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BEFORE THE INSURANCE COMMISSIONER **ORIGINAL**
OF THE STATE OF CALIFORNIA **FILED**

JUL 31 2006

In the Matter of the Appeal of)
)
PALI MOUNTAIN INSTITUTE,) **ADMINISTRATIVE HEARING BUREAU**
)
Appellant,) **FILE AHB-WCA-04-103**
)
From the Decision of)
)
STATE COMPENSATION INSURANCE FUND,)
)
Respondent.)

ORDER ADOPTING PROPOSED DECISION

The attached proposed decision of Administrative Law Judge David R. Harrison is adopted as the Insurance Commissioner's decision in the above-entitled matter. This order shall be effective August 30, 2006. Reconsideration of the Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.72, but it is not necessary to request reconsideration prior to initiating judicial review. Any party seeking reconsideration of the Insurance Commissioner's decision should serve the request for reconsideration on Andrea L. Biren, Special Counsel at the address indicated below in sufficient time to ensure that the Commissioner can review the request and take appropriate action before the expiration of the 30-day limit for reconsideration.

Andrea L. Biren, Special Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105

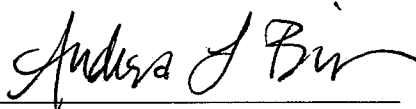
Judicial review of the Insurance Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.76. The person authorized to accept service on behalf of the Insurance Commissioner is:

Staff Counsel Darrell Woo
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

Any party seeking judicial review of the Insurance Commissioner's decision shall file the original writ of administrative mandamus with the court. Copies of the writ of administrative mandamus and the final judicial decision and order on the writ of administrative mandamus must be served on the Administrative Hearing Bureau of the California Department of Insurance.

Dated: July 31, 2006

JOHN GARAMENDI
Insurance Commissioner

By: 
ANDREA L. BIREN
Special Counsel

DEPARTMENT OF INSURANCE
ADMINISTRATIVE HEARING BUREAU
45 Fremont Street, 22nd Floor
San Francisco, CA 94105
Telephone: (415) 538-4251
FAX: (415) 904-5854

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PROPOSED DECISION

Introduction

This appeal is brought pursuant to California Insurance Code section 11737, subdivision (f),¹ and arises from a dispute over premium rates charged by State Compensation Insurance Fund (“SCIF”) for workers’ compensation insurance provided to Appellant (“Pali”) under SCIF Policies 1696035-03 and 1696035-04 for policy years beginning June 1, 2003 and June 1, 2004, respectively.

The parties disagree over the proper payroll classification(s) to be assigned to Pali’s business operations at its 74-acre property (the “Pali site”) located near Running Springs,

¹ Subdivision (f) provides in pertinent part: “Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance offered or afforded. . . . Any party affected by the action of the insurer or rating organization on the request may appeal, within 30 days after written notice of the action, to the commissioner”

California in the San Bernardino National Forest. Pali uses the site: (1) to conduct an overnight recreational camp for children during the summer months; (2) to conduct short-term² overnight supplementary education programs for children during the normal school year; and (3) to provide conference facilities, with sleeping accommodations and meals, to groups that hire the premises for conferences or retreats on week ends after the supplementary education pupils have gone home. (Exs. 16, 103, 105, 106, 211-214.)

Pali appeals from SCIF's decision to treat the Pali site operations as a single enterprise, and to assign it to Classification Code 9048, "Camps – recreational or educational – all operations --- including Clerical Office Employees at camp locations." Pali contends that its operations do not constitute a "single enterprise" but must instead be treated as multiple enterprises, namely, as a "Camp" (Classification Code 9048) for the summer operations; and as a "College or School" (Classification Codes 8868 and 9101) for the school-year supplementary education and conference center operations.³

Issues Statement

Under the California Code of Regulations, title 10, section 2318.6, and the Standard Classification System, Part 3, of the California Workers' Compensation Uniform Statistical Reporting Plan ("USRP"):⁴

1. Are Pali's operations at the Pali site multiple enterprises that must be classified

² The Supplementary Education Programs are for either two nights and three days, or four nights and five days.

³ Appellant's first post-hearing brief argued that the conference center activities should be separately treated and classified as a "hotel" (Classification 9050). This position was changed in a subsequent post-hearing brief to argue that the "school" classification should apply.

⁴ The provisions of the USRP, including the Standard Classification System in Part 3, are part of the Insurance Commissioner's regulations, at title 10, California Code of Regulations, section 2318.6. The 2003 and 2004 versions of the Plan apply to the issues presented in this appeal, as the policies at issue incepted during those years.

separately as: (1) a “camp” (Classification Code 9048) for the recreational camp operations conducted during the summer months; and (2) a “school”⁵ for the supplementary education and convention center operations conducted during the normal school year; or

2. Are Pali’s operations at the Pali site a single enterprise that must be classified as a “camp” under Classification Code 9048?

