

EMPLOYER STATUS DETERMINATION
Associated Safety & Accident Professionals, Inc.

This is the determination of the Railroad Retirement Board regarding the status of Associated Safety & Accident Professionals, Inc. (ASAP), as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.)(RRA) and Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.)(RUIA), which define a covered "employer" in relevant part as:

* * * any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers * * * and which operates and equipment or facility or performs any service * * * in connection with the transportation of passengers or property by railroad * * *.

45 U.S.C. § 231(a)(1)(ii); a similar definition is provided at 45 U.S.C. § 351(a).

Information obtained indicates that ASAP is a privately-held corporation providing accident and claim investigation services for its clients, the largest of which is Grand Trunk Western Railroad, Inc. (GTW). ASAP was incorporated on July 3, 1995, and began providing services to GTW in October, 1995. The central issue in this coverage determination is whether common control, as that term is defined in the Board's regulations at 20 C.F.R. §§ 202.4 and 202.5, exists between GTW and ASAP. There is no question that the services ASAP provides to GTW constitute service-in-connection with railroad transportation.

The Board's regulations provide that "control" exists when:

* * * there exists in one or more such carriers the right or power by any means, method or circumstance, irrespective of stock ownership to direct, either directly or indirectly, the policies and business of such a company or person and in any case in which a carrier is in fact exercising direction of the policies and business of such a company or person.

20 C.F.R. § 202.4. "Common control" exists when:

* * * the control (as the term is used in § 202.4) of such company or person is in the same person, persons, or company as that by which such carrier is controlled.

The Chief Executive Officer and sole owner of ASAP, Mr. Harry A. Joseph, is the former Director of Claims and Safety for GTW. Of five current ASAP employees, two were formerly employed in the Claims and Safety Department of GTW. GTW has entrusted Mr. Joseph with the authority to settle certain claims on behalf of GTW, limited to \$25,000. A contract between GTW and ASAP allows ASAP to lease office equipment, furniture, and other related equipment from GTW throughout the life of the contract for \$1. GTW pays certain travel expenses for

ASAP employees. The contract is of indefinite term and may be

terminated upon six months written notice by either party. GTW appears to have outsourced all of its claims and safety investigation services, and ASAP appears to devote approximately 66 -75% of its employee time toward GTW matters.

Other factors, however, appear to mitigate against a finding of common control between GTW and ASAP. Mr. Joseph, the sole owner of ASAP, does not own any GTW stock. ASAP employees are not subject to the continuing authority of GTW or any person at GTW. ASAP is an independent private investigation company licensed by the Michigan State Police under the Michigan Private Detective License Act, and is required to remain independent of its clients under that Act. According to Mr. Joseph, ASAP obtained the GTW contract through a bidding process.

Although GTW is currently ASAP's largest client, it is the only railroad among 20 clients, and the 19 non-railroad clients include assorted law firms, municipalities, a law enforcement association, an insurance company, a health care provider, a manufacturer, and a newspaper agency, among others. The former GTW employees who now work for ASAP no longer work in their former GTW offices, but rather at ASAP headquarters and are not integrated into GTW staff. Mr. Joseph no longer performs some of the same services he performed for GTW while Director of Claims and Safety. For instance, he is no longer the custodian of any GTW files or corporate information. He is no longer GTW's federal reporting officer, the recipient of RRB lien notices, or responsible for payment of lien amounts to the RRB. He also no longer routinely meets or interacts with GTW management.

Accordingly, GTW's status as ASAP's largest client notwithstanding, the Board determines that common control, as that term is defined in its regulations at 20 C.F.R. §§ 202.4 and 202.5, does not exist. ASAP is therefore not a covered employer under the Acts.

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