machine. Rule 1-D-7 states that the manufacture code may be used for the repair of products for which there is no repair classification. Code 3632 is a classification for the repair of machines and machine parts, and this is the best fit for SPS's operations.

Although the precision nature of SPS's work is similar to that described in Code 3629, SPS does not manufacture machine parts; rather, it repairs them. As the long list of processes in the second paragraph of its "Scope" section makes clear, Code 3632 applies to a wide variety of types of businesses. By contrast, Code 3629 (despite also being an NOC code) is very narrow and specific. In view of all the evidence submitted and a careful reading of the language of the two classifications, the hearing officer concludes that SPS's spindle repair business is best classified under Code 3632.

2. Disparate Treatment of Similar Businesses

The second argument SPS makes is that NCCI has classified its operations differently from those of other spindle repair businesses. SPS offered the testimony of Mr. Hoenig, who stated that his business, GTI Spindle, is substantially identical to the business of SPS Spindle. Mr. Gunski testified that he is familiar with GTI Spindle's business and agrees that it performs essentially the same type of work as his own.

Mr. Hoenig testified that his business had been classified under Code 3629 and remained under that classification today. Mr. Hoenig also testified that GTI Spindle was inspected by NCCI inspector Kathy Pond on August 10, 2010, and that Ms. Pond recommended that GTI's classification be changed to Code 3632. According to the NCCI's Mr. Darna, after the NCCI inspection GTI Spindle switched workers' compensation insurance carriers, and retained the 3629 classification. Mr. Darna testified that GTI Spindle's present insurance carrier intends to change the policy to Code 3632 when the new policy period commences in October 2011. Mr. Hoenig testified that he had no knowledge of this, and that his insurance agent had informed him that the 3632 classification by the NCCI inspector was "a mistake."

Irrespective of the future classification of the GTI Spindle policy, the record does not support a finding that the NCCI has classified similar spindle repair businesses differently. A chart produced on a confidential basis by NCCI during discovery, and filed as an exhibit by both SPS and NCCI, demonstrates that for every spindle repair business recently inspected by NCCI, the inspector has recommended the 3632 classification. See SPS Exhibit 6A and NCCI Exhibit A at 1. While there may have been discrepancies in insurers' use of the NCCI classification system, including in the case of GTI Spindle, these discrepancies are not attributable to NCCI. Indeed, Mr. Darna testified that NCCI has focused nationwide on inspection of businesses classified under the 3629 code, and considers it as one of the top five misclassified codes.

While SPS appears from the evidence to have had the misfortune of being the first spindle repair business to be inspected, it was not the last, and there is no record of inconsistency with respect to the businesses that were inspected by NCCI. Therefore, the hearing officer rejects SPS's second argument.

3. Due Process

Finally, SPS raises claims about the fairness of NCCI's dispute resolution process, particularly with regard to the role of NCCI representatives and their participation in the Board's executive session. Specifically, SPS asserts that while its president, Mr. Gunski, was allowed to present evidence and argument during the Board hearing on March 30, 2011, he was excluded from the Board's executive session, whereas NCCI's representative was allowed to participate in and present evidence during the session. SPS argues that this ex parte consideration of evidence and argument violated SPS's constitutional right to due process.

The evidence presented at the July 27, 2011 hearing supports SPS's assertion that an NCCI representative participated in and presented evidence during the March 30, 2011 executive session, from which SPS was excluded. Mr. Darna, an employee of NCCI, testified that he was present during the Board hearing and the executive session, although he personally did not participate in discussions during the executive session. He testified that Maureen Longacre, NCCI's Regulatory Services Manager, participated in the executive session as a nonvoting member of the Board. According to Mr. Darna's testimony, during the executive session Ms. Longacre presented additional information to the Board relevant to the hearing, which the Board considered in its deliberations. This information related to the classification of other spindle repair companies; in its Notice of Decision, the Board stated that:

The Board met in executive session and discussed the information provided prior to the meeting as well as all the information provided at the meeting. The Board asked NCCI about the classification for the insured named as a competitor [GTI Spindle]. NCCI responded that it performed a classification inspection on three similar businesses, including GTI Spindle, and all three were classified to Code 3632.

