

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

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IN THE MATTER OF:

SNOYER SIGNS, LLC

and

**ACCIDENT FUND GENERAL
INSURANCE COMPANY**

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**Doc. No.: 12.28-136463-A
WC Appeal – Insurance**

SECRETARY OF STATE

FINAL ORDER

This matter was heard on May 16, 2016, before the Honorable Steve Darnell, Administrative Law Judge, appointed by the Secretary of State, with Maliaka Bass, Deputy General Counsel of the Tennessee Department of Commerce & Insurance, sitting as Designee of the Commissioner of Commerce and Insurance. As Commissioner’s Designee, Ms. Bass makes the final determination as to the findings of fact and conclusions of law in this matter. The Petitioner, Snoyer Signs, LLC (“Snoyer Signs”), is a limited liability company and was represented by Attorney Nathan Ridley. The Respondent, Accident Fund General Insurance Company (“Accident Fund”), was represented by Attorney Jeffrey M. Beemer. Also appearing, with no objection raised by either party, was the National Council on Compensation Insurance (“NCCI”) and was represented by Attorney Tony Greer.

JURISDICTION

The Commissioner of Commerce & Insurance (“Commissioner”) has jurisdiction in this matter pursuant to Tenn. Code Ann. § 56-5-309(b), which provides:

Every insurer and rate service organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the matter in which the rating system has been applied in connection with the insurance afforded. If the insurer fails to grant or reject the request within thirty (30)

days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer on the request may, within thirty (30) days after written notice of the action, appeal to the commissioner who, after a hearing held upon not less than ten (10) days' written notice to the appellant and to the insurer, may affirm, modify, or reverse the action.

ISSUE

The subject of this hearing was whether Accident Fund is owed additional premium by Snoyer Signs. The sole disputed issue is the classification of nineteen Snoyer Signs employees who are assigned to use computers and related digital technology to design and create signs and displays for third party customers. Snoyer Signs also employs seven other individuals who physically construct signs by hand and using hand tools. The dispute in this case arises out of whether the nineteen digital print employees should share the same workers compensation rate classification as the seven workers who construct signs using hand tools.

Upon consideration of the record and for the reasons stated below, it is determined that the petition brought by Snoyer Signs is well taken and that the nineteen Snoyer Signs employees should not be reclassified into a higher rate code.

This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Snoyer Signs is a limited liability company engaged in the business of commercial printing and manufacture of signs and displays.
2. Accident Fund is an insurance company licensed to sell workers' compensation insurance coverage in Tennessee and was at all relevant times the underwriting carrier for Snoyer Signs workers' compensation insurance. Accident Fund sells insurance through the voluntary market.

3. Snoyer Signs obtained workers' compensation insurance from Accident Fund for the policy year March 1, 2015 to March 1, 2016.

4. Snoyer Signs has been in business for twenty one years.

5. Snoyer Signs has one business address, 5764 Crossings Blvd. in Antioch, Tennessee. That address contains one 38,000 square foot building, all under one roof.

6. Snoyer Signs employs fifty seven people divided into five departments. Nineteen of these employees are assigned to the *Digital Print* department. Seven of these employees are assigned to the *Architectural Sign* department.

7. Employees in the *Digital Print* department work with computers and large digital printers to produce signs and banners made of vinyl or paper. The printers are significantly larger scale versions of office inkjet printers. Employees also operate computerized machinery that cuts and prepares the media. The employees wear business casual clothing. The work environment is climate controlled and dust free. Employees also perform assembly work without the use of hand tools such as saws, drills, or paint brushes. The media produced by the *Digital Print* department includes large signs displayed at Nissan Stadium, the new Nashville Sounds baseball park, and vehicle wraps for tour buses and commercial automobiles.

8. Employees in the *Architectural Sign* department physically construct signs with hand tools, paints, wood, and other building materials using traditional methods. This department's workspace is noisy and dusty commensurate with the type of work being performed in it.

9. Employees are exclusively assigned to either work in the *Digital Print* department or *Architectural Sign* department. The two departments work on separate projects and typically do not collaborate. The two departments are physically isolated from each other. The business operates on a single floor. However, as shown in Exhibit 4, the workspaces for the two

departments are at opposite ends of the building and are separated by doors and a firewall. The two workspaces are heated and cooled by separate environmental systems.

10. Scott Snoyer, owner of Snoyer Signs, testified that all company employees, including administrative and design employees whose rate classifications are not in dispute, typically enter and exit the building through the *Architectural Sign* department workspaces. The time clock for all building employees is located in the *Architectural Sign* space. Otherwise, the two departments have limited interaction with each other. The *Digital Print* employees do not transport their finished work product through the *Architectural Sign* department spaces.

11. Scott Snoyer further testified that his business was unusual in that it manufactured both digitally produced signs and hand constructed traditional painted signs. Mr. Snoyer explained that most sign businesses in the industry either focus on one type of sign manufacturing or the other.

