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STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE

IN THE MATTER OF )  
MUSK OX DEVELOPMENT CORPORATION, )  
Appellant. )

Case No. H 12-02

**PROPOSED DECISION**

**Introduction**

The dispute in this matter concerns the proper classification for Mark Austin, Executive Director of Musk Ox Development Corporation (MODC). Alaska National Insurance Company (ANIC) assigned Code 0083 to Mr. Austin. Mr. Austin and his agent believe that Mr. Austin should be assigned Code 9016. This classification dispute was the subject of a hearing before the Alaska Workers' Compensation Rating and Classification Grievance Committee (committee) on July 19, 2012. The committee upheld ANIC's class assignment of Mr. Austin.

MODC appealed that decision to the director of the Division of Insurance. The undersigned was appointed by the director to act as hearing officer in this matter. The parties briefed the issues and a hearing was held on May 2, 2013.

Pursuant to the director's appointment, I hereby submit this proposed decision affirming the committee's decision.

**Discussion**

1 MODC operates a 160 acre Musk Oxen farm located in Palmer, Alaska. They  
2 are ranched under a state permit to harvest the Quiviut, the soft under hair that is combed out of  
3 the Musk Oxen in the spring. MODC also provides educational tours of the farm during the  
4 summer. These tours provide 90% of MODC's income.  
5

6 Mr. Austin is the executive director of MODC and resides at the farm year  
7 round. As executive director, Mr. Austin's duties include supervision of the herd manager and  
8 her staff year round and, during the summer season, supervision of the tour manager. Mr.  
9 Austin spends 99% of his time in the office and 1% in the farm areas supervising the operation.

10 During the 2009-2010 policy period, while MODC had a herd manager, Mr. Austin  
11 filed a claim for an injury he suffered working on the farm with animals.

12  
13 **Conclusion**

14 Because the job description provided by Mark Austin, dated March 21, 2012,  
15 clearly shows that the job position is manager over the tour staff as well as the herd manager  
16 and herd staff and since the payroll did not reflect the separation of classifications, the NCCI  
17 manual Rule 1-D-3 with the rule note: *If the insured does not maintain verifiable payroll*  
18 *records specific to the additional higher rated operation, then assign the principal and the*  
19 *additional operation to the higher rated classification, should apply.*

20 At the hearing on May 3, 2013 MODC argued it had submitted verified payroll  
21 records showing Mr. Austin earned his entire pay-under-9016 making 9016 the proper  
22 classification for him. Although not marked as an exhibit for the appeal, it is likely MODC was  
23 referring to the handwritten account showing \$49,999.92 earned by "Mark" attached to the  
24 grievance committee summary. This argument fails for two reasons. For assignment to more  
25 than one classification Rule 1-D-3-c-(1) requires the operation to be able exist as a separate  
26 business if the insured's principal business in the state ceased to exist. Here the tour operations

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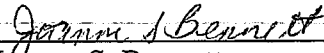
and farm operations are inseparable. The tour takes visitors to the farm for educational purposes. With no musk ox farm to tour the tour operation must cease to exist. Conversely, the tour operation brings the farm 90% of its income. If the tour operations were to cease, MODC would suffer a 90% loss of income, which would result in the collapse of the business. Therefore MODC has not shown that Mr. Austin is qualified for more than one classification as required under Rule 1-D-3 and the higher classification applies.

Also, the assignment of 100% of payroll to 9016 for Mr. Austin is not credible. His duties include overall supervision of tour and herd operations, which would require him to leave the office and visit the farm areas at least 1% of the time, yet the proffered payroll record shows 0% of Mr. Austin's payroll classified under 0083. Because Rule 2-G-2(a) and (b) requires payroll records to show the actual time spent working in each classification and not an estimate the entire payroll must be assigned to the highest classification, in this case 0083.

As such rules are applicable and Mr. Austin has a risk of exposure to animals, I find that Alaska National Insurance Company correctly completed the audit for the policy period of December 19, 2010 to December 19, 2011 as applicable to Alaska National policy number 10LWW93924.

For these reasons, I affirm the committee decision.

Dated this 18th day of November, 2013.

  
Joanne S. Bennett  
Hearing Officer

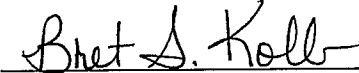
**Adoption**

STATE OF ALASKA  
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The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 12-02 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 18<sup>th</sup> day of November, 2013.



Bret S. Kolb  
Director

**Non-Adoption Options**

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 12-02 and instead orders that the case be returned to the hearing officer to

- \_\_\_ take additional evidence about \_\_\_\_\_
- \_\_\_ make additional findings about \_\_\_\_\_
- \_\_\_ conduct the following specific proceedings: \_\_\_\_\_

DATED this 18<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
Bret S. Kolb  
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 12-02 as follows:

Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 18<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
Bret S. Kolb  
Director

I hereby certify that on the 18th day of November, 2013 I mailed copies of this document to the following persons: