

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

Appeal from Decision of Idaho Workers  
Compensation Appeals Board RE:

ULTIMATE LOGISTICS, LLC

NCCI Case No. 31629

Case No. CV01-17-13494

MEMORANDUM AND DECISION ON  
PETITION FOR JUDICIAL REVIEW

**INTRODUCTION**

Ultimate Logistics, LLC ("Ultimate"), purchases workers' compensation insurance from Travelers Insurance Company Co. ("Travelers"). Travelers conducted an audit of the Ultimate's payroll for the years 2015 and 2016 to determine the premium rates applicable for the following year. Based on that audit, Travelers classified Ultimate as a trucking company as defined by the National Council on Compensation Insurance's ("NCCI") Classification Code 7219 found in the Scopes Manual and the Basic Manual produced by NCCI. NCCI is a rating organization licensed by the State of Idaho. As a result of the audit, Travelers sent Ultimate an invoice charging Ultimate with an additional \$39,000.00 in audited premiums to cover the risks for the previously covered periods. Part of increase in premiums was a result of Travelers including the payroll for two mechanics working for Ultimate into the premium calculation. Ultimate objected to the audit determination by Travelers and requested that the NCCI review the matter. The NCCI agreed with Travelers and Ultimate then appealed to the Idaho Worker's Compensation Appeals Board ("Board"), which is authorized by the Idaho Insurance Code to hear premium-based disputes. On

1 August 22, 2016 the Board issued its decision upholding Travelers' classification of Ultimate as  
2 a trucking company and concluding that any mechanics working for a trucking company would  
3 correctly be classified under Code 7219.

4 Ultimate then appealed to the Department of Insurance ("DOI"), who appointed a  
5 Hearing Officer. The Hearing Officer conducted a hearing on January 11, 2017. In her Findings  
6 of Fact, Conclusions of Law and Preliminary Order dated March 28, 2017, the Hearing Officer  
7 upheld the classification decision of the NCCI and the Board that Ultimate was a trucking  
8 company; however, the Hearing Officer concluded that Travelers cannot require the payment of  
9 worker's compensation premiums for the two mechanics. Travelers appealed that decision to the  
10 Director of the DOI ("Director"). On June 30, 2017, the Director filed a Final Order Denying  
11 Appeal, affirming the Hearing Officer's decision and denying Travelers' appeal. Travelers  
12 timely appealed the Director's Final Order Denying Appeal.

### 13 STANDARD

14 Judicial review of an agency action is governed by the Idaho Administrative Procedure  
15 Act ("IDAPA"). I.C. § 67-5270(1). The IDAPA requires a reviewing court to "affirm the agency  
16 action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:  
17 (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of  
18 the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the  
19 record as a whole; or (e) arbitrary, capricious or an abuse of discretion." I.C. § 67-5279(3). The  
20 petitioner has the burden of showing that the board erred in a manner specified in Idaho Code  
21 section 67-5279(3) and that a substantial right of the petitioner has been prejudiced. I.C. § 67-  
22 5279(4); *Barron v. Idaho Dep't of Water Res.*, 135 Idaho 414, 417, 18 P.3d 219 (2001).

23 The "Court will not substitute its judgment for that of the board regarding the weight of  
24 the evidence on questions of fact." *Wohrle v. Kootenai Cty.*, 147 Idaho 267, 274, 207 P.3d 998,  
25 1005 (2009); I.C. § 67-5279. "A reviewing court defers to the agency's findings of fact unless  
26 they are clearly erroneous, and the agency's factual determinations are binding on the reviewing  
court, even when there is conflicting evidence before the agency, so long as the determinations  
are supported by substantial competent evidence in the record." *Idaho Ground Water Assoc. v.*  
*Idaho Dep't of Water Res.*, 160 Idaho 119, 125, 369 P.3d 897, 903 (2016), reh'g denied (May 9,  
2016) (internal quotations omitted). "Discretionary decisions of an agency shall be affirmed if

1 the agency (1) perceived the issue in question as discretionary, (2) acted within the outer limits  
2 of its discretion and consistently with the legal standards applicable to the available choices, and  
3 (3) reached its own decision through an exercise of reason.” *Id.*

#### 4 ANALYSIS

5 Travelers’ primary argument on appeal is that the DOI does not have statutory authority  
6 to determine whether the two mechanics at issue were employees of Ultimate or independent  
7 contractors. Having reviewed the record and the arguments of the party, the Court affirms the  
8 Director’s Final Order Denying Appeal.

#### 9 A. Traveler’s Employee vs. Independent Contractor Argument is Moot.

10 In sum, Travelers argues that the DOI does not have the statutory authority under Idaho  
11 Code to determine whether the two mechanics at issue were employees of Ultimate or  
12 independent contractors. In response, Ultimate argues that the ability to redress an insured  
13 aggrieved by an increased premium is solidly vested in the DOI and if the review of a premium  
14 rate requires a determination of contractor or employee, then the DOI has the implied authority  
15 to make that determination. However, Ultimate argues that for the purposes of this appeal, the  
16 issue of whether the two mechanics were employees or independent contractors is moot. The  
17 Court agrees.

18 In her Findings of Fact, Conclusions of Law and preliminary Order, the Hearing Officer  
19 explained:

20 Steve Landino testified Travelers agrees with Mr. Reiser that the  
21 mechanics are not employees of Ultimate Logistics and were not required to have  
22 workers compensation insurance in Idaho. However, because the mechanics are  
23 uninsured subcontractors, Travelers has a risk of exposure and could require  
24 workers compensation on the mechanics pursuant to the NCCI Basic Manual Rule  
25 2.H.2. Rule 2.H.1 provides that in states where workers compensation laws  
26 provide that a contractor is responsible for payment of workers compensation  
benefits to “employees of its uninsured subcontractors,” the contractor must  
provide evidence that the subcontractor has workers compensation insurance in  
force. Rule 2.H.2 then states: “For each subcontractor not providing such  
evidence of workers compensation insurance, additional premium must be  
charged on the contractor’s policy for the uninsured subcontractor’s employees  
according to Subcontractor Table 1 and 2 below.” The evidence established that,  
in May 2016, both of the mechanics purchased workers compensation insurance.

