

**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In re: Majestic Repossession & Transportation Corp.
Docket No.: Ins 11-008-AP**

FINDINGS AND FINAL ORDER

Pursuant to the provisions of Ins 204.26(a)(4), the Proposed Decision and Order issued on July 13, 2011, by Hearing Officer Jennifer Patterson, is hereby ACCEPTED as a FINAL ORDER, *with the following additional findings and clarification relating to the NCCI Dispute Resolution Process:*

The hearing officer's legal finding that: (1) Majestic has not formally raised a constitutional due process claim with respect to the NCCI Process; and (2) the hearing officer's de novo factual findings and legal rulings afforded the insured with due process; are adopted in this Final Order. There is no finding of violation against any party in regard to the dispute resolution process utilized by the Board, however, the evident frustration of the insured in this proceeding is duly noted.

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.

There are no other modifications to the Proposed Decision and Order, and the remainder of the Proposed Decision and Order, attached, is accepted without modification.

The Proposed Decision and Order shall be attached to this Order and identified as a Final Decision in this appeal of Majestic Repossession & Transportation Corporation.

SO ORDERED.

September 7, 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.



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Stone/InsDeptNH, James B Young/InsDeptNH,
Bcc:
Subject: Majestic - Final Order - Ins 11-008-AP
From: Debbie OLoughlin - Wednesday 09/07/2011 10:30 AM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

Please find attached: transmittal letter and final order



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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Majestic Repossession & Transportation Corp.

ORDER on REQUEST for ORAL ARGUMENT

Docket No.: Ins 11-008-AP

WHEREAS, Majestic Repossession & Transportation Corp. ("Petitioner") is a Vermont employer with a mailing address of P.O. Box 4248, Burlington, Vermont, with employees in New Hampshire; and

WHEREAS, Petitioner disputed its workers' compensation classification assignment by Chartis for three employees in the 2008 audit conducted on the disputed policy; and

WHEREAS, Petitioner's appeal was heard by the New Hampshire Workers' Compensation Classification and Ratings Appeals Board ("Board") on March 30, 2011 with Notice of Decision issued April 8, 2011; 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 timely filed an appeal letter and the Department conducted a hearing in the matter on June 9, 2011 at 2:00 p.m. and the hearing officer issued a proposed decision and order ("Order") dated July 13, 2011; and

WHEREAS, Petitioner timely filed a request for oral argument pursuant to Ins 204.26 (a)(3); and

WHEREAS, Petitioner's request for oral argument was sent by the Department, to the parties and to the hearing officer; and

WHEREAS the hearing officer has responded by providing the attached recommendation;

NOW THEREFORE, based on review of the record, the request for oral argument and the hearing officer's recommendation I find that:

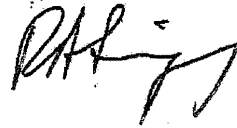
1. Petitioner's request for oral argument relates solely to the Petitioner's contention that its workers' compensation insurance carrier, Chartis, engaged in unfair or deceptive trade practices.
2. The Petitioner had a full and fair opportunity to present arguments related to this issue at the hearing on June 9, 2011, did present her arguments at that hearing, and this information is contained in the record before me.

3. The proposed further oral argument requested by the Petitioner will present no new information that would justify an additional hearing of this matter.

4. Based on these findings, the Petitioner's request for oral argument is hereby DENIED and no further arguments will take place before a Final Decision and Order is made.

5. A Final Decision and Order in this matter will be made after a careful review of the existing record and all evidence, and will then be sent to all parties on or before September 7, 2011, pursuant to RSA 400-A:23, II and Ins 204.26(c).

SO ORDERED,



Dated: August 12, 2011

Roger A. Sevigny, Insurance Commissioner

August 10, 2011 Hearing Officer's Recommendation
on Majestic's Request For Oral Argument Before the Commissioner

On August 2, 2011, appellant Majestic Repossession and Transportation ("Majestic") filed a request for oral argument before the Insurance Commissioner.

Under Insurance Department administrative rules, the commissioner must grant or deny Majestic's request on later than August 12, 2011. In cases heard by a hearing officer other than the commissioner or deputy commissioner, the Department's rules allow a party to "file exceptions and supporting memoranda of law" with respect to the hearing officer's proposed decision and order. Ins 204.26(a)(2). A party may also seek oral argument before the commissioner on the party's exceptions. Ins 204.26(a)(3). The commissioner must grant or deny a request for oral argument within 10 days of receiving the request. Id.

Majestic's request for oral argument reiterates and expands upon its contention that its workers' compensation insurance carrier, Chartis, engaged in unfair or deceptive trade practices. The hearing officer's proposed decision in this case found that while conflicting evidence was presented on the issue of Chartis' allegedly unfair practices, as a matter of law this issue falls outside the scope of a classification appeal under the NCCI rules. Thus, the hearing officer noted, this argument should be raised in a separate proceeding, most likely either a consumer complaint filed with the Department or a private lawsuit between Majestic and Chartis.

Majestic's request for oral argument does not clearly lay out its "exceptions" as contemplated under Ins 204.26(2); however, in the hearing officer's view, it is best characterized as objecting to the portion of the proposed order that concludes that these issues should be raised in a separate proceeding.

It appears that Majestic's purpose in requesting oral argument is primarily to make additional factual assertions regarding Chartis' allegedly unfair actions. These assertions focus on the underlying facts of the claim the hearing officer found as a matter of law to be outside the scope of this appeal. Under these circumstances, the hearing officer does not believe that oral argument would assist the commissioner in understanding the legal issues.

