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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY AT NASHVILLE
Day. Co. Chancery Court

ADVANTAGE PERSONNEL CONSULTANTS,
INC.

Petitioner,

v.

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

Respondents.

FILED
2011 NOV 16 AM 10:25
Case No.: 10-1899
JCC&M
TENTH JUDICIAL DISTRICT
DAVIDSON COUNTY CHANCERY CT


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.

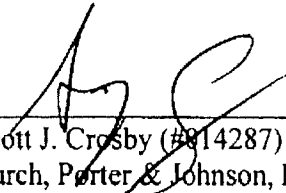
Pursuant to the reasoning set forth in the bench ruling attached hereto, this Court affirms the decision of the Tennessee Department of Commerce and Insurance in all respects and finds the classification code 3507 is the most proper class for employees working at TAG Manufacturing for the Petitioner.

Costs are to be paid by the Petitioner.

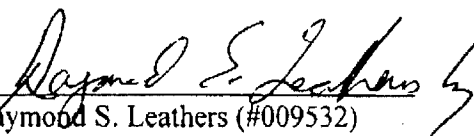
SO ORDERED AND ADJUDGED this _____ day of _____, 2011.


The Honorable Chancellor Claudia Bonnyman

APPROVED:



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*Copies
made 11/18/12*

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
NASHVILLE, TENNESSEE

ADVANTAGE PERSONNEL CONSULTANTS, INC.,

Petitioner,

vs.

Case No. 10-1899-I

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

Respondents.

CHANCELLOR BONNYMAN'S RULING

CHANCELLOR CLAUDIA BONNYMAN

October 12, 2011

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ORIGINAL

A P P E A R A N C E S

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For the Petitioner:

Mr. Raymond S. Leathers
Attorney at Law
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Nashville, Tennessee 37201

For Defendant Liberty Mutual:

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

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

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

8 *****

9 (10:07 a.m., a recess was had until 2:25 p.m.)

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

12 MR. CROSBY: Yes, I am here.

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

14 MR. CROSBY: I am.

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

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

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

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

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

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

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

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

1 matters that come up in this case.

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

10 That section states as follows: The Court
11 may affirm the decision of the agency or remand the
12 case for further proceedings. The Court may reverse or
13 modify the decision if the rights of the Petitioner
14 have been prejudiced because the administrative
15 findings, inferences, conclusions or decisions are 1,
16 in violation of Constitutional or statutory provisions;
17 2, in excess of the statutory authority of the agency;
18 3, made upon unlawful procedure; 4, arbitrary or
19 capricious or characterized by abuse of discretion or
20 clearly unwarranted exercise of discretion or, 5(A),
21 unsupported by evidence that is both substantial and
22 material in light of the entire record.

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

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

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

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

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

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

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

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

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

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

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

1 weight.

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

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

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

17 And although Tennessee Code Annotated Section
18 4-5-322 does not clearly define substantial and
19 material evidence, Courts generally interpret the
20 requirement as requiring something less than a
21 preponderance of evidence but more than a scintilla or
22 glimmer.

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

1 as a separate matter, Tennessee Code Annotated Section
2 4-5-322(j) requires that the Court make findings of
3 fact and conclusions of law, and this bench ruling is
4 the Court's compliance with that direction and
5 statutory requirement.

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

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

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

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

25 The Petitioner later determined that Code

1 3620 for boilermakers is closer to the risk and the
2 work done at TAG by Petitioner's employees.

3 Among the Petitioner's concerns about the
4 risk code classifications for its employees provided to
5 TAG is that the Petitioner cannot afford the increased
6 premium if the risk classification is increased to
7 3507.

