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

IN THE MATTER OF:	)	
SHERWOOD HOME FURNISHINGS, INC.	)	**Doc. No.:12.28-078126A**
and	)	
BERKLEY REGIONAL INSURANCE	)	**WC Appeal - Insurance**
COMPANY	)	
	)	

NOTICE

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

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

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

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

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

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

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

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INITIAL ORDER

This matter came to be heard April 10, 2006, before Steve Darnell, Administrative Judge, assigned by the Secretary of State, along with Larry C. Knight, Assistant Commissioner for Insurance of the Tennessee Department of Commerce and Insurance. Mr. Knight sits as the Commissioner's designee and as such makes the final determination as to findings of fact in this matter. Sherwood Home Furnishing was represented at the hearing by Attorney Hugh Houser, Jr. Berkley Regional Insurance Company was represented at the hearing by Attorney Mike Morgan.

INITIAL ORDER

The subject of this hearing was whether Berkley Regional Insurance Company (hereinafter referred to as "Berkley") correctly adjusted the class code for certain employees of Sherwood Home Furnishings (hereinafter referred to as "Sherwood") from Class Code 9522 – Upholstery to Class Code 2570 – Mattress Manufacturing. After consideration of the record in this case, it is determined that Berkley adjusted the class code correctly to code 2570 – mattress manufacturing based upon the business operations of Sherwood. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

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

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

3. Sherwood was a manufacturing company located in Spring City, Tennessee at the address of 171 Hoyal Lane. Up until October 2005, Sherwood was in the business of manufacturing futons, ottomans, butterfly cushions and upholstered bunky boards.

4. The National Council on Compensation Insurance (hereinafter referred to as the "NCCI") is the designated rate service organization for Tennessee and defines the class codes used in this state for purposes of workers' compensation insurance rating.

5. Sherwood began manufacturing futons in 1999 and continued to do so until October, 2005. In the beginning, Sherwood concentrated approximately forty to fifty percent (40% - 50%) of its operations on the manufacture of futons. By the end of October 2005, Sherwood's futon line accounted for eighty-five to ninety percent (85% - 90%) of its operations.

6. The process undertaken to manufacture a futon was described by Sherwood as follows: First, the components, such as fiber, foam and cotton, are layered on a table. Next, plastic is placed over the filling materials that are vacuumed in order to remove air from the product. Third, an imported cover is then placed over the mattress. The fourth step was to place either a tuft or a button on the mattress. Lastly, the product and mattress were bagged and placed

into a shipping box. Once completed, the product was shipped it to another company where it is placed in a medal or wood frame and then sold to the consumer. Sherwood does not manufacture the wood or medal frames for the futon mattress.

7. Sherwood's workers' compensation policy with Berkley went into effect in January, 2003. The policy was purchased by Sherwood through the Tennessee Workers' Compensation Insurance Plan (hereinafter referred to as the "Plan").

8. Sherwood's original application for insurance submitted to the Plan classified Sherwood as being in the upholstery business. The NCCI defines the scope of the upholstery class code as follows:

> Classification Code 9522 – Upholstering
>
> SCOPE Code 9522 is applicable to insureds engaged in the business of upholstering. The classification is available for a division of payroll with other manual classifications if the insured engages in other operations that qualify as separate undertakings or enterprises per Rule 1-D-3 (Rule IV-D-4, 1996 edition) of the Basic Manual.
>
> The separate undertaking or enterprise rule is not applicable to operations involving coffin or casket manufacturing, automobile body manufacturing or furniture manufacturing. Code 9522 may be assigned as an additional classification to the upholstering operations of an insured engaged in these operations provided proper payroll records are maintained.
>
> This classification is assigned to the installation of automobile trim molding, striping tape and door edge guards.
>
> It is also assigned to insureds engaged in the manufacture of furniture made entirely from foam rubber with cloth covering.
>
> Refer to Code 9521 for upholstering operations away from shop that are incidental to and performed in conjunction with house furnishings installations. Slipcover and drapery manufacturing is assigned to Code 2501-Furnishing Goods Manufacturing NOC.
>
> The cross-reference phraseology "burial garment manufacturing" would have application only if the manufacture of burial garments were incidental operations of an insured principally engaged in casket or coffin upholstering. The insured

whose principal operations were the manufacture of burial garments would properly be assigned to Code 2501-Clothing Manufacturing.

Code 2501 is applicable to the manufacture of automobile seat covers and convertible tops. In the event an insured engages in upholstering operations along with the manufacture of tops and/or seat covers, Basic Manual rules as described above that are applicable to the assignment of more than one classification to a risk will apply.

