

STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

BEFORE THE DIVISION OF INSURANCE

In the Matter of:)
)
 Polar Roller Express, Inc.,)
)
 Appellant.)
)

Case No. H 04-01

Proposed Decision

This case is an administrative appeal of a decision by the Alaska Workers' Compensation Rating and Classification Grievance Committee (hereinafter "committee"). Polar Roller Express, Inc. is a trucking enterprise operating in Alaska and Washington. The company seeks to change a rating classification for its Alaska business and also to receive a retroactive refund of insurance premiums. After Polar Roller unsuccessfully appealed an initial decision to the committee, it requested a hearing with the division of insurance. See 2/3/04 Letter from NCCI to Ken Jones / Polar Roller (attached as Appendix "A"). The division referred the matter to the hearing officer to conduct a hearing and prepare a proposed decision in accordance with AS 21.06.180 – AS 21.06.240.

Polar Roller was represented in this proceeding by Ken and Rebecca Jones, principals of the corporation. The servicing carrier for the workers' compensation insurance coverage at issue in this case is Alaska National Insurance Co. (ANIC). See Policy no. 02D WW 92611 (attached as Appendix "B"). ANIC was represented by an attorney. This appeal was resolved without an evidentiary hearing after ANIC filed a Motion for Summary Judgment supported by the sworn testimony of its Vice President of Audit, Patricia Henderson. See Affidavit of Patricia Henderson (attached as Appendix "C"). The motion

was unopposed by Polar Roller and granted. See 11/27/04 Memorandum and Order Granting Summary Judgment (attached as Appendix "D"). This document and its attachments constitute the hearing officer's proposed decision for the Director of Insurance.

Despite the fact that Polar Roller requested a hearing, it did not file any documents in this case after the July 26, 2004 Notice of Hearing, which set the hearing date and related pre-hearing deadlines. ANIC was not provided witness or exhibit lists by Polar Roller. In addition, due to Polar Roller's failure to respond to discovery, a Motion for Sanctions filed by ANIC was granted by order dated November 12, 2004. The hearing officer found that "appellant has shown a pattern of disregard for procedures, and its conduct has prejudiced Alaska National in its preparation for the hearing." Polar Roller expended minimal effort to prosecute this appeal, in contrast to ANIC.

The attached Findings of Fact and Conclusions of Law are adopted as part of this proposed decision (attached as Appendix "E"). The findings and conclusions, along with the documents contained in the record of this case, support a determination that the committee's decision should be affirmed.

Recommendation

The decision of the Alaska Workers' Compensation Rating and Classification Grievance Committee in Case 01-AK-2004 (Polar Roller Express, Inc. / J.J. Hadley, Inc.) is affirmed as follows:

- The 7219 code classification for the payroll applicable to Polar Roller drivers hauling non-owned goods in Alaska is correct.
- Codes 7728 and 7729 are inapplicable to Polar Roller in this case.
- Retroactive cancellation of ANIC's insurance policy no. 02D WW 92611 is not available to Polar Roller.
- Polar Roller does not have a right to refund of premiums under insurance policy no. 02D WW 92611.

DATED at Anchorage, Alaska this 9th day of December, 2004.



David G. Stebing
Administrative Hearing Officer

STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT

BEFORE THE DIVISION OF INSURANCE

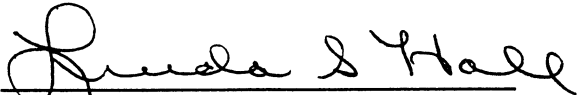
In the Matter of:)
)
 Polar Roller Express, Inc.,)
)
 Appellant.)
)

Case No. H 04-01

Final Action on Proposed Decision Under AS 21.06.100

The Director of Insurance having reviewed the attached proposed decision of the hearing officer in: The Matter of **Polar Roller Express, Inc.**, Case No. **H 04-01**, hereby adopts the decision in its entirety, including the analysis, attachments, findings of fact, and conclusions of law. This order is the final administrative action in this case. The effective date of the order is set forth below.

Dated: 12-27-04

By: 
Director of Insurance



Regulatory Assurance

Tim Hughes
Senior Underwriting Analyst

February 3, 2004

Certified Mail # 7002 0806 0004 4671 6177

RECEIVED

MAR 22 2004

DIVISION OF INSURANCE
ANCHORAGE OFFICE

Mr. Ken Jones
Polar Roller Express, Inc.
1504 Meadowlark Terrance
Clarkson, WA 99403

Re: Decision of the Alaska Workers Compensation Rating and Classification Grievance Committee (Committee)

Dear Mr. Jones:

This letter is to advise all interested parties of the decision made by the Committee at its meeting on January 22, 2004. The following is a reproduction of the Committee meeting minutes and includes the resolution as it relates to your appeal.

01-AK-2004 Polar Roller Express, Inc. (J.J. Hadley)

Becky and Ken Jones presented their appeal before the Committee by telephone. They requested the flat cancellation of a policy issued through the Alaska Workers Compensation Insurance Plan (WCIP), effective April 20, 2002 – 2003. The flat cancellation would result in a full refund of all paid premium for this policy. In addition, they requested that the carrier be denied any attorney fees associated with the current collection activity of this policy. The current amount of billed premium for the policy in dispute totals \$67,150, with an additional amount for legal expenses not to exceed \$5,000.

Polar Roller Express is an Alaska corporation operating a trucking business primarily hauling goods between Alaska and the State of Washington. The base terminal for the business is located in Clarkston, Washington. While some drivers reside in Alaska, all maintenance and storage facilities of the business are located in the State of Washington.

Having its base terminal in Washington, Polar Roller Express secured workers compensation coverage through Washington Labor & Industries (Washington L & I). Polar Roller Express employed the services of an employee leasing service, EMPRO. EMPRO advised the insured that drivers that reside in Alaska must be covered under an Alaska workers compensation policy. Based on this information, Polar Roller Express submitted an application to the Alaska WCIP to cover Alaska resident drivers. A policy was issued effective April 20, 2003 and was assigned to Alaska National in their role as a servicing carrier. Subsequent to securing the Alaska policy, the insured determined that their Washington L& I policy provided coverage for all workers, including those that reside in Alaska. The insured submitted a Cancellation Request Form, signed May 5, 2003, requesting a flat cancellation of the Alaska policy and a full refund of all paid premiums. In part, the insured based their determination that an Alaska policy was not needed on NCCI's Extra-Territorial Classification Guidelines, as published in the NCCI's *Scopes of Basic Manual Classifications*. The guideline states:

The following material was developed by NCCI to be used as a guide by auditors and underwriters in the determination of premium for trucking with extra-territorial employments where no company guidelines have been established for this purpose.

10920 W. Glennon Dr., Lakewood, CO 80226
Telephone: 303-969-9456 E-Mail Tim_Hughes@NCCI.COM

APPENDIX "A"

The payroll of drivers, chauffeurs, and helpers for truckers shall be assigned to the state in which the base terminal from which they load, unload, store or transfer freight on a regular basis is located. Example: A trucker residing in State A has a base terminal in State B. If the driver travels regularly to the base terminal in State B to load or unload freight, the trucker's payroll shall be assigned to State B. When the driver, chauffeur or helper does not operate from a base terminal, a determination shall be made as to where the exposure lies. In that case, payroll shall be assigned as follows:

1. If it can be established that a trucker spends a majority of driving time in a specific state, the trucker's payroll shall be assigned to that state.
2. If a base terminal or state of majority driving time cannot be established and the trucker is traveling from their state of residence, payroll shall be assigned to the trucker's state of residence.

For purposes of these procedures, the following definitions shall apply:

Base Terminal: A permanent location with central loading docks and/or storage facilities where a trucker regularly goes to load, unload, store or transfer freight.

State of Residence: The state in which the trucker resides as evidenced by the location used for filing federal income tax.

Regular: A pattern of 40 hours per week or any other pattern that appears on a continuing basis.”
In May 2003, the insured requested a flat cancellation of the Alaska policy and a full refund of all collected premiums as the Alaska policy was not actually needed.

When Alaska National received the request for flat cancellation, they advised the insured that they must perform an audit to assure all drivers were reported and covered under another policy. The preliminary audit determined that EMPRO had not reported the wages of the Alaska resident drivers to the Washington L & I policy. Mr. Jones subsequently advised the auditor that EMPRO is no longer providing services to Polar Roller Express and that he would file an amended report with Washington L & I to include the wages of Alaska employees. The amount of payroll for the Alaska resident drivers was approximately \$281,000 through February 10, 2003.

