



HOW TO DISPUTE A FAULTY WORKERS' COMPENSATION AUDIT

A case study on how one contractor was able to successfully fight a bill for an extra \$63,000.

By Ross Driscoll Sr., CIC, CR

We have seen numerous contractor clients over the years go into a panic when they receive an unexpectedly high audit bill. And if the insured renews its policy with the same carrier, there could be trouble. The carrier can require payment immediately or cancel the current policy for non-payment of the prior year's audit if there is an outstanding premium due.

This article will be the first in a series presenting different case studies in which workers' compensation audits were not performed correctly by auditors. Many times, these audits can mean an insured may owe the carrier a sizable extra premium at the conclusion of the policy term.

This particular audit case study will discuss the proper use of the carpentry and construction related subcontractor class codes and the rules surrounding them.

Workers' compensation is a highly regulated class of business. The carriers must use the classification codes assigned by the state rating bureaus. Most states come under the purview of the National Council on Compensation Insurance (NCCI) or some states like California have their own work Workers' Compensation Insurance Rating Bureau (WCIRB).

The bureaus provide the classification codes for the work being performed and have very detailed definitions for all of the codes. The carriers must adhere to the detailed definitions provided by the bureaus when auditing their insureds. The bureaus gather the statistical payroll and loss data from the carriers on their insureds each year to come up with lost costs as well as calculating the experience modification of each eligible insured in the jurisdiction. The carriers must adhere to the rules of the NCCI for audits and classification codes.

THE PROBLEM

This particular insured is a full service fire/water restoration contractor located in Arizona. He was not insured by us at the time he had this problem. He told me of his audit problem at an industry event and we decided to help him. I told him to send me his declarations and rating pages for the year in question as well as a copy of the final audit report so we could identify the problem.

The insured has multiple classification codes as the company does mitigation, contents, abatement and is a licensed general contractor. This insured was doing everything correctly with respects to putting the proper payroll in the proper class codes for the final audit. The insured had detailed time cards showing where each

employee was at every day, detailing the job sites they were at each day, and also by the types of work they did on each job each day.

This insured had several departments including estimators and marketing, contents and cleaning staff, water mitigation and extraction, asbestos and mold abatement, construction crews with their own men, and construction superintendents who managed the various subcontractor trades on their jobs.

The audit dispute centered around the assignment of the carpentry classifications by the work comp auditor.

There are multiple class codes and they each have their own separate rate to be used at the final audit. This insured had a class code of 5437 — Carpentry work involved with the installation or repair or interior trim, cabinets, and wood floors and 5445 — Wallboard removal, installation or repair on job sites wither there is no framing work. The auditor took all the payroll for these two class codes and put it in 5645 General carpentry (framing) repairs on residential buildings not exceeding three stories. The rates for wallboard and interior carpentry are much lower than the framing code. In her report, she stated that all "hammer and nail operations" were put in this code by her. This caused the \$63,000-plus surprise for the insured.

THE RECOMMENDATION

Once I had read the report, the insured was advised by their current agent that their current carrier was going to send a 10-day notice to cancel their insurance if they did not immediately send in a check for \$63,000-plus. The insured was with a sizable commercial lines agency in their area but they did not have the expertise to help their own insured. This is not uncommon.

We reviewed the definition of 5645 from the NCCI Scopes manual with the insured. It states the following:

To qualify for 5645, carpentry repair or remodeling operations must take place along with some framing or structural renovation of the premises that would be normally assigned to Code 5645.

Merely performing singular operations such as repairing or replacing cabinets or installing wallboard does not need to be classified to Code 5645. These singular operations are assigned to the appropriate classifications representing their specific trades. However when activities of this nature take place in connection with operations involving some framing or structural renovation of the dwelling, Code 5645 must be assigned to these specialty operations.

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The vast majority of the insured's operations were water losses involving the removal and replacement of finish trim carpentry or cabinets, drywall removal and replacement and painting. With water losses, it is very rare that any framing needs to be removed and replaced. When working on a fire job, the insured subbed out all the framing to other framing contractors who provided certificates of insurance for their own workers' compensation.

At this point I had the insured send the following letter to the carrier and agent on its letterhead:

We are disputing the final audit for the XXX policy xxx900-00 for the policy period 2013 to 2014.

After reviewing the NCCI rules for class code 5643 Carpentry repair or remodeling of residential buildings, the overwhelming and vast majority of our jobs do not involve any framing or structural carpentry renovation at all. The definition states that "merely performing singular operations such as repairing or replacing cabinets or installing wallboard does not constitute work to be classified in code 5645." There is no framing or structural carpentry involved on water damage restoration jobs which make up the vast majority of our work. Therefore it is appropriate when there are no framing operations on a job for all of the work to be in its appropriate class code and not the 5645 class code.

We have requested an NCCI bureau inspection as we do not believe the vast majority of our payroll should be put in code 5645. Please hold off on the collection of the disputed premium until the results of the bureau inspection are completed in order to settle this dispute on use of classification codes.

It is possible to stop audit premium collections with insurance companies when you give them a specific reason why the audit is not proper. It is also the insured's duty at that point to pay any undisputed audit premium to the carrier while the re-audit is taking place.

SUCCESSFUL OUTCOME

The insured wrote the letter above and we contacted NCCI and asked them to do a physical inspection of the insured's operations. The bureau will send an inspector who will write a very detailed narrative and report on the insured's operations and their employees. The inspector assigns the class codes to be used by underwriters and auditors from that point on. The carriers cannot deviate from what is contained in the bureau inspection report. The bureau inspection report is also a great tool to have when placing new business with an underwriter as there is no disputing or wondering what the insured really does. It is also the best tool when you have an auditor trying to interpret class codes improperly.

The report from the inspector stated the following and agreed with our position:

This inspection was ordered due to an audit dispute regarding the application of classifications. The key issue in dispute is the assignment of carpentry classifications.

5437 - Carpentry work involved with the installation of interior trim, cabinet, and wood floors. If this type of work is performed on a job where there is framing work, all carpentry for that job is assigned to the appropriate general carpentry classification 5403 or 5645.

5447 - Wallboard removal, installation or repair on jobsites where there is no framing work. If this type of work is performed on a job where there is framing work, all carpentry for that job is assigned to the appropriate general carpentry classification 5403 or 5645.

In this case, we had the insured dispute the audit in specific detail. We then ordered a bureau inspection. Once we received the bureau inspection and reviewed it, the insured then sent it to the incumbent agent and carrier at our direction. The incumbent carrier was forced to reclassify the codes in the original audit report and the insured owed no addition premium as they had reported their payroll by class code properly all along. The insured received a credit invoice of \$63,000-plus to offset the invoice they originally received for the additional \$63,000-plus they did not really owe.

This is the proper way to dispute a workers' compensation audit when an additional premium is due.

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