Procedural History

On October 7, 2004, Appellant filed a written appeal to the Insurance Commissioner from SCIF’s September 7, 2004 decision (conveyed through the SCIF Customer Assistance Program), rejecting Appellant’s claims that its business operations at the Pali site had been misclassified. Appeal Inception Notice was issued on December 14, 2004, and the case was assigned for hearing to Administrative Law Judge Marjorie A. Rasmussen. The case was re-assigned on January 7, 2005 to Administrative Law Judge David R. Harrison (the “ALJ”).

The Workers’ Compensation Insurance Rating Bureau of California (“WCIRB” or “Rating Bureau”),⁶ appeared by letter dated December 28, 2004, requesting an extension of time to file a response to the appeal, noting that it had performed a recent inspection of the risk and that the results of that inspection needed to be integrated into its response. The extension request was granted. The WCIRB presented a new inspection report dated February 3, 2005, and filed its response to the appeal on February 22, 2005. Thereafter, the WCIRB actively participated in the proceedings in support of the SCIF classification decision. Reference in this decision to “Respondents” includes, therefore, both SCIF and the Rating Bureau.

⁵ Classification 8868 for the academic/administrative professionals, and 9101 for the non-academic employees.

⁶ The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code section 11750, et seq., to assist the Commissioner in the development and administration of worker’s compensation insurance classification and rating systems. The Bureau serves as the Commissioner’s designated statistical agent for the purpose of gathering and compiling experience data developed under California worker’s compensation and employers’ liability insurance policies. (Ins. Code § 11751.5.)

At an early status conference in the case, the Rating Bureau noted that Pali Institute had started school accreditation proceedings before the Western Association of Schools and Colleges (the "Association"), and that an inspection of Pali by the Association's staff was expected during the summer, to be followed by a written report. The parties stipulated to abate the appeal proceedings pending completion of the inspection and report from the Association. The ALJ issued an Order of Abatement for this purpose on April 7, 2005.

On August 3, 2005, the parties presented a joint status report on the accreditation proceedings. (Ex. 8.) This included the Association's report and letter (Exs. 6, 7), approving Pali's candidacy for accreditation. Both SCIF and the Rating Bureau responded to the Association's report, and asserted that their classification decision was not changed as a result of it.

A live evidentiary hearing was held before the ALJ in the Los Angeles hearing room of the Insurance Department on February 2 and 3, 2006.⁷ The parties filed pre-hearing and post-hearing written briefs, and presented oral and documentary evidence. The admitted documentary evidence included all exhibits proposed in the exhibit lists pre-filed by the parties,⁸ and certain additional exhibits that were admitted at and after the hearing.⁹

Eric Lawton, Esq., of the Law Offices of Eric Lawton, represented Appellant Pali at the hearing. John N. Frye, Esq., of the Law Offices of John N. Frye, represented Respondent WCIRB, and Lori A. Oesterreich, Esq., Staff Counsel, represented Respondent SCIF.

⁷ The reporter's transcript for each day begins with page 1. Transcript references therefore are "Tr1" for the February 2 transcript, and "Tr2" for the February 3 transcript. Page and line references are designated by page number/line numbers. Thus, page 3, lines 21-24 of the February 2 transcript would be "Tr1. 3/21-24." If only pages are referred to, the reference will be "Tr1. p. ____" or "Tr2. pp. ____" for multiple pages.

⁸ Pali Exhibits 1-16; WCIRB Exhibits 101-104; SCIF Exhibits 201-221.

⁹ Pali Exhibit 17, and post-hearing Exhibits 18-37; WCIRB Exhibits 105-107, and post-hearing exhibits 113-119; SCIF post-hearing Exhibits 222-223.

Following the live evidentiary hearing, the ALJ called for additional evidence from the parties to be presented as proposed exhibits. The requested post-hearing exhibits were filed in due course and certain¹⁰ of them were made part of the record by order of the ALJ on July 6, 2006.

Post-hearing briefs were timely filed by the parties, and the record was formally closed on July 24, 2006.

The Parties' Contentions

Pali concedes that its summer camp program is properly classified as a "camp" under Classification 9048, but contends that its operations at the Pali site should be treated as multiple enterprises, with a separate "school" classification (8868 and 9101) for the supplementary education program conducted during the months of the normal school year. Pali further contends that the operations of the conference center should also be classified as a school. Respondents SCIF and the WCIRB contend that the Pali site operations are a single enterprise properly classified as a camp and fully described by Classification 9048, which covers "recreational or educational" camps that include overnight facilities. They argue that all operations, including the conference center should have the 9048 ("Camp") classification.

FINDINGS OF FACT

1. The Pali Site and Facilities.

The Pali site is a 74-acre wooded property located at an elevation of 6,200 feet in the San Bernardino Mountains in a natural setting, surrounded by more than 2,000 acres of wilderness. The facilities include about 28¹¹ numbered overnight cabins for the youngsters who attend Pali's

¹⁰ Identified by number in footnote 9, *supra*.

