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ADMINISTRATIVE HEARING BUREAU
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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of)
)
ADVANCED FUEL FILTRATION SYSTEMS, INC.,)
)
Appellant,) **FILE AHB-WCA-03-45**
)
From the Decision of)
)
STATE COMPENSATION INSURANCE)
FUND,)
)
Respondent.)
_____)

PROPOSED DECISION

Advanced Fuel Filtration Systems, Inc. ("AFFS") a business that performed various service operations for the petroleum industry, appeals a June 3, 2003, decision by its insurer, State Compensation Insurance Fund ("SCIF"), that retroactively assigned classification codes 8018 (stores – wholesale), 7219 (truckmen), 6218/6220 (excavation) and 4511 (analytical or testing laboratories) to AFFS's workers' compensation insurance policy number 1441416 for the 1999 and 2000 policy periods commencing on October 1, 1999 ("policies").¹

¹ AFFS was bought by Entech Environment Technologies, Inc. in September 2003

The retroactive application of these rating classifications resulted in AFFS owing SCIF additional premium in the amounts of \$17,860.19 for the 1999 policy period and \$74,021.23 for the 2000 policy period. AFFS's appeal to the Insurance Commissioner is authorized by Insurance Code section 11737 (f).² For the reasons set forth below, the decision of SCIF is affirmed.

Statement of Issues

Pursuant to a stipulation by the parties at the commencement of the evidentiary hearing, the sole issue to be determined by the Insurance Commissioner is as follows:

1. Whether SCIF's retroactive assignment of classification codes 8018 (stores – wholesale), 7219 (truckmen), 6218/6220 (excavation) and 4511 (analytical or testing laboratories) to AFFS's policies is contrary to Insurance Code sections 11753.1(b) and 11753.2.

Contentions of the Parties

AFFS contends SCIF's retroactive application of classification codes 8018, 7219, 6218/6220 and 4511 to its 1999 and 2000 is in violation of Insurance Code sections 11753.1(b) and 11753.2(b). Appellant argues that any classification change to its policies should be effective March 5, 2002, not October 1, 1999³. AFFS also argues that SCIF failed to provide the appellant with classification training. Since the appellant did not

² Insurance Code section 11737(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"

³ In its First Amended Pleading, the appellant alleged that the classifications changes should not go into effect until June 1, 2002, the date of the premium invoice for appellant's 2000 policy. Appellant did not assert this claim at the hearing and, during oral argument, appellant's counsel urged that the effective date should be no earlier than March 5, 2002, which is the date SCIF notified AFFS in writing of the classification change. (Reporter's Transcript, p. 121.)

understand the rules and regulations governing the classification system applied to the policies at issue the appellant did not view its expanded activities as changes in operations. AFFS argues further that SCIF failed to conduct physical inspections and timely audits of appellant's operations and knew about appellant's expanded operation as early as 2000 but failed to act. (Appellant's First Amended Pleading, pp. 3-6; Reporter's Transcript, pp. 120-123.)

SCIF disputes all of AFFS's contentions. Specifically, SCIF argues that AFFS failed to notify SCIF that its operations changed as it should have under the policy contract and that the classification codes in effect on the 1995 policy were inadequate to describe AFFS's operations during the 1999 and 2000 policy periods. SCIF denies that it failed to act once it learned about AFFS's changes in operation and maintains that pursuant to the applicable regulations and the SCIF policy contract, it appropriately and timely audited appellant's operations. SCIF also claims that it timely notified AFFS that the additional classification codes would be applied to the policies and that, pursuant to Insurance Code sections 11753.2(b), the classifications were effective October 1, 1999. (SCIF's Opening Trial Brief, pp. 13 and 15; Reporter's Transcript, pp. 123-126.)

