



insurance agent. She listed employees that were involved in “construction debris removal” and listed Code 5610, and Liberty wrote the policy. (Ex. 107, 102).

2. On January 11, 2006, one of Petitioner’s employees, Ron Savage, injured his low back when he fell off scaffolding and landed on his back on stairs. (Ex. 108). At the time, he was on the scaffolding attempting to fix some damaged trim work. (Test. of Petitioner). Petitioner’s employees do various jobs, including taking truckloads of debris to the dump, preparing the ground for the pouring of cement, trips to Lowe’s and other stores to pick up items, shoveling dirt and removing blackberry vines, and “punch list” duties—going around just before the house is listed, and doing whatever is needed (repairs, cleaning up messes, touching up paint). (*Id.*).

3. Code 5610, for debris removal from a jobsite, is a restrictive classification. In order to be the correct code, the amount of payroll under 5610 must be greater than all other employee classifications combined. If it is not, or if the job tasks go beyond just debris removal, then the employees are considered “miscellaneous” and their time is assigned to the general classification of the job. (Test. of Bigham; Ex. 111).

### **ADMINISTRATIVE NOTICE**

At the hearing, I took administrative notice of the accuracy of the *Basic Manual or Workers’ Compensation and Employers Liability Insurance*, as well as of the *Scopes of Basic Manual Classifications*. I accept these documents, and in particular the portions of the document which are part of this record, as the authoritative definitions of what the work entails under Classes 5610 and 5645.

### **CONCLUSIONS OF LAW**

Liberty correctly reclassified Petitioner’s employees from Code 5610 to Code 5645.

### **OPINION**

Petitioner contends that Liberty’s reclassification of employees from 5610 to 5645 was incorrect because it was based upon faulty information received from the bookkeeper and others. I will not address whether the initial information Liberty received was faulty, because I find that the evidence presented by Ms. Reich, and the documentary evidence, shows that the employees were properly reclassified into 5645.

Code 5610, the classification where the employees were initially placed, describes the debris removal tasks as follows:

Code 5610 applies to insureds contracting to provide cleaners, timekeepers and watch guards at construction, erection or wrecking sites.

The classification also applies to an insured engaged in construction operations provided that the total payroll of cleaners, timekeepers and

watch guards exceeds all other payroll of the insured subject to construction or erection classifications at the same job or location.

\* \* \* \* \*

Code 5610 does not contemplate employees who assist various tradespeople at a job site. These employees may run errands, deliver material and equipment or engage in direct construction or erection labor of a varied nature. Employees of this type are assigned to single or multiple classifications based on the conditions described in *Basic Manual* Rule 2-G[.]

*Scopes Manual* at N175. The tasks described by Petitioner do not fit within this restrictive rule. The tasks performed by Petitioner's employees do not match those under this code.

The other classification code at issue is 5645. The *Scopes Manual* describes that code's application to new home construction:

When all of the carpentry work in connection with the construction of a private residence is performed by employees of the same contractor, the work is assigned to Code 5645 \* \* \*. Carpentry repair or remodeling of private residences is also included under this classification[.]

*Scopes Manual* at N176. A reading of the entire classification suggests that this code, more than 5610, is designed to cover several different activities relating to the construction of a residence, mostly involving carpentry.

Based on the testimony, 5645 is the correct code to be applied in this case. I conclude that the various tasks performed by Petitioner's employees do not fall within the debris removal classification, Code 5610. Accordingly, the Final Premium Audit billing, using Code 5645, will be affirmed.

### **PROPOSED ORDER**

I propose that the department issue the following final order:

Liberty correctly assigned Class 5645 to Petitioner's employees at the construction sites.

DATED this 24<sup>th</sup> day of May, 2007.

/s./ Rick Barber  
Rick Barber, Administrative Law Judge  
Office of Administrative Hearings

**NOTICE OF OPPORTUNITY FOR ADMINISTRATIVE REVIEW**

**NOTICE:** Pursuant to ORS 183.460, the parties are entitled to file written exceptions to this proposed order and to present written argument concerning those exceptions to the Director. Written exceptions must be received by the Department of Consumer and Business Services within 30 days following the date of service of this proposed order. Mail exceptions to:

Mitchel D. Curzon  
Chief Enforcement Officer  
Oregon Insurance Division  
PO Box 14480  
Salem, OR 97309-0405