12. The applicable premium rates are based upon determining the appropriate classification code (“code”) found in the National Council on Compensation Insurance Scopes Manual (“NCCI Manual”) and applying the code to a state-based multiplier. Therefore, to arrive at the proper premium rate, both the appropriate job classification code and the state where the employment was based must be ascertained.

13. At the close of the policy year, a premium audit was conducted. As a result of that audit, Accident Fund and NCCI determined that all sign manufacturing employees, whether they were in the *Architectural Sign* department or *Digital Print* department, should be assigned rate classification code 9501 – sign manufacturing.

14. Snoyer Signs does not dispute the classification of employees in the *Architectural Sign* department with the code 9501. Snoyer Signs does however contend that its *Digital Print* employees should be classified with the code 4299 – printing.

15. Coding the *Digital Print* employees with the rate code of 4299 will result in a lower effective premium payment due. Snoyer Signs insurance broker, Randall Ritter, testified that the estimated rate difference would constitute approximately \$14,000 in annual premium during the policy year in question and that if upheld, Snoyer Signs would have to pay the higher rate classification for its *Digital Print* employees in subsequent policy years.

CONCLUSIONS OF LAW

1. In accordance with Tenn. Comp. R. & Regs. 1360-04-01-.02(3) and (7), Snoyer Signs, bears the burden of proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor.

2. Under the NCCI manual, code 4299 is described, in part, as follows:

Code 4299 is applied to insureds engaged in commercial printing. Printing operations may include hand typesetting; linotyping; electrotyping; monotyping; stereotyping; transferring of photocopy to metal plates; press operations; perforating, folding and incidental cutting; collating; thread or wire stitching; gluing; incidental binding of magazines, catalogues, pamphlets or circulars; printing or embossing by machine from engraved plates; and photocomposition methods. Photocomposition systems, electronic page imaging and automated plate processing are among the major pre-press functions in use today by the graphic arts/printing industry.

3. Under the NCCI manual, code 9501 is described, in part, as follows:

Code 9501 is applied to insureds engaged in the business of painting in the insured's shop or those risks engaged in sign painting or lettering at a customer's premises. . . .

Articles painted may include goods manufactured by others or component parts made from wood, metal, glass, leather or plastic. The operations include the preparation of the paint-receiving surface, which may involve degreasing, sanding or wire brushing; the application of paint by hand brushing, rolling, spraying or dipping; and drying in ovens using infrared lamps or natural ventilation. As Code 9501 includes drivers, pick-up or delivery of articles to be painted is contemplated by this code.

This classification is assigned to specialists engaged in shop painting or lettering of real estate signs, which may include incidental cutting to

special sizes, provided no erection, repair or maintenance operations are performed. Also, specialists engaged in painting and wood grain printing of moldings, coating of moldings with vinyl plastic, and glazing of metal bakery pans have been assigned by analogy to Code 9501. . . .

4. Code 9501 in the NCCI manual provides further guidance on how to distinguish between work performed under these codes:

The following describes computerized plastic or vinyl sign manufacturing operations that may be classified to either Code 4299 or Code 9501. The sign manufacturers under consideration will typically use plastic or vinyl materials, a desktop computer attached to an electronic scoring device and small knives. Some may also use drills and circular or jig saws to fabricate boards upon which the lettering is mounted. The computer is used in conjunction with the electronic scoring apparatus to die-cut the plastic or vinyl into letters or other graphic shapes. The small knives are used to hand-lift the cut letters or graphics from the vinyl sheets. The letters or graphics are then affixed to various mounting materials, which may include wood or plastic. These mounting materials may be purchased pre-cut from others or fabricated by the insured. An insured engaged in the above operations is classified to Code 4299 if the insured does not engage in the manufacture or preparation of mounting surfaces. Insureds that engage in the above operations and do manufacture or prepare mounting surfaces are classified to Code 9501. Codes 4299 and 9501 shall not apply at the same location.

5. Under the NCCI Basic Manual, it is possible for a business to operate under more than one rate classification. NCCI Basic Manual Rule 1.D.3. states:

More than one basic classification may be assigned to an insured who meets conditions a, b, or c below. Operation means activities, enterprises, processes, secondary businesses or undertakings. . . .

c. The insured conducts more than one operation in a state.

(1) For the purpose of this rule, an insured is conducting more than one operation in a state if portions of the insured's operations in that state are not encompassed by the classification applicable to the insured's principal business. To qualify for a separate classification, the insured's additional operation must meet all of the following conditions:

- Be able to exist as a separate business if the insured's principal business in the state ceased to exist.
- Be located in a separate building, or on a separate floor in the same building, or on the same floor physically separated from the principal

business by structural partitions. Employees engaged in the principal business must be protected from the operating hazards of the separate additional operations.

- Maintain proper payroll records. . . .

