# STATE OF CALIFORNIA
# DEPARTMENT OF INSURANCE

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| In the Matter of the Appeal of<br><br>CHEROKEE INTERNATIONAL, INC./<br>DYNAMIC ELECTRONICS MANUFACTURING,<br><br>Appellant.<br><br>From a Decision of<br><br>THE WORKERS' COMPENSATION<br>INSURANCE RATING BUREAU<br>OF CALIFORNIA,<br><br>Respondent. | FILE NO. SF 6960-R-019<br><br>DECISION |

## FACTS

1. The Appellant was insured for its workers' compensation liability for the periods of time pertinent to the appeal.

2. Respondent, The Workers' Compensation Insurance Rating Bureau of California ("Bureau") is a rating organization licensed pursuant to the provisions of Insurance Code Sections 11750, et seq.

3. Dynamic Electronics Manufacturing is a wholly-owned subsidiary of Cherokee International, Inc., the loss experience of the two entities are combined to produce a workers' compensation insurance experience modification.

4. Effective January 1, 1992, the experience modification of the Appellant reached 622%.

5. The Appellant has protested this experience modification to the Bureau. Following a hearing before the Classification & Rating Committee of the Bureau, the application of the experience modification was sustained.

6. The Appellant has appealed the Decision to the Insurance Commissioner pursuant to Insurance Code Section 11753.1.

The California Experience Rating Plan, which sets forth the method for computation of experience modifications, is a regulation of the Department of Insurance, Title 10, California Code of Regulations, Section 2353. The application of a debit experience modification to an employer's workers' compensation premium is a requirement of the workers' compensation minimum rate law. Basically, the

experience modification plan uses the past experience of an employer as a predictor of future loss performance.

Two incidents were a substantial contributing factor (although not the entire reason) for Appellants high experience modification. In 1990, a rumor circulated through Dynamics Manufacturing that a plant was closing with numerous layoffs to follow. In fact, there was no plant closure. Only six of ninety-four (94) employees were laid off. Nevertheless, forty-three (43) employees filed claims alleging stress and cumulative trauma. Four claims were dismissed, but thirty-nine (39) remained open and hence have adversely affected the experience modification. The following year, Cherokee International underwent examination by the Immigration & Naturalization Service (INS). This inspection revealed several illegal aliens employed (Appellant contends it did not know these people were illegal, they having produced documents attesting to their legality). The INS ordered the Appellant to terminate the employment of fifty of the illegally employed aliens, twenty-six (26) of whom filed stress claims following their termination.

There was testimony at the hearing that most claims filed following the two incidents were filed the same day. All were filed within the space of approximately three weeks. Because of the similarity

of the facts, the Dynamic claims have been consolidated for hearing by the Workers' Compensation Appeals Board (WCAB).

The Appellant seeks some sort of relief from the very high current experience modification. The most promising is the determination that the two incidents be viewed as "catastrophes" under Section II, F of the California Unit Statistical Plan (Title 10, California Code of Regulations, Section 2318.5). The Unit Statistical Plan sets forth the rules to be followed by insurers in reporting an employer's claims experience to the Bureau. Reporting the claims in each incident as a single "accident", involving two or more employees, results in a substantially reduced impact on the experience modification, Rule IV, 5 of the Experience Rating Plan, than would the impact be if all of the injuries were considered independently. The problem with this approach is the definition of "accident", which term is used in both of the cited Rules.

The Appellant urges a more broad interpretation of accident, so as to encompass incidents such as occurred here. Basically, the Appellant contends that such actions that it took, which could be viewed as intentional, i.e., there were six (6) actual layoffs in the Dynamics situation, and the illegal alien workers were

intentionally dismissed by Cherokee, would not, or should not preclude consideration of the incidents as catastrophes.

Respondent, Bureau, does not automatically dismiss Appellant's concern over its experience modification. The Bureau does, however, contend that its traditional definition of "accident", as used in the catastrophe rules, would not permit use of the catastrophe rules in these situations. Following Appellant's hearing, the Classification & Rating Committee directed another Bureau committee to study the overall problem of numerous claims generated by layoffs or closing of facilities.

## DISCUSSION

While not unsympathetic to Appellant's current problem, the Classification & Rating Committee charge to the Manual Subcommittee included a study of possibly recommending alternative language for the catastrophe Rules in question. The Committee was also charged with studying the possibility of broadening the interpretation of the current language, which uses "accident". Recommending new language would alleviate the problem in the future, but would not now help the Appellant, or other employers with similar fact situations who currently have appeals pending with the Department.

While some concern was expressed by the Appellant that the claims were perhaps tinged with fraud, they were nonetheless made. We cannot determine the fraud issue. That is for the WCAB. The claims were made, thus they cannot be totally ignored.

In order to get the relief offered by the catastrophe rules of the Unit Statistical and Experience Rating Plans, the term "accident" in the regulations will have to be interpreted in such a way that the Rules can be applied. "Accident" is defined, "1. A happening that is not expected, foreseen, or intended." Webster's New World Dictionary, Second College Edition. What has happened here that affects Appellant's experience modification is not actually the precipitating events themselves, i.e., the rumor of the plant closure and the INS activity. The event which impacts the experience modification is the filing of the large number of claims. Although some claim filings could possibly have been foreseen, and even expected given the workers' compensation climate at the time, the filing of this large number of claims could not reasonably have been foreseen or expected, and certainly was not intended. In other words, whatever action Appellant took, the Appellant did not intend the result that approximately eighty workers' compensation claims be filed. The proximity of the claims

filings to the precipitating events is strong evidence of the casual relationship. Similarity in the claims facts are recognized by the WCAB which has consolidated them for a hearing. It is not unreasonable therefore to view the matter as involving two incidents, the rumor of the plant closing and the INS "sweep", rather than viewing the situation as being eighty separate incidents of employees filing claims.

The cited dictionary definition of "accident" does not limit the term to only those events caused by some external, traumatic means. It is, in our opinion, a broad enough definition to include the events in the present case. By so construing "accident", no change in the current regulation is needed, hence, the Rules of the present regulations can be applied.

There could be other possible ways to alleviate the substantial problem faced by Appellant (and others) with its very high experience modification. Deeming these events to be catastrophes is perhaps not ideal, but it must be recognized that the workers' compensation world is not ideal. Application of the catastrophe Rule to incidents such as these will require some decision-making in individual situations. Likely, administration of the Experience Rating Plan will be made a little tougher. However, a realistic

approach must be taken. Recently, the Legislature passed several workers' compensation reform measures. Stress claims will be more difficult to file. Post-termination claims have been severely restricted. There has been a general crackdown on fraudulent claims. The experience modification uses the past to predict the future. The future will likely not produce the large number of claims of the types present here. The experience rating plan is intended to predict future results, and is not intended to punish the employer.

ORDER

It is therefore ordered that the experience modification of the Appellant be recomputed using the catastrophe Rule of the California Experience Rating Plan, for purposes of including the claims resulting from the two incidents at issue here. This Order to be effective not less than twenty (20) days from its date pursuant to the provisions of Insurance Code Section 11754.5.

DATED: Dec 2, 1993

Joseph P. Powers

JOSEPH P. POWERS
Hearing Officer