Because the oral argument Majestic requests would not assist the commissioner in understanding the legal issues, the hearing officer recommends that the request for oral argument be denied.

This recommendation, and any order in this matter by the commissioner, should not be construed as limiting Majestic's ability to initiate a separate proceeding, including a consumer complaint raising the issue of potential unfair trade practices by Chartis. The proposed order does not speak to the merits of these claims; it merely concludes that they should be raised in a different forum.



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Stone/InsDeptNH, James B Young/InsDeptNH, Kathryn Naughton/InsDeptNH,
Bcc:
Subject: Order on Request for Oral Hearing
From: Debbie OLoughlin - Friday 08/12/2011 09:01 AM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

Maura:

Please find attached the Commissioner's Order on your request for oral argument.

Deb



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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

**In re: Majestic Repossession & Transportation Corp.
Docket No.: Ins 11-008-AP**

PROPOSED DECISION and ORDER

Procedural History

This case comes before the New Hampshire Insurance Department ("Department") based on a May 9, 2011, filing by Majestic Repossession and Transportation Corporation of Burlington, Vermont ("Majestic") seeking Department review under RSA 400-A:17.

Majestic disputes the National Council on Compensation Insurance ("NCCI") classification assigned to three New Hampshire clerical employees by Majestic's workers' compensation insurance carrier, Commerce and Industry Insurance Co. ("Chartis"). Majestic disputed Chartis' classification and premium increase, and contacted the NCCI to pursue dispute resolution.

The New Hampshire Workers Compensation Classification and Rating Appeals Board ("Board"), an entity created under NCCI's dispute resolution process, held a hearing on Majestic's concerns on March 30, 2011, and, on April 8, 2011, issued a decision agreeing with Chartis' classification. Majestic filed its appeal to the Department on May 4, 2011.¹

On June 9, 2011, the Department held a hearing on Majestic's appeal. Majestic was represented at the hearing by its Vice President, Maura Fitzgerald. Also participating in the hearing were NCCI, represented by attorney Christopher Nicolopolous and NCCI employees Ron Darna and Laura Backus Hall; Chartis, represented by Robert Hunt; and the Department, represented by Staff Advocates Deborah Stone and James Young. All parties were given the opportunity to offer testimony, cross-examine witnesses, and make arguments. The hearing was recorded, and lasted approximately 90 minutes.

Issues

Majestic performs voluntary and involuntary repossessions for its clients. It has historically operated offices in Massachusetts, New Hampshire, and Vermont. In

¹ Under the NCCI Process, any party may appeal to the Department within 30 days of the Board's decision. The Department received the appeal on May 9, 2011, and deemed it timely as May 7, 2011, the actual appeal deadline, fell on a Saturday.

its 2008-09 audit, Chartis found that three employees - Chad Gagnon, Lise Hagen, and Savannah Brodeur - were paid to perform voluntary repossessions outside of regular working hours. Because this work exposed the employees to the operative hazards of the business, Chartis concluded that under NCCI Rule 1-B-2-a-3(b), they were not properly classified to Code 8810 (Clerical Office Employees), and instead classified them to Code 7228 (Trucking: Local Hauling Only – All Employees and Drivers). Further, Chartis concluded that under NCCI Rule 2-G, governing interchange of labor, the entire payroll for these three workers for the period in question must be assigned to Code 7228, despite the fact that the vast majority of their work was clerical in nature.²

Majestic makes three primary arguments. First, the company contests both the Board's and Chartis' decision under NCCI Rules 1-B-2-a-3(b) and 2-G to assign the entirety of the three workers' payroll to Code 7228. Second, the company asserts that it was entitled to rely on Chartis' 2007-08 audit, which did not identify any classification concerns with respect to the clerical employees, despite the fact that Majestic's practices did not change between the two audits. Third and finally, Majestic argues that the NCCI appeals process was unfair, particularly in that NCCI representatives participated in the Board's executive session, from which Majestic was excluded.

Standard of Review

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. Under the NCCI Process, a policyholder must first attempt to resolve the dispute directly with its insurance carrier. A policyholder unable to reach resolution may contact NCCI to seek assistance in resolving the dispute amicably. If these efforts fail, the policyholder may ask 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.

As a general matter, the Department has regulatory authority over the business of insurance conducted in New Hampshire, including investigation of unfair trade practices. See, e.g., RSA chapters 400-A and 417. However, appeals under the NCCI Process focus more narrowly on the application of the NCCI rules to the facts at issue in a particular case, and on the fairness of the NCCI hearing process. Thus, in this particular case the Department does not exercise its full regulatory authority, although it reserves the right to do so in any separate proceedings it may determine to be appropriate. Further, in view of the concerns Majestic raises about the fairness of the process before the Board, the hearing officer's findings

² Copies of the cited rules and classification code descriptions are attached as Exhibit B.

of fact are made de novo, based on the evidence presented at the June 9, 2011 hearing. The hearing officer gives no deference to any factual finding or legal ruling made by the Board.

1. Classification and Payroll Assignment

There is no factual dispute that the three clerical employees at issue performed voluntary repossessions during the 2008-09 policy period. Majestic's appeal document stated, and Ms. Fitzgerald's testimony confirmed, that it was the company's practice during this policy period (July 10, 2008 to July 10, 2009) to pay clerical employees to perform voluntary repossessions outside of their regular work hours. The three employees at issue each earned between \$300 and \$1600 for such work during the 2008-09 policy period. Ms. Fitzgerald testified that this practice was discontinued after the 2008-09 Chartis audit, and that Majestic's clerical employees are now barred from performing repossessions.