Procedural History

AFFS filed its amended appeal with the California Department of Insurance's Administrative Hearing Bureau on August 14, 2003. (Exhibit 3.) Initially the appeal alleged that SCIF: (1) incorrectly assigned certain classifications to AFFS's policy in violation of Insurance Code sections Insurance Code sections 11753.1(b) and 11753.2; (2) failed to allocate the payroll of appellant's employees described as drivers between

classification codes 7219(1) (Trucking) and 3724(1) (Millwright Work) and; (3) failed to apply applicable merit ratings and discounts to appellant's policies.

SCIF filed its response to the appeal on September 24, 2003. Since the classification issue involved SCIF's application of the Standard Classification System contained in the Uniform Statistical Reporting Plan ("Plan")⁴ that is administered by the Workers' Compensation Insurance Rating Bureau of California, ("WCIRB"), and because SCIF did not file a deviation from the Plan, the WCIRB elected to participate in this appeal and filed its response to the appeal on September 12, 2003.⁵

Administrative Law Judge Marjorie A. Rasmussen conducted status conferences on October 6, 2003, and November 14, 2003, to frame and narrow the issues in dispute. As a result of these conferences, the parties engaged in further discovery and settlement negotiations and the appellant waived the time limits under California Code of Regulations, title 10, section 2509.56. The evidentiary hearing was set for March 4, 2004, and, prior to that date, the parties submitted their respective Opening Briefs, Designation of Witnesses, a Joint Exhibit List and Joint Exhibits numbering 1 through 37-10.⁶

SCIF filed objections to the admission of certain exhibits and the testimony of appellant's proposed witness, Mr. Medina. Following a hearing, Judge Rasmussen precluded the testimony of Mr. Medina, sustained SCIF's objections to Exhibits 37-1, 37-

⁴ The Plan has been approved by the Insurance Commissioner and is incorporated by reference into Title 10 of the California Code of Regulations at section 2353.1. The 1999 and 2000 versions of the Plan are applicable to this appeal.

⁵ 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 workers' compensation insurance classification and rating systems. The WCIRB serves as the Commissioner's designated 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.)

2 and 37-3 and conditionally admitted Exhibits 37-9 and 37-10 by order dated February 23, 2003.

At the commencement of the evidentiary hearing on March 4, 2004, the appellant withdrew Exhibits 37-9 and 37-10 from evidence. The parties entered into a stipulation whereby the appellant withdrew the issues of whether SCIF: (1) failed to allocate the payroll of appellant's employees described as drivers between classification codes 7219(1) (Trucking) and 3724(1) (Millwright Work) and; (2) failed to apply applicable merit ratings and discounts to appellant's policies. Pursuant to the stipulation, the parties also agreed that the findings and conclusions contained in the WCIRB's Classification Inspection Report dated February 12, 2003, (Exhibit 3-A) and the WCIRB's December 16, 2003, letter to Judge Rasmussen (Exhibit 35) were accurate and not in dispute and further agreed that the WCIRB could be dismissed as a party to the appeal⁷.

The parties confirmed that the only remaining issue before the Insurance Commissioner in this appeal was whether SCIF's retroactive assignment of certain classification codes to AFFS's policies is contrary to Insurance Code sections 11753.1(b) and 11753.2. (Reporter's Transcript, pp. 10-12.)

⁶ The individual pages of the Joint Exhibits were not Bate stamped but did contain sporadic page numbering. The citations will refer to the Exhibit number and will include page numbers if noted.

⁷ The WCIRB's Classification Inspection Report dated February 12, 2003, found that the following classifications were assignable to AFFS's policy as of February 2, 2003, the date of its inspection: 7219(1) Truckmen; 4511 Analytical or Testing Laboratories; 3724(1) Millwright Work; 9402 Sewer or Tank Cleaning; 5187/5183(01) Plumbing; 6218/6220(1) Excavation; 87429(1) Salespersons – Outside; 8810(0) clerical Office Employees; 8018 Stores-Wholesale. (Exhibit 3-A.) In its letter of December 16, 2003, the WCIRB found that the records AFFS submitted for purposes of segregating the payroll of its drivers between classification codes 7219(1), Truckmen and 3724(1), Millwright Work" for the 1999 and 2000 policy periods were not "...complete and accurate records supported by original time cards or time book entries which show separately, both by individual employee and in summary by operations performed, the remuneration earned by such employee." Accordingly, the WCIRB concluded that, in absence of such records, Rule 3 of the Plan mandates that "the entire remuneration of the employee shall be assigned to the highest rated classification applicable to any part of the work performed by the employee" and that SCIF correctly applied this provision when auditing AFFS's 1999 and 2000 policy periods. (Exhibit 35.)