1 Further, there is no evidence that either of the mechanics have any employees.

2 \*\*\*

3 Travelers conceded through the testimony of Steve Landino that the  
4 mechanics were not employees and workers compensation was not required for  
5 the mechanics, but could be required to cover these uninsured subcontractor's  
6 employees. Mr. Landino cited to NCCI Basic Rule 2.H in support of Travelers'  
7 position. There is no evidence that either of the mechanics have any employees.  
8 In addition, pursuant to Rule 2.H.1 each of the mechanics purchased their own  
9 workers compensation insurance.

10 The Hearing Officer concludes the two mechanics are not employees of  
11 Ultimate Logistics, are not required by Idaho law to be covered by worker's  
12 compensation laws, and they have no employees. Consequently, Travelers cannot  
13 require the payment of a worker's compensation premium for the two mechanics.  
14 . . . [T]he Board's conclusion that the mechanics working as independent  
15 contractors for Ultimate Logistics were correctly included in the workers  
16 compensation policy is reversed.

17 The Director's Final Order Denying Appeal presents a similar analysis:

18 Lastly, Travelers' own testimony at the hearing made the issue of whether  
19 the mechanics were employees or independent contractors arguably moot.  
20 Travelers' admitted through the testimony of Steve Landino that it did not  
21 consider the mechanics to be employees. Instead, Travelers asked the Hearing  
22 Officer to conclude that the mechanics were "subcontractors" within the scope of  
23 Ultimate Logistics' 7219 classification code by virtue of NCCI Basic Manual  
24 Rule 2.H.2. Thus, the Hearing Officer's analysis was directed to the classification  
25 of the mechanics as subcontractors.

26 The Preliminary Order presents a well-reasoned analysis of the  
classification codes proffered by both parties for the purpose of setting Ultimate  
Logistics' workers' compensation insurance rates. The Hearing Officer did not  
exceed her jurisdiction in determining that the two onsite mechanics could not be  
included in calculating Ultimate Logistics' premium rates because there were  
neither employees nor subcontractors subject to workers' compensation.

Certainly the Hearing Officer provided a full and reasoned analysis of the question of whether  
the two mechanics were employees or independent contractors; and the Director provided an  
analysis of whether the DOI had the statutory authority to make that determination; however,  
those analyses were not dispositive in this case. The question of whether the two mechanics were  
employees or independent contractors was not a question in controversy below given Travelers'  
own testimony. "A case is moot if it presents no justiciable controversy and a judicial  
determination will have no practical effect upon the outcome." *State v. Manzanares*, 152 Idaho  
410, 419, 272 P.3d 382, 391 (2012) (internal citation omitted).

1 Given the factual findings of the Hearing Officer and the Director concerning Travelers'  
2 own testimony that the increased premium rates were calculated using NCCI Basic Manual Rule  
3 2, even if the Court concluded that the DOI does not have the statutory authority to determine the  
4 employment status of the two mechanics, that determination would have no practical effect upon  
5 the outcome in this case. Rather, the dispositive question on appeal would have been whether the  
6 DOI has the statutory authority to determine the proper application of NCCI Basic Manual Rule  
7 2; it does.

8 The scope of Idaho's Worker's Compensation Rates is found in Chapter 16 of the Idaho  
9 Code. Idaho Code section 41-1601 provides: "This chapter applies as to worker's compensation  
10 insurance as defined in section 41-506(1)(d), Idaho Code, and to insurance or guaranty by surety  
11 insurers of the obligations of employers under worker's compensation laws." I.C. § 41-1601.  
12 Idaho Code section 41-1602 provides: "It is declared that the public welfare is served by the  
13 making of premium rates for workmen's compensation insurance coverages in concert, and that  
14 the review by the state of the rates so made is necessary and desirable in the public interest. It is  
15 the purpose of this chapter: To provide for review by the state of such rate-making and the  
16 results thereof. I.C. § 41-1602.

17 Rate filings consist of "every manual of classifications, rules and rates, every rating plan  
18 and every modification of any of the foregoing" of which an insurer proposes to use. I.C. § 41-  
19 1606. If a party is aggrieved by the application of a rating system, Idaho Code section 41-1622  
20 provides a mechanism for review:

21 Every rating organization and every insurer which makes its own rates shall  
22 provide within this state reasonable means whereby **any person aggrieved by the  
23 application of its rating system** may be heard, in person or by his authorized  
24 representative, on his written request to review the manner in which such rating  
25 system has been applied in connection with the insurance afforded him. . . . **Any  
26 party affected by the action of such rating organization or such insurer on  
such request may**, within thirty (30) days after written notice of such action,  
**appeal to the director**, who, after a hearing held upon notice to the appellant and  
to such rating organization or insurer in accordance with chapter 2, title 41, Idaho  
Code, may affirm or reverse such action.

27 I.C. § 41-1622 (emphasis added). Similarly, Idaho Code 41-1623 provides: "Any person or  
28 organization aggrieved with respect to any filing which is in effect may make written application  
29 to the director for a hearing thereon. . ." I.C. § 41-1623. The NCCI Basic Manual is a rate filing  
30 pursuant to Idaho Code 41-1606. The DOI has statutory authority to consider an appeal from

1 “any person aggrieved by the application” of a rating system pursuant to Idaho Code section 41-  
2 1622. NCCI Basic Manual Rule 2 provides:

- 3 1. In those states where workers compensation laws provide that a contractor  
4 is responsible for the payment of compensation benefits to employees of  
5 its uninsured subcontractors, the contractor must furnish satisfactory  
6 evidence that the subcontractor has workers compensation insurance in  
7 force covering the work performed for the contractor. The following  
8 documents may be used to provide satisfactory evidence:
  - 9 • Certificate of insurance for the subcontractor's workers  
10 compensation policy
  - 11 • Certificate of exemption
  - 12 • Copy of the subcontractor's workers compensation policy
- 13 2. For each subcontractor not providing such evidence of workers  
14 compensation insurance, additional premium must be charged on the  
15 contractor's policy for the uninsured subcontractor's employees according  
16 to Subcontractor Table 1 and 2 below.

17 In reaching their conclusions, both the Hearing Officer and the Director made factual findings  
18 that there was no evidence that either of the mechanics had any employees and that each of the  
19 two mechanics had purchased their own workers compensation insurance in compliance with  
20 NCCI Basic Manual Rule 2. Travelers has not presented any argument on this issue on appeal,  
21 and the “Court will not substitute its judgment for that of the board regarding the weight of the  
22 evidence on questions of fact.” *Wohrle*, 147 Idaho at 274, 207 P.3d at 1005; I.C. § 67-5279.