¹¹ There were 27 or 28 cabins available for use, with others being built. (Tr1. pp. 64-65.) There appear to be about 18 separate cabin structures, as some cabin structures have two numbered cabins in them. (Ex. 4-30.)

summer camp, and for the students who attend Pali's supplementary education programs during the traditional (September to June) school year. Each cabin generally houses eleven children and an adult who is responsible for overseeing the children during the night and other "cabin times." The property also includes a two-story main lodge, used for a dining hall, separate clerical offices, and staff quarters; another two story building used for an infirmary, staff quarters, and a multi-purpose room; various barns and corrals, a riding arena, go-cart arena, tack building, maintenance shed, swimming pool, outdoor event areas and single story buildings used for support of events and activities. (Exs. 4-30, 16, 103, 105, 106, 211-214.)

2. Pali's Operations at the Pali Site.

a. Overnight Summer Camp Operation.

Pali's overnight summer camp operations antedate its school year supplementary education programs. The summer camp runs for twelve weeks, beginning in mid-June and ending in early September. Activities are predominantly recreational and typical of what would normally be expected at an overnight camp. (Exs. 101-1, 102, 103-1.)

Camp periods are divided into one-week and two-week sessions, conducted seven days and nights a week with a staff of counsellors, mainly people in their late teens or early twenties, who are paid salaries that average about \$160 per week. Counsellors are responsible for daytime and nighttime supervision of the campers. Campers and counsellors sleep in the facility's cabins, with one counsellor to eleven campers in each cabin. The number of campers during the summer is near the facility's capacity (somewhat more than 200 campers at a time). (Tr1. pp. 175-176.) The assignment of the summer camp to Classification Code 9048 was conceded to be correct in Pali's briefs, and is not disputed.

b. Supplementary Education Operation.

Pali first established its supplementary education operation, using the name "Pali Institute," in June of 2003, with classes beginning that fall. Classes start in September of each year, after the summer camp is finished, and persist through the rest of a normal school year (September – June). Educational weeks start with lunch on Monday at noon, and finish at mid-day on Friday, when the last children depart. Programs are for (1) three days and two nights, starting on Monday or Wednesday and ending on Wednesday or Friday respectively; or (2) five days and four nights, starting on Monday and ending on Friday.

The supplementary education programs are marketed to elementary and middle schools (K4 through K9 levels) that contract and work closely with Pali to structure the precise programs and experience that each contracting school wants for its students during their 3-day or 5-day sessions at Pali. (Tr1. pp. 17-19; 44/21-25.)

The daytime classes offered by Pali are broken down into two modules of three hours each, one in the morning and one in the afternoon. (Ex. 216, pp. 11-12). Each module consists of two class sessions, including breaks between sessions. Morning modules are from 9 a.m. to noon. Afternoon modules are from 2 p.m. to 5 p.m. The programs are offered in three general categories, namely, outdoor education, science, and leadership. (Tr1. 18/8-14.) Contracting schools can, and do, elect to have their students take part in more than one category.

Apart from the six hours of daytime modules, the students arise at about 7 a.m., arriving at breakfast by 8 a.m., with one hour for breakfast (8-9). After their morning module, at noon, they have a one-hour lunch period (12-1), followed by an hour (1-2) for personal time¹² and

¹² During the 2004-2005 school year, Pali had 3,450 students. About 925 were from the 7th, 8th and 9th grades. The remaining 2500 students included forty youngsters from the 4th grade, and the rest from the 5th and 6th grades. (Ex. 16-6.) "Personal time" could be a rest period for some of the younger students.

preparing for the afternoon module. After the afternoon module, at 5 p.m., they have an hour for showers and personal time (5-6), an hour for dinner (6-7), then a half hour for personal time, after which the evening activities go on (7:30-9), followed by "lights out" at 9:30. (Tr1. pp. 93-94.)

The evening activities are more recreational in nature than the daytime modules, but also have educational components. Thus, evening activities include campfires, stargazing (astronomy), games of Jeopardy where questions are specifically tailored to the daytime curricula in science and outdoor education (principally studies in ecology), and night "hikes" which may entail hands-on experience with stream and forest life. Other evening activities include skits, karaoke singing, and games of capture the flag on an open playing field. (Tr1. pp. 191-198; Ex. 4, pp. 10, 22-23.)

The teacher/counsellors for the supplementary education programs do not participate in any of the summer camp programs, as the education programs do not start until after summer camp is over. The faculty consists of 25 to 30 teacher/counsellors. Each must have at least a bachelor's degree, and about half of them have teaching credentials from various states. (Tr1. p. 23.) Their pay varies with their experience. Advertised pay levels for February-June 2005 employment were \$300-\$500 per week (Exs. 106, 216-13).

While not required to train in activities with which they are uncomfortable, many of the faculty members do train in "high ropes courses" which include rappelling on ropes from considerable heights. (Ex. 105; Tr2. pp. 43-46.) They do not, however, go to the higher heights personally when students are using the ropes, but supervise the activity from positions on the ground.