SPS Exhibit 10C. It is the hearing officer's understanding, based on discussion at the prehearing conference, that NCCI considered the information about competitors to be confidential or proprietary and for that reason chose not to share it with SPS.⁵

The question of whether NCCI's participation in the executive session violated SPS's right to due process is legally complex. NCCI is not a state agency, and Board proceedings are not mentioned in any New Hampshire statute. The Board is completely separate from the Workers Compensation Appeals Board created under RSA 281-A:42-a. As outlined in the NCCI Process, Board members are appointed by the Insurance Commissioner. See Exhibit A.

Board proceedings differ significantly from hearings conducted under the New Hampshire Administrative Procedures Act, RSA chapter 541-A. Under the NCCI Process, normal administrative procedures or rules are not applicable to proceedings before the Board. Exhibit A, D(1). For instance, it is impermissible to record proceedings before the Board. Moreover, the NCCI Process specifically states that the Board will make a decision by secret majority vote during an executive session.

The non-voting NCCI member (in this case Ms. Longacre) plays a complex role that includes attempting to resolve disputes informally, receiving formal complaints if resolution is not reached, scheduling meetings of the Board, preparing and distributing agenda materials, preparing and distributing draft decisions, and providing technical expertise to the Board during its executive session. Process, C(3)(c).

The legal issue of whether a private entity such as NCCI may under certain circumstances be bound by constitutional due process requirements is a complex one, turning on the question of whether the state was sufficiently involved in the private conduct to treat that conduct as state action. Harper v. Healthsource New Hampshire, Inc., 140 N.H. 770 (1996); NCAA v. Tarkanian, 488 U.S. 179, 191 (1988) (private action may be treated as state action where state provides "a mantle of authority that enhance[s] the power of the harm-causing individual actor"). The question of whether the Board is a state entity governed by either RSA chapter 91-A or RSA chapter 541-A is similarly complex.

SPS has not made legal arguments during this proceeding sufficient to allow the hearing officer to recommend a ruling on the due process issue. Although the Ins 200 procedural rules allow for the filing of legal memoranda, and the prehearing order included a deadline for submitting hearing memoranda, neither SPS nor NCCI made such a submission. Moreover, the brief legal argument made during SPS's closing statement focused on the Board's (undisputed) lack of compliance with RSA chapter 91-A, not the reasons the Board should be considered a state agency or the legal standard for finding a constitutional due process violation.

⁵ As noted above, this or related information was produced by NCCI on a confidential basis during discovery in this matter, and submitted as an exhibit by both parties.

Where the issue has not been briefed by the parties, the hearing officer declines to rule on whether constitutional due process requirements apply to Board proceedings under the NCCI Process. Any constitutional defect that may have existed in the Board's process is cured by the July 27, 2011 Department hearing and the hearing officer's de novo factual findings and legal rulings on the classification issues. See, e.g., In re JLD PROPERTIES OF ST. ALBANS, LLC, --- A.3d ----, 2011 WL 3370401 (Vt. Supr. Ct. 2011) (de novo court hearing cured due process violation at zoning board level). Moreover, the discovery process in this proceeding gave SPS access to the information about competitors' classifications that SPS was not able to review during the Board proceeding.

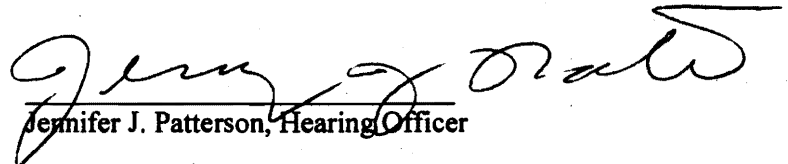
While the contents of the NCCI rules are beyond the scope of this appeal, the hearing officer finds it troubling that those rules apparently allowed NCCI, the adverse party to SPS in the March 30, 2011 Board hearing, to present evidence on an ex parte basis and to participate in the Board's executive session. In a recent ruling on another appeal from a Board decision, the hearing officer recommended that the Department, in its capacity as regulator with authority to review and approve the NCCI rules applicable in New Hampshire, review the NCCI Process at its earliest opportunity with the objective of ensuring that policyholders, particularly when operating pro se, are fully informed about the nature of the process and receive a fair hearing before the Board. The hearing officer reiterates this recommendation, and urges the Department to ensure that the appealing parties in both cases be notified of any public hearing relating to NCCI rules or Board procedures, so they can express their concerns about the Board process.

