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**IN THE CHANCERY COURT FOR THE STATE OF TENNESEE**
**TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY AT NASHVILLE**

**ADVANTAGE PERSONNEL CONSULTANTS, INC.**
**Petitioner,**

**v.**

**TENNESSEE DEPARTMETN OF COMMERCE AND INSURANCE and LIBERTY MUTUAL INSURANCE COMPANY,**

**Respondents.**

FILED
2011 NOV 18 AM 10: 25
DAVIDSON COUNTY CHANCERY CT.
BC&M

**Case No.: 10-1899**

**JUDGMENT AFFIRMING DECISION OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE**

This matter came before the Court upon appeal by Petitioner, Advantage Personnel Consultants, Inc., from a decision of the Tennessee Department of Commerce and Insurance. Both parties filed briefs with this Court, and oral argument was heard by this Court on October 12, 2011. This Court issued a bench ruling later the same day, a copy of which is attached hereto and incorporated herein by reference as part of this judgment.

Pursuant to the reasoning set forth in the bench ruling attached hereto, this Court affirms the decision of the Tennessee Department of Commerce and Insurance in all respects and finds the classification code 3507 is the most proper class for employees working at TAG Manufacturing for the Petitioner.

Costs are to be paid by the Petitioner.

SO ORDERED AND ADJUDGED this _____ day of _____, 2011.

The Honorable Chancellor Claudia Bonnyman

APPROVED:

Scott J. Crosby (#014287)
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, TN 38103\
Tel: 901.524.5134
Fax: 901.524.5024
scrosby@bpjlaw.com

Raymond S. Leathers (#009532)
Howard, Tate, Sowell, Wilson & Boyle
150 Second Avenue North
Suite 201
Nashville, TN 37201-1934
Tel: 615.256.1125
Fax: 615.244.5467

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
NASHVILLE, TENNESSEE

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ADVANTAGE PERSONNEL CONSULTANTS, INC.,

Petitioner,

vs. Case No. 10-1899-I

TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE and LIBERTY MUTUAL INSURANCE COMPANY,

Respondents.

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# CHANCELLOR BONNYMAN'S RULING

CHANCELLOR CLAUDIA BONNYMAN

October 12, 2011

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BERES & ASSOCIATES
230 Fourth Avenue North, Suite 503
Post Office Box 190461
Nashville, Tennessee 37219-0461
(615) 742-2550

ORIGINAL

A P P E A R A N C E S

For the Petitioner:

Mr. Raymond S. Leathers
Attorney at Law
150 Second Avenue North, Suite 201
Nashville, Tennessee 37201

For Defendant Liberty Mutual:

Mr. Scott J. Crosby
Attorney at Law
130 North Court Avenue
Memphis, Tennessee 38103

BE IT REMEMBERED, on the 12th day of October, 2011, at 9:05 A.M., the above-referred to matter came on for hearing before the Honorable CLAUDIA BONNYMAN, CHANCELLOR, of the above-entitled Court, at the Davidson County Courthouse, Nashville, Tennessee.

The parties having announced ready, the following proceedings were had, to wit:

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(10:07 a.m., a recess was had until 2:25 p.m.)

THE COURT: So, lawyers and parties, do we have Mr. Crosby on the telephone?

MR. CROSBY: Yes, I am here.

THE COURT: Okay. And you're able to hear?

MR. CROSBY: I am.

THE COURT: Alright. And I'm sure the court reporter can hear.

So the first thing I want to say is that a bench ruling is rougher than the product that the Court would generate, would write if the Court took the matter under advisement and spent time crafting a written decision as opposed to working on a bench ruling.

And sometimes a bench ruling is more intense work for a short period of time but I think the parties in this case deserve to get not a poor decision, not a

decision that the Court hadn't spent time on, but one that's carefully thought through but is provided as soon as possible.

It took about a year and a half for the case to get to a contested case hearing, that is before the agency, and then the Court is aware that the Commissioner's Designee held the matter under advisement, we don't know why, we don't know what happened, for over 600 days, and that adds up to an unfortunate picture for both parties, really.