Teacher/counsellors work long hours. In a typical day, a staff member will teach the equivalent of two full 3-hour modules, participate in and lead evening activities, and supervise the children in the dining hall at breakfast, lunch and dinner. At cabin times and after the evening activities, teachers supervise students in the cabins. Most days, the teachers live in the cabins with the students (usually with those who are not in their daytime classes). Other days, they may not have cabin responsibility, in which case they are responsible for the daily "set up" and "take down" of lessons. (Ex. 106-2.)

The residential aspect of Pali Institute is considered an integral part of each student's experience. Staff members normally spend most of their week nights sleeping in the cabins with the children, and the Institute holds itself responsible for 24-hour supervision of the children while they are "at camp." (Ex. 106-2.)

Pali Institute applied for school accreditation with the Western Association of Schools and Colleges in February 2005. (Ex. 16-1) An accreditation team from the Association visited the Pali site during the summer in 2005, and reviewed Pali's facilities, personnel and supplementary education programs. The Association found that (1) the programs are bona fide educational programs; (2) Pali Institute has education as its primary mission (Tr1. 155/6-19); and (3) Pali Institute meets the Association's requirements for, and is granted, formal "candidacy" status for accreditation in supplementary education. (Tr1. p.110; Exs. 6-8.) Pali personnel testified, without rebuttal, that Pali's supplementary education operations during the policy years in issue (June 2003-2004, and June 2004-2005), were substantially the same as those reviewed by the Association in the summer of 2005.

Pali was approved as a "candidate" for accreditation in August, 2005. (Ex. 8.) Once an institution is approved as a candidate, formal accreditation may take as much as an additional

three years, during which the candidate is expected to correct perceived deficiencies and advance its operations. In most cases, full accreditation is ultimately granted, once the threshold hurdle of achieving "candidacy" status has been crossed. (Tr1. 143/19 – 144/1.)

There was no evidence that the accreditation steps taken by Pali Institute were customary or normally prevailed among Class 9048 "camps" that offered educational programs. Similarly, the composition of Pali Institute's staff, having as teacher/counsellors only those with bachelor's degrees, many of whom also had teaching credentials, is not customary among camps. (Tr2. pp. 173-175; Ex. 102-5.) However, offering outdoor and other educational programs at camps is not uncommon. (Exs. 117, 119.)

c. Conference Center Operations.

In addition to its summer camp and school year supplementary education operations, Pali hires out its facilities for retreats and conferences during the school year. The children are gone by early afternoon on Fridays, and scheduled conference groups can arrive later in the afternoon, staying in the Pali cabins over the week end. Pali provides meals in the main dining room for conferees, and has personnel available to assist groups in various recreational activities.

A Pali web posting (on the website in July 2004) for the conference center specifically (Ex. 214-3) points out "exceptional activities" available at the center, as well as facilities that include a "heated swimming pool, dance studio, skate park, boating pond with water games, ATV /minibike track, archery range, shooting range, soccer field, paintball, arts & crafts, tennis courts, rock climbing wall, ropes course, zip lines, hiking trails and outdoor amphitheaters." The list of facilities closes by noting that "Visitors choose the activities that best suit their need and budget." Charges for special activities are listed on the website, including fees for group use and for individual use. (Ex. 214-2.) Group charges in the 2004 posting were \$300 per day for

the skateboard park, \$150 per day for canoeing “on our private lake,” \$300 per day for “inflatable joust,” \$300 per day for Sumo wrestling, and \$300 per day for ATV use. Individual charges were also posted for paintball games and ropes challenge courses.

Discussion

A. The Regulatory Scheme.

The provisions of the California Workers’ Compensation Uniform Statistical Reporting Plan (“USRP” or the “Plan”)¹³ are part of the Insurance Commissioner’s regulations, at title 10, California Code of Regulations, section 2318.6. The Plan contains an extensive listing of rating classifications for various occupations, employments, industries and businesses.

Part 3, Section I, of the Plan sets forth the objective of the classification system:

The objective of the classification system is to group employers into classifications so that each classification reflects the risk of loss common to those employers. With few exceptions, *it is the business of the employer within California that is classified, not the separate employments, occupations or operations within the business.* (Plan, Part 3, Section I, emphasis added.)

Part 3, Section III, paragraph 1, of the Plan sets forth the general classification procedure:

1. **Classification Description.** An alphabetical listing of classifications that describe most occupations, employments, industries and businesses is contained in Section VII. “Standard Classification.”
 - a. Any business or operation specifically described by a classification shall be assigned to that classification.

¹³ Because the policy periods in issue commenced on June 1, 2003 and 2004, references to the USRP are to the versions effective on those dates.