Further Action

Pursuant to Ins 204.26(a), this proposed decision is hereby submitted to the Insurance Commissioner and the parties. Any party wishing to file exceptions and supporting memoranda of law for review by the Commissioner, or to request oral argument before the Commissioner, must do so within 20 days of the date of this proposed decision.

SO ORDERED.

Dated: August 30, 2011


Jennifer J. Patterson, Hearing Officer



Basic Manual—2001 Edition—NEW HAMPSHIRE

MISCELLANEOUS RULES

Effective 01 Jan 2010 12:00:01

DISPUTE RESOLUTION PROCESS

A. Summary of Dispute Resolution Process

The New Hampshire Workers Compensation Classification and Rating Appeals Board Dispute Resolution Process (the Process) provides a means by which New Hampshire policyholders may obtain a review of the application of a National Council on Compensation Insurance, Inc. (NCCI) manual rule or rules to a workers compensation and employers liability insurance policy.

The Process has four steps:

1. A policyholder may obtain dispute resolution services only after the policyholder has made a reasonable attempt to first resolve the dispute directly with the insurance carrier.
2. If a policyholder cannot resolve the dispute directly with the carrier, then the policyholder may ask for NCCI's assistance with the dispute. Once NCCI has received a request for dispute resolution services from the policyholder, NCCI will attempt to assist the policyholder and the carrier to reach an amicable resolution of the issues in dispute.
3. If a policyholder is unable to resolve the dispute to its satisfaction with NCCI's assistance, then the policyholder may ask NCCI, in writing, to refer the dispute to the New Hampshire Workers Compensation Classification and Rating Appeals Board (the Board).
4. An NCCI inspection of the policyholder's operation(s) must be completed before a dispute is eligible to be heard by the Board.

The rules of the Process apply to disputes involving policies written in both the voluntary and residual markets. Additional rules found in NCCI's **Basic Manual for Workers Compensation and Employers Liability Insurance** Rule 4-A apply regarding the resolution of disputes involving policies written in the residual market. Policyholders must seek resolution of disputes regarding policies written in the residual market through NCCI's **Basic Manual** Rule 4-A before the rules of this Process apply.

B. Authority, Purpose, and Scope of the Process

The purpose of the Process is to review the application or interpretation of NCCI manual rules. The Board does not have the authority to interpret, apply or provide an opinion on state or federal laws, rules, or regulations; or decisions of courts or administrative proceedings; or to hear disputes brought by carriers.

1. It is not within the jurisdiction of either NCCI or the Board to make exceptions to rules that are approved by the New Hampshire Department of Insurance. The Board will exercise its discretion to interpret and apply NCCI's manual rules to the facts of each dispute.
2. The Process as set forth in these rules must be exhausted before a dispute within the jurisdiction of the Board may be appealed to the next level of review. The Board will not hear disputes about any issue that is pending in another forum.

3. All issues in dispute arising from the same policy and policy period must be submitted for resolution under these rules at the same time.
4. This Process applies to any dispute arising out of a policy issued either before or after the effective date of these rules. Policyholders seeking dispute resolution under this process must request dispute resolution services from NCCI within three (3) years of the expiration date of the policy in question. Any extension of time to file a request for review after three (3) years of the policy expiration will be granted at the sole discretion of the Board. An extension of time under this section will be granted only once.
5. Carriers are encouraged to consult with NCCI about any question regarding the application or interpretation of NCCI's rules. Should a carrier, after consultation with NCCI, want to formally dispute any action by NCCI regarding a policy written in the voluntary market, the carrier is directed to the appropriate regulatory authority (and not the Board). Disputes by carriers about any aspect of the Plan or Pool are governed by the rules found in NCCI's *Basic Manual* Rule 4-A.
6. NCCI's participation in this Process fulfills NCCI's obligation pursuant to New Hampshire law to provide a reasonable means for a person aggrieved by the application of NCCI's rating system to be heard.