#### 23 **B. Attorney Fees and Costs**

24 Both parties request attorney fees pursuant to Idaho Code section 12-121, which  
25 provides:

26 In any civil action, the judge may award reasonable attorney's fees to the  
prevailing party or parties when the judge finds that the case was brought, pursued  
or defended frivolously, unreasonably or without foundation.

I.C. § 12-121. Based on the above, Travelers is not the prevailing party on appeal. Because the  
only issue presented by Travelers on appeal was moot, the Court finds that this appeal was  
brought without foundation. The Court awards attorney fees and costs to Ultimate.

**CONCLUSION**

The Director's Final Order Denying Appeal is AFFIRMED.  
IT IS SO ORDERED.

Signed: 10/15/2018 01:37 PM

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

  
\_\_\_\_\_  
MICHAEL REARDON  
District Judge

**CERTIFICATE OF MAILING**

I hereby certify that on this 15th day of October, 2018, I served a true and correct copy of the:

**MEMORANDUM AND DECISION ON PETITION FOR JUDICIAL REVIEW**

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By Beth Martin  
Deputy Clerk





**FILED**  
**JUN 30 2017** *AB-1*  
Department of Insurance  
State of Idaho

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE**

**STATE OF IDAHO**

Appeal from Decision of the  
NCCI Workers Compensation Appeals  
Board In Idaho

Re:

**ULTIMATE LOGISTICS, LLC**

(NCCI Case No. 31629)

Docket No. 18-3204-16

**FINAL ORDER DENYING APPEAL**

Pursuant to Idaho Code § 67-5245, this matter came before the Director of the Idaho Department of Insurance (“Director”) upon Travelers Insurance Co.’s appeal timely filed on April 11, 2017, through its counsel, Neil McFeeley, of the firm Eberle, Berlin, Kading, Turnbow & McKlveen, Chartered (the “Appeal”). Travelers Insurance Co. (“Travelers”) disputes in part the Findings of Fact, Conclusions of Law and Preliminary Order (“Preliminary Order”) that issued in this matter on March 29, 2017. The original dispute arises from Travelers’ classification of

Ultimate Logistics, LLC<sup>1</sup> (“Ultimate Logistics”), and its “workers” for the purposes of determining workers’ compensation premium rates. Ultimate Logistics appealed Travelers’ classification decision to the Idaho Workers Compensation Appeals Board (“Appeals Board”). After the Appeals Board rendered its decision, Ultimate Logistics again appealed that decision to the Idaho Department of Insurance (the “Department”). Travelers now appeals in part the decision rendered by the Hearing Officer.

After Travelers filed this appeal, the Director issued an Order Closing Record on Appeal on May 8, 2017. Thereafter, Ultimate Logistics filed an untimely response to Travelers’ appeal on May 12, 2017. The Director, having considered the exhibits and pleadings on file in this matter, issues this Final Order Denying Appeal based on the following.

#### BACKGROUND

For three years, Ultimate Logistics had purchased its workers’ compensation insurance from Travelers. (Rieser Let. to Cameron, P. 2. dated 9/21/2016.) Travelers conducted an audit of Ultimate Logistics’ 2015/2016 payroll information for the purpose of determining premium rates for the following billing year. (*See generally*, Travelers’ Ex. 8, Case Summary & Decision, dated 8/22/2016. *See also*, Travelers’ Ex. 7, Case Summary, P. 2, dated 8/2/2016.)

Based on the audit, Travelers classified Ultimate Logistics as a “trucking operation” as defined by NCCI<sup>2</sup> Classification Code 7219. Travelers also concluded that two onsite mechanics, *i.e.*, Luke Bannon operating as Bannon Truck Repair, LLC, and Justin Scherer operating as J&H Truck Repair, LLC, were employees of Ultimate Logistics and thus included in the same code.

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<sup>1</sup> Early pleadings on record show attorneys from both parties as well as the appointed hearing officer identifying the insured as “Ultimate Logistic, LLD.” This error is corrected in later pleadings with the true entity name of “Ultimate Logistics, LLC” appearing in the pleading caption.

<sup>2</sup> “NCCI” is the acronym for the National Council on Compensation Insurance. According to its website at [www.ncci.com](http://www.ncci.com), NCCI “gathers data, analyzes industry trends, and prepares objective insurance rate and loss cost recommendations” regarding workers’ compensation insurance rates.

Code 7219 is described in the NCCI Scopes Manual as follows:

Code 7219 is applied to insureds engaged in the hauling of general merchandise under contract for one or more individuals or concerns provided such operations are not otherwise classified in the manual. The classification includes incidental rigging when performed by these truckers. It is not applied to specialty trucking operations described at the end of this scope.

\*\*\*

Trucking concerns usually maintain terminals, central loading platforms or temporary storage depot where merchandise is stored for a short period pending transfer to another destination. Platform persons engaged in loading or unloading merchandise as well as miscellaneous employees such as terminal employees, garage employees and repairers are considered to be an integral part of trucking operations and are assigned to code 7219.

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(Travelers' Ex. 1, NCCI Scopes Manual, States Special Scopes, dated 8/1/2014, excerpt on P. 4).

From the onset of this contested matter, Ultimate Logistics argued that its business is a leasing and financing company and that the onsite mechanics are independent contractors, not employees. (Travelers' Ex. 8, Case Summary & Decision, P. 2, dated 8/22/2016). However, Ultimate Logistics also contended that, to the extent the mechanics were determined to be employees, the mechanics were more properly classified by Code 8380 as an auto service or repair station. (*Id.*)

Code 8380 is described as follows:

Code 8380 is applied to insureds operating service stations and gasoline stations which perform service or repair work on automobiles, vans, trucks and motorcycles. The classification includes minor repair and service work such as engine tune-ups; simple electrical lighting; starter and generator repairs; sales, installation and service of storage batteries; tire mounting, balancing and alignments; lubrications; oil changes; gasoline dispensing; car washing; glass installation; undercoating; and work on engines, transmissions, radiators, ignition systems, chassis and bodies.

\*\*\*

(Travelers' Ex. 7, NCCI Scopes Manual, National Scopes, dated 10/27/2014, excerpt on P. 34.)