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

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

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

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

1 boiler making classification 3620.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 The issues for the Court to decide -- I've
12 stated what the Plaintiff's contentions are, I've
13 stated what Liberty Mutual's contentions are, and the
14 issues for the Court to decide are, 1, did the
15 Commissioner err in his application of NCCI risk
16 classifications, determining that Code 3507 was the
17 proper class to apply to the payroll and work of
18 employees of the Plaintiff who are assigned to work at
19 TAG Manufacturing and, 2, is there substantial,
20 material evidence supporting the factual findings of
21 the Commissioner that the process TAG Manufacturing --
22 that the processes of TAG Manufacturing best meet the
23 3507 classification.

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

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

5 As for the principles of law, Rule
6 1360-04-01-.02(7) states that the burden of proof
7 discussed in the definition of Petitioner refers to the
8 duty of a party to present the evidence on and to show,
9 by preponderance of the evidence, that an allegation is
10 true or that an issue should be resolved in favor of
11 that party.

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

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

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

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

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

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

9 And here the Court is looking at T.C.A.
10 56-6-320 which states in (a), the Commissioner may
11 designate a rate service organization to assist in
12 gathering, compiling and reporting relevant Workers'
13 Compensation insurance statistical information, and,
14 (c), every Workers' Compensation insurer shall adhere
15 to a uniform classification system and uniform
16 experience and retrospective rating plans that have
17 been filed with the Commissioner by the designated rate
18 service organization and approved by the Commissioner.

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

25 As I stated before, the Commissioner has

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

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

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

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

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

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

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

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

17 The scope of Code 3632 states that it applies
18 to the manufacture or repair of machines as well as
19 general job machining. It must be emphasized that Code
20 3632 is an NOC Classification and is applied to
21 operations only when such operations are not
22 specifically contemplated by another manual
23 classification.

24 Metal castings, forging, bars, rods, flats,
25 tubing, angles, pipe and pipe fittings, chains,

1 sockets, gears, shafting, pulleys, hardware, sheet
2 metal and some lumber and paint may be used.

3 A variety of processes may be involved, such
4 as boring, turning, planing, shaping, melling,
5 drilling, punching, grinding, tapping, threading,
6 shearing, bending, forming, riveting, welding,
7 painting, inspecting and testing.

8 Additional representative operations that
9 have been assigned to Code 3632 include the repair of
10 diesel machines -- diesel engines used as generators.

11 The classification applies to automotive
12 machine shops. The term "automotive machine shops" as
13 used in this context refers to locations where work is
14 performed on various automobile parts which has been
15 removed from the vehicle by others.

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

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

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

1 relevance to the manufacturing process in this reviewed
2 case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 And the ^{NCCI} report, which is dated
20 10/19/2006 states, As authorized in **NCCI's Basic Manual**
21 **for Workers' Compensation Employers Liability Insurance**
22 and related provisions in NCCI's Affiliation Agreement
23 and **Workers' Compensation and Employer's Liability**
24 **Insurance Policy**, NCCI conducts a classification
25 inspection program in which all NCCI states as a part

1 of its ongoing core services.

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

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

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

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

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

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

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

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

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

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

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

1 parts.

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

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

11 Code specific information is stated as
12 followed by NCCI: Code 3507 applies to manufacturers
13 of plate steel and material handling equipment. The
14 manufacturing of plate steel equipment, such as loader
15 buckets, excavator buckets, couplers, hydraulic pumps,
16 ditch buckets, dozer blades and buckets are all used to
17 store or move materials that have been assigned to Code
18 3507. Code 3507 applies to the manufacture of heavy
19 equipment and most closely describes the insurer's
20 business operations.

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

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

1 could have a contested case hearing.

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

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

9 The primary reasons for assignment of Code
10 3507, according to the proof elicited at the hearing,
11 was that the heavier the metal to be used for
12 manufacturing, the higher the risk of injury. This
13 testimony was from Liberty Mutual's premium auditor,
14 Mr. Welch.

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

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

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

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

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

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

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

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

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

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

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

15 THE COURT: So we're now adjourned.

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

18 THE REPORTER: Yes, sir.

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

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

1 appreciate that.

2 THE REPORTER: Sure.

3 (3:05 P.M.)

4 (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