Unless an employee falls within one of the Standard Exceptions¹⁴ or works within an industry (such as construction) in which the Plan specifically allows for payroll to be divided between occupations, all employees are classified according to the classification of the overall “business” in which they work, and not the “separate employments, occupations or operations within” that business. (Plan, Part 3, Section I, quoted *supra*.)

Further, the USRP provides:

2. Single Enterprise. If the employer's business, conducted at one or more locations, consists of a single operation or a number of separate operations which normally prevail in the business described by a single classification, the entire exposure of the business shall be assigned to that single classification. No division of payroll shall be permitted in respect to any other operation, even though such operation may be specifically described by some other classification, unless the applicable classification phraseology or other provisions contained herein specifically provide for such division of payroll. Division of payroll for Standard Exceptions and General Exclusions shall be made pursuant to the provisions of this Plan. (Plan, Part 3, Section II, Rule 2.)¹⁵

By contrast, the rule for “multiple enterprises” provides, in pertinent part:

3. Multiple Enterprises. If the employer's business includes a separate operation that does not normally prevail in the business described by the governing classification, such operation shall be separately classified in accordance with the following rules:

a. If such separate operation is described by a classification that carries a pure premium rate either equal to or higher than the pure premium rate for the governing classification, division of payroll shall be required, provided that:

- ... (2) the division is not contrary to classification phraseology; and
- (3) the division is not contrary to any other provision contained herein.

* * *

¹⁴ The Standard Exceptions are only for clerical office employees and outside salespersons, but see foot note 15, *infra*.

¹⁵ The classification rules for Class 9048 (“Camps”) do not allow a Standard Exception separate classification for clerical office employees working on-site at camp locations. All such employees must be classified under Code 9048.

b. If such separate operation is described by a classification that carries a pure premium rate lower than the pure premium rate for the governing classification, division of payroll shall be permitted only when the following conditions are met:

- ... (2) the division is not contrary to classification phraseology;
- (3) The division is not contrary to any other provision contained herein;
and
- (4) Except for miscellaneous employees and Standard Exceptions, the entire operation is conducted without interchange of labor, either in a separate building or on a separate floor of a building or on the same floor with other operations, but separated by such structural partitions as effectively segregate the separate operations.

B. Determination of the Correct Classification(s)

Since the preference is normally to treat a business as a single enterprise, the question arises as to whether all of Pali's operations can properly be viewed as ones that "normally prevail" (Plan, Part 3, Section II, Rule 2. *supra.*) in the "camp" business.

Alternatively, whether or not the three enterprise activities "normally prevail" with one another, can each be separately classified as a "camp" within the meaning of Classification Code 9048?

1. The Pali Summer Camp.

All parties agree that the overnight summer camp operation is properly classified under Classification Code 9048 as a "camp."

2. The Pali Institute.

Pali argues that the Pali Institute supplementary educational programs make it a school and not a camp. The premise for Pali's distinction is that the two are mutually exclusive, i.e., a camp cannot also be a school, and a school cannot also be a camp. Where, however, a classification is broad enough to include recreational and educational activities, an argument based on mutually exclusive categories is not persuasive.

Pali offered as authority for its position the minutes of a meeting of the Classification and Rating ("C&R") Committee of the WCIRB from March of 1989 (Ex. 107), in which the

operations of an insured were being considered by the C&R Committee, pursuant to procedures then in effect (but discontinued by the WCIRB more than ten years ago).¹⁶ The proffered minutes are not authoritative or controlling on any issue before the Commissioner, nor are the facts or reasoning persuasive in helping to resolve the issues in the current case.

The insured in the C&R case was a non-profit corporation that maintained approximately 1600 acres in a rural area of the Los Altos Hills, and engaged in four not-for-profit activities:

(1) Daytime environmental education programs, providing teachers on a fee basis during the school year (September-June), to teach environmental subjects “in classrooms at schools located throughout the [San Francisco] Bay Area,” followed by “hands-on” tours (led by teachers and volunteers) in which the students toured the Los Altos Hills grounds and were instructed in ecological and agricultural subjects;

(2) A summer day camp that operated for eight weeks during the summer months, for children between the ages of 5 and 18, offering typical summer camp “educational and recreational activities,” with no overnight facilities for the campers;

(3) A youth hostel that operated during the school year (September – June) on the Los Altos property, providing bunk accommodations (no bedding or linen) and a common kitchen for use by young travelers for up to a maximum of three nights;

(4) A certified organic vegetable farm.

The C&R Committee found that there was no interchange of labor among the various businesses, and treated them as “multiple enterprises.”

The C&R decision is from a different era, with different rules. First, the day camp was classified by the Committee as a “camp,” even though it provided no overnight facilities for the

¹⁶ Tr2. 191/15-193/21.

campers. The distinction is fundamental. During the policy years at issue in this proceeding, the applicable description for Classification 9048 provides that a "camp" can only be classified as such if it includes "overnight facilities for camp participants." An entity that provides camp recreational or educational activities without overnight facilities is now classified as a day care center (Class 9059), not a camp, under the specific terms of Classification 9048.¹⁷

Given the apparent difference in scope between current classification 9048 and what it was in March 1989 (when the C&R meeting occurred), the nighttime hazards that are a key to the current classification were not relevant or considered. Further, from the standpoint of the "risk of loss common to those employers" (Plan, Part 3, Section I), the usual daytime work days associated with "day camp" operations do not share a "common risk of loss" with the 24-hour "work days" of the counsellor/employees at an overnight camp.