The Alaska National audit also determined that the insured hired owner operators to haul goods on behalf of Polar Roller Express. The insured provided no evidence to Alaska National showing that these workers had their own workers compensation coverage. The insured maintains these workers are independent contractors, and as such, Polar Roller Express is not liable for their workers compensation coverage. Alaska National advised the insured that they must complete a review of the records for these drivers to make a proper determination as to the carrier's liability, if any.

It is Alaska National's position that unless the insured can provide evidence that they have paid premiums on the wages for the Alaska residents under another policy, Alaska National is entitled to the full \$67,150 of billed premium.

The following additional information was presented during the appeal:

- Polar Roller Express does not have a base of operation in Alaska.

- The drivers in dispute spend approximately 20% of their time driving within the state of Alaska. The balance of the time is spent driving in Canada and Washington State.
- The Insurance Corporation of British Columbia has deferred payroll earned while in Canada to Washington State because the base of operation is located in this state.
- NCCI directed Alaska National to refund \$28,000 pending the outcome of the audit dispute to reduce the stated financial hardship the business was experiencing.
- There was no documentation presented at the meeting that confirmed the insured's statement that both NCCI and the Alaska Division of Insurance support the position that Alaska policy coverage was not necessary.
- The Washington L & I policy paid all claims. However, there were no Alaska resident drivers injured.
- Alaska State special Code 7219 applies to truck drivers hauling goods for others. In most other NCCI states, Code 7228 or Code 7229 applies to trucking operations. The insured stated that the rate for Code 7219 is 80% higher than the rate paid to the Washington L & I policy. Committee members confirmed that truck drivers insured in Alaska are not classified to Code 7228 or to Code 7229 but to Code 7219.

Committee members asked the following specific questions:

- Did the independent operators employed to haul goods on behalf of Polar Roller Express provide Certificates of Insurance? Insured's response: No. As owner operators, they may elect not to carry workers compensation.
- How were these independent operators paid? Insured's response: Revenue was processed through the financial books of Polar Roller Express.
- Have the wages of the Alaska drivers in dispute been reported to Washington L & I? Insured's response: Washington L & I will pick up the wages of these drivers at the next audit after the dispute with the Alaska policy has been resolved.
- Has Polar Roller Express paid any premiums to Washington L & I for any of the workers in dispute? Insured's response: No.
- Are there any documents from Washington L & I as to their position on covering the drivers that reside in Alaska? Insured's response: No.
- What is the effective date of the Washington L & I policy? Insured's response: Not sure. The policy is issued under continual coverage. We make quarterly payments.
- Does the Washington L & I policy provide Other States Coverage? Insured's response: Depends if there are other states that have an identified base terminal operation.
- Does the Washington L & I policy satisfy the Alaska Department of Labor requirements? Insured's response: Yes. There was no need to file Alaska Unemployment forms because there are no Alaska employees. The drivers in Alaska have no "point to point" operations within the state.
- Was EMPRO a payroll service or employee leasing service? Insured's response: EMPRO and Polar Roller Express acted as "co-employers." EMPRO, based in Idaho, issued payroll checks to drivers and reported Federal Tax on drivers. EMPRO issued W-4's.
- Who was responsible for securing and paying workers compensation insurance on drivers? Insured's response: EMPRO.

Concluding comments of insured and Alaska National:

- The Alaska National representative stated that the insured has not produced any evidence of duplicate coverage on the drivers in question. As such, it is Alaska National's position that the audit stands as billed.
- Mr. Jones stated that they have never agreed to provide Alaska National with documents concerning their Washington I & L policy. Alaska National has overstepped its authority in requesting policy information on the Washington L & I policy.

The Committee moved into executive session. The Alaska National representative was dismissed from the meeting room. Various members made the following points during the executive session discussion:

- A worker injured within the State of Alaska has the right to file for Alaska benefits even if the policy is written by another state. It is believed that Alaska benefits are higher than those in Washington. A worker injured in Alaska would therefore pursue Alaska benefits.
- If a claim had been filed under the Alaska National policy, as a minimum, Alaska National would have been required to defend the claim.
- It is believed that EMPRO was correct in separating Alaska payroll from Washington payroll.
- No evidence was provided that substantiated that duplicate coverage existed on the drivers that reside in Alaska.
- The Cancellation Request was signed by the insured 13 months after the Alaska policy was issued.
- Of the \$67,150 of billed premium, it appears that \$23,515 represents coverage for independent contract drivers. Alaska National has not been able to confirm whether these drivers could make a claim under their policy. The insured provided no certificates of insurance or other documents to confirm the status of these drivers, or whether any of the drivers had any direct employees. Employees of independent contractors could make a claim under the Polar Roller Express policy if their employer did not have coverage.
- The Grievance Committee is not the ruling authority in determining whether coverage was required in Alaska for the drivers in dispute. The Grievance Committee determined that its role was to consider whether duplicate coverage existed during the time of dispute.
- Members questioned the insured's reliance on NCCI's Extra Territorial Classification Guidelines to determine whether coverage requirements for the State of Alaska were met. The published information is considered a "guideline" and not an approved rule for use in Alaska.

After consideration of all testimony and written material presented at the meeting, a motion was made, seconded and passed by majority vote and it was

RESOLVED, the Committee denies the request of Polar Roller Express to flat cancel the Alaska National policy. The Committee was provided no proof that other coverage was in force during the policy period in dispute, which covered the workers compensation exposures of the Alaska resident employees. The committee further affirms that drivers hauling non-owned goods in Alaska are properly classified to Code 7219 and that Code 7728 and 7729 are not available for use in the state.

By copy of this letter, Alaska National is advised of the Committee's decision.

You have the right to appeal the decision of the Appeals Committee to an administrative hearing unit for the State of Alaska. If you choose to exercise this right, your appeal must be made within 30 days from the receipt of this letter. To request a hearing, contact:

PARALEGAL
Director of Insurance- Attention Barbara Karl - *907-269-7919*
Dept. of Commerce and Economic Development *907 269 -4580*
3601 C Street, Suite 1324
Anchorage, AK 99503

907-269-7910

*STATE OF AK
DEPT OF COMMUNITY
ECON
DEVELOP*

For more information concerning the hearing process, please call the Department of Commerce and Economic Development.

Please feel free to call me if you have any questions regarding the Appeal Committee's decision at (800) 525-8529, extension 25.

Sincerely,
Tim Hughes
Tim Hughes
NCCI, Inc.

*550 WEST 7th AVE
Suite # 15100*

*~~507-35069~~
99501-350*

C: Pat Henderson – Alaska National
WC Policy #02D WW 92611
Effective 4/20/02-03

WORKERS COMPENSATION & EMPLOYERS LIABILITY INSURANCE POLICY
 02D WW 92611

House Acct 140-1

Item 1 Insured:
 J.J. Hadley, Inc.
 c/o Empro P.E.S.
 1525 Idaho Street, Suite A-1504
 Lewiston, ID 83601
Meadowlark Terrace Clarkston, WA 99403

Producer:
 Alaska Business Insurance, Inc.
 1400 Benson Blvd., Suite 410
 Anchorage, AK 99503
725 @ renewal

The insured is a corporation. Federal Tax I.D. No. 820488516. Risk I.D. No. DNQ.
 Other workplaces not shown above. See WC 99 06 02, Other Workplaces Endorsement.

Item 2 Policy Period: From 04/20/02 to 04/20/03 at 12:01 A.M. standard time at your mailing address shown above.

Item 3 A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation law of the state(s) listed here: Alaska.

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in Item 3A. The limits of our liability under Part Two are:
 Bodily injury by accident \$ 100,000 each accident
 Bodily injury by disease \$ 500,000 policy limit
 Bodily injury by disease \$ 100,000 each employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: Refer to Residual Market Limited Other States Insurance Endorsement, WC 00 03 26A.

D. Endorsements and Schedules: See WC 99 06 22, Table of Contents.

Item 4 Premium: The premium for this policy shall be determined by our Manual of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Classifications	Code	Estimated Annual Remuneration	Rate Per \$100	Estimated Annual Premium
Alaska - State Act				
Trucking MQC-All Employees & Drivers	7219	260,000	13.58	35,308
Assigned Risk Plan Surcharge (1.250)	0077			8,077
Alaska Guaranty Fund Assessment (.000)	0986			0
	8510	31,200		
				\$43,385
Minimum Premium	\$500	Deposit Premium	\$13,016	Estimated Annual Premium
				\$43,385

TRUE & CERTIFIED COPY
 OF ORIGINAL
William R. Stewart
 Date: *8.5.04*

See End #10 11

10.1.03 CANCELLED
 Date *11/20/03*
 Reason *Company closed*
preferred physical audit
RE

TABLE OF CONTENTS

Form Title	Form Number	Endorsement Number
Workers Compensation Information Page	WC 00 00 01 01 98	NA
Table of Contents	WC 99 06 22 10 99	NA
Alaska Department of Commerce and Economic Development Division of Insurance Attorney Fees Coverage Notice (AWCARP)	PN 171 04 97	NA
Workers Compensation and Employers Liability Insurance Policy	WC 00 00 00A 03 95	NA
Other Workplaces Endorsement	WC 99 06 02 03 95	1
Residual Market Limited Other States Insurance Endorsement	WC 00 03 26A 02 97	2
Alaska Limit of Liability Endorsement (AWCARP)	WC 54 03 01 04 95	3
Premium Due Date Endorsement	WC 00 04 19 01 01	4
Alaska Assigned Risk Premium Surcharge Endorsement	WC 54 04 01 09 92	5
Alaska Notice of Installment Option Endorsement	WC 54 06 01 08 91	6
Installment Premium Endorsement - Workers Compensation	WC 99 06 04 10 99	7
Alaska Residual Market Safe Workplace Incentive Premium Credit Endorsement	WC 54 04 03 01 99	8
Alaska Cancellation and Nonrenewal Endorsement	WC 54 06 02 04 95	9
Important Information	ANIC 168 06 95	NA
Consumer Privacy Statement	PN 184 07 01	NA
		10
		11

Handwritten: Alaska Dept. of Commerce and Economic Development

**ALASKA DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
 DIVISION OF INSURANCE
 ATTORNEY FEES COVERAGE NOTICE (AWCARP)**

**THIS POLICY LIMITS COVERAGE FOR ATTORNEY FEES
 UNDER ALASKA RULE OF CIVIL PROCEDURE 82**

In any suit in Alaska in which we have a right or duty to defend an insured in addition to the limits of liability, our obligation under the applicable coverage to pay attorneys fees taxable as costs against the insured is limited as follows:

Alaska Rule of Civil Procedure 82 provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Alaska Rule of Civil Procedure 82. We provide coverage for attorney fees for which you are liable under Alaska Rule of Civil Procedure 82 subject to the following limitation:

We will not pay that portion of any attorney's fees that is in excess of fees calculated by applying the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) to the limit of liability of the applicable coverage.

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

For example, the attorney fees provided by the schedule for contested cases in Alaska Rule of Civil Procedure 82(b)(1) are:

- 20% of the first \$25,000 of a judgment;
- 10% of the amounts over \$25,000 of a judgment.

Therefore, if a court awards a judgment against you in the amount of \$125,000, in addition to that amount you would be liable under Alaska Rule of Civil Procedure 82(b)(1) for attorney fees of \$15,000, calculated as follows:

	20% of \$25,000		\$5,000
	10% of \$100,000		\$10,000
Total Award	\$125,000	Total Attorney Fees	\$15,000

If the limit of liability of the applicable coverage is \$100,000, we would pay \$100,000 of the \$125,000 award, and \$12,500 for Alaska Rule of Civil Procedure 82(b)(1) attorney fees, calculated as follows:

	20% of \$25,000		\$5,000
	10% of \$75,000		\$7,500
Total Limit of Liability	\$100,000	Total Attorney Fees Covered	\$12,500

You would be liable to pay, directly and without our assistance, the remaining \$25,000 in liability plus the remaining \$2,500 for attorney fees under Alaska Rule of Civil Procedure 82 not covered by this policy.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE
WORKERS COMPENSATION INSURANCE**

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;

4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance; or
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO
EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-

8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident-each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3A. of the Information Page.
3. We will reimburse you for the benefits required by the Workers Compensation Law of that

state if we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3C. of the Information Page.

PART FOUR YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premium for this policy will be determined by our Manuals of Rules, Rates, Rating Plans and classifications. We may change our manuals and

apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows 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.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications

and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. 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. Insurance rate service organizations have the same rights we have under this provision.

PART SIX - CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the

insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

Your policy has been signed by our President, but is not valid until countersigned on the Information Page by our authorized representative.

Alaska National Insurance Company (a stock company)
7001 Jewel Lake Road
Anchorage, AK 99502
Phone: (907) 248-2642

David P. Jones

President

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OTHER WORKPLACES ENDORSEMENT

Other workplaces not shown in Item 1 of the Information Page:

Schedule

Blank No. 12 Cache Street, Kasilof, AK

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 1

Countersigned By _____

EXHIBIT A
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RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT

"Part Three - Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE**A. How This Insurance Applies**

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:

- a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
- b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation

insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and

- c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 2

Countersigned By _____

EXHIBIT A
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ALASKA LIMIT OF LIABILITY ENDORSEMENT (AWCARP)

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because Alaska is shown in Item 3.A. of the Information Page.

**THIS POLICY LIMITS COVERAGE FOR ATTORNEY FEES
 UNDER RULE 82 OF THE ALASKA RULES OF CIVIL PROCEDURE**

In any suit in Alaska in which we have a right or duty to defend an insured in addition to the limits of liability, our obligation under the applicable coverage to pay attorney fees taxable as costs against the insured is limited as follows:

Rule 82 of the Alaska Rules of Civil Procedure provides that if you are held liable, some or all of the attorney fees of the person making a claim against you must be paid by you. The amount that must be paid by you is determined by Rule 82. We provide coverage for attorney fees for which you are liable under Rule 82 subject to the following limitation:

We will not pay that portion of any attorney fees that are in excess of fees calculated by applying the schedule in Rule 82(b)(1) for contested cases to the limit of liability of the applicable coverage.

This limitation means the potential costs that may be awarded against you as attorney fees may not be covered in full. You will have to pay any attorney fees not covered directly.

For example, the attorney fees provided by the schedule in Civil Rule 82(b)(1) for contested cases are:

20% of the first \$25,000 of a judgment or claim settlement.

10% of the amounts over \$25,000 of a judgment or claim settlement.

If a court awards a judgment against you in the amount of \$125,000, in addition to that amount you would be liable under Rule 82(b)(1) for attorney fees of \$15,000 calculated as follows:

20% of \$ 25,000	\$ 5,000
10% of \$100,000	\$10,000

Total Award	Total Attorney Fees
\$125,000	\$15,000

If the limit of liability of the applicable coverage is \$100,000, we would pay \$100,000 of the \$125,000 award, and \$12,500 Rule 82(b)(1) Attorney Fees, calculated as follows:

20% of \$ 25,000	\$ 5,000
10% of \$ 75,000	\$ 7,500

Total Limit of Liability	Total Attorney Fees Covered
\$100,000	\$12,500

You would be liable to pay, directly and without assistance, the remaining \$25,000 in liability, plus the remaining \$2,500 in attorney fees not covered by this policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. **The information below is required only when this endorsement is issued subsequent to preparation of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No. 3

Countersigned By _____

PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision.

**PART FIVE
PREMIUM**

- D. Premium is amended to read: You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. The due date for audit and retrospective premiums is the date of the billing.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 4

Countersigned By _____

EXHIBIT A
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ALASKA ASSIGNED RISK PREMIUM SURCHARGE ENDORSEMENT

This endorsement is added to Part 5 (Premium). It explains the premium you will pay for the insurance afforded by this policy with respect to operations in Alaska shown in the Schedule.

The total modified premium in excess of the amount shown for Alaska is subject to the Scheduled percentage premium surcharge. The required additional premium is or will be shown in Item 4 of the Information Page.

Schedule

% Premium
Surcharge

25%

Surcharge Applies to Alaska
Total Modified Premium in Excess of

\$3,000.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 5

Countersigned By _____

EXHIBIT A
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ALASKA NOTICE OF INSTALLMENT OPTION ENDORSEMENT

This endorsement modifies this policy if Alaska is shown in Item 3A. of the Information Page.

If your annual estimated premium exceeds \$2,000, you may elect to pay your premium on an installment basis of not fewer than two payments. Premiums paid by

installment must be structured to reflect seasonal peaks in the basis of the premium.

If you elect to pay your premium on an installment basis, we will issue an endorsement to show the installment schedule.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. **The information below is required only when this endorsement is issued subsequent to preparation of the policy.**

Endorsement Effective

Policy No.