On June 16, 2016, Ultimate Logistics requested a hearing before the NCCI Appeals Board in Idaho (“Appeals Board”)<sup>3</sup>, disputing Travelers’ classifications and asserting that it was not a trucking operation and that the mechanics were independent, single member limited liability companies. (Travelers’ Ex. 7, Rieser Email to Hughes, Ps. 5-6, dated 6/16/2016). On August 2, 2016, the Appeals Board sent all interested parties a Case Summary, notifying them of an upcoming hearing scheduled for August 16, 2016, and framing the issue before the board as follows:

Travelers assigned **workers** involved in the service, maintenance and repair of vehicles to Code 7219. Code 7219 applies to trucking operations and includes ‘garage’ operations. [Ultimate Logistics] states they are not a trucking operation because the drivers are not employees of [Ultimate Logistics]. Therefore, **workers** involved in the service, maintenance and repair of trucks should be classified to Code 8380.

(Travelers’ Ex. 7, Case Summary, P. 1, dated 8/2/2016.) (Emphasis added.) The Case Summary also contained the following notation acknowledging that NCCI had framed the issue as follows:

NCCI Note—NCCI advised [Ultimate Logistics] prior to the appeals board meeting that the issue of Travelers including the mechanics under [Ultimate Logistics’] policy is a coverage issue and is not within the authority of NCCI or the Board to act on. **The only issue before the Board is the proper classification of workers covered under the policies.**

(Travelers’ Ex. 8, Case Summary & Decision, P. 2, dated 8/22/2016.) (Emphasis added.)

On August 22, 2016, the Appeals Board issued its decision, again acknowledging NCCI’s framing of the issue on appeal. The Appeals Board resolved the matter in favor of Travelers by passing the following resolution by unanimous vote:

RESOLVED, that Ultimate Logistics is correctly classified to Code 7219 as its business is best described as a trucking company. The mechanics that are included

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<sup>3</sup> In Idaho, the NCCI Appeals Board is comprised of five voting members and one non-voting representative from the Idaho Department of Insurance which are appointed by the Director. (See NCCI Basic Manual, Item B-1432 Dispute Resolution Process, Append. G, 2001 Ed., P.11.) Decisions rendered by the NCCI Appeals Board may be appealed to the Department pursuant to Idaho Code §§ 41-1622 and 41-1623.

under Ultimate Logistics' policies are correctly included under Code 7219 and not Code 8380.

(*Id.* at P. 4).

The Appeals Board based its ruling on the following conclusions:

- NCCI's *Basic Manual* Rule 1-A states that subject to certain exceptions, it is the business of the **employer** that is classified, not separate employments, occupations or operations within the business.
- It is the Board's finding that the business of [Ultimate Logistics] is that of a trucking company rather than a finance company as suggested by Mr. Rieser. [Ultimate Logistics] owns the fleet of vehicles, brokers the loads to be delivered, and receives its revenue from the delivery of the load.
- **Mechanics working for a trucking company** are correctly included in Code 7219.

(*Id.*) (Emphasis added.)

On September 21, 2016, Ultimate Logistics sent a timely notice to the Director requesting an appeal from the decision rendered by the Appeals Board. Ultimate Logistics framed the issues on appeal as follows:

Ultimate Logistics, LLC is an administrative services and financial company that helps truck drivers establish their own independent businesses. ULTIMATE LOGISTICS, LLC IS NOT A TRUCKING COMPANY.

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In our opinion, we should not have been subject to ANY workers' compensation premiums for the independent contractors/mechanics who work from our facility.

\*\*\*

We should not have to be responsible for insuring service providers who are independent contractors/mechanics who have their own SINGLE MEMBER LLC.

(Rieser Let. to Cameron, Ps. 1-2., dated 9/21/2016.) (Emphasis in original.)

Thereafter, Jean Uranga was appointed as Hearing Officer by the Director. After a pre-hearing conference, she filed a Notice of Hearing on October 26, 2016, alerting the parties to the following procedures, among others:

The above-entitled hearing will be conducted pursuant to the Administrative Procedure Act contained in Title 67, Chapter 52, Idaho Code, and the Rules of Practice and Procedures of the Idaho Department of Insurance.

The purpose of the hearing is to determine the appeal of Ultimate Logistics, LLC.

An opportunity shall be afforded all parties to respond and present evidence and argument on all the issues being raised.

(Not. Of Hrg, Ps. 1-2, dated 10/26/2016.)

A hearing was held on January 11, 2017, with each party given the opportunity to present evidence and testimony, after which the Hearing Officer issued the Preliminary Order that is currently disputed in this Appeal. The Hearing Officer determined that Ultimate Logistics was properly classified by the Appeals Board under Code 7219 as a “trucking operation.” However, after analyzing the parties’ testimony, exhibits, pleadings on record, and post-hearing briefing, the Hearing Officer determined that Code 7219 was not applicable to the two onsite mechanics. Ultimately, the Hearing Officer determined that:

[T]he two mechanics are not employees of Ultimate Logistics, are not required by Idaho law to be covered by worker’s compensation laws, and they have no employees. Consequently, Travelers cannot require the payment of a worker’s compensation premium for the two mechanics.

(Preliminary Order, P. 10, dated 3/29/2017.)

In reaching this conclusion, the Hearing Officer relied on statutory and case law authority distinguishing the characteristics of an independent contractor from that of employee and clarifying a “...well established rule that coverage under worker’s compensation laws depends on the existence of an employer-employee relationship.” (Preliminary Order, P. 6, dated 3/29/2017). Rightly so, the Hearing Officer also gave weight to Travelers’ testimony through its representative, Steve Landino, who testified that the mechanics were not employees. However, the Hearing Officer rejected Landino’s conclusion that although the mechanics were not employees, they could be considered subcontractors subject to NCCI Basic Rule 2.H.

Specifically, the Hearing Officer noted the following:

Steve Landino testified Travelers agrees with Mr. Reiser that the mechanics **are not employees of Ultimate Logistics** and were not required to have workers compensation insurance in Idaho. However, because the mechanics are uninsured subcontractors, Travelers has a risk of exposure and could require workers compensation on the mechanics pursuant to the NCCI Basic Manual Rule 2.H.2. Rule 2.H.1 provides that in states where workers compensation laws provide that a contractor is responsible for payment of workers compensation benefits to 'employees of its uninsured subcontractors,' the contractor must provide evidence that the subcontractor has workers compensation insurance in force. Rule 2.H.2 then states: 'For each subcontractor not providing such evidence of workers compensation insurance, additional premium must be charged on the contractor's policy for the uninsured subcontractor's employees according to Subcontractor Table 1 and 2 below.' The evidence established that, in May 2016, both of the mechanics purchased workers compensation insurance. Further, there is no evidence that either of the mechanics have any employees.