Secondly, the C&R Committee had no difficulty in assigning Class 8868 ("Schools – professional employees"), to the teachers who were sent out to the local schools, since teaching off-premises at recognized schools was essentially all they did. They did not live at the farm site; they had no evening or overnight duties; they taught during the day in the schools they were sent to; and their involvement at the main site was merely to act (along with volunteers) as daytime teacher/escorts for the children who visited for a day. The teachers had nothing to do with the summer day camp, and their activities were not the type to which Classification 9048 "typically" applied.

The Committee similarly found that the youth hostel was not an operation to which Code 9048 typically applied, and the youth hostel operations were therefore separately classified

¹⁷ "Firms that solely operate recreational and/or educational day camps that do not include overnight lodging shall be assigned to Classification 9059, "Day Care Centers." USRP, Part 3, Section VII Standard Classifications, page 53 - "Camps." (2004 Ed.)

as a "hotel" (Classification Code 9050).

In approving the separate treatment of organic farming, the Committee noted that the farming operation incidentally benefited the education program, since it was something the children explored during their hands-on visits, but found that the primary purpose of the farm was to grow produce for sale to the local farmers' markets. Accordingly, the organic farm was treated as a separate commercial venture.

The C&R Committee decision is consistent with the "single enterprise" and "multiple enterprises" rules of the Statistical Reporting Plan in that it turned on whether an activity "normally prevails" in a business to which a classification is typically assigned. This inquiry becomes relevant, however, only if there is no single classification that describes the insured's overall business. The Committee found that assignment of one all-encompassing classification was not justified, since it would include operations to which the 9048 classification was not typically assigned, i.e. operations that did not normally prevail within the "camp" classification, as it then existed.

Thus, an institution that provided daytime instructors who taught in local school classrooms and engaged in no "camp-type" activities at any camp site would be seriously misclassified if its entire business were classified as a "camp." The hazard exposures of these teachers would be substantially identical to those occurring in any normal school, and the environmental risks, largely within established school classrooms in the community, were similarly identical. This contrasts markedly with the activities of the Pali teacher/counsellors, activities that include all-day teaching and supervisory responsibilities, and all-night supervision of children of tender age sleeping in cabins in a wilderness landscape with which the children have no familiarity and, by reason of their limited stays, no time to gain such familiarity. The

C&R precedent cited by Pali is therefore not persuasive in the current proceedings.

Pali Institute fits within the common usage definition of “camp.”

A substantial amount of testimony and evidence was devoted to proving (a) that Pali’s supplementary education program is more like a school than a camp (Pali’s position); or (b) that the single Classification 9048 is properly applied because Pali offers recreational and educational activities (including in the latter category the supplementary education programs), and provides overnight facilities for the participants. (WCIRB and SCIF positions).

The argument that Pali is a “camp” to be classified under Classification 9048 was based in part on an analysis that says 9048 applies to “camps that provide supervised recreational or educational activities ... with overnight facilities for camp participants.”¹⁸ Since Pali offers recreational or educational activities at the Pali site, with overnight facilities for the participants, Pali is, the argument goes, a camp. The problem with this approach is that it is tautological, resting on the premise that a “camp” is a “camp” if it is a “camp” that provides recreational or educational activities with overnight facilities.

The threshold analysis must depend in the first instance on the definition of a “camp.” That term is not defined in the classification. The classification does require that, in order to be classified as a camp under Classification 9048, the institution must offer recreational or educational activities, and must provide overnight facilities for the participants. These criteria are negative screens, not definitions, however, and could as well apply to full-time private boarding schools, such as Thacher¹⁹ or Andover,²⁰ offering full-year and full-range educational,

¹⁸ Plan, Classification definition “CAMPS – recreational or educational – all operations – including Clerical Office Employees at camp locations.....9048(1)”

¹⁹ The Thacher School was founded in 1889, and is a well-known residential college preparatory school located in Ojai, California.

²⁰ The Phillips Academy, Andover was founded in 1778, and is a well-known residential college preparatory school located in Andover, Massachusetts. Its alumni include both Bush Presidents of the United States, father and son.

athletic and recreational activities in permanent facility structures and residence halls.

The distinguishing characteristic in this case derives from the meaning of the word “camp,” and not simply from being an “institution” that offers recreational or educational activities with overnight facilities. Pursuing this inquiry, the ALJ called upon the parties to present as exhibits definitions of the term “camp” that might bear on this issue. The exhibits presented and admitted were marked as Pali post-hearing Exhibits 18-37; SCIF post-hearing Exhibits 222-223; and WCIRB post-hearing exhibits 113-119.