But, here is the Court's bench ruling. As I have said, it is rougher than might be ideal.

The Petitioner seeks judicial review of a decision in the Department of Commerce and Insurance that Liberty Mutual had properly applied a Classification Code to its employees assigned to work for TAG Manufacturing, Inc.

As per the standard of review, the Court agreed with the standard of review analysis prepared and provided in the briefs of both of the lawyers, and I might say also that both of the lawyers did an excellent job at orienting the Court and educating the Court at oral argument, but now back to the briefs and I'm going to read into the record the standard of review because I think it is -- addresses all of the

matters that come up in this case.

In H & R Block versus State -- versus Department of Commerce and Insurance, the Tennessee Court of Appeals discussed the standard of review under Tennessee Code Annotated, Section 4-5-322(h) as follows: Tennessee Code Annotated, Section 4-5-322(h) sets forth the standard by which the agency decisions are to be reviewed at both the trial and appellate levels.

That section states as follows: The Court may affirm the decision of the agency or remand the case for further proceedings. The Court may reverse or modify the decision if the rights of the Petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are 1, in violation of Constitutional or statutory provisions; 2, in excess of the statutory authority of the agency; 3, made upon unlawful procedure; 4, arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or, 5(A), unsupported by evidence that is both substantial and material in light of the entire record.

B, in determining the substantiality of evidence, the Court shall take into account whatever in the record fairly detracts from its weight but the

Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. No presumption of correctness attaches on appeal on rulings of questions of law.

The construction of administrative rules and regulations is a question of law. Generally Courts will give great deference in controlling weight to an agency's interpretation of its own rules.

However, Courts will decline to adopt the agency's interpretation of its rules if that interpretation is plainly erroneous, inconsistent with the regulation or has no reasonable basis in law. An Administrative Law Judge's construction of the statute and application of the law to the facts is a question of law.

The Court, in H & R Block, further stated, The Commissioner's ruling is entitled to consideration and respect, but not necessarily to deference. The ruling is neither controlling nor presumed correct. If we find error in either of the Commissioner's interpretation of the statute, or application of the statute to the case's undisputed facts, will be impelled to depart from it.

This rule is consistent with Tennessee Code Annotated Section 4-5-322(h), which states that an

agency decision may be reversed or modified if the rights of the Petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are in violation of Constitutional or statutory provisions, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. An error of law is an abuse of discretion by definition.

The narrow standard of review under the Uniform Administrative Procedures Act for an administrative body's factual determination suggests that, unlike other civil appeals, the Courts should be less confident if their judgment is preferable to that of the agency.

This Court must apply the substantial and material evidence standard to the agency's factual findings. With respect to questions of law, the review is de novo, with no presumption of correctness.

The Court is to take into account whatever in the record fairly detracts from the weight of the evidence, but it may not substitute its own judgment on questions of fact by reweighing the evidence.

When the agency conducts a hearing and can evaluate the witnesses as they testify, this Court gives the tribunal's credibility determinations great

weight.

Moreover, the substantial and material evidence standard does not justify reversal of an administrative decision only because the evidence could also support another result. Rather, the Court may reject an administrative determination only if a reasonable person would necessarily arrive at a different conclusion based upon the evidence.

Substantial and material evidence is such evidence as a reasonable mind might accept as adequate to support a rationale conclusion and such is to furnish a reasonably sound basis for the action under consideration.

This is from City of Memphis versus Civil Service Commission, 239 S.W. 3d, 208. Tennessee Court of Appeals 2006 opinion.

And although Tennessee Code Annotated Section 4-5-322 does not clearly define substantial and material evidence, Courts generally interpret the requirement as requiring something less than a preponderance of evidence but more than a scintilla or glimmer.