(Preliminary Order, P. 5, dated 3/29/2017.) [Emphasis added.]

Ultimately, the Hearing Officer found as follows:

Ultimate Logistics argues that it is not a trucking operation and that its business and the mechanics should be classified under Code 8380. (Exhibit 7, page 34-46.) Code 8380 applies to insureds operating service stations and gasoline stations which perform services or repair work on automobiles, vans, trucks and motorcycles. **Ultimate Logistics primary business is a trucking business, not a service station.** Ultimate Logistics should not be classified under Code 8380.

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The Hearings Officer concludes **the two mechanics are not employees of Ultimate Logistics, are not required by Idaho law to be covered by worker's compensation laws,** and they have no employees. Consequently, Travelers cannot require the payment of a worker's compensation premium for the two mechanics.

(Preliminary Order, P. 5 and P.10, respectively, dated 3/29/2017.)

#### ISSUES ON APPEAL

Travelers appeals only the Hearing Officer's conclusion regarding the mechanics and asserts that the Hearing Officer had no jurisdiction under Idaho's Insurance Code to analyze whether the mechanics were employees or independent contractors. Travelers argues that under Idaho Code § 41-1623, a hearing officer is limited to interpreting only whether a classification is

applicable to an **employer**. According to Travelers, a determination of employer/employee relationships or independent contractor status exceeds the scope of the statute. This reading of Idaho Code § 41-1623 is inaccurate.

### ANALYSIS

As noted in the Preliminary Order, chapter 16, title 41, Idaho Code, is dedicated to workers' compensation. More specifically, Idaho Code § 41-1602 sets forth the purposes of chapter 16, title 41, Idaho Code, among others, as establishing "the general bases and standards" for setting workers' compensation rates and "[t]o provide for review by the state of such rate-making and the results thereof." Idaho Code § 41-1602(2)(b) & (c). In large part, Idaho Code § 41-1601(1) describes the scope of the Department's review as follows:

This chapter applies as to worker's compensation insurance as defined in section 41-506(1)(d), Idaho Code, and to insurance or guaranty by surety insurers of the obligations of employers under worker's compensation laws.

Idaho Code § 41-1601.

By the statute's express terms, the scope of the chapter extends to the application of "worker's compensation laws" to the obligations of employers. The very definition of workers' compensation insurance found in Idaho Code § 41-506(1)(d) contemplates a determination that an employer/employee relationship exists before any obligation to insure arises. Idaho Code § 41-506(1)(d). Without the existence of an employer/employee relationship, there is no requirement for workers' compensation insurance and thus no classification to analyze. *Moore v. Moore*, 152 Idaho 245, 249, 269 P.3d 802, 806 (2011) (citing to *Livingston v. Ireland Bank*, 128 Idaho 66, 69, 910 P. 2d 738, 741 (S.Ct.1995)).

Likewise, Idaho Code § 41-1623 allows "any person or organization aggrieved" by a filing



to seek relief via appeal to the Department. *See also*, Idaho Code § 41-1622(2).<sup>4</sup> There is no express limitation within the scope of Idaho Code § 41-1623 that prohibits an appointed hearing officer from reviewing a filing classification made applicable to employees or from determining the existence or nonexistence of an employee-employer relationship.<sup>5</sup> Idaho Code § 41-1623(1) requires only that an application for appeal specify the grounds relied upon for the relief sought and that, prior to appointing a hearing officer, the director determine that “the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing.”

In this matter, Ultimate Logistics consistently contested its classification as a “trucking operation” and also the inclusion of the mechanics as its “employees.” In its request for a determination from NCCI and its applications for appeal to both the Appeals Board and to the Department, Ultimate Logistics consistently claimed that the mechanics were independent contractors, not employees, and should have no impact in setting its premium rates.<sup>6</sup> Contrary to Travelers’ contention, the issue was not first raised on appeal but instead was presented in good faith, with full notice from the onset at each stage of this dispute and not as a last minute surprise. Further, Travelers’ inclusion of the mechanics as employees classified under Ultimate Logistics code affects Ultimate Logistics’ premium rates substantially and, arguably, unjustifiably if the mechanics are instead independent contractors. As such, Ultimate Logistics’ application for

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<sup>4</sup> Although the order appointing the Hearing Officer does not cite to Idaho Code § 41-1622, the Hearing Officer cites to both Idaho Code §§ 41-1622 and 41-1623 for jurisdictional authority in the Preliminary Order. Noting, without conceding, Travelers’ argument that the Hearing Officer is bound by the agency established in the order of appointment, only Idaho Code § 41-1623 is analyzed herein.

<sup>5</sup> Likewise, Idaho Code § 41-1622 contains no express limitation. *See also* Idaho Code § 41-1622(2) (“[E]very insurer which makes its own rates shall provide within this state reasonable means whereby **any person aggrieved** by the application of its rating system may be heard....on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him.”) [Emphasis added.]

<sup>6</sup> Ultimate Logistics also consistently offered an alternative argument that if the mechanics were determined to be employees, their classification should be considered under Code 8380. That issue is moot for purposes of this appeal.

appeal to the Department was properly before the Hearing Officer within the scope of Idaho Code § 41-1623.

Travelers also complains that the Hearing Officer's determination was improperly made without the benefit of a full factual record. In its appeal to the Director, Travelers stated as follows:

Moreover, the Hearing Officer did not have before her the facts necessary to determine whether the mechanics were independent contractors as there is no discovery process in an appeal to the Department of Insurance from a classification decision by the Idaho Worker's Compensation Appeals Board. How can the Hearing Officer fairly adjudicate a fact-specific issue when there was no discovery into the elements that determine the question of employment versus independent contractor?

(Travelers' Appeal, Ps.7-8, dated 4/11/2017.) This argument is not persuasive on a number of fronts.