Both Chartis and the Board found, and the hearing officer agrees, that this matter is governed by two NCCI classification rules. Rule 1-B-2-a-3(b) provides that "[e]mployees who otherwise meet the requirements for Code 8810 (clerical employees) . . . will be disqualified from assignment to this category if their duties involve . . . [a]ny work exposed to the operative hazards of the business" Rule 2-G (Exception) states that "Code 8810 – Clerical Office Employees are not available for division of payroll under this rule." Copies of the applicable NCCI rules are attached as Exhibit B. Majestic does not argue that any other NCCI rules are applicable.

As Majestic's discontinuation of the practice underscores, the evidence presented at the hearing supports a finding that the clerical employees who performed repossessions were exposed to the operative hazards of the repossession business within the meaning of NCCI Rule 1-B-2-a-3(b). In its appeal documents, Majestic points out that these employees performed only voluntary repossessions, with the keys left in the vehicle for an agreed-to pickup. However, classification Code 7228 is not specific to the repossession business; it covers many activities involving driving or light trucking. Even voluntary repossessions involve driving the repossessed vehicles. Thus, whether the repossessions were voluntary or involuntary does not affect the class code analysis.

Ms. Fitzgerald testified that no claims were filed relating to the three clerical employees under the 2008-09 policy, and argues that the premium was unreasonably high given that Chartis incurred no losses under the policy. However, Mr. Hunt responded in his testimony that under the terms of the policy Majestic would have been entitled to full coverage had a claim been filed, and that the policy premium was calculated after audit in order to accurately represent the risk of loss, not the actual loss during the policy period. The hearing officer agrees with Chartis that the lack of claims does not alter the premium calculation.

Finally, Majestic argues that where the amounts earned from the clerical employees' repossession activities are so small in relation to their overall salaries, it is unfair to classify their entire payroll to Code 7228. Under Rule 2-G, it is never permissible to divide payroll for clerical employees. Both Mr. Hunt, on behalf of Chartis, and Mr. Darna, on behalf of NCCI, testified that there is no flexibility in applying this rule. Majestic argues that it is unfair to apply the rule when the company relied on the lack of audit findings during the 2007-08 audit year, an argument discussed further below. In view of all the testimony, the hearing officer concludes that Rule 2-G must be strictly applied.

In view of the evidence presented and the plain meaning of the rules in question, the hearing officer agrees with Chartis and the Board that under NCCI Rules 1-B-2-a-3(b) and 2-G, the entire payroll for Majestic's three clerical employees who performed repossessions during the 2008-09 policy period was properly classified to Code 7228.³

2. Reliance on Prior Audit

One of Majestic's central arguments is that Chartis waived its right to reclassify clerical employees who performed repossessions after hours during the 2008-09 policy period, because Chartis did not raise this classification issue during its first audit of Majestic. Majestic alleges that Chartis conducted an audit in the first year of coverage (2007-08), and raised no issues about clerical employees' ongoing practice of performing voluntary repossessions after hours for overtime pay. Rather, Majestic alleges, Chartis raised the issue in its second audit (2008-09), resulting in a premium increase that was more substantial than it would have been had Majestic not believed the practice was acceptable. Majestic asserts that it justifiably relied on Chartis' failure to raise the issue of clerical employee classification in the first audit, and that increasing the premium in the second year was unreasonable even given the policy's language allowing premium increases based on audit findings.

There was conflicting testimony on when and how Majestic became aware of the NCCI rules' requirements that clerical employees not engage in activities that expose them to the operative risks of the business, and that payroll not be divided between clerical and non-clerical classifications. According to Ms. Fitzgerald, Majestic only became aware of these requirements after the 2008-09 audit. However, both Mr. Hunt and Mr. Darna pointed out language in the 2007-08 audit report referencing these requirements, though not applying them to any particular Majestic employee. The 2007-08 audit report contained the following general language:

³ The hearing officer further finds that as of June 9, 2011, and in all likelihood for some substantial period prior to that date, Majestic's clerical employees ceased to perform repossessions and should be reclassified to Code 8810. There was no evidence presented as to the exact date of this reclassification.

Workers compensation rules permit most operations with employees who spend 100% of their time inside an enclosed office, completely separate from the other operations of the business, where no inventory or supplies are maintained or displayed, who handle only paper work or use the computer or phone, who do not work with the public, who do not tally, handle, package, inspect inventory or supplies, who do no physical labor, who do not represent the company outside the office enclosure, who do not oversee business operations or supervise non-clerical employees outside an office setting, travel in the course of their work, or repossess cars, to be classified to the clerical standard exception class 8810. NCCI rules state that clerical wages may not be split with exposure in other classes and require that all wages must be assigned to the non-clerical class where the employee spends most of his time.

NCCI hearing packet at 80 (2007-08 audit report at 5).⁴ In sum, the 2007-08 audit report did describe the classification standard for clerical employees, effectively summarizing NCCI Rules 1-B-2-a-3(b) and 2-G.

The parties dispute whether Majestic reviewed the audit report or understood the classification standard at the time of the 2007-08 audit. Ms. Fitzgerald testified that she did not see the 2007-08 audit report in 2008, and that Majestic was unaware of the language quoted above until after the 2008-09 audit. Mr. Hunt testified that it is Chartis' practice to mail a copy of the audit report to the address on the policy after the audit is complete. Mr. Hunt admitted, however, that such reports were not sent by certified mail or e-mail in 2008, so he has no proof that the report was delivered to Majestic.