Insured

Endorsement No. 6

Countersigned By _____

EXHIBIT A
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INSTALLMENT PREMIUM ENDORSEMENT - WORKERS COMPENSATION

1. It is agreed that the estimated policy premium, as shown under Item 4 of the policy Information Page, is payable as follows:

Payment Schedule	
Premium Due Date	Premium Due
April 20, 2002	\$13,016
June 30, 2002	4,338
July 30, 2002	4,338
August 30, 2002	4,338
September 30, 2002	4,338
October 30, 2002	4,338
November 30, 2002	4,338
December 30, 2002	4,341
Total Installment Payments	\$43,385

2. Additional premiums due for endorsements issued after inception may be paid on a cash basis.
3. Return premiums due for endorsements issued after inception may be refunded on a cash basis at the option of this company.
4. Failure to pay an installment, as set forth above, will result in cancelation of this insurance.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective _____

Policy No. _____

Insured _____

Endorsement No. 7

Countersigned By _____

EXHIBIT A
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ALASKA RESIDUAL MARKET SAFE WORKPLACE INCENTIVE PREMIUM CREDIT ENDORSEMENT

This endorsement provides notice that the final premium for your policy may be affected by the Alaska Residual Market Safe Workplace Incentive Program.

Your policy has been issued through the Alaska Workers Compensation Insurance Plan. The Alaska Division of Insurance has approved the use of a 3% premium credit for eligible employers.

To be eligible for this premium credit, you must:

- 1) Attest on the Alaska Supplemental Assigned Risk Application that you have a safety program in place; and

- 2) Remain loss-free for the entire annual term covered by this policy. You will be considered loss-free if we have not made any claim payment or established any loss reserve for reported claims covered by this policy.

We will determine your eligibility for this premium credit at the time your final premium audit is processed.

The application of this premium credit will not reduce your premium below the minimum premium applicable to your policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective

Policy No.

Insured

Endorsement No. 8

Countersigned By _____

EXHIBIT A
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ALASKA CANCELATION AND NONRENEWAL ENDORSEMENT

This endorsement modifies this policy if Alaska is shown in Item 3.A. of the Information Page.

The Cancellation Condition, as well as Part Five, Paragraph E.2., of the policy is replaced by this Condition:

D. Cancellation/Nonrenewal

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect. If you cancel, the final premium will be calculated pro rata based on the time the policy was in force, and increased by a cancellation fee equal to 7.5 percent of the unearned premium, provided that the final premium will not be less than the applicable minimum premium.
2. We may cancel this policy. We must mail or deliver to you and the agent or broker of record advance written notice stating the reason for cancellation and when the cancellation is to take effect. Such notice will be mailed or delivered not less than:
 - a. 10 days before the effective date of cancellation if we cancel for conviction of the insured of a crime having as one of its necessary elements an act increasing a hazard insured against, or for discovery of fraud or material misrepresentation made by the insured or a representative of the insured in obtaining the insurance or by the insured in pursuing a claim under the policy; or
 - b. 20 days before the effective date of cancellation if we cancel for nonpayment of premium, or for failure or refusal of the insured to provide the information necessary to confirm exposure or determine the policy premium; or
3. We will mail or deliver the notice to your last known address and the last known address of the agent or broker of record.
 - c. 60 days before the effective date of cancellation if we cancel for any other reason.
4. A post office certificate of mailing or certified mailing receipt will be sufficient to prove notice.
5. The policy period will end on the day and hour stated in the cancellation notice.
6. If we decide not to renew this policy, we will mail written notice of nonrenewal, by first class mail, to you and the agent or broker of record at least 45 days before:
 - a. the expiration date; or
 - b. the anniversary date if this policy has been written for more than one year or with no fixed expiration date.
7. We need not mail notice of nonrenewal if:
 - a. we have manifested in good faith our willingness to renew; or
 - b. you have failed to pay any premium required for this policy; or
 - c. you fail to pay the premium required for renewal of this policy.
8. Any notice of nonrenewal will be mailed to your last known address and the last known address of the agent or broker of record. A post office certificate of mailing or certified mailing receipt will be sufficient proof of notice.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective _____

Policy No. _____

Insured _____

Endorsement No. 9

Countersigned By _____

EXHIBIT A
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ITEM 4 CLASS, RATE, OTHER

It is agreed that Item 4, Premium, of the Information Page is amended to read as shown below.

Additional premium \$250.

Classifications	Code Number	Premium Basis Estimated Annual Remuneration	Rate Per \$100	Estimated Annual Premium
Alaska - State Act				
Trucking NOC-All Employees & Drivers	7219	260,000	13.58	35,308
Clerical Office Employees NOC	8810	31,200	.64	200
Assigned Risk Plan Surcharge (1.250)	0077			8,127
Alaska Guaranty Fund Assessment (.000)	0986			0
Minimum Premium		Deposit Premium	Estimated Annual Premium	
\$500		\$13,016	\$43,635	

NOV 15 2002

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective April 20, 2002

Policy No. 02D WW 92611

Insured J.J. Hadley, Inc.

Endorsement No. 10

Countersigned By William R. Stewart

Alaska Business/Anchorage

INSURED'S MAILING ADDRESS

It is agreed that Item 1, the Insured's Address, of the Information Page is amended to read:

1504 Meadowlark Terrace
Clarkston, WA 99403

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. The information below is required only when this endorsement is issued subsequent to preparation of the policy.

Endorsement Effective March 8, 2003

Policy No. 02D WW 92611

Insured J.J. Hadley, Inc.

Endorsement No. 11

Countersigned By William R. Stewart

Alaska Business/Anchorage

IMPORTANT INFORMATION

A. Employers' Notice of Insurance

There are three Employers' Notices enclosed in the envelope on the inside back cover of this policy. Contact our underwriting department if you need more (phone 907-248-2642; fax 907-266-9252).

Alaska law requires that you post this notice in a conspicuous place at:

1. Your office
2. Your mess or boarding house if you have one
3. Each of your work sites or premises

B. Your Responsibilities Regarding Contractors, Subcontractors and Hired Vehicles

You may be subject to added insurance costs if you employ contractors or subcontractors or hire vehicles with drivers or helpers.

Workers compensation laws in most states, including Alaska, provide that an owner or general contractor is responsible for compensation benefits to employees of uninsured contractors and subcontractors and to drivers and helpers of hired vehicles if the owners of those vehicles have not purchased workers compensation insurance. When you are responsible for compensation benefits under these circumstances, we are required to charge an additional premium for the exposure.

To avoid these costs, obtain certificates of workers compensation insurance from all contractors, subcontractors and owners of hired vehicles and keep them with your payroll records for review by our auditor.

C. Workers Compensation Injury Reporting Instructions

When an injury occurs:

1. Do whatever is necessary to preserve life and obtain emergency treatment.
2. Collect as much information as you can, including names, addresses and telephone numbers of witnesses.
3. If an injury results in hospitalization overnight or a fatality:
 - a. Call us, Alaska National Insurance Company (907-266-9227).
 - b. Call the Alaska Division of Labor Standards and Safety (907-269-4940) within 24 hours as required by law.
4. Complete the Report of Occupational Injury or Illness. There are two of these reports in the envelope on the inside back cover of this policy. Contact us (phone 907-266-9227; fax 907-266-9250) if you need more.

Instructions for completing the Report of Injury are printed on the back of the green copy of the report.

Alaska law requires the Report of Injury to be completed and mailed within 10 days after you have knowledge that one of your employees has been, or claims to have been, injured while in the course of employment. Failure to meet this 10 day requirement may subject you to a penalty.

Mail or fax the adjusting company (white copy) to us:

Alaska National Insurance Company
7001 Jewel Lake Road
Anchorage, AK 99502-2825
Fax 907-266-9250

There are pre-addressed envelopes enclosed with the reports.

5. If you have any injury reporting questions, call us (907-266-9227). Please do not discuss an incident with anyone except:
 - a. Alaska National Insurance Company
 - b. Law Enforcement Officers
 - c. The Division of Labor Standards and Safety

Consumer Privacy Statement

Alaska National Insurance Company appreciates the trust that is placed in us when our company is chosen to provide insurance protection. We strive to provide quality insurance products and superior service. In engaging in the insurance buying process with us, you trust us with personal and private information. We will limit the collection and use of such information to the minimum extent necessary to manage our business effectively and deliver superior service.

We are committed to protecting your private information, and we do not sell your information to others.

Please read the following notice about how we collect and use your personal information.