Accordingly, Judge Rasmussen dismissed the WCIRB as a party to this appeal and subsequently admitted into evidence Joint Exhibits 1 through 36 and 37.4 through 37.8, as more fully identified in the Joint Exhibit List that was made an attachment to the reporter's transcript of this proceeding. The stipulation, the testimony of the witnesses and the exhibits entered into evidence constitute the evidentiary record in this matter. The record remained open until March 23, 2004, when the case was submitted and the record closed by order.

Findings of Fact

Background

The appellant has been insured by SCIF under policy number 1441416 since November 1995. (Exhibit 16, p. 63.) When the appellant initially applied for workers' compensation insurance in 1995, it filled out a SCIF questionnaire describing its operations as "cleaning and filtering of underground fuel tanks using hoses and pumps, not entry into tank." The appellant did not indicate on this questionnaire that it had PUC/ICC licenses or that it was involved in the transportation of hazardous materials. The appellant listed 2 clerical employees, 1 outside sales person and 1 person who cleaned the tanks. (Exhibit 16, pp. 9-12; Reporter's Transcript pp. 49, 58, 69.) Based on this information, SCIF issued the appellant an insurance policy that assigned the payroll of appellant's employees to classification codes 8810 (clerical), 8742 (outside sales) and 9402 (sewer tank cleaning). (Exhibit 5.)

Appellant received a standard policy of workers' compensation insurance from SCIF that states the insured is "responsible for telling us [SCIF] at once when the information contained in this policy is no longer accurate for your operations." (Exhibit

16, p. 1.) The SCIF policy sets forth the basis for determining how the insured's final premium will be calculated and states that SCIF may audit a policy within three years from a policy's expiration date.⁸ In addition, SCIF instructed the appellant to "send to this office written notice of any changes on your policy, such as a change in mail address, location, phone number, ownership, operations, or to request cancellation" by letter dated December 20, 1995. (Exhibit 17.)

In November 1997, appellant incorporated and changed its name from TLD Clean Fuels to Advanced Fuel Filtration Systems, Inc. (Exhibit 6.) At this time, SCIF requested that the appellant complete a "Statement of Operations" that sought a detailed breakdown of AFFS's business operations including a description of: (1) its employee duties and the locations where the duties were performed; (2) the type of products it manufactured, sold and/or services rendered; (3) the percentage or amount of its payroll for each separate operation; and (4) any other information that might be helpful in describing its operations. (Exhibit 7, p. 315.)

According to the "Statement of Operations" AFFS submitted to SCIF on November 17, 1997, the appellant employed four persons and specialized "in the 'Fuel Polishing' or filtering of fuel stored in underground storage tanks. All activities are

⁸ The policy language under Part 5 Premium specifically states, in pertinent part, as follows:
"B. Classifications The Declarations show the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy. **You are responsible for telling us at once of any change in classification.** . . .
E. Final Premium The premium shown on the Declaration, schedules and endorsements is an estimate. **The final premium will be determined after this policy ends by using the actual premium basis and the proper classifications, rates and rating plans that lawfully apply to the business and work covered by this policy.** . . .
G. Audit . . . **We may conduct the audits** during regular business hours during the policy period and **within three years after the policy period ends.** Information developed by audit will be used to determine final premium. . ." (Exhibit 16, pp. 4-5. Emphasis added.)

performed above ground.” Employee duties were listed as administrative, sales, taking samples from underground storage tanks and operating the filtering equipment.