This is from Wayne County versus Tennessee Solid Waste Disposal Control Board, 556 S.W. 2d, 274, Tennessee Court of Appeals 1988, and Tennessee Code --

as a separate matter, Tennessee Code Annotated Section 4-5-322(j) requires that the Court make findings of fact and conclusions of law, and this bench ruling is the Court's compliance with that direction and statutory requirement.

As for the issues in the case, the Plaintiff -- the Petitioner contends that it assigned its employees to work at TAG Manufacturing which makes various buckets for attachment by other manufacturers to Caterpillar and Komatsu mechanized machinery.

The Petitioner explains that the buckets are considered in the industry to be work tools rather than pieces of mechanized machinery. The buckets have no moving parts.

The Petitioner argues that during its first policy period with Liberty Mutual, the Petitioner classified its workers provided to TAG Manufacturing as Code -- as classification 3113 for employees who manufacture tools.

For the second policy year, however, says the Petitioner, Liberty Mutual changed the classification code from 3113 to Classification Code 3507 which applies to employees whose work is the manufacture of construction or agricultural machinery.

The Petitioner later determined that Code

3620 for boilermakers is closer to the risk and the work done at TAG by Petitioner's employees.

Among the Petitioner's concerns about the risk code classifications for its employees provided to TAG is that the Petitioner cannot afford the increased premium if the risk classification is increased to 3507.

According to the Petitioner, the Caterpillar and Komatsu machinery is complete without the TAG buckets, but the buckets are added only and ordered by Caterpillar or Komatsu.

Further says the Petitioner, the misclassification of TAG's bucket making to the wrong risk code was caused by TAG's use of heavy gauge metal in manufacture of the buckets -- manufacture of the buckets while, in fact, TAG does not use heavy gauge metal but uses sheet metal that is thicker than the thickest gauge metal.

The Petitioner believes that the misapplication of Code -- of Class Code 3507 is also caused by the inclusion of the word "bucket" in the classification description.

The Petitioner believes that the work at TAG Manufacturing by the Petitioner's employees is more like that of making a garbage dumpster included in the

boiler making classification 3620.

The garbage dumpster, for example, contends the Petitioner, has four sides and a bottom just as does the TAG's bucket and these are not mechanized.

The Petitioner argues that the term "bucket" is referenced only once in Classification Code 3507. And Classification 3507 at Hearing Exhibit 13 is only used if no other class is more accurate.

According to the Petitioner, Class 3620 describes the TAG Manufacturing process in exact detail and it involves the laying out of metal, welding the metal, cleaning and painting the metal.

The Petitioner asserts that Class 3620 exactly matches the process at TAG Manufacturing when it makes the sheet metal buckets.

As for Liberty Mutual's contentions, Liberty Mutual contends that Class 3113 first applied or used by the Petitioner for its workers at TAG Manufacturing is for small tools and that class is very much off base as regards the Petitioner's processes.

For just one matter, says Liberty Mutual, Class 3113 applies to small tools and the Plaintiff's buckets are various sizes and many are very large.

According to Liberty Mutual, examples of Class No. 3113, which is Hearing Exhibit 15, are

plumber hand tools, twist drills, chisel bits and some types of wrenches.

According to Liberty Mutual, 3507 does include some motorized machinery but it also includes multiple examples of equipment with attachments and products without any motor, such as buckets which are made by Petitioner and then used as attachments.

According to Liberty Mutual, Class 3507 refers to water screen baskets or conveyor buckets or blow chutes for use in a sawmill and these are not mechanized.

Liberty Mutual claims that these particular items just mentioned are all created to serve as attachments to a much larger piece of machinery that may be mechanized.

The Petitioner testified, according to Liberty Mutual, that C & P and TAG Manufacturing are similar businesses and though Liberty Mutual's premium auditor, Mr. Welch, did not go to the Petitioner's business or to TAG -- did go to Petitioner's business but did not go to TAG Manufacturing to see its exact processes, Mr. Welch has been to C & P which has processes like that of the Petitioner.