9. After the inception of the policy, Berkley performed a preliminary premium audit on Sherwood's policy. Berkley contracted with Overland Solutions to perform the audit. The premium auditor informed Berkley that Sherwood's business was classified incorrectly as upholstering. The premium auditor indicated that Sherwood's classification should properly be mattress manufacturing.

10. Based upon the premium auditor's recommendations, Berkley endorsed Sherwood's policy to change their classification code from upholstering to mattress manufacturing.

11. Upon receiving notice of the endorsement, Sherwood objected and Berkley requested the NCCI to conduct a classification audit.

12. The NCCI determined that the proper classification for Sherwood was Class Code 2570 – Mattress Manufacturing. The NCCI based its determination on the fact that Sherwood's operations were analogous to a stuffed mattress manufacturer, rather than that of upholsterers. The NCCI defines the scope of the mattress manufacturing class code as the following:

Classification Code 2570 – Mattress Manufacturing

SCOPE The products falling within this classification are stuffed mattresses, spring mattresses or box springs. Unprocessed or processed fillers such as hair, cotton, kapok cotton liners, silk floss, and felt as well as fabrics to be used for covers, coiled springs, burlap, twine and dressed frames are received. Treatment of filler material such as carding, willowing, picking, garnetting and cleaning is contemplated within this classification. Coil springs can be tied together and padded or individual pockets of muslin can be sewn for each coil spring. Also,

> springs can be joined and attached to the frame. Covers are cut to size and sewn on three sides and slipped over only the filler or filler and spring or box spring assembly. The fourth side is then sewn closed. There can be tufting operations and occasionally upholsterers' tape may be tacked to the box springs.
>
> Code 2570 is applicable to those mattress or box spring manufacturers who purchase layer cotton felt, innerspring units and wood frames from others and assemble these materials to form mattresses or box springs.
>
> The manufacture of pillows, quilts or cushions when performed by a mattress manufacturer is assigned to Code 2570. Code 2570 also contemplates the manufacture of mattresses from prepurchased component parts such as springs, pads, foam, fabric and other related parts.

The NCCI further states in their manual that Class Code 2570 "[i]ncludes pillow, quilt or cushion manufacturing. Separately rate the manufacturing of wire springs or excelsior." Furthermore, the NCCI determined that Class Code 9522 – Upholstery Manufacturing was not appropriate since Class Code 9522 is more commonly used in situations where the business manufactures both the wood or medal part and then upholsters the chair or cushion.

13. While Sherwood encouraged a finding that the manufacture of futons was upholstering and not mattress manufacturing, Sherwood provided no evidence at the hearing to support such a finding.

14. The American Heritage Dictionary of the English Language, Fourth Edition, defines "upholstering" as the act of "[s]upply[ing] (furniture) with stuffing, springs, cushions, and covering fabric. The American Heritage Dictionary of the English Language, Fourth Edition, defines a "cushion" as "[a] pad or pillow with a soft filling, used for resting, reclining, or kneeling." The American Heritage Dictionary of the English Language, Fourth Edition, defines a "mattress" as "[a] usually rectangular pad of heavy cloth filled with soft material or an arrangement of coiled springs, used as or on a bed."

15. Applying the explanation of the business of Sherwood, as explained by Sherwood, to the two (2) class codes in which the parties are urging the Department to use, it would appear that Sherwood's activities can be described as either the manufacture of mattresses or cushions, but not the act of upholstering. Regardless of which of the two (2) it may be, both items are covered under Class Code 2570 – Mattress Manufacturing and not Class Code 9522 – Upholstering.

CONCLUSIONS OF LAW

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

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

18. The decision of which class code to apply to a particular employer is to be made based upon the type of business the employer is engaged in and not the functionality of the product in which they may manufacture.

19. After consideration of the manner in which Sherwood makes futons, as described by Sherwood itself, and the language of the two class codes referenced above, it is the conclusion of this Department that Berkley correctly characterized the business of Sherwood as falling under Class Code 2570 – Mattress Manufacturing and not Class Code 9522 – Upholstering.

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

1. The proper class code for Sherwood Home Furnishing is 2570 – Mattress Manufacturing; and

2. Sherwood Home Furnishing shall pay to Berkley Regional Insurance Company Eighty-Two Thousand, Twenty-Four Dollars ($82,024) in additional premium.

This Initial Order is entered and effective this the 25 day of July, 2006.

Larry C. Knight, Jr.
Assistant Commissioner of Insurance