C. Operations of the Board

1. Members of the Board

- a. The Board will consist of six (6) voting members, one (1) non-voting advisor from NCCI and one (1) non-voting advisor from the New Hampshire Department of Insurance.
- b. All voting members will be appointed by and serve at the pleasure of the Commissioner of the Department of Insurance (Commissioner).
- c. Each member's term on the Board will be for two (2) years or a time frame as determined by the New Hampshire Department of Insurance.
- d. Vacancies on the Board of voting members will be filled by the Commissioner.
- e. The non-voting advisor from NCCI will be appointed by NCCI for an indefinite term.
- f. Voting members will be reimbursed by NCCI for the reasonable expenses connected with Board functions such as travel expenses, food, non-alcoholic beverages, and lodging. Such reimbursement may be provided as a per diem allowance. Members will not receive any other compensation for participation on the Board.

2. Meetings of the Board

- a. The Board will meet at least once in the last quarter of each calendar year:
 - (1) To elect a Chair and a Vice Chair for the following calendar year. The Vice Chair will assist the Chair in any duties and substitute for the Chair when the Chair cannot attend a meeting or has a conflict.
 - (2) To determine a schedule for Board meetings for the following calendar year to include not less than one meeting per quarter.
 - (3) If, at the time of this meeting, no disputes are pending before the Board, the meeting may be held via telephone at the discretion of the Chair.
- b. At the discretion of the Chair:
 - (1) Any meeting may be cancelled if the Board has no business to discuss or there are no disputes pending before the Board.
 - (2) Additional meetings may be called.
- c. Once NCCI has received a request from the policyholder to refer a dispute for review by the Board, the Board will hear the dispute at its next scheduled meeting with an opening on the agenda, unless:
 - (1) A continuance is granted pursuant to these rules.
 - (2) NCCI or the Board determines that some action is required by NCCI, the employer, or the carrier.

in which case the matter will be heard at the next scheduled meeting of the Board with an opening on the agenda following the completion of the action requested.

- d. Proceedings under this Process will not be videotaped or audio recorded in any manner by NCCI or any person, witness, or observer. The sole record of the proceedings will be the Decision Notice issued by the Board following each meeting and any minutes of other Board business recorded by the non-voting NCCI advisor to the Board.

3. Duties of the Board

- a. It is the duty of every Board member to:

- (1) Thoroughly review all Board materials and agendas prior to each meeting of the Board.
- (2) Determine as soon as possible if the member could reasonably be perceived to have a conflict of interest with any matter before the Board. If so, that member will recuse himself or herself from participating in such Board business.
- (3) Promptly notify the Chair if the member is unable to attend a Board meeting or to otherwise participate in Board business and to secure an alternate who must be approved by the Chair to participate in the member's place prior to the Board meeting in question. The Chair may appoint his or her own alternate, if necessary, to achieve a quorum.
- (4) Refrain from discussing any matter pending before the Board with any other person who may have an interest in the outcome of a dispute pending before the Board, except at a meeting of the Board.
- (5) Fully participate in all disputes heard by the Board and vote, if authorized to vote, in a given dispute.

- b. It is the duty of the Chair of the Board to:

- (1) Maintain order during all phases of the dispute resolution proceedings.
- (2) Promptly provide a written report to the Commissioner of any chronic absence or inappropriate behavior by any Board member.

- c. It is the duty of the non-voting NCCI advisor to the Board to:

- (1) Schedule each meeting of the Board and send meeting notices to all Board members and persons appearing before the Board.
- (2) Prepare and distribute agenda materials to the Board prior to each Board meeting.
- (3) Prepare and distribute decisions of the Board and minutes of other Board business.
- (4) Provide technical expertise to the Board, either personally or through other employees of NCCI, on the application and interpretation of NCCI manual rules.

D. Appearances Before the Board

1. Dispute resolution services under these rules are meant to be informal in nature. Formal administrative procedures or rules of New Hampshire are not applicable to the Process.
2. Legal representation by either the policyholder or the carrier is not required. The policyholder or the carrier may, at their own expense, be represented by legal counsel or the policyholder may be represented by the policyholder's current agent of record.
3. Policyholders must choose to make an appeal to the Board in one of the following ways:

- a. In Writing:

NCCI will notify the policyholder and the carrier in writing of the date and time of the Board meeting

at which the dispute will be heard. The Board will only consider information received in writing by NCCI from the policyholder or the carrier prior to the date of the meeting by the Board. Both the policyholder and the carrier may submit statements by others for the Board's consideration. All statements made by the policyholder, or carrier, or any other person must be in writing and signed by the person making the statement. No personal appearance before the Board by either the policyholder, or the carrier, or by any other person will be allowed, and no oral communications by any person will be considered by the Board in making its decisions.