Appellant apportioned its payroll as follows: 25% Administration, 50% Sales and 25% actual work by the technician. (Exhibit 7, p. 315.) Appellant’s witness Mr. Parker, who was AFFS’s vice president in 1997, testified that the transportation of hazardous materials was always a part of appellant’s operations. However, he conceded that he did not specifically list the trucking or transportation of fuels as an operational activity on the Statement of Operations he submitted to SCIF in 1997. Mr. Parker further testified that he did not remember when AFFS obtained PUC/ICC licenses and acknowledged that appellant did not provide this information to SCIF in 1995. There is no documentary evidence in the record that AFFS ever provided this information to SCIF. (Reporter’s Transcript, pp. 41-44, 49; Exhibit 3F, p. MM-35.)

Appellant’s annual final premiums for the 1995-1998 policy years amounted to less than \$10,000. SCIF did not conduct a physical audit of AFFS’s payroll records because of its premium size. Instead, SCIF relied on the appellant’s signed monthly payroll reports to calculate appellant’s final premium for these policy periods. (Exhibit 22.) Around 1999, AFFS’s operations began to expand; the appellant employed 14 persons in 1999 and 49 persons in 2000. Although AFFS’s operations now definitely included drivers who hauled hazardous materials, AFFS continued to submit its monthly payroll reports and premium payments to SCIF under the classification codes originally assigned to its policy in 1995: 8810 (clerical); 8742 (outside sales); and 9402 (sewer tank cleaning.) (Exhibits 8.1 – 8.3.)

During the 1999 policy period, AFFS transferred its location from Huntington Beach, California, to Corona, California. (Appellant's First Amended Pleading, p. 3) As a consequence, AFFS's account was transferred from SCIF's Santa Ana district office to SCIF's Riverside district office for auditing. AFFS's 1999 policy expired on or about October 1, 2000. In December 2000, SCIF's Riverside district office auditing department noted that AFFS was involved in trucking operations beginning in the fourth quarter of 1999 and that AFFS might not have informed SCIF's Santa Ana district office about these operations. The Riverside office requested that the Santa Ana office complete the final audit of AFFS's 1999 policy year because of possible "AB1914"⁹ issues. (Exhibit 3-F, p. G.)

The audit of AFFS's 1999 and 2000 policies was conducted by Ms. Fincher, a senior auditor with SCIF's Santa Ana district office. Ms. Fincher obtained AFFS's payroll records from its accountant and the job duties of each of AFFS's employees from Ms. Kellogg during a visit at AFFS's office on November 16, 2001¹⁰. (Reporter's Transcript, pp. 104, 107-108.) Ms. Kellogg observed that AFFS indeed was engaged in activities in addition to those operations defined by classification codes 8810 (clerical), 8742 (outside sales) and 9402 (sewer tank cleaning.) These new activities included the bulk transportation of oil, hazardous materials, including waste water and used oil, and tank construction. Since these operations were not defined by the classifications codes originally endorsed on AFFS's policy, Ms. Fincher was unable to assign the payroll of

⁹ AB 1914 enacted in 1994, amended Insurance Code section 11753.1 and added Insurance Code section 11753.2 with respect to effective dates and proper notice to policyholders of classification changes.

¹⁰ No evidence was provided to explain the approximate 12 month delay between the December 2000 request for an audit made by SCIF's Riverside office and Ms. Fincher's November 2001 audit of the 1999 and 2000 policies. While it could be wished that Santa Ana's office had conducted the audit of the policies more expeditiously than it did, SCIF was not legally obligated to do so.

the employees engaged in these activities. In order to complete her audit, Ms. Fincher requested that a physical inspection of AFFS's premises be conducted by SCIF's Santa Ana district office underwriting department to verify that the classifications assigned to AFFS's policy accurately reflected all of its operations for the audited periods. (Exhibit 16, pp. 139-140; Reporter's Transcript, pp. 78-80.)