Sources of Information About You

We collect information about you from:

- The insurance application, other forms and information you or your insurance broker or agent submits to us (such as your name, address, locations of your business, social security or FEIN number, assets and past claims history).
- Your business transactions with us (such as your payrolls, revenues, premiums, policy coverage, payment history, and claims information).
- Insurance service organizations, state departments of motor vehicles, consumer reporting agencies, premium auditors or inspection services (such as your credit history, driver records, payroll, and gross income).

Use of Information About You

We treat your information with respect and concern for your privacy. We do not disclose any non-public personal information about our customers or former customers to anyone except as permitted by law. This may include providing information to the insurance agent who represents you, or other companies that perform support services on our behalf or to other firms that assist us in providing service for your account.

Insurance Brokers/Agents

The insurance broker or agent representing you is not an employee of ours and is not subject to our privacy policy.

Your agent or broker may have information about you that we do not have, and may have a different policy regarding the use and protection of that information. Contact your broker or agent to learn about their privacy practices.

Protecting Your Private Information From Unauthorized Access

We limit employee access to customer information to those employees with a legitimate business reason for such access. We will safeguard, according to strict standards of security and confidentiality, any personal information we receive about you or from you. We will permit only authorized employees, who are trained in the proper handling of our customers' personal information, to have access to that information. Whenever we hire other organizations to provide support services, we will require them to conform to our privacy standards.

Medical Information

We obtain medical information only in connection with claims. We will not use or share personally identifiable medical information for any purpose other than for the administration of claims.

AKTruckers Service: Drivers	Gross Wages 4/1/02 6/30/02	Gross Wages 7/1/02 to 9/30/02	Gross Wages 10/01/02 to 12/31/02	Gross Wages 1/1/03 to 2/10/03
-----------------------------------	-------------------------------------	--	---	--

Higgs, Tommy	0	0	0	1,684
Bell, Jerrold	0	0	7,684	3,868
Crowell, Robert	7,677	2,371	0	0
Miller, Richard	1,908	0	0	0
Klabunde, Cheryl	8,133	0	0	0
Dunham, Robert	10,494	3,413	0	0
Klabunde, Glen	8,041	0	0	0
Rodgers, Karta	9,881	7,299	0	0
Little, Benjamin	4,150	11,249	14,066	5,230
Johnson, Linda	0	0	11,543	2,643
Dorff, James	8,665	1,958	0	0
Alexander, Dale	465	0	0	0
Galbraith, Patricia	1,672	0	0	0
Galbraith, David	1,717	0	0	0
Rodgers, Walter	10,584	7,960	0	0
Heinbockel, Lewis	3,168	1,873	0	0
Hinman, David	9,026	8,246	1,895	0
Vining, Daniel	0	0	2,343	6,549
Flory, Ronald	8,068	5,773	0	0
Kuryla, Chad	12,126	3,359	0	5,522
Edmonds, Michael	4,425	0	0	0
Collins, David	15,444	18,803	13,519	7,241
total	125,644	72,304	51,050	32,737

Grandtotal	125,644	72,304	51,050	32,737
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EXHIBIT 3
Page 1 of 2

VATruckers ic Registers	Gross	Gross	Gross	Gross
	Wages	Wages	Wages	Wages
	4/1/02	7/1/02 to	10/01/02 to	1/1/03 to
	6/30/02	9/30/02	12/31/02	2/10/03
Carighan, Richard	4,492	12,952		
Douglas, Keith	0	0	9,139	4,614
Freitas, Faye	0	0	11,713	6,454
Layne, Ricky	0	8,347	8,356	3,742
Layne, Sharon	0	8,312	8,788	3,588
Smith, James	0	0	8,602	
Feyder, Douglas	0	0	936	
Liebig, David	0	3,482		
Liebig, Josh	0	2,964		
Finney, Richard	0	1,911		
Faucett, Timothy	0	2,042	10,059	3,262
Faucett, Robert	0	2,012	4,885	4,009
Scott, Spike	0	0	3,653	962
Gunter, Steven	0	4,413	9,243	5,651
Klag, John	967	3,860		
Willis, Sammy	11,050	6,574		
Spencer, Clayton	0	4,615		1,013
Singh, Bagavan	12,987	13,082	9,804	
Reedy, Charles	2,276	9,351	7,936	2,663
Hudson, Rudy				3,053
Sememko, Fedor	0	0	2,534	
Sullivan, Patrick	0	0	1,962	
Reinkens, Melody	6,176	3,143		
f Teo	1,500	10,088	2,909	
Oliphant, David	0	6,188	3,226	
Bachman, Craig	0	0	8,484	
Singh, Rajinder	4,289	0		
Whitehorn, Daniel	0	902	9,562	4,379
Subtotal	43,737	104,238	121,791	43,390
Grandtotal	43,737	104,238	121,791	43,390

**WORKERS COMPENSATION
 AUDIT ADJUSTMENT STATEMENT**

Named Insured: J.J. Hadley, Inc. c/o Empro P.E.S. 1504 Meadowlark Terrace Clarkston, WA 99403	Producer: Alaska Business Insurance, Inc. 1400 Benson Blvd., Suite 410 Anchorage, AK 99503
--	--

Policy Number: 02D WW 92611	Audit Period: 04/20/02 - 04/20/03	Final Audit
-----------------------------	-----------------------------------	-------------

Classifications	Code Number	Reported Payroll	Rate Per \$100	Premium
Alaska - State Act Trucking NOC-All Employees & Drivers Assigned Risk Plan Surcharge (1.250)	7219 0077	400,000	13.58	54,320 12,830
				EXHIBIT A Page 59 of 62
Total Premium Due. Less Premium Previously Billed Total Additional Premium				\$67,150 [15,635] 51,515

PREMIUM IS DUE AND PAYABLE AS OF THE DATE OF THIS STATEMENT.



REVISED INVOICE

08/28/03

The premium due on this invoice is only for the transaction indicated below and is in ADDITION to any remaining installment payments.

INSURED NAME:

J.J. Hadley, Inc
1504 Meadowlark Terrace
Clarkston, WA 99403

PRODUCER:

Alaska Business Insurance, Inc
1400 Benson Blvd., Suite 410
Anchorage, AK 99503

<u>POLICY NUMBER</u>	<u>EFF. DATE</u>	<u>TRANSACTION DESCRIPTION</u>	<u>AMOUNT</u>
02D WW 92611	04/2002	Final Audit	\$ 67150.00
		Payments Received	\$(15635.00)
		Amount Due	\$ 51515.00

Please disregard invoice dated
08/14/03.

If you have any questions about this invoice, please call The Assigned Risk Accounting Department.

If you disagree with this billing, refer to the dispute procedure on the back of this invoice.

RETURN THIS PORTION WITH YOUR PAYMENT

Insured Name: J.J. Hadley, Inc
Policy Number 02D WW 92611

Payment Due: 09/08/03

Amount Enclosed \$ _____

Please make your check payable to Alaska National Insurance Company and mail directly to 7001 Jewel Lake Road, Anchorage, AK 99502.

To make sure that our communication with you is handled as efficiently as possible, please provide us with a current telephone and fax number.

Telephone: _____ Fax: _____

Check box and indicate change of address on reverse.

EXHIBIT A
Page 60 of 62

EXHIBIT 5
Page 1 of 1

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
BEFORE THE DIVISION OF INSURANCE

In the Matter of:

Polar Roller Express Inc.,

Appellant.

Case No. H-04-01

AFFIDAVIT OF PATRICIA HENDERSON

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

Patricia Henderson, being first duly sworn, states as follows:

1. I am the Vice President of Audit for the Alaska National Insurance Company ("ANIC") and make this Affidavit based upon my personal knowledge and experience, and the business records of ANIC.

2. As Vice President of Audit, I am the individual responsible for all audit operations at ANIC. I supervise a staff of four field auditors and eleven in-office support personnel. I am responsible for ensuring that these persons are qualified to perform the duties required of their positions and that they properly perform their duties.

3. One aspect of my job is the review of audits performed by ANIC staff auditors as well as by independent auditors. On a daily basis I review and analyze such audits to determine whether the auditor properly classified employees and payroll for workers' compensation insurance purposes, whether the auditor utilized appropriate records in performing the audit and

In the Matter of Polar Roller Express, Inc., Case No. H-04-01
Affidavit of Patricia Henderson

APPENDIX "C"

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844
FAX (907) 563-7322

whether the auditor's findings are supported by the records. If any questions or problems arise, I am responsible for resolving the issues raised.

4. The auditing of workers' compensation policies requires the application of specific facts to standards and definitions established in the insurance industry. With respect to workers' compensation, the most complex aspect of an audit is the classification of employees and payroll, as further described below. There are several hundred employee classifications. In each case, the auditor must review the operations of the business and the tasks performed by employees and determine, based on experience and the standards established, which classification is appropriate. The complexity of this determination is one reason why I review every audit performed by staff and independent auditors.