b. By Telephone:

NCCI will notify the policyholder and the carrier in writing of a date, time, and telephone number to be used to appeal to the Board. The Board, in making its decisions, will consider information received by NCCI in writing prior to the date of the Board meeting and any oral statements given by telephone at the time of the Board meeting. Either the policyholder or the carrier may have witnesses present to give statements to the Board by telephone.

c. In Person:

NCCI will notify the policyholder and the carrier in writing of a date, time, and place where parties and their witnesses are to appear before the Board. The Board, in making its decisions, will consider agenda materials prepared by NCCI prior to the date of the Board meeting and any oral statements presented to the Board at the time of the hearing. Either the policyholder or the carrier may have witnesses appear in person before the Board.

4. The carrier will appeal or appear in the same manner chosen by the policyholder. Each party will be responsible for its own costs associated with participation in the Process. If the policyholder chooses to appeal by telephone, NCCI will provide a toll-free telephone number for use by the Board, policyholder, carrier, and all witnesses.

E. Where to Send Documents

1. Initial requests by the policyholder for dispute resolution services must be sent to:

National Council on Compensation Insurance, Inc.
Regulatory Assurance Department—Dispute Resolution Services
901 Peninsula Corporate Circle
Boca Raton, Florida 33487

regulatoryassurance@ncci.com

Fax Number: 561-893-5043

2. Once NCCI receives a request from a policyholder for dispute resolution services, NCCI will assign a Regulatory Services Manager (RSM) to the dispute.

- a. NCCI will send a letter to the policyholder and the carrier advising the name and contact information of the RSM that has been assigned to the dispute.
- b. Any document submitted to NCCI under this Process must be submitted by the person or party making such a filing to the RSM using the contact information provided by NCCI.
- c. The filing party must also provide a copy simultaneously by US mail or facsimile transmission (fax) to all other parties to the dispute.

F. Disputes Involving Interstate Policies

When the resolution of the issue(s) in dispute affects the business operations of the policyholder in New Hampshire and at least one other state, the Board's decision will apply only to business operations located in New Hampshire. The state of New Hampshire has no jurisdiction to enforce any decision by the New Hampshire Board in another state.

G. Continuances

1. Except in an emergency, requests for continuances must be received by NCCI at least three (3) business days before the date the meeting is scheduled.
2. NCCI will grant a request timely submitted by either the policyholder or the carrier for a continuance of a meeting by the Board, but, in any case, only one continuance per party will be allowed.

H. Decision of the Board

1. A quorum consisting of a simple majority of Board members eligible to vote must be present for each vote taken by the Board.
2. The decision of the Board will be by simple majority vote of those Board members present at the Board meeting. The votes of the individual Board members will not be recorded or noted in the Board's decision or otherwise disclosed in any manner to any person.
3. The Board will issue its decision in writing within thirty (30) business days after the meeting and will issue that decision to all parties to the dispute and the New Hampshire Commissioner of Insurance by US mail.
4. The Board's decision will be a summary of the dispute resolution review proceedings including:
 - The issues in dispute
 - A statement of the applicable NCCI rules
 - A summary of the policyholder and carrier's positions on the issues in dispute
 - A brief discussion of the Board's analysis
 - The Board's decision
5. NCCI will distribute the Board's decision to all parties to the dispute, and no one else, unless required to do so by these rules, state law, or regulatory agency.

I. Appeal of Board Decisions

Any party to a dispute heard by the Board may appeal a decision of the Board to the New Hampshire Department of Insurance within thirty (30) days of the date the decision of the Board is issued.