(2) If the separate additional operation is not encompassed in the classification applicable to the insured's principal business and meets all the conditions listed above in c(1), the insured is considered to be engaged in an additional operation. If this is the case, a separate basic classification may be assigned to each operation that qualifies as a separate additional operation. . . .

6. The fundamental issue in this case is whether the *Digital Print* department should be deemed to be working at the "same location" as the *Architectural Sign* department, utilizing the definition of location provided in NCCI Basic Manual Rule 1.D.3. If the two departments were deemed to be operating at the same location, then rate code 4299 would not be available to the Snoyer Signs so long as those workers were co-located with workers properly classified with rate code 9501. If Snoyer Signs' manufacturing operations do meet the definition for separate locations in their same building, then it would be possible to classify the *Digital Print* workers with code 4299. It is clear from the evidence presented that the Snoyer Signs' *Digital Print* employees would unquestionably be classified with the 4299 rate code but for the presence of workers in the same building who are properly classified with the 9501 rate code.

7. Snoyer Signs demonstrated that under NCCI Basic Manual Rule 1.D.3, that the *Architectural Sign* and *Digital Print* departments could be successfully operated as independent businesses. Scott Snoyer testified that the standard practice in the sign manufacturing industry is for a business to either digitally produce signs or build and paint them by hand. He further testified that the two departments work on separate projects. Thus it could not be held that one department is dependent upon the other to complete its work.

8. Snoyer Signs also demonstrated that the *Digital Print* workers were physically separated from the *Architectural Sign* department and not exposed to the hazards of the more risky work. Scott Snoyer testified that the departments are separated by doors, firewalls, and separate ventilation systems. The physical separation is further evident in Exhibit 4, a floor plan diagram showing the layout of Snoyer Signs' facilities. The *Digital Print* workers, along with other administrative workers, do walk through the *Architectural Sign* department when entering and leaving the building and utilize a time clock in those spaces. However, it would not be reasonable to characterize such a fleeting daily encounter as exposing these workers to the "operating hazards" of the *Architectural Sign* department.

9. There appears to be no dispute between the parties over whether Snoyer Signs maintains adequate payroll records. No evidence was presented to suggest that Snoyer Signs does not maintain proper payroll records.

10. Snoyer Signs demonstrated that the operations of the *Architectural Sign* department, as described through the evidence presented, should be deemed a separate location from the operations of the *Digital Print* department. Accordingly, Snoyer Signs may maintain the 4299 rate classification code for the workers in the *Digital Print* department, notwithstanding the presence of the *Architectural Sign* department under the same roof with employees classified under the 9501 rate code.


NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED**:

1. Snoyer Signs' petition for relief is GRANTED. Snoyer Signs shall only be responsible for paying premium for employees working in the *Digital Print* department calculated with the 4299 rate code and not the 9501 rate code during the policy year.

2. The costs of this matter shall be taxed against the Respondent, Accident Fund.


Maliaka Bass
Commissioner's Designee

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 13th day of July, 2016.


Richard Collier, Director
Administrative Procedures Division

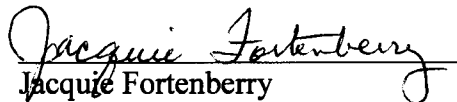
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the within and foregoing document has been sent by U.S. Mail, postage prepaid, to the following on this 13th day of July, 2016:

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Jacquie Fortenberry

NOTICE OF APPEAL PROCEDURES

Review of Final Order

This Final Order is issued pursuant to Tenn. Comp. R. & Regs. 0780-1-82-.10.

Any party who is aggrieved by this Final Order is entitled to judicial review pursuant to Tenn. Code Ann. § 4-5-322. See Tenn. Comp. R. & Regs. 0780-1-82-.11.

Tenn. Code Ann. § 4-5-322 provides in relevant part:

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review.

* * * * *

(b)(1)(A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.

* * * * *

(2) In a case in which a petition for judicial review is submitted within the sixty-day period but is filed with an inappropriate court, the case shall be transferred to the appropriate court. The time for filing a petition for review in a court as provided in this chapter shall not be extended because of the period of time allotted for filing with the agency a petition for reconsideration. Copies of the petition shall be served upon the agency and all parties of record, including the attorney general and reporter, in accordance with the provisions of the Tennessee Rules of Civil Procedure pertaining to service of process.

(c) The filing of the petition for review does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing that shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until a good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.

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MEMO

SECRETARY OF STATE

To: Administrative Procedures Division

From: Jacquie Fortenberry, ASA III

Date: July 12, 2016

Subject: Filing of Final Order
Snoyer Signs, LLC and Accident Fund General Insurance Company
Docket No. 12.28-136463-A
Workers' Compensation Rate Appeal Hearing

Please find enclosed the original and one copy of the Final Order on the above styled case. Please file the original and stamp the copy filed for our records. I have enclosed a self-addressed messenger mail envelope for your convenience in returning the stamped copy to me.

Please feel free to contact me at (615) 532-5340 if you have any questions.

Thank you.

Enclosures