Travelers' audit itself should have produced enough evidence for Travelers to justify the inclusion of the mechanics under Ultimate Logistics' classification. Also, contrary to Travelers' current contention, the opportunity for discovery of additional facts was not lost in the administrative process. To the extent that Travelers required additional evidence to defend its classification of the mechanics, Rules 521 and 522 of the Idaho Rules of Administrative Procedure, codified at IDAPA 04.11.01.000 *et seq.*, offer a procedural avenue for conducting discovery during an appeal to the Department. As such, Travelers' complaint that it was prevented from initiating discovery appears disingenuous at this juncture.

Lastly, Travelers' own testimony at the hearing made the issue of whether the mechanics were employees or independent contractors arguably moot. Travelers' admitted through the testimony of Steve Landino that it did not consider the mechanics to be employees. Instead, Travelers asked the Hearing Officer to conclude that the mechanics were "subcontractors" within the scope of Ultimate Logistics' 7219 classification code by virtue of NCCI Basic Manual Rule

2.H.2. Thus, the Hearing Officer's analysis was directed to the classification of the mechanics as subcontractors.

The Preliminary Order presents a well-reasoned analysis of the classification codes proffered by both parties for the purpose of setting Ultimate Logistics' workers' compensation insurance rates. The Hearing Officer did not exceed her jurisdiction in determining that the two onsite mechanics could not be included in calculating Ultimate Logistics' premium rates because they were neither employees nor subcontractors subject to workers' compensation. As such, Travelers' appeal is DENIED.

IT IS SO ORDERED.

DATED this 30 day of June, 2017.

STATE OF IDAHO  
DEPARTMENT OF INSURANCE



DEAN L. CAMERON  
Director

### **NOTIFICATION OF RIGHTS**

This Order constitutes a final order of the Director. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Director will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See*, Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal it by filing a petition for judicial review in the district court of the county in which: (1) the hearing was held; or (2) the final agency action was taken; or (3) the aggrieved party resides or operates its principal place of business in Idaho; or (4) the real property or personal property that was the subject of the agency decision is located. An appeal must be filed within twenty-eight (28) days of: (a) the service date of this final order; or (b) an order denying a petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See*, Idaho Code § 67-5273. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2017, I caused a true and correct copy of the foregoing FINAL ORDER DENYING APPEAL to be served upon the following by the designated means:

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FILED *BM*  
MAR 29 2017  
Department of Insurance  
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

Appeal from Decision of Idaho	)	
Workers Compensation Appeals	)	
Board Re:	)	Docket No. 18-3204-16
	)	
ULTIMATE LOGISTICS, LLC.	)	
	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW AND PRELIMINARY ORDER
NCCI Case No. 31629,	)	
	)	
	)	

This matter came on for hearing on January 11, 2017, before the undersigned Hearing Officer. Ultimate Logistics, LLC., appeared through its representative, William Reiser, and its attorney of record, John C. DeFranco. Travelers Insurance Company appeared through its representatives, Steve Landino and Chris Schrenk, and its attorney, Neil McFeeley. Woody Richards appeared for NCCI.

Following the presentation of testimony and evidence, the parties agreed on a briefing schedule. The final post hearing Brief was received February 15, 2017.

## **ISSUE PRESENTED ON APPEAL**

The issue presented by this case is whether Ultimate Logistics is properly classified as a trucking company and, based upon that classification, whether its two mechanics must be covered by worker's compensation insurance.

## **STATEMENT OF FACTS**

### **Ultimate Logistics Operations**

Ultimate Logistics was organized as an LLC on June 18, 2012. William Reiser testified that he is the General Manager for Ultimate Logistics. Currently, Ultimate Logistics operates as an administrator and financial company for independent truck drivers. Ultimate Logistics buys trucks which are then leased to independent truck drivers with an option to purchase the truck at the end of 55 months. (Exhibit 7, pages 19 and 20.) The Lessee is required to drive a minimum of 12,000 miles per month as a solo driver or 24,000 miles per month as a team driver. The bi-monthly lease payments are deducted from the hauling checks owing to the drivers. Ultimate Logistics also owns the trailers which it rents to the independent drivers.

Each driver is required to have a Commercial Drivers License and pass necessary medical exams. Each driver must also have its own Department of Transportation and Motor Carrier number. Ultimate Logistics does not have its own Department of Transportation or Motor Carrier authority because their hauling authority was revoked by the Federal Carrier Motor Safety Association on August 11, 2014.

Ultimate Logistics helps each driver set up their own business and LLC and then helps the drivers run their businesses. Mr. Reiser is the registered agent for each of those LLCs. Ultimate Logistics runs a dispatch service to help the drivers find loads. Ultimate Logistics handles all invoicing and receives payments for all the loads hauled by the drivers and Ultimate Logistics

receives a percentage of the revenue for loads hauled. The drivers are responsible for paying their own trucking expenses. There are approximately 50 drivers operating under Ultimate Logistics lease program. All of the leased trucks are owned by Ultimate Logistics until full payment is made for the truck and the license plates are registered in the name of Ultimate Logistics. Ultimate Logistics makes sure the trucks are serviced and maintained in order to preserve the asset. The leased trucks operate in all of the lower 48 states. All payments for loads hauled are paid to Ultimate Logistics and Ultimate Logistics deducts certain expenses, such as the lease payments, fuel costs, repair expenses and administrative expenses, before paying the balance owing to the drivers.

Ultimate Logistics maintains a website which clearly represents to the public that Ultimate Logistics is a trucking company. Three pages of the website were admitted as Exhibit 3. Page 1 of Exhibit 3 states: "We believe a positive attitude and professional manner are key to our team and our driver's success." That page also states that Mr. Rieser is the General Manager and his primary responsibility is to purchase semi-tractors and trailers "for the company." "Bill's goal is to continue to build the fleet." "Bill is in charge of hiring all drivers." He oversees drug testing of the drivers and handles all insurance and compliance issues. Page 1 indicates "Our Team" includes Luke "Fleet Maintenance & Safety Supervisor" and Justin "Fleet Maintenance & Trailer Repair Specialist."

Page 2 of Exhibit 3 further states "Ultimate Logistics, LLC hauls refrigerated and dry cargo." That page further provides that Ultimate Logistics is licensed in 48 states and Canada and "hauls refrigerated and dry cargo." Page 3 of Exhibit 3 then states that Ultimate Logistics "has a well maintained fleet of semi-tractors and reefer trailers to insure on-time deliveries. The fleet of tractors and trailers are maintained in Boise, ID."

Ultimate Logistics leases 4.5 acres from the City of Boise near the airport. That property includes offices of Ultimate Logistics and garage space. Two mechanics, Mr. Bannon and Mr.