5. Because of my position and experience, I am often consulted by individuals and entities, such as insurance brokers, insureds, and insurance industry representatives, who have questions concerning workers' compensation and general liability insurance in Alaska, specific insurance policies, the calculation of insurance premiums, and the classification of employees and payroll. I have worked in audit operations in the insurance industry since about 1965. I have worked in a supervisory capacity since 1975. The primary focus of my career has been workers' compensation and general liability insurance. Over the course of my career, I have performed or reviewed several thousand audits.

6. I am a member of the Alaska Insurance Auditors Association. The Alaska Insurance Auditors Association holds regular meetings to address issues concerning the auditing of insurance policies. I am a past president of the Alaska Insurance Auditors Association.

7. I receive trade journals, newsletters and other reference materials relevant to auditing in the insurance industry. One important resource is the Basic Manual published by the

National Council on Compensation Insurance, Inc. ("NCCI"), discussed further below. Another important resource is the Premium Audit Advisory manual published by the Insurance Institute of America. These materials contain important and timely information. Utilization of these reference resources is necessary to issue, audit and administer workers' compensation insurance policies consistent with industry standards.

8. As discussed in this Affidavit, I have reviewed the business records relating to the audit of Workers' Compensation & Employers' Liability Insurance Policy No. 02D WW 92611 issued to J.J. Hadley, Inc. Attached to this Affidavit are several exhibits, each of which I have reviewed and certify to be true and correct copies of business records maintained by ANIC in the regular course of its business, as described further below.

9. I have reviewed and I work on a very regular basis with the Alaska Workers' Compensation Insurance Plan (the "AWCIP").

10. The AWCIP is sometimes referred to by insurers, producers (insurance brokers), and insureds as "the Pool." In fact, "the Pool" is an agreement among insurance carriers to share in the operating results arising from those AWCIP assignments.

11. An employer eligible for participation in the AWCIP is called an "assigned risk."

12. The National Council on Compensation Insurance, Inc. ("NCCI") administers the ACWIP on behalf of the Alaska Division of Insurance. One of the NCCI's chief responsibilities is to devise rules and procedures to be applied to the AWCIP and files them for approval with the State of Alaska.

13. The rules, approved and adopted by the Alaska Division of Insurance, that govern workers' compensation insurance policies to insureds under the AWCIP are published in a manual referred to as the "Basic Manual."

14. ANIC has written workers' compensation insurance in the State of Alaska since 1980. Accordingly, ANIC is required to participate in the AWCIP. ANIC has been a Servicing Carrier under the provisions of the Alaska Plan since at least 1990.

15. As a Servicing Carrier, ANIC is authorized to receive assigned risk assignment policies for servicing from the NCCI. The assignment by the NCCI is made after the employer submits an application and deposit premium to the NCCI. The NCCI then determines whether the employer is eligible to obtain workers' compensation insurance through the AWCIP. If the NCCI determines that the employer is eligible to obtain insurance through the AWCIP, the NCCI assigns the policy for servicing to a Servicing Carrier. The assigned carrier issues workers' compensation coverage to the assigned risk under the terms and conditions of the AWCIP.

16. Exhibit A, attached hereto, is a true and accurate copy of the Application received by ANIC and maintained by ANIC in the usual course of its business.

17. Exhibit B, attached hereto, is a true and accurate copy of Workers Compensation & Employers Liability Insurance Policy No. 02D WW 92611, issued by ANIC to J.J. Hadley, Inc. The NCCI assigned the binder of coverage to ANIC for servicing. The policy issued to J.J. Hadley, Inc. was a standard form policy similar to all assigned risk workers' compensation policies issued by ANIC at the time. The Policy was in full force and effect for the entire policy period, April 20, 2002 through April 20, 2003. Based on the classifications used and the total payroll estimated, the estimated annual premium for Polar Roller's Policy was \$43,635.

18. ANIC audited the business records made available by Polar Roller in May 2003 to verify the payroll and classifications as the basis for the policy. Exhibit C, attached hereto, is a true and accurate copy of the Annual Audit Summary prepared by ANIC's in-house auditor, Michael Hagen, and maintained by ANIC in the usual course of its business. As noted in the

Annual Audit Summary, ANIC's auditor examined the business of Polar Roller, the work of Polar Roller's employees, and the amount of relevant payroll based on representations made by Polar Roller and records provided to ANIC's auditor by Polar Roller.

19. After the audit was completed, I made repeated efforts to obtain additional records from J.J. Hadley, Inc. and Polar Roller Express, Inc. (hereinafter referred to as "Polar Roller") relating to other workers compensation coverage for the exposures of Alaska resident employees of Polar Roller and of independent contractors who provided services for Polar Roller. Polar Roller refused to provide such records, asserting that ANIC had no right to review such records.

20. Exhibit D, attached hereto, is a true and accurate copy of the Audit Adjustment Statement issued by ANIC upon the audit performed by ANIC. At the time, I added additional estimated payroll to account for payroll of independent contractors for which Polar Roller refused to provide any documentation. The resulting total premium determined to be due for the policy, in accordance with the contract documents and with reference to rules and guidelines commonly used in the industry, was \$67,150. After applying all payments made by Polar Roller, the outstanding balance is \$51,515.

21. Exhibit E, attached hereto, is a true and accurate copy of a Revised Invoice, dated August 28, 2003, that ANIC sent to Polar Roller on or about August 28, 2003. The Revised Invoice accurately reflects the additional premium due for the subject policy based on the audit, the records provided by Polar Roller, and the attribution of payroll for additional exposures under the policy as to which Polar Roller refused to provide documentation.

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A PROFESSIONAL CORPORATION
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22. Exhibit F attached hereto is a true and accurate copy of Cancellation Request/Policy Release received by ANIC. ANIC never received any prior request from Polar Roller for cancellation of the policy.

23. Attachment A hereto is a true and accurate copy of the Alaska Workers Compensation Plan, also referred to as the Basic Manual, including copies of provisions that have been revised. Also included as part of Attachment A are true and accurate copies of a portion of the Alaska User's Guide for the AWCIP. Exhibit H hereto is a true and accurate copy of a portion of the Basic Manual.


24. Another reference resource known as the "Scopes Manual" is utilized to determine the appropriate workers compensation classification for particular work activities. This Manual is also published by the NCCI. The Manual sets forth the various classifications of work activities and provides a definition of the scope of each classification. The facts relevant to a particular work activity must be reviewed and analyzed, and the definitions in the Scope Manual applied, to determine which classification is appropriate in a given case.

25. Attached hereto as Attachment B are true and accurate copies of Codes 7219, 7228 and 7229 from the Scopes Manual. Based on my experience and the definitions set forth in the Scopes Manual, Polar Roller's payroll was appropriately classified to Code 7219. As noted in the Scopes Manual, Code 7219 is a Special Code for the State of Alaska. Also as noted in the Scopes Manual, Codes 7228 and 7229 have not been approved for use under the AWCIP. Thus, ANIC applied the appropriate premium rate to the payroll of Polar Roller to determine the premium due for the policy. Consistent with industry rules, ANIC also applied certain surcharges. Based on my experience and Polar Roller's business records, the surcharges applied

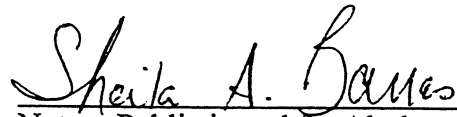
are appropriate. As set forth above, applying all of the charges, credits, and payments, the total premium remaining due for the policy is \$51,515.

FURTHER THIS AFFIANT SAYETH NAUGHT.

DATED at Anchorage, Alaska this 17th day of November, 2004.


Patricia Henderson

SUBSCRIBED AND SWORN to before me this 17th day of November, 2004, at Anchorage, Alaska.