Pali offered various examples of definitions, including the following:

Exhibit 18-3: *Webster's New World College Dictionary, Fourth Edition (2004):*

camp ... 3. a tent, cabin. etc. or a group of these used for temporary lodging, as by hunters or fishermen ... 4. a place in the country for vacationers, esp. children, with outdoor recreation often organized and supervised...

Exhibit 19-3: *Random House Webster's Concise College Dictionary (1999):*

camp ... 1. a. a place where an army or other group of persons is lodged in tents or other temporary shelters ... 2. any temporary structure, as a tent or cabin, used on an outing or vacation ... 6. a. a recreation area in the country equipped with extensive facilities for sports... v.t....9. to reside or lodge somewhere indoors temporarily or irregularly...

Exhibit 20-3: *The American Heritage Dictionary of the English Language, Fourth Edition (2000):*

camp ... 1b. A cabin or shelter or group of such buildings... 2a. A place in the country that offers simple group accommodations and organized recreation or instruction, as for vacationing children: ...

Exhibit 21-3: *The Oxford Encyclopedic English Dictionary (1991):*

camp ... 2 temporary overnight lodging in tents, etc., in the open 3a temporary accommodations of various kinds usu. consisting of huts or tents... b a complex of buildings for holiday accommodation, usually with extensive recreational facilities...

Exhibit 22-3: *Encarta World English Dictionary (1999):*

camp... 1. PLACE WITH REMOVABLE ACCOMMODATIONS a place where short-term, accommodations have been temporarily erected or sited in the form, e.g., of tents or camper vehicles for vacationers. 2. PLACE FOR TEMPORARY STAY a set of buildings where people are housed temporarily, e.g., as prisoners, refugees or troops...

Exhibit 23-3: *The American Heritage College Dictionary, Fourth Edition (2002):*

camp... **1a.** A place where tents, huts or other temporary shelters are set up. **b.** A cabin or shelter or group of such buildings... **2a.** A place in the country that offers simple group accommodations and organized recreation or instruction.

Exhibit 26-1: *The Oxford Pocket Dictionary of Current English (2006):*

camp ...1. a place with temporary accommodations of huts, tents, or other structures, typically used by soldiers, refugees, prisoners or travelers ... a recreational institution providing facilities for outdoor activities, sports, crafts, and other special interests and typically featuring rustic overnight accommodations... temporary overnight lodging out of doors, typically in tents ...

Exhibit 27-1: *Merriam-Webster Online Dictionary, Thesaurus(Undated):*

camp ... **1 a:** a place usually away from urban areas where tents or simple buildings (as cabins) are erected for shelter or for temporary residence (as for laborers, prisoners, or vacationers) ... **b.** a group of tents, cabins, or huts ... **d.** a place usually in the country for recreation or instruction during the summer ...

Exhibit 28-3: *Cambridge Advanced Learner's Dictionary (2006)*

camp ... **1** a place where people stay in tents or other temporary structures ... **2** an area where people are kept temporarily for a particular reasons ...

Exhibit 34-1: California Health and Safety Code, section 18897(a):

(a) "Organized camp" means a site with program and facilities established for the primary purpose of providing an outdoor group living experience with social, spiritual, educational, or recreational objectives, for five days or more during one or more seasons of the year.

Exhibit 35-2: *The Encyclopedia Americana International Edition, (2002)V. 5. p. 306:*

Organized camping is represented by the resident camp, where campers live for several days or weeks, under the supervision of a professional staff ... There are also educational, family, travel, health, tutoring and music camps... Camp programs may include nature study, swimming, field sports, riding, boating, shooting, astronomy, pack trips, canoe trips, dramatics, crafts and dancing.

State Fund offered one definition, found in two websites on the internet (Exhibits 222 and 223), taken from *The American Heritage Dictionary of the English Language, Fourth Edition (2000)*, and quoted in Pali's Exhibit 20-3, *supra*, namely, "a place in the country that offers simple group accommodations and organized recreation or instruction, as for vacationing children: ..."

The WCIRB offerings included (Exhibit 113-1) the "organized camp" definition contained in section 18897 of the Health and Safety Code (also presented in Pali Exhibit 34-1, *supra*), as well as section 30700(c) of the title 10 of the California Code of Regulations (Exhibit 115-1) defining an "intermittent short-term organized camp" (pursuant to the authority of section 18997), as "a site, operated by a city or county, for camping by any group of people with a program and facilities established for the primary purpose of providing an outdoor group living experience with social, spiritual, educational or recreational objectives for a period of not more than 72 consecutive hours."

The final WCIRB exhibits (117 through 119) are excerpts from the website of the American Camping Association ("ACA").

Exhibit 117-2 presents a list of types of "camps," specifically including "academics" as an "activity" and as the "targeted focus" of an "Academic Camp."