Both Ms. Fitzgerald and Mr. Hunt testified that at the conclusion of the 2007-08 file review, Chartis auditor Jeanne Miller conducted an exit interview with Majestic finance manager Susan Fraser and asked Ms. Fraser to sign off electronically on the audit based on a verbal review of issues by Ms. Miller. Neither Ms. Fraser nor Ms. Miller testified at the June 9 hearing, and the parties disagree on whether the classification of clerical employees was discussed during the 2007-08 exit interview. Ms. Fitzgerald testified that Ms. Fraser never informed her of any special NCCI requirements for clerical employees following the exit interview, and that Ms. Fraser would have brought the issue up had it been discussed. However, the audit report states that the issue was discussed:

The exit interview was held with the contact, Susan Fraser, Finance manager, who signed the authorization to release worksheets to the agent. **She understood how employees were**

⁴ At the hearing officer's request, the packet of material compiled by NCCI for the Board's hearing was submitted as evidence immediately following the June 9, 2011 Department hearing.

classified and that repossession work disqualifies an employee from standard exception class 8810. . . . She was provided a copy of the policy estimates and the preliminary exposures.

NCCI hearing packet at 80-81 (2007-08 audit report at 5-6) (emphasis added). The parties agree that Ms. Fraser did not receive a copy of the audit report during the exit interview. Mr. Hunt testified that final audit reports are never available at the time of the exit interview, and that the electronic sign-off is an acknowledgement of the records that were reviewed and the fact that the auditor gave a verbal summary of the audit findings.

It was clear from the hearing testimony that Majestic feels Chartis treated it unfairly in increasing its premium based on the clerical employees' NCCI classification in the second, rather than the first, year of coverage. The factual testimony on the issue of when Majestic became aware of the rules governing clerical employee classifications was conflicting, and the witnesses directly involved in the 2008 exit interview (Ms. Fraser and Ms. Miller) were not present at the hearing. While Majestic's frustration about the unexpected premium increase is understandable, Mr. Hunt testified that it is not uncommon for auditors to uncover new information about a recently insured business in the second year of coverage, by getting to understand the operation better and engaging in more detailed questioning.

The hearing officer finds that answering the question of whether Majestic relied on Chartis' lack of findings in the first audit will not alter the classification analysis, and thus is beyond the scope of this appeal. Essentially, these are private issues that should be resolved directly between Majestic and Chartis. See, e.g., Cont'l Ins. Co. v. Seppala & Aho Constr. Co., Inc., 121 N.H. 374 (1981) (workers' compensation policy allowed insurer to retrospectively apply Massachusetts rates to that percentage of the defendant's employees who had worked in Massachusetts during the coverage period); see also Hartford Accident & Indem. Co. v. Pro-Football, Inc., 127 F.3d 1111 (D.C. Cir. 1997); Travelers Indem. Co. v. Int'l Nutrition, Inc., 734 N.W.2d 719 (Neb. 2007) (insurer's failure to conduct discretionary preliminary audit did not prevent insurer from applying retroactive premium increase based on later audit); Tropical Roofing Co. v. Charnow, 134 So. 2d 32 (Fla. 2d DCA 1961); Ins. Co. of N. Am. v. Am. Plasterers, Inc., No. CV87-0334874S, 1991 WL 209873 (Conn. Super. Ct. Oct. 2, 1991) (in view of workers' compensation policy terms allowing reclassification and recalculation of premium following audit, policyholder's claim that insurer was estopped from recovering the additional premium due to its negligence in failing to initially apply the correct classifications to the defendant's payroll should be denied).

While the hearing officer notes the evidence presented, there is no need to make findings of fact regarding this issue. Regardless of any factual findings the hearing officer might make, the questions of whether Majestic justifiably relied to

its detriment on Chartis' representations, and whether Chartis engaged in any unfair trade practice under New Hampshire law, are beyond the scope of this appeal hearing. Majestic retains its right to pursue a private legal action against Chartis, or to make a consumer complaint to the Department regarding Chartis' actions. The Department also has authority to initiate an investigation of its own accord; such action would rest in the discretion of the Insurance Commissioner.

3. Due Process

Finally, Majestic 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 deliberations. Ms. Fitzgerald testified that numerous NCCI representatives were present at the Board hearing, that their role was unclear to her, and that several of them remained with the Board during its executive session, for which she was asked to leave. Mr. Darna and Ms. Backus Hall testified that they were both present during the Board hearing and the executive session, although they did not participate in discussions during the executive session. Ms. Backus Hall testified that Maureen Longacre, NCCI's Regulatory Services Manager, was present at the Board hearing and participated in the executive session as a nonvoting member.

Majestic's confusion about the NCCI and Board process is understandable. NCCI is not a state agency, and its proceedings are not governed by any New Hampshire statute. Nor is the Board mentioned in any state statute; Board members are appointed by the Insurance Commissioner, and the Board is completely separate from the Workers Compensation Appeals Board created under RSA 281-A:42-a.⁵ The Board is created by the NCCI Process, which also governs its proceedings. See Exhibit A.

It is difficult for a person outside the insurance industry to obtain a copy of the NCCI Rules. The hearing officer takes administrative notice of the fact that they are not available on the Department's website, or from the NCCI website without a user login. Unlike agency administrative rules, which are public documents made widely available to the public, the NCCI rules contain a copyright notice, and expressly state that "[n]o further use, dissemination, sale, assignment, reproduction, preparation of derivative works, or other disposition of this product or any part thereof may be made without the prior written consent of NCCI." See, e.g., Exhibit A at 5. While administrative agencies' rules may at times be labyrinthine, the NCCI rules are literally inaccessible.