Scherer, work on the leased trucks at the Ultimate Logistics property. This allows Ultimate Logistics to save on maintenance expenses for the drivers and their trucks. Ultimate Logistics does not warehouse products for later delivery. Ultimate Logistics' property does have a loading dock, but it is not used for loading products. The drivers may use the dock to pressure wash their trucks between loads. A trailer might be parked in the yard for a few days before being delivered. In addition, drivers can park their trucks on the Ultimate Logistics' property on their days off.

The two mechanics who work on site are not employees of Ultimate Logistics. Each mechanic has established their own sole member LLC. Luke Bannon operates as Bannon Truck Repair, LLC, which was created March 22, 2013. Justin Scherer operates as J & H Truck Repair, LLC, which was created August 28, 2015. They set their own hours and purchase and provide their own tools. Ultimate Logistics provides the mechanics a place to work at no charge in exchange for reduced hourly rates for work done on Ultimate Logistics trucks and trailers. The mechanics submit bills to Ultimate Logistics and Ultimate Logistics pays the bills and then deducts the cost of the mechanics bills from the money due to the drivers. Both Bannon Truck Repair, LLC, and J & H Truck Repair, LLC, obtained workers compensation on May 27, 2016.

Mr. Reiser, Mr. Bannon and Mr. Scherer were all advised by the Idaho State Insurance Fund and the Department of Labor that workers compensation insurance was not required for the mechanics because they were sole member LLCs.

#### **Ultimate Logistics dispute with Travelers Insurance**

Travelers Insurance provides workers compensation insurance to Ultimate Logistics. Travelers conducted an audit and determined that Ultimate Logistics was operating a trucking business and the two mechanics needed to be covered by workers compensation insurance under the Scopes Manual classification 7219. (Exhibit 1.) That classification is "Trucking-NOC-All

Employees & Drivers.” NOC means “Not Otherwise Classified.” “Code 7219 is applied to insureds engaged in the hauling of general merchandise under contract for one or more individuals or concerns provided such operations are not otherwise classified in the manual.” (Page 4, Exhibit 3.) Such trucking concerns usually maintain terminals, central loading platforms or temporary storage depots. “Garage employees” of trucking operations are also assigned the Code 7219.

Ultimate Logistics argues that it is not a trucking operation and that its business and the mechanics should be classified under Code 8380. (Exhibit 7, page 34-46.) Code 8380 applies to insureds operating service stations and gasoline stations which perform service or repair work on automobiles, vans, trucks and motorcycles. Ultimate Logistics primary business is a trucking business, not a service station. Ultimate Logistics should not be classified under Code 8380.

Steve Landino testified Travelers agrees with Mr. Reiser that the mechanics are not employees of Ultimate Logistics and were not required to have workers compensation insurance in Idaho. However, because the mechanics are uninsured subcontractors, Travelers has a risk of exposure and could require workers compensation on the mechanics pursuant to the NCCI Basic Manual Rule 2.H.2. Rule 2.H.1 provides that in states where workers compensation laws provide that a contractor is responsible for payment of workers compensation benefits to “employees of its uninsured subcontractors,” the contractor must provide evidence that the subcontractor has workers compensation insurance in force. Rule 2.H.2 then states: “For each subcontractor not providing such evidence of workers compensation insurance, additional premium must be charged on the contractor’s policy for the uninsured subcontractor’s employees according to Subcontractor Table 1 and 2 below.” The evidence established that, in May 2016, both of the mechanics purchased workers compensation insurance. Further, there is no evidence that either of the mechanics have any employees.

### **Appeal to the NCCI and Dispute Resolution Board**

NCCI is a rating organization that promulgates insurance rates, and rules for their application, for numerous states, including Idaho. Idaho law requires NCCI to set up a dispute resolution process to allow individuals to challenge the application of its rules to an insured's policy. Idaho Code §41-1622. Pursuant to this requirement, NCCI established the Idaho Worker's Compensation Appeals Board. Ultimate Logistics requested a hearing before that Board to challenge Travelers classification of Ultimate Logistics as a trucking business pursuant to Code 7219 and the consequent inclusion of the two mechanics on the worker's compensation policy. The hearing was set up through Mr. Tim Hughes from the NCCI. Mr. Hughes likewise presided over, and made a written record, of the hearing.

The Board decision was issued on NCCI letterhead on August 22, 2016. (Exhibit 8.) That decision notes that the issue in dispute is whether Travelers correctly classified the mechanics who service, maintain and repair vehicles owned by Ultimate Logistics to Code 7219 as a trucking operation which includes garage operations. The summary noted that Ultimate Logistics alleged it is not operating a trucking business and the included mechanics are independent contractors, but if the mechanics must be included, Code 8380 should apply. On page 2 of the decision, NCCI noted that the issue of Travelers including the mechanics under the worker compensation policy was a coverage issue which is not within the authority of NCCI or the Board to act on. However, the Board decision then states: "The only issue before the Board is the proper classification of workers covered under the policies." The Board decision also cited and relied upon NCCI Basic Manual Rule 2.H., which is the same rule relied upon by Travelers.

The Idaho Workers Compensation Appeals Board decision ruled that Travelers correctly classified Ultimate Logistics to Code 7219 as its business is best described as a trucking company.

While the Board indicated it had no authority to determine whether coverage was required, the Board decision then ruled: “The mechanics that are included under Ultimate Logistics’ policies are correctly include under Code 7219 and not Code 8380.” The decision further noted that NCCI Basic Manual Rule 1-A states that it is the business of the employer that is classified, not separate employments or occupations within the business. The review Board further found that the business of Ultimate Logistics is that of a trucking company, not a finance company as Mr. Reiser suggested. “UL owns the fleet of vehicles, brokers the loads to be delivered, and receives its revenue from the delivery of the load.” The decision then again stated: “Mechanics working for a trucking company are correctly included in Code 7219.”

### **CONCLUSIONS OF LAW**

This matter is before the Department of Insurance based upon the appeal filed by Ultimate Logistics of the decision of the Idaho Worker's Compensation Appeals Board issued August 22, 2016. Page 3 of that decision recites Ultimate Logistics has a right to appeal without any reference to the statutory authority for the appeal hearing.