Liberty Mutual reasons that the Petitioner's employer, Mike Fowler, was the only person or entity

who advocated that Class 3620 applies to TAG Manufacturing's 's processes.

All the other officials, says Liberty Mutual, determined that Class 3507 is the closest risk classification to the Petitioner's processes.

Importantly, claims Liberty Mutual, NCCI -- NCCI's employee, Mr. Craddock, and NCCI's employee Mr. Craddock, all had credible, responsible roles and determined in an internal appeals process predating the hearing before the Department, that 3507 is the best classification for the risk that the Petitioner's employees will experience while working at TAG Manufacturing.

Further, Liberty Mutual asserts that NCCI's business is determining the classification of work and that NCCI did a physical inspection of TAG Manufacturing and saw that very heavy metal was cut, rolled and drilled and was welded just as described in Class 3507.

Liberty Mutual states that 3507 does use the word "bucket" while 3620 never mentions any type of bucket. Liberty Mutual claims it did a test audit and the final audit was revised by the auditor, Mr. Welch.

Liberty Mutual claims that although its premium auditor, Mr. Welch, did not see the TAG

Manufacturer's processes, he did see a competitor's processes, and based on his conversation with Mike Fowler, 3507 is the most descriptive of the Petitioner's processes.

The only witness, according to Liberty Mutual, to choose Class 3620 was Mr. Fowler. Liberty Mutual claims that a factor in its auditor's reasoning was that TAG Manufacturing uses thick, heavy metal even past the thickness of heavy gauge metal and this increases the risk of injury.

The issues for the Court to decide -- I've stated what the Plaintiff's contentions are, I've stated what Liberty Mutual's contentions are, and the issues for the Court to decide are, 1, did the Commissioner err in his application of NCCI risk classifications, determining that Code 3507 was the proper class to apply to the payroll and work of employees of the Plaintiff who are assigned to work at TAG Manufacturing and, 2, is there substantial, material evidence supporting the factual findings of the Commissioner that the process TAG Manufacturing -- that the processes of TAG Manufacturing best meet the 3507 classification.

And as for the summary of the decision, the Court affirms the decision of the Commissioner -- the

Commissioner's Designee of the Department, and finds that Classification Code 3507 is the most proper class for employees working at TAC Manufacturing for the Petitioners.

As for the principles of law, Rule 1360-04-01-.02(7) states that the burden of proof discussed in the definition of Petitioner refers to the duty of a party to present the evidence on and to show, by preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party.

A preponderance of the evidence means the greater weight of the evidence or that, according to the evidence, the conclusions sought by the party with the burden of proof is the more probable conclusion.

The burden is generally assigned to the party who seeks to change the present state of affairs with regard to any issue.

And here the Court notes that the Petitioner has the burden of proof in this case which involves a choice among several codes and in which the decision is not absolutely pointed and precise.

Continuing on with the principles of law, the parties agree that Workers' Compensation Classification Codes are determined in accordance with the basic

manual for Workers' Compensation liability insurance and Scopes Classifications published by NCCI.

NCCI is the National Council on Compensation Insurance. It's the advisory organization designated by the Commissioner of Labor in accordance with Tennessee Code Annotated Section 56-6-320 to administer the uniform classification system for Workers' Compensation for the State of Tennessee.

And here the Court is looking at T.C.A. 56-6-320 which states in (a), the Commissioner may designate a rate service organization to assist in gathering, compiling and reporting relevant Workers' Compensation insurance statistical information, and, (c), every Workers' Compensation insurer shall adhere to a uniform classification system and uniform experience and retrospective rating plans that have been filed with the Commissioner by the designated rate service organization and approved by the Commissioner.

Subject to the approval of the Commissioner, the rate service organization shall develop and follow rules reasonably related to reporting and recording of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification system.

As I stated before, the Commissioner has

chosen NCCI, The National Council on Compensation Insurance as its organization which administers the classification system.

The parties also agree that the payroll for particular workers assigned to TAG Manufacturing is to be analyzed and placed in a risk class in order to determine the Workers' Compensation premiums to be paid by the Petitioner for its workers that are assigned to TAG Manufacturing.