Exhibit 119 is ACA's statement that its program of Standards for accreditation is designed to serve camps that operate programs consistent with the following definition of camping:

A sustained experience which provides a creative, recreational, and educational opportunity in group living in the outdoors. It utilizes trained leadership and the resources of the natural surroundings to contribute to each camper's mental, physical, social, and spiritual growth.
(Emphasis supplied.)

"**A sustained experience**" is defined as campers attending a session for an established period of time that lasts at least five days. To be eligible for accreditation, camps must have at least one session of five days or more.

"**Group living**" includes planned and organized group interaction that provides personal growth, skill development, and instructional opportunities.

"**Outdoors**" requires utilizing the outdoors and the natural environment as a principal setting for activities and/or specialized recreational skills such as archery, horseback riding, swimming, and boating.

The ALJ concludes that Pali Institute is a "camp" within the ordinary meaning of that term. Its geographic location and its physical facilities fit the criteria for a "camp" (see Findings of Fact "1. The Pali Site and Facilities."), and, distinguishing it from a full term private "school," its normal curriculum is in sessions of not more than 5 days. This short-term aspect of the Pali operations, and the attendant limited stays for the students, fit the "temporary" characteristic found in most of the "camp" definitions.²¹

Classification Code 9048 is the proper classification code for Pali Institute.

Classification Code 9048 "CAMPS --- recreational or educational --- all operations --- including Clerical Office Employees," classifies as "camps" for standard classification purposes under the USRP, "... camps that provide supervised recreational or educational activities with guidance or counseling services, and with overnight facilities for camp participants." The use of the term "or" in the phrase "recreational *or* educational" in the classification language is clearly conjunctive, not disjunctive. The fact that a camp offers both recreational and educational

²¹ Witness Eric Riley of the WCIRB specifically alluded to this "short-term" aspect of the Pali programs in his testimony. (Tr2. 119/9-13.)

activities in no way disqualifies it from the classification.

Further, from the standpoint of risk and hazard to its employees, particularly its teaching staff: (1) the Pali setting is in the middle of a mountain wilderness; (2) the cabins are physically separated (Ex. 4-30); (3) most of the teacher/counsellors have all-night responsibility for their eleven student/cabin-mates, all of whom are young children and strangers to the setting; (4) activities include night-time educational and recreational programs that resemble those of a traditional summer camp, exposing the employees and the children to perils that are not typical of a private school; (5) some of the teacher training, such as "high ropes," may entail physical danger to the teachers taking the training and to their instructors.

Pali Institute is a "camp" in the common usage of that term. It is a "camp" that provides overnight facilities and supervised recreational and educational activities to its participants, under the guidance and counseling services of counsellor/teachers. It is, therefore, properly classified as a "Camp" under Classification Code 9048 of the California Uniform Statistical Reporting Plan.

3. Pali Conference Center.

The Conference Center operation fits the conventional definition of a "camp," in that it is physically a "camp" ground with camp buildings in a camp location. It offers overnight facilities for limited stays for conference groups, and offers typical camp-type recreational or outdoor educational activities to groups that hire it for their retreats or conferences.

The notion that the conference center activities are those of a school is misguided. The conference center has no curriculum or "faculty" as such. It offers recreational and overnight boarding facilities with available personnel to assist hiring groups in using the facilities in ways that the groups deem appropriate. Whether or not the activity of running a conference center "normally prevails" in the

operations of "typical" recreational or educational camps for children, the actual operation of the conference center at Pali is within the contemplation of Classification 9048, as an (adult) camp that offers recreational or educational activities, with overnight facilities for the participants.

Accordingly, Classification 9048 is the proper classification for the Pali Conference Center operation.

CONCLUSION

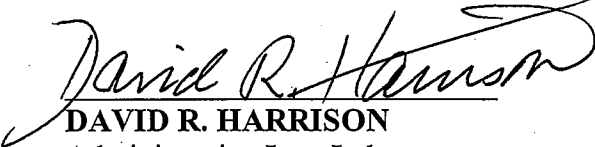
Each of the three operations (summer camp, supplementary education program, conference center) conducted by Pali at the Pali site is a "camp" within classification 9048 of the Uniform Statistical Reporting Plan. Pali's overall business is "specifically described by a classification,"²² namely 9048, and its business is therefore properly assigned to that classification.

ORDER

The decision of State Fund to assign Classification 9048 "Camps – recreational or educational – all operations --- including Clerical Office Employees at camp locations" to Pali's business at the Pali site as a single enterprise is affirmed.

I submit this proposed decision on the basis of the record before me and I recommend its adoption as the decision of the Insurance Commissioner of the State of California.

DATED: July 28, 2006


DAVID R. HARRISON
Administrative Law Judge
California Department of Insurance

²² Part 3, Section III, paragraph 1.a. of the Uniform Statistical Reporting Plan requires that "...any business or operation specifically described by a classification shall be assigned to that classification."