Ms. Teri Wood, SCIF senior underwriter, conducted an inspection of AFFS on February 27, 2002. On March 5, 2003, Ms. Wood issued her inspection report and notified AFFS by letter that her recent inspection resulted in the identification of new operations that required SCIF to endorse additional classifications 7219 (01) Truckmen, 8081 (01) Stores – Wholesale, 4511 Analytical or Testing Laboratories and 6218/6220 Excavation onto AFFS's policy effective October 1, 1999. (Reporter's Transcript, pp.61-63, 74-76; Exhibits 9-10, 16, pp. 171-174.)

Ms. Fincher finalized and submitted her audits of AFFS's 1999 and 2000 policies on May 2, 2002. (Reporter's Transcript, p. 101.) SCIF's final bill for the 1999 policy, dated May 24, 2002, is in the amount of \$17,860.19 and SCIF's final bill for the 2000 policy, dated July 1, 2002, is in the amount of \$74,021.23. (Exhibits 8.2, 8.3, 16, p. 154)

AFFS's Operations During The 1999 And 2000 Policy Periods

Mr. Douglas Parker, president of AFFS from January 1, 1999 until September 2003, conceded during the hearing that three of the five classification codes SCIF assigned to its 1999 and 2000 policies accurately described appellant's operations during this period.¹¹ (Reporter's Transcript, pp. 34, 40-42, 52.) However, Mr. Parker did not

¹¹ These classifications are: 7219 (01) Truckmen; 8081 (01) Stores – Wholesale; and 4511 Analytical or Testing Laboratories

believe AFFS was involved in any excavation work in 1999 or 2000.¹² (Reporter's Transcript, pp. 55-56.) The weight of the evidence is to the contrary.

During her inspection, Ms. Wood met with AFFS's office manager, Ms. Kellogg. In addition to verifying that AFFS had engaged in operations defined in classification codes 7219 (01), 8081(01) and 4511, Ms. Kellogg also told Ms. Wood that AFFS had engaged in excavation work beginning in early 2001. Ms. Wood subsequently verified, through the Contractor's State Licensing Board ("CSLB"), that AFFS had obtained a construction license on October 1, 1999. According to Ms. Wood, appellant would have to obtain the CSLB license before it could do any excavation work. Based on the foregoing, Ms. Wood concluded that it was possible that AFFS had conducted excavation operations during the 1999 policy year. (Reporter's Transcript, pp.61-63, 74-76, 98; Exhibits 9-10, 16, pp. 171-174.)

Ms. Wood's supposition regarding AFFS's excavation activities during the 1999 policy period is supported by Ms. Fincher's testimony. Ms. Fincher reviewed AFFS's payroll records with Ms. Kellogg, who confirmed that AFFS's employees actually had

¹² The WCIRB Inspection Report issued on February 12, 2003, notes that AFFS may be engaged in "the excavation of damaged underground fuel tanks at automobile gasoline stations." and assigned classifications 6218 and 6220 to AFFS's operations. (Exhibit 3-A.) Classifications 6218 and 6220 are defined in the Plan as follows:

"6218(1) EXCAVATION – N.O.C. – including borrowing, filling or backfilling – employees whose regular hourly wage does not equal or exceed \$22.00 per hour Mass rock excavation, grading or excavation in connection with street or road construction, pile driving, shaft sinking, caisson or cofferdam work shall be separately classified.

6220(1) EXCAVATION – N.O.C. – including borrowing, filling or backfilling – employees whose regular hourly wage equals or exceeds \$22.00 per hour. Assignment of this classification is subject to verification at the time of final audit that the employee's regular hourly wage equals or exceeds \$22.00 per hour. The payroll of an employee whose regular hourly wage is not shown to equal or exceed \$22.00 per hour shall be classified as 6218(1), "Excavation – N.).C." Mass rock excavation, grading or excavation in connection with street or road construction, pile driving, shaft sinking, caisson or cofferdam work shall be separately classified." (1999 Plan, Part 3, Classifications, p. 33.)