The National Council on Compensation Insurance has an audit or inspection process to determine how it will apply its risk classes when there is a dispute between a Workers' Compensation carrier and an employer to be assigned a risk.

Four classifications were addressed in the hearing before the Department and in the history of proceedings in this case, and the Court must apply the classes as a combination of fact in law.

And when I say "apply", what the Court means here is it must review the classes and application of the classes as a combination of fact in law.

The four classes to be reviewed are code names 3113, 3632, 3507 and 3620. It does appear that Class 3113 has been left behind and the primary focus is upon the other three classes.

As for Class No. 3632, the pertinent language or text in Class No. 3632 that are helpful to this case and can enlighten the Court as -- in its review of the application of particular Class 3507, is the following language in 3632, it refers to a cross-reference or a similarity or a connection between 3632, which is called Machine Shop NOC, which means Not Otherwise Classified.

It cross-references automotive and Machine Shop. It applies -- the cross-references that is Machine Shop, applies to operations involving the repair of parts that have been removed from a vehicle by others, and then as to the class, which is 3632, the scope of the class -- and I'm taking this from the code provision itself, Code 3632 -- and before I get too far into it, this is Hearing Exhibit 14.

The scope of Code 3632 states that it 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.

Metal castings, forging, 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, melling, drilling, 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 machines -- diesel engines used as generators.

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 has been removed from the vehicle by others.

And this code provision refers to auto jacks manufacturing, typical Machine Shop operations, and production of bomb cases, woodworking machinery.

This code, 3632, defines NOC operations which shall apply to an insured only when no other classification more specifically describes the insured's operations.

And this language from 3632 are the provisions in that classifications. There are many other provisions which could have or do have some

relevance to the manufacturing process in this reviewed case.

As for Classification 3507, and this is Hearing Exhibit No. 13, the Court reviews the text in that particular classification which is the classification which the Department applied and its scope is stated as follows: Code 3507 covers the manufacture of agricultural machinery, such as milling machines, reapers and binders, hay loaders, potato planters, et cetera.

The class also covers the manufacture of many other types of heavy machinery and equipment as evidenced by its cross-reference phraseologies.

The equipment invclves the use of welding and Machine Shop apparatus, include shears, punch presses, turret and engine lathes, drill presses, milling machines, grinders, boring mills and gear shapers.

In general, castings are processed with the Machine Shop equipment or steel framing is cut to size or other steel parts are shaped on power rolls. Assembling the parts is by welding or bolting.

Code 3507 is also assigned to the manufacture and fabrication of screw and belt-type conveyors, sidewalk sweepers and cleaners, sewer pumping station equipment, packing case equipment, hydraulic baling

presses used in the automobile dismantling and junk business, pile driving equipment, pneumatic unloaders, including conveyor systems used in unloading boxcars, pollution control and dust collection systems, water screen baskets, conveyor buckets and blow chutes used in sawmills, pulp and papermills, hoisting equipment, including overhead crane manufacturing, tractor manufacturing of the Caterpillar type and other products in which the manufacturing or fabricating process involves the use of heavy gauge metal, welding, riveting, bolting, et cetera.

Code 3507 contemplates the manufacture of heavy equipment, such as hoisting and tractor manufacturing, whereas Code 3126 contemplates the manufacture of lighter products such as picks, shovels and sledge hammers.

Certain Code 3507 operations are classified as not otherwise -- are designated as not otherwise classified NOC.

These NOC operations shall apply to the insured only when no other classification more specifically describes the insured's operations.

And last, as to Class 3620, phraseology boilermaking, the scope of this particular rule is boilermaking and tank building metal shop.

Code 3620 is applied to insureds engaged in manufacturing various types of plate steel tanks, boilers, gas holders, whiskey stills, pressure vessels, smoke stacks, heat exchangers, gas dehydrators, garbage dumpsters and air cleaning equipment.

