

DEPARTMENT OF INSURANCE  
ADMINISTRATIVE HEARING BUREAU  
45 Fremont Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4251

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FILED

AUG 7 2001

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
THE TRANSIT AUTHORITY CORPORATION, )  
 )  
Appellant, )  
 )  
From a Rating Classification Decision of )  
 )  
THE WORKERS' COMPENSATION )  
INSURANCE RATING BUREAU, )  
 )  
Respondent. )  
\_\_\_\_\_ )

ADMINISTRATIVE HEARING BUREAU

FILE NO. ALB-WCA-99-23

PROPOSED DECISION

Introduction

The Transit Authority Corporation (Transit Authority), a motor vehicle customizing business, appeals under Insurance Code section 11753.1<sup>1</sup> from a rating classification decision of the Workers' Compensation Insurance Rating Bureau of California (Rating Bureau).<sup>2</sup>

<sup>1</sup> Section 11753.1, subdivision (a), authorizes any person aggrieved by a rating organization's decision to appeal the decision to the Insurance Commissioner.

<sup>2</sup> The Rating Bureau is a rating organization licensed by the Insurance Commissioner under Insurance Code section 11750, et seq. The Rating Bureau's statutory responsibilities include the development and administration of workers' compensation insurance classification and rating systems, subject to the Insurance Commissioner's approval and oversight. The commissioner designated the Rating Bureau to serve as statistical agent for the purpose of gathering and compiling experience data developed under California workers' compensation and employers' liability insurance policies. (Ins. Code § 11751.5.) The Rating Bureau's decision in the instant

This appeal presents the issue whether the Rating Bureau correctly assigned appellant's operations to California Workers' Compensation Uniform Statistical Reporting Plan (Statistical Reporting Plan)<sup>3</sup> rating classification 8390, "Automobile Van Conversion or Customizing — all operations." Appellant contends that its business should be assigned to classification 8391, "Automobile or Automobile Truck Dealers," which carries a lower rate than classification 8390.

An evidentiary hearing on the appeal was conducted on May 31, 2001, before Administrative Law Judge (ALJ) Michael D. Jacobs. Transit Authority President Joseph E. Chambers represented appellant at the hearing and testified as a witness on appellant's behalf. Diane Heidenreich, Vice President and Assistant General Counsel of Zenith Insurance Company (Zenith), appeared on behalf of Zenith, appellant's workers' compensation insurer. In these proceedings Zenith adopts the Rating Bureau's position regarding the proper classification of appellant's operations. Zenith presented the testimony of Karen F. Erickson, Premium Audit Manager of Zenith Insurance Company. John N. Frye, Esq., represented respondent Rating Bureau at the hearing. The Rating Bureau presented the testimony of Workers' Compensation Insurance Rating Bureau Vice President Warren Clark, an expert in the development and administration of the workers' compensation insurance Standard Classification System approved by the Insurance Commissioner.<sup>4</sup>

For the reasons that follow, the ALJ concludes the Rating Bureau properly assigned appellant's business to classification 8390. The Rating Bureau's decision is affirmed.

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appeal is contained in a July 2, 1999, letter from the Rating Bureau to Zenith Insurance Company (Exh. 15).

<sup>3</sup> The Statistical Reporting Plan constitutes part of the Insurance Commissioner's regulations. (Cal. Code Regs., tit. 10, § 2318.6.)

<sup>4</sup> The Insurance Commissioner's Standard Classification System is contained in Part 3 of the Statistical Reporting Plan.

## **Findings of Fact**

### ***Appellant's Operations***

Appellant customizes new light trucks, vans, and sport utility vehicles (SUVs) manufactured by Ford Motor Company. Appellant converts standard factory trucks and SUVs and incomplete cargo vans into deluxe custom vehicles by installing an array of special equipment, accessories, and decorative finishes.

Under an agreement with Ford Credit, appellant orders and receives new vehicles from Ford and pays a flooring cost based on the length of time the vehicles remain in appellant's possession. Upon completion of appellant's customizing work, vehicles are delivered to automobile dealerships for sale to the public. Appellant solicits orders from dealerships but does not acquire ownership of the vehicles it customizes; it derives its income from the value added to the vehicles by the skillful conversion work performed by its employees.

Appellant's employees customize standard factory trucks and SUVs by removing, painting and reinstalling bumpers and grills, and installing running boards, spoilers, lights, light guards, grab handles, custom wheels, wood dashboard covers, televisions and video cassette players, leather seat covers, and other accessories. Appellant's employees also apply exterior stripes and designs to the trucks and SUVs with vinyl or paint. Trucks and SUVs constitute approximately two-thirds of the vehicles appellant customizes.

Appellant receives new vans from Ford with bare interiors. Appellant's employees convert the vans into plush, street-legal vehicles by outfitting the vans with custom seats, sofa beds, draperies, cabinets, carpeting, door panels, headliners, lighting fixtures, drink holders and trays, wood dashboard covers, running boards, window sills, consoles, and televisions and video

players. They also install custom windows and bubble tops, replace wheels and tires, paint van bodies and bumpers, and apply graphic vinyl designs. Vans constitute approximately one-third of the vehicles appellant customizes.