Case

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

FILED

APR 22 2004

In the Matter of the Appeal of)
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 Respondent.)
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ORDER ADOPTING PROPOSED DECISION

The attached proposed decision of Administrative Law Judge Marjorie A. Rasmussen is adopted as the Insurance Commissioner's decision in the above-entitled matter. This order shall be effective May 21, 2004. Judicial review of the Insurance Commissioner's decision may be had pursuant to California Code of Regulations, title 10, section 2509.76. Persons authorized to accept service on behalf of the Insurance Commissioner are listed below:

Chief Counsel Gary Cohen
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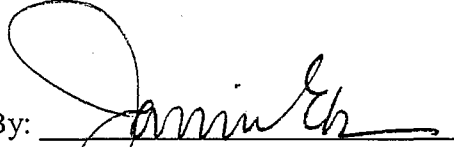
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Any party seeking judicial review of the Insurance Commissioner's decision shall lodge copies of the writ of administrative mandamus and the final judicial decision and order on the writ of administrative mandamus with the Administrative Hearing Bureau of the California Department of Insurance.

Additionally, pursuant to Government Code section 11425.60, I hereby designate pages 12 – 18 contained under sub-caption "Decision" as precedential and remove *Allee Construction Company vs. WCIRB* (File No. ALB-WCA-94-15) from the list of designated precedents.

Dated: April 21, 2004

John Garamendi
Insurance Commissioner

By: 
JANICE E. KERR
Special Counsel
Department of Insurance

been engaged in excavation work during the 1999 and 2000 policy periods. (Reporter's Transcript, pp. 101-104; Exhibits 8.2, 8.3, 25 and 26.)

While all witnesses appeared to testify forthrightly, Mr. Parker's testimony on the issue of whether and when AFFS was engaged in excavation activities was based more on his recollection and a narrower definition of excavation than that defined by the Plan.¹³ In contrast, the testimony of Ms. Wood and Ms Fincher was based on their observations of AFFS's operations, their discussion with AFFS employees and, in Ms. Fincher's case, her additional review of the payroll records. On balance, SCIF's witnesses were more credible with respect to this question of fact.

Accordingly the administrative law judge finds that during the 1999 and 2000 policy periods AFFS's employees were engaged in operations properly assigned to classifications 7219 (01), 8081(01), 4511,6218 and 6220. Specifically, AFFS was engaged in excavation work as defined by the Plan as early as the final quarter of 2000, which falls within AFFS's 1999 policy period. (Reporters Transcript, pp. 104-114; Exhibit 26.)

Discussion

SCIF Properly Assigned Classification Codes 7219 (01), 8081(01), 4511, 6218 And 6220 To AFFS's 1999 And 2000 Policies Pursuant to Insurance Code Sections 11753.1 (b) and 11753.2(c)

Insurance Code section 11753.1(b) requires, in part, that "any insurer adopting a change in the classification assignment of an employer that results in an increased

¹³ In his closing arguments on behalf of AFFS, appellant's counsel explained that, "Mr. Parker's definition of "excavation" is different from regular old tank repair. "Excavation" means digging a huge hole for something new. Mr. Parker certainly wasn't aware of that classification going back to tank repair and that's why he said '02." (Reporter's transcript, p. 120.)

premium shall notify the employer in writing . . . of the change and the reasons for the change.”

Insurance Code section 11753.2 sets forth the basis for and effective dates of changes in classification assignments on workers’ compensation policies. The effective date of a classification change depends, in part, on whether the change arises from an erroneous classification or insured’s change of operations.

Insurance Code section 11753.2(a) governs the effective date of a classification change due to an erroneous classification that results in a decrease in premium and Insurance Code section 11753.2 (b) governs the effective date of a classification change that results in an increase in premium.¹⁴ Insurance Code section 11753.2(c) governs the effective date of a change of classification due to a change in an employer’s operations.¹⁵ The parties differ over whether Insurance Code sections 11753.2(b) or 11753.2(c) apply to the facts in this case.