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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: SPS Spindle Parts & Service, LLC

**ORDER on
PREHEARING CONFERENCE**

Docket No.: Ins 11-007-AP

WHEREAS, on July 6, 2011, the Department held a prehearing conference in this matter pursuant to Ins 204.13. In attendance were SPS Spindle President Michael Gunski, SPS Spindle counsel Michael Mortimer, NCCI counsel Christopher Nicolopoulos, Department staff advocate James Young, and Department legal intern Kathryn Naughton, serving as clerk. By agreement of all parties, the prehearing conference was not recorded. The following matters were discussed:

- **Time for Hearing:** The hearing is scheduled for 2:00 p.m. on July 27, 2011. The hearing is not expected to exceed three hours;
- **Witnesses:** SPS Spindle intends to present two or three witnesses; NCCI intends to present one witness. In accordance with RSA 400-A:19, counsel for the parties will be allowed to examine and cross-examine all witnesses;
- **Exhibits:** The hearing officer requested that the parties pre-mark any exhibits and endeavor to coordinate such that there are not multiple copies of the same documents. Counsel for SPS Spindle indicated that he also intends to present evidence in the form of a video. While this was not discussed during the prehearing conference, the hearing officer suggests that if the video can be viewed without accompanying witness testimony, in the interest of keeping the hearing to three hours, SPS Spindle might consider submitting the video as an exhibit (with copies to all parties) rather than showing it during the hearing;
- **Additional Written Submissions:** Counsel may submit hearing memoranda on or before the date of the hearing;
- **Stenographer:** No party intends to provide a stenographer. The hearing will be recorded in accordance with the Department's rules and usual practice;
- **Discovery:** The parties discussed compliance with the discovery ordered in this matter in response to the motion filed by SPS Spindle. Discover is due ten days before the hearing. Counsel for NCCI indicated that he intended to object to two aspects of discovery, first that the request for information on other similar companies was overbroad and second that internal investigation reports with respect to other companies were confidential. With respect to the first objection, SPS Spindle agreed to provide a list of approximately twenty similar companies,

for which NCCI agreed to provide the requested information. With respect to the second objection, counsel agreed to attempt to resolve the confidentiality issue by agreement, and if no agreement was reached, to submit the information to the hearing officer for *in camera* review. The hearing officer finds that pursuant to RSA 400-A:16, RSA 400-A:19, V, RSA 541-A:33 and Ins 203.01(d)(5), the Department has the authority to hold the information confidential during the *in camera* review.

Therefore, the hearing officer:

ORDERS that all parties proceed in accordance with the above.

SO ORDERED.

Dated: July 11, 2011


Jennifer Patterson, Hearing Officer



To: mgunski@spsspindle.com <mgunski@spsspindle.com>, Mike Mortimer
<MMortimer@wadleighlaw.com>, cnicolopoulos@preti.com, James B Young/InsDeptNH,
maureen_longanacre@ncci.com <maureen_longanacre@ncci.com>,
lhoffman@firstcomp.com, laura_backus_hall@NCCI.com, Deborah L. Stone/InsDeptNH,
Jennifer J Patterson/InsDeptNH, Kathryn Naughton/InsDeptNH,
Cc:
Bcc:
Subject: SPS Spindle - Order on Prehearing Conference
From: Debbie OLoughlin - Monday 07/11/2011 12:53 PM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

See attached Order on Prehearing Conference.



spsspindlepartsorderonprehearingconf071111.pdf

Deborah J. O'Loughlin
Legal Coordinator
N.H. Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
603-271-2261
603-271-1406/fax

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: SPS Spindle Parts & Service, LLC

**ORDER on
MOTION for DISCOVERY
MOTION to be ALLOWED to CROSS EXAMINE WITNESSES
&
PREHEARING CONFERENCE**

Docket No.: Ins 11-007-AP

WHEREAS, a Motion for Discovery, dated June 3, 2011, (Motion "A") and a Motion to be Allowed to Cross Examine Witnesses, dated June 7, 2011, (Motion "B"), were filed in the above referenced matter by Michael R. Mortimer, attorney for SPS Spindle Parts & Service, LLC (Spindle); and


WHEREAS, the New Hampshire Insurance Department (Department) has not received objections to either Motion "A" or Motion "B"; now, therefore, it is

ORDERED that:

1. Motion "A" is Granted;
2. Motion "B" is Moot (see provisions of RSA 400-A:19 II.); and
3. A Prehearing Conference in the matter is scheduled for July 6, 2011 at 2:00 p.m. at the offices of the Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

SO ORDERED.