Notary Public in and for Alaska
My Commission Expires: 6/20/05

Certificate of Service

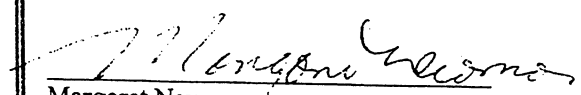
The undersigned certifies that on the 17th day of November, 2004, a true and correct copy of the foregoing was served by U.S. Mail, postage prepaid on the following:

Ken and Rebecca Jones
1504 Meadowlark Terrace
Clarkson, WA 99403

Melissa Palmer
NCCI
901 Peninsula Corporate Circle
Boca Raton, FL 33487

Ron Moore
State of Washington
Department of Labor and Industries
P.O. Box 44148
Olympia, WA 98504

Barbara Karl, Paralegal
Division of Insurance
550 W. 7th Avenue, Suite 1560
Anchorage, AK 99501


Margaret Newman

LAW OFFICES OF
JERMAIN DUNNAGAN & OWENS
A PROFESSIONAL CORPORATION
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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT
BEFORE THE DIVISION OF INSURANCE

In the Matter of:)
)
 Polar Roller Express, Inc.,)
)
 Appellant.)
 _____)
 Case No. H 04-01

Memorandum and Order Granting Summary Judgment

I. Introduction

This administrative appeal is from a decision by the Alaska Workers' Compensation Rating and Classification Grievance Committee ("Committee"). Appellant Polar Roller Express, Inc. is a Washington corporation operating a trucking business in Washington and Alaska. Through an affiliate (J.J. Hadley, Inc.), the company obtained workers compensation insurance in 2002 covering its Alaska drivers with Alaska National Insurance Co. (ANIC). In 2003, Polar Roller requested ANIC to retroactively cancel the policy and to receive a full refund for the premiums paid. Polar Roller claimed that it had duplicate insurance coverage in Washington. It also challenged the Committee's classification of the business as Code 7219 for the purpose of determining the premium.

An appeal to the Committee was unsuccessful, and Polar Roller requested a hearing from the division of insurance. The division referred the matter to the hearing officer for a proposed decision under AS 21.06.180 – AS 21.06.240. At a July 23, 2004 pre-hearing conference, the hearing date was scheduled for December 7, 2004. ANIC recently filed a Motion for Summary Judgment seeking a ruling that the committee was correct in its

decision. Polar Roller did not oppose the motion, nor did it respond to discovery requests made by ANIC, nor did it file a witness list or exhibits in this case, or any other documents after the pre-hearing scheduling conference.

II. Availability of Summary Judgment

An oral evidentiary hearing is only required to resolve disputed facts in an administrative proceeding, whether the matter is governed by the APA (AS 44.62.330 et seq.) or the insurance code (AS 21) as in this case. See Smith v. State of Alaska, 790 P.2d 1352, 1353 (Alaska 1990); I Davis & Pierce, Administrative Law Treatise, § 8.3 (3rd ed. 1994). Summary judgment is a procedural litigation device that allows the adjudicator (e.g., judge; hearing officer; board) to rule as a matter of law in a case, without having to take testimony at a trial or hearing. The relief derives from the civil rules used in court proceedings. Those rules do not strictly apply to administrative proceedings. However, they provide useful guidance and are recognized by courts as fulfilling that purpose. See, e.g., Tlingit-Haida Regional Electrical Authority v. State of Alaska, 15 P.3d 754, 768 (Alaska 2001) (Civil Rule 19 provides relevant guidance in administrative adjudications); State of Alaska v. Thompson, 612 P.2d 1015, 1016-17 (Alaska 1980) (agency in APA proceeding may look by analogy to Civil Rules 26-32). Accordingly, the hearing officer will be guided by Civil Rule 56 in deciding this motion.¹

Rule 56 provides that summary judgment may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Alaska Civil Rule 56(c). The moving party has the initial burden to establish the absence of a genuine issue of material fact. If the moving party meets this burden, the party opposing the motion then can avoid summary judgment only by producing competent evidence to

¹ ANIC's Motion for Sanctions seeking dismissal relying on application of civil rules and was earlier denied.

) show that there are issues of material fact to be tried. Specific facts must be proffered by the party opposing the motion showing that admissible evidence could be produced reasonably tending to dispute the movant's evidence. See, e.g., Brock v. Rogers & Babler, Inc., 536 P.2d 778, 782-83 (Alaska 1975). Inferences of fact from proffered proofs are drawn in favor of the party opposing the motion and against the movant. See Alaska Rent-A-Car, Inc. v. Ford Motor Co., 526 P.2d 1136, 1139-40 (Alaska 1974).

III. Analysis

) The Notice of Appeal in this case is a letter dated February 5, 2004, through which Polar Roller disagrees with the committee's decision in its entirety. The letter is date-stamped received by the division on February 23, 2004. The case was referred to the hearing officer by the insurance director on April 22, 2004. After the hearing date and related deadlines were scheduled in this case, Polar Roller did not file any documents. It failed to provide ANIC any requested discovery, and it failed to file a witness list, an exhibit list and exhibits as required by the Notice of Hearing.

ANIC was the servicing carrier for workers' compensation insurance covering Polar Roller (affiliate J.J. Hadley Inc.) through policy no. 02D WW 92611 for the policy period April 20, 2002 to April 20, 2003. On May 1, 2003, Polar Roller requested retroactive cancellation of the policy and a refund of premiums paid. In contrast, the insurer alleges that it is owed by its insured a total unpaid premium in the amount of \$51,515, accounting for charges, credits and payments. ANIC's motion is supported by exhibits (A – I) and attachments (A, B), along with an Affidavit of Patricia Henderson, Vice President of Audit at the company. Henderson verified the accuracy of the exhibits and attachments.

) Polar Roller did not respond to the subject motion with any filing, and it has refused to provide discovery to ANIC, even after a Motion for Sanctions was substantially granted.

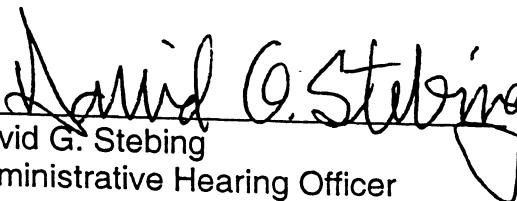
(11/12/04 Order) In addition, it is noteworthy that Polar Roller refused to sufficiently identify the alleged duplicate insurance coverage in Washington State during this proceeding as well as during the appeal to the Alaska Workers' Compensation Rating and Classification Grievance Committee.

While slightly different facts were at issue, it is noted that the director of the division of insurance previously affirmed the Committee's use of code 7219 in a trucking case, rejecting an appellant's argument to use a different code. See Matter of Arthur's Trucking / Royal Contractors, Inc., Case No. H97-01 (1/23/98 Order)

Based on the filings in this case, ANIC met its burden for summary judgment. Polar Roller did not establish a genuine issue of material fact. As a matter of law, the 7219 code classification was correct.

ANIC is ordered to prepare detailed Findings of Fact and Conclusions of Law for review by the hearing officer to include as part of the written proposed decision for the insurance director. The findings and conclusions must be filed no later than December 2, 2004. Upon receipt of these findings and conclusions, the hearing officer will review them for appropriateness and thereafter submit his proposed decision to the director and vacate the hearing date.

DATED at Anchorage, Alaska this 27th day of November, 2004.


David G. Stebing
Administrative Hearing Officer

) **Certificate of Service:** The Undersigned certifies that on the 29th day of November, 2004, a true and correct copy of this **Order Granting Summary Judgment** was mailed to the following: Ken and Rebecca Jones, Appellants; Melissa Palmer, Attorney for NCCI; Ron Moore, Washington Department of Labor and Industries; Mark Melchert, Attorney for ANIC; and Barbara Karl, Paralegal for the Division of Insurance.

By: Molly Benson
Molly Benson

2. Polar Roller is an Alaska corporation operating a long-haul trucking business in Alaska and Washington State. Ken and Rebecca Jones are principals of the business. As part of its operations, Polar Roller employed drivers who were Alaska residents.

3. Through its affiliate J.J. Hadley, Inc., Polar Roller obtained a workers' compensation policy of insurance issued by ANIC to cover its Alaska exposures under the Alaska Workers' Compensation Act. Policy no. 02D WW 92611 was in effect from April 20, 2002 through April 20, 2003. It was an assigned risk policy. The Workers' Compensation Assigned Risk form used to apply for coverage identifies the applicant as "J.J. Hadley, Inc." and is signed by Rebecca Jones as "owner or officer" of the business. See Motion for Summary Judgment, Exh. A, p. 5. Above her signature she agreed "To take no action in any form to evade the application of experience modification determined in accordance with the experience rating rules, as determined by the Plan Administrator." The complete terms and conditions of the insurance agreement were set forth in the policy, a copy of which is attached and marked as Appendix "B." The policy was in full force and effect for the entire policy period. Hadley and Polar Roller are hereinafter referred to together as Polar Roller.