SCIF contends that Insurance Code section 11753.2(c) applies to this appeal because AFFS’s operations changed. AFFS contends that the issue before the Commissioner deals with an erroneous classification and that Insurance Code section 11753.2 (b) governs this matter. AFFS also contends that SCIF failed to notify AFFS of the classification changes to its policy pursuant to Insurance Code section 11753.1(b).

¹⁴ Insurance Code section 11753.2(b) states, in pertinent part, as follows: “If a change in a classification assignment on a workers’ compensation insurance policy is due to an erroneous classification and results in an increased premium, the classification change shall become effective on the effective date of the erroneous classification assignment . . .”

¹⁵ Insurance code section 11753.2(c) states as follows: “If a change in a classification assignment on a workers’ compensation policy is due to an insured’s change of operations, any resulting increase or decrease in premium shall become effective on the date of the change of operations.” The plan incorporates the above Insurance Code sections in Part 5, Section III, subsection 3.

AFFS premises its argument that Insurance Code section 11753.2(b) is applicable to the facts here on its claims that SCIF erroneously placed the entire payroll of AFFS's drivers into classification code 7219(1) "Trucking" instead of allocating this payroll between 7219(1) and 3724(1) "Millwright Work" for the policy years in dispute. Since SCIF did not notify AFFS of the classification changes to its policy until March 5, 2002, AFFS contends that these changes should be effective on March 5, 2002, rather than October 1, 1999. (Reporter's Transcript, p. 121.)

AFFS's argument fails for two reasons. First, Insurance Code section 11753.2(b) is not applicable to the facts in this appeal because the classifications SCIF added to AFFS's 1999 and 2000 policies were not erroneous. Mr. Parker admitted during his testimony that classification codes 7219(1) "Trucking" and 3724(1) "Millwright Work" accurately described appellant's operations during the policy years at issue and the evidence overwhelmingly proves that the remaining classifications SCIF added to the policies on March 5, 2002, correctly described the risks associated with AFFS's operations in 1999 and 2000.

Second, pursuant to the stipulation, AFFS withdrew the issue of whether SCIF should have segregated the payroll of AFFS's drivers between classification codes 7219(1) "Trucking" and 3724(1) "Millwright Work. (Reporter's Transcript, pp. 9-11.) Underlying the stipulation was the WCIRB's determination that AFFS had not submitted payroll records for its drivers in a manner that satisfied the requirements for payroll division that is contained in Part 3, Section VI, Rules 2 and 3 of the Plan and AFFS's concession of this fact. (Exhibit 35.) Merely because SCIF did not apportion the payroll

of AFFS's drivers between the two classifications does not make the assignment of these classifications erroneous.

As AFFS's business expanded in 1999, its operations changed. While each of the activities described by Classification Codes 7219 (01), 8081(01), 4511, 6218 and 6220 ultimately may have supported AFFS's primary business of petroleum-based product filtration, these activities nevertheless represent a significant change in AFFS's operational risks that are not reflected in the rates for the original three classification codes assigned to AFFS's 1995 -1998 policies. The evidence is clear that once SCIF endorsed the additional classifications on AFFS's policy, SCIF timely notified AFFS in writing on March 5, 2002, of this action in accordance with Insurance Code section 11753.1(b).

Based on the foregoing, SCIF correctly assigned additional classification codes to AFFS's 1999 and 2000 policies to reflect changes in AFFS's operations. The effective date of the classification changes is October 1, 1999, as mandated by Insurance Code section 11735.2(c) and Part 5, Section III subsection 3(b) of the Plan.

Despite the clear and convincing evidence in this matter, AFFS argues in the alternative that the classification codes should go into effect on March 5, 2002, because AFFS did not understand the classification system and was not aware that it should have reported to SCIF that its operations included additional risks under the Plan. In any event, AFFS argues, SCIF knew about appellant's trucking operations as early as December 2000 and should have conducted timely physical audits of AFFS each year. AFFS's arguments are not persuasive.