Appellant employs a salesperson, a clerical office worker, two detailers, and 14 employees who engage in vehicle conversion and related operations, including vehicle component disassembly and assembly, equipment and accessory installation, upholstery work, cabinet and trim manufacturing, painting, and video component installation.<sup>5</sup>

### ***Classification 8390***

Classification 8390, "Automobile Van Conversion or Customizing — all operations," became effective as a new rating classification on January 1, 1980. The Insurance Commissioner approved the classification on the recommendation of the Rating Bureau, which conducted a study of van customizing firms in 1979 and concluded that such firms constituted a separate and identifiable industry for workers' compensation insurance rating purposes. The Rating Bureau's study found that van customizing firms engaged in similar operations, typically consisting of the following work performed on factory-built vehicles:

Automobile vans are received from dealers or private parties and are stripped of seats, spare tire mounts, engine covers and light fixtures. Window and roof openings are cut in designated areas with metal shears. Plywood is cut to size and installed into the bed of the van with screws for sub-flooring. If necessary, electrical wire is run through conduit along the floor and wall panels and left loose for connection at a later time. Insulation material is cut to size and glued into the interior walls and roof. Foam carpet padding is tacked to the sub-flooring and carpeting will be installed. As desired, pre-finished wood paneling, carpeting or upholstery fabric is attached to the walls and ceiling. Compression type windows and sun-roofs are installed in the appropriate openings and secured with putty and screws. Seat pedestals are bolted in place and chairs or seats are attached. Cabinets and tables, either purchased or fabricated by the insured, are

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<sup>5</sup> Exhibits 24 and 25.

installed in place and secured with metal brackets and screws. As required, purchased ice boxes, tape decks, stereos, speakers, and light fixtures will be secured and interconnected to the electrical wiring. Occasionally, sinks will be installed in camper vans. Necessary special wheels and wheel coverings may also be installed<sup>6</sup>

In its 1979 study of the van customizing industry, the Rating Bureau determined that “[w]hile all of the van conversion firms did not perform all of the above activities, the overwhelming majority did install windows, sun-roofs, flooring, carpeting, paneling, upholstery items, cabinets, tables, lighting fixtures, wheel covers and ice boxes. . . . In all cases, the basic unit was a factory-built automobile van which was converted.”<sup>7</sup>

The California Classification Reference, published by the Rating Bureau as a guide to the Statistical Rating Plan’s Standard Classification System,<sup>8</sup> describes the operations contemplated by classification 8390, based on the Rating Bureau staff’s technical expertise, intimate familiarity with the van customizing industry, and its established classification practices:

Classification 8390 applies to firms specializing in automobile van conversion or customizing. [¶] Van conversion or customizing involves the receipt of vans from customers, after which the interiors are stripped of seats, panels, carpeting, and existing interior components. In many cases, customers purchase vans without interiors installed from the factory. As needed, holes in the top of the van are cut away to install bubble tops or moon roofs. Overhead consoles, custom made for the vans, are installed along with televisions, stereo systems, VCR units, cabinets, sinks and refrigerators. New door panels, custom seats, upholstery and carpeting are installed per customer specifications to complete. [¶] This classification also applies to firms specializing in modifying vans for physically disabled. This may involve installing electric wheelchair lifts, power doors, power windows, and special hand controls as well.<sup>9</sup>

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<sup>6</sup> Minutes of the Rating Bureau’s Classification and Rating Committee meeting of July 10, 1979 (Exh. 25).

<sup>7</sup> *Id.*

<sup>8</sup> As previously noted, the Insurance Commissioner’s Standard Classification System is contained in Part 3 of the Statistical Reporting Plan.

As Warren Clark testified, when the Insurance Commissioner adopted the phraseology of classification 8390 in 1979, the term “sport utility vehicle” was not widely used, if it was used at all. The term came into common use after the popularity of SUVs, which evolved as light truck/automobile van/station wagon hybrids, grew apace during the 1980s and 1990s. In the years since classification 8390 was adopted, some van conversion firms began to customize light trucks and SUVs also, as consumer demand increased for specialty versions of those vehicles. Since classification 8390 was established, the Rating Bureau has consistently assigned businesses that customize light trucks and SUVs to that classification.

The evidence establishes that the process and hazard associated with appellant’s light truck and SUV customizing operations is closely analogous to the operations expressly described by classification 8390, “Automobile Van Conversion or Customizing.” The ALJ finds that no other Statistical Reporting Plan rating classification applies to light truck and SUV conversion operations.

***Classification 8391***

Classification 8391 states in full: “Automobile or Automobile Truck Dealers — all employees other than automobile or automobile truck salespersons — including estimators, service writers and accessory or spare parts sales.” The directive footnote to classification 8391 provides, “This classification shall apply only to those concerns having in addition to proprietors a full-time clerical office force and a regular sales force engaged exclusively in the demonstration and sale of automobiles and/or automobile trucks.”