⁵ Even the Department seems to find the Board's role confusing; the Department's website mistakenly calls the Board the Workers' Compensation Appeals Board. See Workers' Compensation FAQs, NEW HAMPSHIRE INSURANCE DEPARTMENT, <http://www.nh.gov/insurance/pc/workerscomp/faq.htm#Process> (last updated 2007).

Board proceedings differ significantly from hearings conducted under the New Hampshire Administrative Procedures Act, RSA chapter 541-A, in ways that a policyholder may find confusing. Under the NCCI Process, normal administrative procedures or rules are not applicable to proceedings before the Board. See Exhibit A at D(1). Proceedings may not be recorded. After reviewing any information offered, the Board makes 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. See Exhibit A at C(3)(c). Based on the evidence and the NCCI rules, the hearing officer finds that it is credible that a policyholder might be confused about the process and the role of NCCI staff during the hearing.

Majestic has not formally raised a constitutional due process claim with respect to the NCCI Process. The 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. 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”); Harper v. Healthsource N.H., Inc., 140 N.H. 770 (1996).

Though the NCCI is a private party, its rules are approved by the Department. Further, the Board and the NCCI Process provide the only avenue for review of insurers’ classification decisions under the NCCI rules. As the NCCI Process states, “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.” See Exhibit A at B(1). Thus, there may be some basis for concluding that Board hearings are subject to constitutional due process requirements.

Where the issue was not formally raised, and 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. The hearing officer does not believe a further hearing before the Board would alter the outcome in this case. Any constitutional defect that may have existed in the Board’s process is cured by the June 9, 2011 hearing and the hearing officer’s de novo factual findings and legal rulings.

While the contents of the NCCI rules are beyond the scope of this appeal, the hearing officer finds merit in Majestic’s concerns about the Board process. Therefore, the hearing officer recommends that the Department, in its capacity as

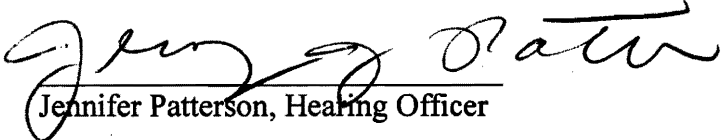
regulator with authority to review and approve the NCCI rules applicable in New Hampshire, review the NCCI Process at its earliest opportunity with the objective of ensuring that policyholders, particularly when operating pro se, are fully informed about the nature of the process and receive a fair hearing before the Board.

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: July 13, 2011


Jennifer 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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RULE 1—CLASSIFICATION ASSIGNMENT**A. CLASSIFICATION SYSTEM** *Effective 01 Jul 2001*

1. The purpose of the classification system is to group employers with similar operations into classifications so that:
 - The assigned classification reflects the exposures common to those employers
 - The rate charged reflects the exposure to loss common to those employers
2. Subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations or operations within the business.

B. EXPLANATION OF CLASSIFICATIONS *Effective 01 Jan 2010*

Classifications are divided into two types—Basic Classifications and Standard Exception Classifications.

1. Basic Classifications

Basic Classifications describe the business of an employer. This term is applied to all classifications listed in this manual, except for the standard exception classifications.

Refer to User's Guide for an example.

2. Standard Exception Classifications

(Exceptions: MO, NV)

Standard Exception Classifications describe occupations that are common to many businesses. These common occupations are not included in a basic classification unless specified in the classification wording. The standard exception classifications are described below.

a. Clerical Office* Employees NOC (Code 8810)**Clerical Office Telecommuter Employees (Code 8871)**

(Additional Rules: MT) (Exceptions: AK, MT, FL, OR)

The above classifications are assigned when all the following conditions are met:

- The basic classification(s) wording applicable to the business does not include clerical office or telecommuting employees
- Other rules do not prohibit the assignment of Code 8810 or Code 8871
- The employee meets the duties, site and other requirements listed below:

(1) Duties

(Additional Rules: OR)

Duties must be limited to one or more of the following work activities:

- Creation or maintenance of:
 - Employer records
 - Correspondence
 - ~~Computer programs~~
 - Files
- Telephone duties, including telephone sales
- Data entry or word processing
- Copy or fax machine operations, unless the insured is in the business of making copies or faxing for the public
- General office work similar in nature to the above

(2) Site

(Exceptions: FL)

(a) Code 8810—The duties above must take place in a work station that is separated from the operative hazards:

- Factories
- Stores
- Shops
- Construction sites

- Warehouses
- Yards
- Any other work areas such as:
 - Work or service areas
 - Areas where inventory is located
 - Areas where products are displayed for sale
 - Areas to which the purchaser customarily brings the product from another area for payment

(b) Work stations or service areas as described in Rule 1-B-2-a(2) above must be physically separated by:

- Floors
- Walls
- Partitions
- Counters
- Other physical barriers that protect the clerical employee from the operating hazards of a business

(c) Code 8871—The duties above must take place in a clerical work area located within the home of the clerical employee. It must be separate and distinct from the location of the employer.