The materials used in the process include iron, steel or stainless steel plates, channel iron, I-beams, round and square bars, et cetera. The materials are laid out, marked, power sheared or torch cut to size, power braked or rolled in form, drilled, punched and assembled into the final product by welding, grinding, cleaning and painting.

And this rule refers to and goes on to state in its scope, military tank hull manufacturing or assembly. Code 3620 covers insureds who fabricate or assemble armor plate into military tank bodies or hulls.

As to the facts found by the Commissioner's Designee, the Designee heard the matter and then held the case under advisement for over 600 days. Although, unfortunately, that is the case.

The Designee then went -- first went to NCCI's inspection and classification report, which is exactly what this Court did. This is because NCCI is the organization most familiar with its own

classifications and its job is to determine correct codes for various industries.

The inspection of NCCI of -- specifically of TAG Manufacturing processes appears as, and is included as Exhibit 9 in the record below.

And the NCCI inspection report is first referred to by the risk management broker AON Risk Services, Inc. in which it notes that the Petitioner will have an NCCI inspection done to determine the correct Class Code given the dispute between the insurance carrier and the employer, the Petitioner.

NCCI will have to go to the client location, TAG Manufacturing, in order to determine a Class Code for the employees working at the TAG location.

And now the Court turns to the actual notice of classification change, and I do have some text to read into the record here. There's not a lot of it but I do have some.

NCCI (83)

And the report, which is dated 10/19/2006 states, As authorized in **NCCI's Basic Manual for Workers' Compensation Employers Liability Insurance** and related provisions in NCCI's Affiliation Agreement and **Workers' Compensation and Employer's Liability Insurance Policy**, NCCI conducts a classification inspection program in which all NCCI states as a part

of its ongoing core services.

NCCI performed a physical inspection of the policyholder listed on the attached NCCI inspection and classification report as part of NCCI's classification inspection program.

As a result of this inspection, NCCI determined that classifications on the policy should be changed. And the change the Court notes is from Classification Code 3632 to 3507, construction for agricultural machinery manufacturing.

And the report goes on to state that TAG Manufacturing Inc. is a manufacturer of attachments for various types of heavy equipment used in the construction, industrial and agricultural industries.

The insured will produce attachments that are specific to most major brands of construction machinery. The attachments may include loader buckets, excavator buckets, couplers, hydraulic guns, ditch buckets, dozer blades and end buckets.

The facility is separated into two buildings, the plant and the administrative building. All manufacturing operations are conducted in the plant.

The raw materials involved in the manufacturing process includes steel plate, steel round bar, square tubing and square bar. The manufacturing

process begins when a steel plate is placed on a conveyor and rolled into a C & C laser cutting machine. The machine will cut the plate to specs programmed by the design engineer.

Some of the cut pieces may be placed into the press break machine which is used to form or roll the metal into various shapes. As the parts roll out of either the laser cutter or press break, they may be drilled or punched before being separated and placed into bins. The bins are placed into a work cell where assembly begins.

The partially assembled attachment is sent to fit up where it is tacked together and sent for final welding. The insured does not produce the teeth that are attached to the buckets. The teeth are produced by an outside contractor.

They are sent to the insured who will weld them on to their finished attachments. Once the final welding is complete, the attachment is cleaned and painted.

The insured will also produce the parts needed to fit any attachment to a specific brand of equipment. These parts may include bushings and bearings. The parts are produced using a C & C turning center which will cut metal bar into precision-sized

parts.

The square bar is placed into one of two C & C milling machines. The milling machines will perform both small scale and larger scale precision cutting to produce highly accurate parts.

These machines that referred to as machine in box. Once the bar is placed into the machine a door must be closed to start any operation. The entire cutting process is encased within a box which protects the operator or any employee from possible injury.