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<sup>9</sup> California Classification Reference (Workers’ Comp. Ins. Rating Bur. of Cal. 1998) page 982.

The California Classification Reference published by the Rating Bureau contains the following description of classification 8391:

Classification 8391 applies to the service and repair, parts, and automobile body shops of automobile or automobile truck dealerships meeting the requirements stipulated in the footnote to this classification.

Service and repair operations or automobile dealers include estimating costs of repairs, repairing the vehicles, and test driving. Parts department employees provide parts to both the service and repair departments, as well as to walk-in trade. These employees price parts, take inventory, order additional parts, and engage in the sale of parts to walk-in trade. Many dealerships also maintain their own automobile body shop. Operations include estimating costs, conducting automobile body repairs, and painting to complete.<sup>10</sup>

The testimony of Warren Clark, who has had more than 20 years of experience in the development and administration of the workers' compensation insurance rating classification system, established that classification 8391 contemplates after-sale vehicle mechanical and body repair operations performed by automobile dealers' service and body shop departments and the sale of parts and accessories. As Clark testified, major customizing operations of the kind performed by appellant do not normally prevail in automobile dealership operations and historically the Rating Bureau has not assigned vehicle conversion or customizing businesses to classification 8391.

### **Appellant's Contentions**

Appellant contends its operations should be assigned to classification 8391, "Automobile or Automobile Truck Dealers — all employees other than automobile or automobile truck salespersons — including estimators, service writers and accessory or spare parts sales." Appellant argues its business should be classified as a dealership because the operations it

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<sup>10</sup> *Id.* at page 984.

performs consist of “final stage assembly,” which appellant contends is incidental to the sale of vehicles. Appellant also argues that classification 8390, “Automobile Van Conversion or Customizing — all operations,” does not apply to the customization of light trucks or SUVs because the classification phraseology does not include those two vehicle types.

## **Discussion**

Appellant engages in the business of customizing and converting vehicles. It does not operate an automobile and automobile truck dealership, within the meaning of classification 8391. As the Rating Bureau’s decision notes, “Transit Authority does not engage in the purchase and resale of automobiles; rather, Transit Authority derives its revenue from the conversion or customizing of vehicles.”<sup>11</sup> Every vehicle that passes through appellant’s shop undergoes a major transformation, expertly accomplished by the addition of custom equipment, accessories, and finishes. The Rating Bureau’s decision correctly points out the significant differences between the installation of vehicle accessories by an automobile dealership and the type of operations performed by a vehicle customizing business:

It is common for automobile dealers to perform incidental preparation of new vehicles for sale, and this may include installing accessories such as radios or luggage racks. However, these activities are incidental to the sale of the vehicle, and do not convert or transform the nature of the vehicle. In comparison, Transit Authority is converting basic cargo vans to deluxe family or passenger vans by installing a broad range of equipment and accessories. The comprehensive customization or conversion of a basic van to a specialized van is the activity directly contemplated by Classification 8390, “Automobile van Conversion or Customizing — all operations.”<sup>12</sup>

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<sup>11</sup> Exhibit 23.

<sup>12</sup> Exhibit 15.



The phraseology of Classification 8390 does not explicitly include light trucks and SUVs but, as Warren Clark stated, “[m]any of the activities involved in the customizing of sport utility vehicles and trucks are similar, if not identical, to those activities involved in the customization of automobile vans.”<sup>13</sup>

The ALJ concludes that classification 8390 applies to appellant’s light truck and SUV customizing operations as well as to its van customizing work. The Insurance Commissioner’s regulations declare, “Any business or operation not described by a classification shall be assigned to the classification(s) most analogous from the standpoint of process and hazard. The limitations and conditions of the classification(s) so assigned and all rules pertaining thereto shall be applicable.” (Statistical Reporting Plan Pt. 3, § II, para. 1 (b).) The Rating Bureau correctly determined that appellant’s light truck and SUV customizing operations are most analogous to the operations described by classification 8390 from the standpoint of process and hazard. The Rating Bureau’s determination that classification 8390 applies by analogy to appellant’s customization of light trucks and SUVs accords with the Standard Classification System’s purpose, which is expressed in Part 3, section I, of the Statistical Reporting Plan: “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.”

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<sup>13</sup> Exhibit 23.

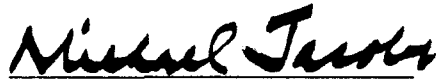
**Conclusion**

The Rating Bureau correctly assigned appellant's operations, involving the customizing of vans, light trucks, and SUVs, to Statistical Reporting Plan classification 8390, "Automobile Van Conversion or Customizing — all operations." The Rating Bureau's decision is affirmed.

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

Dated: July 17, 2001



Michael D. Jacobs  
Administrative Law Judge  
Department of Insurance