(3) Other Requirements

(a) Employees who otherwise meet the requirements for Code 8810 or Code 8871 will not be disqualified from assignment to this classification if they perform certain incidental nonclerical duties directly related to that employee's duties in the office. These duties include:

- Depositing of funds in a bank
- Pickup or delivery of mail
- Purchase of office supplies
- Entering an area exposed to the operative hazards of the business for clerical purposes, such as delivering paychecks

(b) Employees who otherwise meet the requirements for Code 8810 or Code 8871 will be disqualified from assignment to this classification if their duties involve:

- Outside sales or outside representatives
- Direct supervision of nonclerical employees not performed in an eligible site according to Rule 1-B-2-a(2) above
- Physical labor
- Any work exposed to the operative hazards of the business, such as a stock or tally clerk, that is necessary, incidental, or related to any operations of the business other than a clerical office

b. Drivers, Chauffeurs, Messengers, and Their Helpers NOC—Commercial (Code 7380)

(Exceptions: AZ, NV)

This classification is assigned to employees who perform work on or in connection with a vehicle. Messenger and courier deliveries of owned documents or goods made by foot or public transportation are assigned to the governing class code. This code includes garage employees and employees using bicycles as part of their work duties. Duties include, but are not limited to, delivering goods owned by the employer.

Code 7380 does not apply when the basic classification wording already includes drivers. *Refer to Rule 2-H for vehicles under contract.*

c. Salespersons or Collectors—Outside (Code 8742)

This classification is assigned to employees who perform these duties away from the employer's premises.

This code excludes employees who:

- Deliver merchandise.

G. INTERCHANGE OF LABOR *Effective 01 Nov 2005*
(Additional Rules: AR, ID, MO, MT) (Exceptions: AR, ID, OR, SD) (*User's Guide*: ID, OR)

Some employees may perform duties directly related to more than one properly assigned classification according to Rule 1-D-3. Their payroll may be divided among the properly assigned classifications provided that:

1. The classifications can be properly assigned to the employer according to the rules of the classification system, and
2. The employer maintains proper payroll records, which show the actual payroll by classification for that individual employee.
 - a. Records must reflect actual time spent working within each job classification and an average hourly wage comparable to the wage rates for such employees within the employer's industry.
 - b. Estimated or percentage allocation of payroll is not permitted.

Note: If payroll records do not show the actual payroll applicable to each classification, the entire payroll of the individual employee must be assigned to the highest rated classification that represents any part of his or her work.

3. Payroll for holiday, vacation, sick pay, overtime and all other forms of payroll that are not directly attributable to a specific classification code must be allocated to the classification code with the greatest amount of payroll applicable to the individual employee.

If none of the classification codes applicable to the employee has the greatest amount of payroll, the payroll for holiday, vacation, sick pay, overtime and all other forms of payroll that are not directly attributable to a specific classification code must be allocated to the highest rated classification code applicable to the employee.

4. Some employees qualify for division of payroll between two or more basic classification codes and also engage in operations that are classified by Codes 8810, 8742, 8748 or 8871. The payroll for these standard exception operations must be allocated to the basic classification code with the largest amount of payroll applicable to that employee.

Exceptions to Rule 2-G:

1. Code 8810—Clerical Office Employees, Code 8871—Clerical Telecommuter Employees, Code 8742—Salespersons or Collectors—Outside, and Code 8748—Automobile Salespersons are not available for division of payroll under this rule. However, when an interchange of labor exists between Code 8810 and Code 8871:
 - Code 8871 will be assigned when the employee spends more than 50% of the time worked telecommuting as described by Rule 1-B-2-a.
 - Code 8810 will be assigned when the employee spends 50% or less of the time worked telecommuting as described by Rule 1-B-2-a.
2. The distribution of payroll for the employee may result in no single basic classification code that represents the largest amount of that employee's payroll. In such cases, the payroll included in the standard exception codes (8810, 8742, 8748 and 8871) will be assigned to the highest rated classification code that represents any part of the employee's work.
3. This rule does not apply to miscellaneous employees. *Refer to Rule 1-E* for these employees.

Refer to User's Guide for examples.

H. SUBCONTRACTORS *Effective 01 Nov 2005*
(Additional Rules: AZ, ME) (Exceptions: CO, NC, MO, UT)

1. In those states where workers compensation laws provide that a contractor is responsible for the payment of compensation benefits to employees of its uninsured subcontractors, the contractor must furnish satisfactory evidence that the subcontractor has workers compensation insurance in force covering the work performed for the contractor. The following documents may be used to provide satisfactory evidence:
 - Certificate of insurance for the subcontractor's workers compensation policy
 - Certificate of exemption
 - Copy of the subcontractor's workers compensation policy
2. For each subcontractor not providing such evidence of workers compensation insurance, additional premium must be charged on the contractor's policy for the uninsured subcontractor's employees according to Subcontractor Table 1 and 2 below.

Code and Phraseology	Effective Date	State Exception(s)	State(s) Not Applicable
	7/1/11: AR, MT, SC, SD 10/1/11: KY 11/1/11: DC, WV 12/1/11: UT		

CLEANING *Effective 01 Jul 2001*

5610● Railroad Freight Cars—Not Tank

3726● Tanks or Tank Cars

2586 **CLEANING OR DYEING & ROUTE SUPERVISORS, DRIVERS.** *Effective 01 Jul 2001*

Includes repairing or pressing. Not textile piece goods. Collecting or distributing stores, no cleaning or dyeing at the same location, to be rated as Code 8017—Store—retail NOC.

5213● **CLEANING OR RENOVATING BUILDING EXTERIORS** *Effective 01 Jul 2001*

6217● **CLEARING OF RIGHT-OF-WAY—ELECTRIC, POWER, TELEPHONE, BURGLAR, OR FIRE ALARM LINES BRUSH CLEARING OR REMOVAL—NEW OR EXISTING RIGHT-OF-WAY & DRIVERS.** *Effective 01 Jul 2007*

Applies to the clearing or removal of brush using mechanical equipment.

8810 **CLERICAL OFFICE EMPLOYEES NOC.** *Effective 01 Jul 2001*

Subject to the Rule 1-B-2.