Code specific information is stated as followed by NCCI: Code 3507 applies to manufacturers of plate steel and material handling equipment. The manufacturing of plate steel equipment, such as loader buckets, excavator buckets, couplers, hydraulic pumps, ditch buckets, dozer blades and buckets are all used to store or move materials that have been assigned to Code 3507. Code 3507 applies to the manufacture of heavy equipment and most closely describes the insurer's business operations.

That is the end of the Court's read of NCCI's report.

The inquiry does not end here. The Petitioner was appealing from the NCCI determination and moving into the Department so that the Petitioner

could have a contested case hearing.

The Petitioner was entitled to a contested case hearing which the Court is now reviewing and which includes the NCCI's report.

All of the Codes which might apply to the Plaintiff's premiums were examined and compared to processes at the Plaintiff -- at TAG Manufacturing at the contested case hearing.

The primary reasons for assignment of Code 3507, according to the proof elicited at the hearing, was that the heavier the metal to be used for manufacturing, the higher the risk of injury. This testimony was from Liberty Mutual's premium auditor, Mr. Welch.

There is also the fact that buckets and heavy non-mechanized inert products are described in Class Code 3507. Class Code 3507 is not limited in anyway to mechanized products, although this is or was one of the primary arguments made by the Petitioner.

And going back to the issues and contentions of the parties, the Court agrees with Liberty Mutual's analysis that at the contested case hearing Liberty Mutual was able to show that the majority or the primary proof in the case would direct the finder of fact in law to the Class 3507.

Most of the proof was oriented by -- by "most of the proof", the Court means here the witnesses in the case and the exhibits in the case, analyzed and supported Class No. 3507.

The fact that sheet metal was used by TAG Manufacturing to fabricate the buckets and that heavier metal -- makes sense to the Court that working with heavier metal would increase the risk of injury to employees, and the fact that 3507 is not limited to mechanized machines or mechanized equipment, leads the Court to conclude that there is substantial and material evidence in the record to show that the processes at TAG Manufacturing best meet the 3507 classification.

The Court must find that the Commissioner did not err -- the Commissioner's Designee did not err in his application of the NCCI risk classifications determining that Code 3507 is the proper class.

And lawyers, I'm asking the Liberty Mutual's counsel to order the bench ruling and file that with the Court, along with a cover judgment affirming the decision by the Commissioner's Designee.

I think the Court would be remiss in not noting that where you have these classifications which contain text applying to a number of manufacturing

processes, the burden of proof in this case, which is on Advantage Personnel Consultants, does play a role in this Court's decision, and I believe it played a role in the Commissioner's Designee's decision.

I think the other persuasive proof was that NCCI made a personal inspection of the manufacturing and then goes on to matchup Code 3507 with the work that was done at TAG Manufacturing, and the Court accepts that analysis in its judicial review.

Any other housekeeping issues that anybody wishes to raise? Okay. So, we're now adjourned and I thank the lawyers for the good work.

MR. CROSBY: Thank you, Your Honor. I appreciate the prompt decision.

THE COURT: So we're now adjourned.

MR. CROSBY: If I could stay on the phone for one second to the court reporter --

THE REPORTER: Yes, sir.

MR. CROSBY: -- it sounds -- sounds like I have been ordered for the bench ruling so Mr. Leathers and I will talk about that, but, of course, subject to any other agreement, I will pay for that cost and I will order that part of the transcript.

If you could get that transcribed and send that to me in your normal course of business, I

appreciate that.

THE REPORTER: Sure.

(3:05 P.M.)

(Thereupon the hearing was concluded.)

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STATE OF TENNESSEE )

COUNTY OF DAVIDSON )

I, James P. Beres, Court Reporter and Notary Public in and for the State of Tennessee at Large, do hereby certify that the foregoing proceedings were taken at the time and place set forth in the caption hereof; that the witness was duly sworn on oath to testify the truth; that the proceedings were stenographically reported by me in machine shorthand, and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel, nor do I have an interest in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal this 17th day of October, 2011, at Nashville, Davidson County, Tennessee.

JAMES P. BERES, Notary Public
for the State of Tennessee

My Commission Expires: July 8, 2014