The rules and regulations contained in the Plan and published by the WCIRB are no different from any other regulation governing business practices in California. It is AFFS's responsibility to know and abide by these laws. Ignorance of the law, in this case, is no excuse. The policy documents and the written communications between the parties clearly indicate that the appellant was put on notice that it had the responsibility to notify SCIF of any changes in its operations that might impact the insured's risk.

(Exhibit 16, p. 1 and Exhibit 17.)

The Plan permits a carrier to use the signed payroll statements from the employer in lieu of a physical audit of payroll records when the final premium is \$10,000.¹⁶ SCIF relied on AFFS's signed payroll statements during the 1995, 1996, 1997 and 1998 policy periods because AFFS's final premium was less than \$10,000. Based on the evidence, AFFS's labor force remained small and the description of AFFS's operations that SCIF received in 1997 indicated that its operations had not expanded. Thus, SCIF's reliance on AFFS's signed payroll statements to determine AFFS's final premium during the policy period from 1995 through 1998 was reasonable.

SCIF's policy documents notify the insured of when and how premiums are to be calculated and allow for premium audits to be conducted within three years of a policy's expiration. Based on the record, SCIF first learned of AFFS's new operations in December 2000 after AFFS's 1999 policy year had expired. This knowledge was used by SCIF in the course of its 1999 and 2000 audits of AFFS's policies. AFFS has provided no legal support, and none exists, for appellant's contention that the audits of its

¹⁶ Part 5, Section III, subsection 4(a) (2) of the Plan states, in pertinent part, as follows: "Each policy producing a final premium of less than \$10,000. shall be audited at sufficient intervals to ensure determination of proper payrolls. In each year when such a policy is not audited, a signed payroll statement shall be obtained from the employer."

policies should have been conducted in a different fashion or any sooner than they were by SCIF.

It is well recognized that individuals may suffer economic hardships for not being adequately insured. ¹⁷ In California, all employers are required to obtain workers' compensation coverage for their employees. (California Labor Code section 3700.) Thus, it is a legal necessity that employers insure all their risks. In this case, AFFS's failure to keep its policy up to date did not result in a loss or denial of coverage but a larger premium bill. Unlike the premium for an automobile insurance policy that is determined at the policy's inception, premiums for workers' compensation insurance are calculated after a policy has expired because the coverage rates are based, in part, on the employer's operations and payroll that are subject to change. By not keeping its policy up to date as its operations changed, the monthly premiums AFFS submitted to SCIF were based on incomplete reporting and thus, were inadequate for the risk actually insured. Although it is a hardship, AFFS must pay SCIF now for what it should have paid SCIF earlier.

Conclusion

For the foregoing reasons, SCIF correctly assigned classification codes 8018 (stores – wholesale); 7219 (truckmen), 6218/6220 (excavation) and 4511 (analytical or testing laboratories) to AFFS's policy 1441416 effective October 1, 1999.

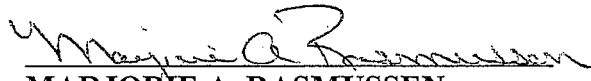
¹⁷ After the Northridge earthquake and the Southern California fires, the Commissioner has repeatedly warned California consumers to review and update their insurance policies, as necessary. With respect to workers' compensation insurance policies, the WCIRB regularly sponsors public seminars on classification and other rating issues for employers and members of the insurance industry.

ORDER

1. The determination of the SCIF to assign classification codes 8018 (stores – wholesale); 7219 (truckmen), 6218/6220 (excavation) and 4511 (analytical or testing laboratories) to AFFS's 1999 and 2000 policies effective October 1, is sustained.
2. The SCIF shall apply classification code codes 8018 (stores – wholesale); 7219 (truckmen), 6218/6220 (excavation) and 4511 (analytical or testing laboratories) to AFFS's operations for the 1999 and 2000 policy years.

I submit this proposed decision based on the evidentiary hearing, records and files in this matter and I recommend its adoption as the decision of the Insurance Commissioner of the State of California.

Dated: April 6, 2004.


MARJORIE A. RASMUSSEN
Administrative Law Judge
California Department of Insurance