4. The policy was issued by ANIC pursuant to an application submitted by Polar Roller to the administrator for the Alaska Workers' Compensation Insurance Plan, the NCCI, and the assignment of the binder of coverage by the NCCI to ANIC in accordance with the rules of the Alaska Workers' Compensation Insurance Plan.

5. On or about May 1, 2003, after the policy had expired, Polar Roller submitted a Cancellation Request/Policy Release to ANIC, requesting that the policy be cancelled as of its effective date, April 20, 2002. A copy of this request was filed by ANIC as Exhibit "F" to its Motion for Summary Judgment. Polar Roller represented that the policy duplicated insurance coverage the business obtained through "State of Washington Policy # 035-077-

00.” Except for the cancellation request, Polar Roller did not submit any evidence to support this representation.

6. Polar Roller also requested a refund of all of the premiums it paid for the policy. ANIC refused to cancel the policy retroactively, and it conducted an audit. ANIC filed a copy of the audit summary as Exhibit “C” to its Motion for Summary Judgment.

7. During the audit, Polar Roller failed or refused to produce records and information relating to independent contractors engaged by the business, asserting that ANIC had no right to review such records. Polar Roller also failed to provide evidence of duplicate coverage that the business alleged it maintained in Washington.

8. As a result of the audit, ANIC determined that the total premium due for the policy was \$67,150. The balance outstanding and unpaid was at least \$51,515, after application of all charges, credits, and payments.

9. Polar Roller admits the following:

- (a) It submitted the above-referenced application for workers’ compensation insurance;
- (b) ANIC issued the policy;
- (c) ANIC conducted a physical audit of the policy;
- (d) Polar Roller refused to produce any records relating to drivers that provided services for Polar Roller as independent contractors during the policy period;
- (e) Polar Roller did not obtain proof of workers’ compensation insurance from any driver that provided services as an independent contractor; and
- (f) Persons identified by ANIC at audit are Alaska residents who provided services for Polar Roller during the policy period.

The hearing officer deemed such admissions made as a result of Polar Roller's failure to respond to discovery requests propounded by ANIC. See 11/12/04 Order Regarding Motion for Sanctions.

10. Polar Roller also has not submitted any documents in this proceeding to dispute the admissions noted in the committee's decision (Exhibit "G", p. 3 to ANIC's Motion for Summary Judgment) that its employees drove trucks for Polar Roller in Alaska; that Polar Roller did not report the wages of its Alaska drivers to the Washington Department of Labor & Industries; or that Polar Roller paid any premium to the Washington Department of Labor & Industries for such drivers during the policy period.

11. After ANIC demanded payment of the premium due for the policy, Polar Roller filed an appeal to the committee pursuant to the dispute resolution procedures under the Alaska Workers' Compensation Insurance Plan. In its appeal, Polar Roller requested that the committee order a flat cancellation of the policy for the alleged reason that the business had duplicate coverage for Alaska exposures during the policy period. Polar Roller further requested a ruling from the committee that the business was entitled to a full refund of all premiums paid to ANIC. Polar Roller also asserted its belief that Alaska law did not require it to maintain insurance coverage in Alaska for exposures in this state. And, Polar Roller requested the committee to determine that ANIC misclassified Polar Roller's payroll during the audit by using Code 7219 rather than Codes 7228 and 7229.

12. The committee determined that Polar Roller was not entitled to a flat / retroactive cancellation of the policy, and that ANIC used the appropriate classifications for Polar Roller's payroll. See attached Appendix "A."

13. Although Polar Roller filed this appeal to the division contesting every part of the committee's decision, as appellant it failed to provide any documentation to support its

assertions. Polar Roller did not file witness and exhibit lists, despite the fact that they are required to by the Notice of Hearing issued in this proceeding. Polar Roller also failed to provide responses to reasonable discovery requests propounded by ANIC. In summary, Polar Roller failed to adequately prosecute this appeal. Nonetheless, the Hearing Officer has carefully reviewed the entire record to determine whether there is any merit to the assertions made by Polar Roller.

14. This is no merit to Polar Roller's arguments on appeal. Polar Roller did not comply with ANIC's audit requests. It did not submit any documentation to support that it had duplicate coverage for Alaska exposures during the term of the policy. The business did not submit any documentation to support an assertion that it was not required under Alaska law to insure for workers' compensation benefits during the policy period. Polar Roller also did not submit any documentation that would support an assertion that its payroll was misclassified by ANIC.

15. There are no genuine issues of material fact that would prevent summary disposition of this appeal. ANIC is therefore entitled to judgment as a matter of law.

CONCLUSIONS OF LAW

1. The Director has jurisdiction over this matter pursuant to the dispute resolution procedures set forth in the Alaska Workers' Compensation Insurance Plan. See AS 21.39.155. Those procedures provide for an appeal to the Director from decisions in employer disputes relating to Plan matters. See Motion for Summary Judgment, attachment "A" (attached Appendix "G"). The procedures provide that an appeal to the Director shall be decided in accordance with state law, regulation, and policy and in the interests of the reasonable and proper administration of the Plan.

2. The ANIC policy provided conditions under which the policy could be cancelled. While disputes between the parties to an insurance contract are outside the jurisdiction of the Director in this appeal, the policy does not appear to provide for a flat / retroactive cancellation after the expiration of the policy period.

3. The Director's jurisdiction in this proceeding is limited to deciding matters relating to the Alaska Workers' Compensation Insurance Plan. One issue is whether the Alaska Workers' Compensation Insurance Plan provides that an insured may obtain a flat / retroactive cancellation of an insurance policy issued pursuant to the Plan, whether or not the contract between the insurer and insured provides for such a cancellation. It is not necessary to decide that issue in this appeal, however, because Polar Roller has not proffered any documentation that it had duplicate coverage for Alaska exposures during the policy period. Consequently, whether or not the Alaska Workers' Compensation Insurance Plan would require an insurer to cancel a policy retroactively and refund any premiums paid based on the fact that the insured allegedly had duplicate coverage during the policy period, as a matter of law Polar Roller was not entitled to a flat / retroactive cancellation of policy no. 02D WW 92611.

4. The committee was correct in its conclusion that it was not the ruling authority for determining whether coverage for Alaska exposures was required for the employees and independent contractors in dispute. Such coverage issues are not matters concerning the administration of the Alaska Workers' Compensation Insurance Plan. Instead, they go to the requirements of Alaska law that are applicable to all employers. Nonetheless, it is clear that Polar Roller was required to insure its liability for the disputed employees under the Alaska Workers' Compensation Act. Under the Act, employees are entitled to recover benefits from their employers for work-related disability or death. See 23.30.010. The Act is

part of every contract of hire, and it includes a liberal presumption of compensability for employees. See AS 23.30.020; AS 23.30.120(a)(1). Application of the Act depends on whether there is an employer-employee relationship. An entity that is engaged in a “business or industry” is an “employer” within the meaning of the Act and persons employed by that entity are “employees” under the Act. See Gaede v. Saunders, 53 P.3d 1126, 1126-27 (Alaska 2002). ANIC established that Polar Roller conducted business in Alaska and employed Alaska residents to provide services on its behalf.

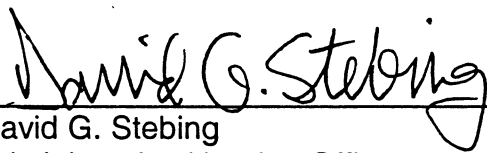
5. AS 23.30.045 expressly provides that an employer is liable for and shall secure payment of compensation to employees of a subcontractor unless the subcontractor secures the payment. As noted in the findings, Polar Roller did not obtain certificates of insurance from its independent contractors.

6. While the Director need not decide the issue of whether or to what extent Alaska law required Polar Roller to maintain workers’ compensation insurance coverage for Alaska exposures – independent of the issue of duplicate coverage – the undisputed facts of this case and the applicable law confirm the correctness of the committee’s decision that Polar Roller was not entitled to a flat / retroactive cancellation of the ANIC policy.

7. The committee also correctly determined that Code 7219, not Codes 7228 and 7229, was the appropriate code for purposes of classifying Polar Roller’s payroll. This conclusion is supported by the fact that Code 7219 has been approved for use in Alaska, but Codes 7228 and 7229 have not. The conclusion is further supported by the Director’s affirmance of the committee’s decision in another trucking company case, Matter of Arthur’s Trucking/Royal Contractors, Inc., Case No. H97-01 (1/23/98 Order).

Based upon the foregoing findings of fact and conclusions of law, the committee's decision is affirmed.

DATED at Anchorage, Alaska this 9th day of December, 2004.



David G. Stebing
Administrative Hearing Officer