CLERICAL OFFICE EMPLOYEES NOC *Effective 01 Jul 2001*

Coverage Under the Federal Employers' Liability Act (FELA):

8814 Program I

8805 Program II—State Act Benefits

8815 Program II—USL&HW Act Benefits

8871 **CLERICAL TELECOMMUTER EMPLOYEES.** *Effective 01 Jul 2001*

Subject to the Rule 1-B-2.

8103◆ **CLIPPINGS DEALER.** *Effective 01 Jul 2001*

Applies to a dealer in new textile fabrics only. Not rag or paper stock dealers. Dealers in used fabrics shall be assigned to Code 8264—Paper stock or rag dealer.

3385 **CLOCK MFG.** *Effective 01 Jul 2001*

2501 **CLOTH, CANVAS AND RELATED PRODUCTS MFG. NOC** *Effective 01 Jan 2011*

The installation, removal, or repair of awnings, tents, or other canvas products away from the shop must be classified to Code 5102. Unless payroll records are accurately maintained, showing the amount of payroll expended for shop work, the entire payroll must be assigned to Code 5102.

TOWNSHIP EMPLOYEE NOC. *Effective 01 Jul 2001*

See Municipal.

TOY MFG. *Effective 01 Jul 2001*

2501 Cloth Stuffed Animals or Toys

2841 Wood

3507 TRACTION ENGINE OR POWER PLOW MFG. *Effective 01 Jul 2001*3507 TRACTOR MFG.—CATERPILLAR TYPE *Effective 01 Jul 2001*TRAILER BODY MFG.—NOT HOME TYPE. *Effective 01 Jul 2001*

See Automobile, Bus, Truck or Trailer Body Mfg.

2812 TRAILER MFG.—HOME TYPE *Effective 01 Jul 2001*9015 TRAILER PARKS OR TRAILER CAMPS *Effective 01 Jul 2001*0106 TREE PRUNING AND REMOVAL—ALL OPERATIONS & DRIVERS—NATURAL CATASTROPHE
Effective 01 Nov 2005

Applicable to risks contracting exclusively to prune limbs, clean up tree debris, and remove lodged or felled trees in the aftermath of a natural catastrophe. Code 0106—Tree Pruning and Removal—All Operations & Drivers—Natural Catastrophe may be assigned as an additional classification when separation of payroll exists. When no separation of payroll exists, the payroll for the entire operation must be assigned to the highest rated classification. Refer to Code 2702 for removal of standing trees and Code 6217 for removal of tree debris using mechanical equipment such as bulldozers and hydroaxes.

0106 TREE PRUNING, SPRAYING, REPAIRING—ALL OPERATIONS & DRIVERS *Effective 01 Nov 2005*

Applicable by job site to tree pruning contracts requiring any aboveground level work. Code 0106 applies to the whole contract including, but not limited to, chipping and cleanup activities regardless of whether or not a separate contract is written for tree pruning or lawn maintenance and another contract is written for chipping or cleanup. Incidental tree removal on a developed site conducted in connection with tree pruning, spraying, and repairing operations is also assigned to Code 0106. Code 0106 is differentiated from Code 2702—Logging or Lumbering & Drivers because under Code 0106 a tree is removed by cutting it into sections. Also, due to limited clearance from structures, a guide rope is used as needed to direct the fall of the tree. Refer to Code 2702 for risks engaged exclusively in tree removal operations.

0106 TREE PRUNING, TRIMMING, OR SPRAYING—ALL OPERATIONS & DRIVERS FOR EXISTING
RIGHT-OF-WAY—ELECTRIC, POWER, TELEPHONE, BURGLAR, OR FIRE ALARM LINES *Effective*
*01 Nov 2005*2702 TREE REMOVAL FOR NEW RIGHT-OF-WAY—ELECTRIC, POWER, TELEPHONE, BURGLAR, OR
FIRE ALARM LINES *Effective 01 Jul 2007***TRUCK** *Effective 01 Jul 2001***Leasing—Long-Term:**

8748 Sales Employees. Subject to the Rule 1-B-2, except as respects delivery of automobiles.

8380 All Other Employees & Drivers

Rental:

8385 Garage Employees

8002♦ All Other Employees & Counter Personnel, Drivers

TRUCKING *Effective 01 Nov 2005*

Truckers engaged in hauling under contract, whether for one or more individuals or concerns, shall under no circumstances be classified and rated except in accordance with the appropriate "Trucking" classification.

Exception: When trucking operations are a secondary business and conducted as a separate undertaking or enterprise, the payroll of an individual employee may be divided and allocated to other than a "Trucking" classification. Refer to Rule 1-E.

Each classification includes miscellaneous employees such as terminal employees, garage employees, and repairers.