Dated: June 14, 2011


Jennifer Patterson, Hearing Officer



Mike Mortimer <MMortimer@wadleighlaw.com>, cnicolopoulos@preti.com,
maureen_longanacre@ncci.com <maureen_longanacre@ncci.com>,
mgunski@spsspindle.com <mgunski@spsspindle.com>, lhoffman@firstcomp.com,
laura_backus_hall@NCCI.com, Deborah L. Stone/InsDeptNH, James B Young/InsDeptNH,
Kathryn Naughton/InsDeptNH,
Jennifer J Patterson/InsDeptNH,
Cc:
Bcc:
Subject: Order on Motions & Prehearing Conference
From: Debbie OLoughlin - Tuesday 06/14/2011 10:22 AM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

See attached Order

Deborah J. O'Loughlin
Legal Coordinator
N.H. Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
603-271-2261
603-271-1406/fax

----- Forwarded by Debbie OLoughlin/Administration/InsDeptNH on 06/14/2011 10:21 AM -----

From: "New Hampshire Insurance Dept" <requests@ins.nh.gov>
To: "DEBORAH.OLOUGHLIN@INS.NH.GOV" <deBORAH.OLOUGHLIN@INS.NH.GOV>
Date: 06/14/2011 10:20 AM
Subject:

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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: SPS Spindle Parts & Service, LLC

ORDER on MOTION TO CONTINUE

Docket No.: Ins 11-007-AP

WHEREAS, a Motion to Continue Hearing (Motion) in the above referenced matter was filed on May 26, 2001 by Christopher Nicolopoulos, attorney for National Council on Compensation Insurance, Inc. (NCCI); and

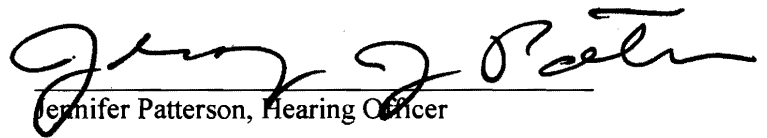
WHEREAS, the Motion was filed with the concurrence of the Respondent SPS Spindle Parts & Service, LLC. (Spindle), and

WHEREAS, the New Hampshire Insurance Department (Department) does not object to a change of hearing date; now, therefore, it is

ORDERED that the hearing in the matter is continued to July 27, 2011 at 2:00 p.m. at the offices of the Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

SO ORDERED.

Dated: June 1, 2011


Jennifer Patterson, Hearing Officer



To: Mike Mortimer <MMortimer@wadleighlaw.com>, cnicolopoulos@preti.com, maureen_longanacre@ncci.com <maureen_longanacre@ncci.com>, mgunski@spsspindle.com <mgunski@spsspindle.com>, lhoffman@firstcomp.com, Deborah L. Stone/InsDeptNH, James B Young/InsDeptNH,
Cc: Jennifer J Patterson/InsDeptNH,
Bcc:
Subject: SPS Spindle Appeal
From: Debbie OLoughlin - Wednesday 06/01/2011 10:19 AM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

Hi All:

Please find attached Order on Motion to Continue dated June 1, 2011. New hearing date is July 27, 2011 at 2:00 p.m.

Deb

Deborah J. O'Loughlin
Legal Coordinator
N.H. Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
603-271-2261
603-271-1406/fax

----- Forwarded by Debbie OLoughlin/Administration/InsDeptNH on 06/01/2011 10:19 AM -----

From: "New Hampshire Insurance Dept" <requests@ins.nh.gov>
To: "DEBORAH.OLOUGHLIN@INS.NH.GOV" <debORAH.OLOUGHLIN@INS.NH.GOV>
Date: 06/01/2011 10:12 AM
Subject:

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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: SPS Spindle Parts & Service, LLC

NOTICE OF HEARING

Docket No.: Ins 11-007-AP

WHEREAS, SPS Spindle Parts & Service, LLC ("Petitioner") is a New Hampshire employer located at 30 Lamy Road, Goffstown, New Hampshire; and

WHEREAS, Petitioner obtained its workers' compensation coverage from Southern Insurance Company ("Southern"), policy number SIC000482702, effective 10/01/08; and

WHEREAS, Petitioner disputed its class code determination which, as a result of an NCCI inspection conducted April 29, 2009 was changed from 3629 to 3632; and

WHEREAS, Petitioner's appeal was heard by the New Hampshire Workers' Compensation Appeals Board ("Board") on March 30, 2011; and

WHEREAS, the National Council on Compensation Insurance, Inc. ("NCCI") on April 8, 2011 provided Petitioner with a copy of the Case Summary: Notice of Decision wherein the Board voted that "for policy number SIC000482702 effective 10/01/08, the correct classification code is Code 3632"; and