Idaho Code §41-1622 provides the statutory authority for this matter and states:

- (1) Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charges as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.
- (2) Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within thirty (30) days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty (30) days after written notice of such action, appeal to the director, who, after a hearing held upon notice to the appellant and to

such rating organization or insurer in accordance with chapter 2, title 41, Idaho Code, may affirm or reverse such action. (Emphasis added.)

Idaho Code §41-1623 also allows any person to request a hearing if they are aggrieved by any filing by insurer or rating organization. Any hearings under Idaho Code §41-1623 are also subject to Idaho Code, Title 41, Chapter 2.

Idaho Code §§41-1622 and 41-1623 both state that hearings before the Director of the Department of Insurance shall proceed "in accordance with chapter 2, title 41, Idaho Code." Idaho Code §14-231 specifically provides that the Idaho Administrative Procedure Act, Idaho Code, Title 67, Chapter 52 "shall apply as to hearings and as to all appeals." Idaho Code §41-240 deals with Orders following hearing and clearly contemplates the receipt of evidence. Idaho Code §41-240(3) states: "The order shall contain a concise statement of the facts as found by the director, and of his conclusions therefrom, and the matters required by Section 41-212, Idaho Code." The Hearing Officer concludes that based upon the applicable statutes, the Director of the Department of Insurance has authority to issue findings of fact and conclusions of law.

With respect to workers compensation insurance, the Idaho Insurance Code includes an entire chapter on worker's compensation rates found at Idaho Code, Title 41, Chapter 16. Idaho Code §41-1601(1) states that the chapter applies to insurance provided to insure "the obligations of employers under worker's compensation laws." That statute refers to the definition of worker's compensation insurance found in Idaho Code §41-506(1)(d) which states:

Workmens [workers] compensation. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of **employees**. (Emphasis added.)

In order to address the issue raised in this hearing, it is necessary to review the Idaho Worker's Compensation statutes. Idaho Code §72-102(13)(a) states: "Employer means any person has expressly or impliedly hired or contracted the services of another." Idaho Code §72-102(12)

provides: " 'Employee' is synonymous with 'workman' and means any person who has entered into the employment of, or who works under contract of service or apprenticeship with, an employer."

Idaho Code §72-102(17) states:

"Independent contractor" means any person who renders service for a specified recompense for a specified result, under the right to control or actual control of principal as to the result of his work only and not as to the means by which such result is accomplished.

Multiple Idaho cases clearly establish that independent contractors are not covered by the worker's compensation laws and businesses are not required to provide worker's compensation insurance for independent contractors. In the case of Livingston v. Ireland Bank, 128 Idaho 66, 910 P.2d 738 (S.Ct. 1995), the Idaho Supreme Court reaffirmed the well established rule that coverage under worker's compensation laws depends on the existence of an employer-employee relationship. Determining whether an individual is an employee or an independent contractor is a factual determination. The Supreme Court further stated that the test to determine whether a worker is an independent contractor or an employee is whether the employer has the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results. The Supreme Court reaffirmed the four prong test used to determine whether a relationship with an employer is that of an employee or an independent contractor. They stated:

. . .This Court has articulated a four-pronged test to determine if the relationship between master and servant is that of employer-employee or independent contractor: 1) there must evidence of the employer's right to control the employee; 2) the method of payment, i.e., whether the employer withholds taxes; 3) whether the master or servant furnishes major items of equipment; and 4) whether either party has the right to terminate the relationship at will, or whether one is liable to the other in the event of a pre-entry termination. 128 Id. at 69.

All of these elements must be balanced. These legal requirements have also be stated in other cases.

*See e.g.* reaffirmed in Wellman v. Horsley, 120 Idaho 136, 814 P.2d 36 (S.Ct. 1991); Kiele v. Steve

Henderson Logging, 127 Idaho 681, 905 P.2d 82 (S.Ct. 1995); Daleiden v. Jefferson County School District, 139 Idaho 466, 880 P.3d 1067 (S.Ct. 2003).

Significantly, Idaho Code Section 72-212(6) exempts working members of an LLC from workers compensation coverage.

Based upon these legal authorities, the Ultimate Logistics mechanics are clearly not employees of Ultimate Logistics and are independent contractors. Ultimate Logistics has no right to control the time, manner or method of how the mechanics operate. With respect to the second factor, Ultimate Logistics does not pay a salary to the mechanics, but rather pays them an hourly rate for actual hours worked on a truck or trailer owned by Ultimate Logistics. With respect to the third factor, while Ultimate Logistics does provide garage space, the mechanics provide their own equipment. Finally, either party has the right to terminate the relationship at will.

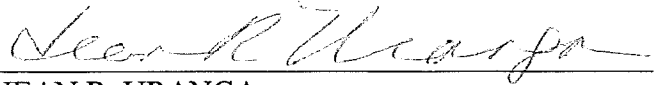
Travelers conceded through the testimony of Steve Landino that the mechanics were not employees and workers compensation was not required for the mechanics, but could be required to cover these uninsured subcontractors employees. Mr. Landino cited the NCCI Basic Rule 2.H in support of Travelers' position. There is no evidence that either of the mechanics have any employees. In addition, pursuant to Rule 2.H.1 each of the mechanics purchased their own workers compensation insurance.

The Hearing Officer concludes the two mechanics are not employees of Ultimate Logistics, are not required by Idaho law to be covered by worker's compensation laws, and they have no employees. Consequently, Travelers cannot require the payment of a worker's compensation premium for the two mechanics.

### **PRELIMINARY ORDER**

Based upon the foregoing, the Hearing Officer orders that the decision of the Board to classify Ultimate Logistics as a trucking company under Code 7219 is affirmed. However, the Board's conclusion that the mechanics working as independent contractors for Ultimate Logistics were correctly included in the workers compensation policy is reversed.

DATED This 28<sup>th</sup> day of March, 2017.

  
\_\_\_\_\_  
JEAN R. URANGA  
Hearing Officer



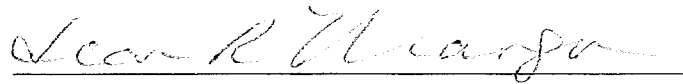
CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28<sup>th</sup> day of March, 2017, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND PRELIMINARY ORDER by emailing and depositing a copy thereof in the United States mail, postage prepaid, in envelopes addressed to:

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A handwritten signature in cursive script, reading "Jean R. Uranga", written in dark ink over a horizontal line.

JEAN R. URANGA