- 7228 Hauling Explosives or Ammunition—Local Hauling Only—All Employees & Drivers**
- 7229 Hauling Explosives or Ammunition—Long Distance Hauling—All Employees & Drivers**
- 7228 Local Hauling Only—All Employees & Drivers.** The term "local hauling" as used in this classification means hauling within a radius of two hundred (200) miles from the point of principal garaging. The term "principal garaging" as used above means base terminal. When a base terminal is not utilized, principal garaging means a permanent maintenance garage where vehicles are serviced or stored on a regular basis. When a permanent maintenance garage is not utilized, principal garaging means the residence of the employee. Storage warehouse employees to be separately rated.
- 7229 Long Distance Hauling—All Employees & Drivers.** The term "long distance hauling" as used in this classification means hauling outside a radius of two hundred (200) miles from the point of principal garaging. The term "principal garaging" as used above means base terminal. When a base terminal is not utilized, principal garaging means a permanent maintenance garage where vehicles are serviced or stored on a regular basis. When a permanent maintenance garage is not utilized, principal garaging means the residence of the employee. Storage warehouse employees to be separately rated.
- 7232 Mail, Parcel, or Package Delivery—Under Contract With the U.S. Postal Service—All Employees & Drivers.** Applies to risks engaged under contract to the U.S. Postal Service for delivery of mail involving letters, parcels, packages, sacks, pallets, and rolling containers. Includes both U.S. Postal Service contract mail delivery performed on a bulk basis as well as on an individual letter, parcel, or package basis.
- 7222 Oil Field Equipment—All Employees & Drivers**
- 7230 Parcel or Package Delivery—All Employees & Drivers.** Applies to risks engaged exclusively in delivery from retail stores under term contracts.

TRUCKING—RIGGERS *Effective 01 Jul 2001*

See **Mobile Crane & Hoisting Services**.

2883 TRUNK MFG. *Effective 01 Jul 2001*

Metal frames or fittings to be separately rated.

TUBE MFG. *Effective 01 Jul 2001*

See **Pipe or Tube Mfg.**

TUGBOATS *Effective 01 Jul 2001*

Coverage Under Admiralty Law:

- 7016 Program I**
- 7024 Program II—State Act Benefits**
- 7047 Program II—USL&HW Act Benefits**

9019 TUNNEL—VEHICULAR—OR BRIDGE OPERATIONS & DRIVERS. *Effective 01 Jul 2001*

Includes all employees on approaches. Structural alterations or repairs or the painting of the bridge structures to be separately rated.

TUNNELING *Effective 01 Jul 2001*

- 6251• Not Pneumatic—All Operations.** Includes lining. Subway construction to be separately rated.
- 6260• Pneumatic—All Operations.** Includes lining, all employees working under air pressure and all others working in the tunnel or in work on the apparatus connected therewith.

0016■ TURPENTINE FARM & DRIVERS. *Effective 01 Jul 2001*

Includes the incidental distillation of turpentine or resin from tree gums. Removal of stumps, logging, or lumbering, wood distillation to be separately rated.

2220 TWINE, CORDAGE, OR ROPE MFG. NOC *Effective 01 Jul 2001*

2220 TWINE OR CORD MFG.—COTTON *Effective 01 Jul 2001*



To: Mcamdf@comcast.net, bob.hunt@chartisinsurance.com, ron_darna@ncci.com, cnicolopoulos@preti.com, laura_backus_hall@NCCI.com, maureen_longanacre@ncci.com <maureen_longanacre@ncci.com>
Cc: Jennifer J Patterson/InsDeptNH, Deborah L. Stone/InsDeptNH, James B Young/InsDeptNH, Kathryn Naughton/InsDeptNH,
Bcc:
Subject: Majestic Repossession Decision Order
From: Debbie OLoughlin - Wednesday 07/13/2011 12:26 PM
Sent by: Debbie OLoughlin/Administration/InsDeptNH

Pursuant to Ins 204.26(a), please find attached a "Proposed Decision and Order" in the above referenced matter (Docket No.: Ins 11-008-AP) dated July 13, 2011.



majesticproposeddecisionorder071311.pdf

Deborah J. O'Loughlin
Legal Coordinator
N.H. Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
603-271-2261
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**STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT**

In re: Majestic Repossession & Transportation Corp.

NOTICE OF HEARING

Docket No.: Ins 11-008-AP

WHEREAS, Majestic Repossession & Transportation Corp. ("Petitioner") is a Vermont employer with a mailing address of P.O. Box 4248, Burlington, Vermont, with employees in New Hampshire; and

WHEREAS, Petitioner obtained its workers' compensation coverage from Commerce and Industry Insurance Co. ("Chartis"), policy number WC2931969, effective 07/10/08; and

WHEREAS, Petitioner disputed the classification assignment by Chartis for three employees in the 2008 audit conducted on the disputed policy; 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 WC2931969, effective 07/10/08, the correct classification code for the three employees in question is Code 7228, the code identified by Chartis; 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 filed an appeal letter received by the Department on May 9, 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 and complete under RSA 400-A:17, III.
- B. A hearing in this matter will be held on June 9, 2011 at 2:00 p.m. in the offices of the Department, 21 South Fruit Street, Suite 14, Concord, New Hampshire.
- C. Jennifer Patterson will serve as the Hearing Officer in this matter.

D. 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.

E. 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.

F. 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.

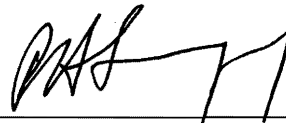
G. The Petitioner may request that the hearing be transcribed. The Petitioner shall bear the cost of retaining a certified court reporter to transcribe the hearing. The Petitioner wishes to have the hearing transcribed, the Petitioner shall file a written request for a certified court reporter with the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

H. 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.

I. 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.

J. 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.



Roger A. Sevigny, Insurance Commissioner

Dated: May 12, 2011

**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:
Majestic Repossession & Transportation Corp.
P.O. Box 4248
Burlington, VT 05406

FROM:
Deborah O'Loughlin
Legal Coordinator

REMARKS/MATERIAL TRANSMITTED:

. Workers' Compensation

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

**cc: Maura Fitzgerald, Majestic Repossession and Transportation Corp., P.O. Box 4248,
Burlington, VT 05406
Robert Hunt, Chartis, 344 Brown Hill Road, Belmont, NH 03220
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**