WHEREAS, under New Hampshire's Operational Rules for NCCI any party to the action or proceeding may appeal the decision of the Board to the Commissioner of the New Hampshire Insurance Department ("Department") within 30 days; and

WHEREAS, Petitioner, via its attorney Michael R. Mortimer, Wadleigh, Starr & Peters, PLLC, filed an appeal letter received by the Department May 5, 2011; and

WHEREAS, pursuant to RSA 400-A:17, II.(b) and III., the Department may schedule a hearing upon receipt of an application for hearing filed within 30 days of the act complained of, provided that the application "shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded in the hearing."

NOW THEREFORE, the Department finds and rules as follows:

A. The filing of the Petitioner's appeal is timely.

B. Petitioner's Notice of Appeal does not state the grounds for appeal and relief requested as required under RSA 400-A:17, III. Therefore, within 10 days of the date of this order, Petitioner will file and serve on all parties an amended Notice of Appeal conforming to RSA 400-A:17, III.

C. A hearing in this matter will be held on June 2, 2011 at 2:00 p.m. in the offices of the Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire.

D. Jennifer Patterson will serve as the Hearing Officer in this matter.

E. James Young, P&C Market Analysis Examiner and Deborah Stone, P&C Actuary, are designated as Staff Advocates, representing the interests of the Department in this matter pursuant to Ins 203.07.

F. These proceedings shall be conducted in accordance with the provisions RSA 541-A: 31 through 38 and New Hampshire Code of Administrative Rules Ins 200. A copy of these Administrative Rules may be obtained through the Department's website, www.state.nh.us/insurance.

G. Pursuant to the provisions of Ins 200, if the Petitioner elects to be represented by counsel, the Petitioner shall be responsible for his own attorney's fees and costs, and the Petitioner's attorney shall file a notice of appearance at the earliest possible date.

H. The Petitioner may request that the hearing be transcribed. The Petitioner shall bear the cost of retaining a certified court reporter to transcribe the hearing. The Petitioner wishes to have the hearing transcribed, the Petitioner shall file a written request for a certified court reporter with the Hearing Officer at least 10 days prior to the scheduled hearing date.

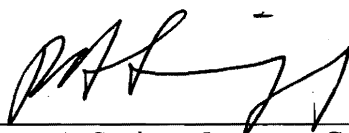
I. All documents shall be filed with the Hearing Clerk in the form of an original and one (1) copy and shall bear a certification that a copy has been delivered to all other parties to this matter in accordance with New Hampshire Code of Administrative Rules Ins 204.09.

J. The burden of proof, by a preponderance of the evidence, shall be borne by the Petitioner. At the conclusion of the hearing, the Hearing Officer may order the Petitioner and/or the Staff Advocates to file proposed findings of fact and conclusions of law and/or proposed orders.

K. The Petitioner's failure to appear at the time, date and place specified herein shall result in the hearing being held *in absentia* and/or a default ruling in favor of the Department, without further notice or opportunity to be heard.

SO ORDERED.

Dated: May 12, 2011



Roger A. Sevigny, Insurance Commissioner

**NH INSURANCE
DEPARTMENT**

**21 SOUTH FRUIT ST., Ste. 14
CONCORD, NH 03301-5151**

**Tel. 603-271-2261
Fax. 603-271-1406**

TRANSMITTAL LETTER

DATE: May 12, 2011

TO:

SPS Spindle Parts & Service, LLC
30 Lamy Road
Goffstown, NH 03045

FROM:

Deborah O'Loughlin
Legal Coordinator

REMARKS/MATERIAL TRANSMITTED:

. Workers' Compensation

. Notice of Hearing, d. 05/12/11

**cc: Michael R. Mortimer, Esq., Wadleigh et al., 95 Market St., Manchester, NH 03101
Janet Taylor, First Comp Underwriter's Group, Central Park Plaza, 222 South 15h St.,
Suite 100N, Omaha, NE 68102
Maureen Longanacre, NCCI, 901 Peninsula Corporate Circle, Boca Raton, FL 33487
Jennifer Patterson, NHID Hearing Officer
James Young, NHID P&C Analyst
Deborah Stone, NHID P&C Actuary**