

**EMPLOYER STATUS DETERMINATION****Marksman Corporation (Marksman)****Toledo, Peoria & Western Railway, A New York Corporation (Toledo)**

This is a determination of the Railroad Retirement Board concerning the status of the Marksman Corporation (Marksman) and Toledo, Peoria & Western Railway Corporation, A New York Corporation (Toledo) as employers under the Railroad Retirement Act (45 U.S.C. § 231 et seq.)(RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.)(RUIA). Previously, both railroads have been determined to be covered under the Acts.

Marksman was ruled to be a covered entity in BCD 00-57 decided December 18, 2000. Marksman was assigned BA # 2390. Marksman was found to be owned by the Toledo, Peoria and Western *Railroad Corporation* (TPW Railroad). Marksman was then found to be the holding company that 100% owned Toledo (not the same entity as TPW Railroad).

Toledo was ruled to be a covered entity in BCD 89-33 decided April 19, 1989. Toledo was assigned BA # 2346. Toledo acquired and began to operate former properties of the Atchison, Topeka, and Santa Fe Railway connecting points in Indiana and Illinois.

The latest coverage information in the file for Marksman indicates that in March of 2002, an Agreement and Plan of Merger was filed whereby Toledo merged into Marksman. Next, a certificate of merger was filed on May 15, 2002 with the Delaware Secretary of State whereby Marksman changed its name to Toledo, Peoria & Western Railway Corporation, a *Delaware Corporation*. The surviving corporation, now under the name of Toledo, Peoria & Western Railway Corporation, a *Delaware Corporation* continued to file the combined annual reports under the BA number of 2346, which was actually the former Toledo's BA number, not the surviving Marksman BA number of 2390. Information on these activities was provided by Scott Williams the Senior Vice President and General Counsel of Marksman/Toledo.

Section 202.11 (20 CFR 202.11) of the Board's regulations states that:

The employer status of any company or person shall terminate whenever such company or person loses any of the characteristics essential to the existence of an employer status.

As indicated above, information in our coverage files indicates that the original Toledo was formed to operate a railroad and began operations on February 3, 1989 until its merger with Marksman on May 15, 2002. The evidence of record establishes that Toledo has not functioned as a rail carrier since the date of the merger and no longer possesses the characteristics of a railroad carrier employer. The Board therefore finds that effective May 15, 2002, the Toledo, Peoria & Western Railway Corporation, *A New York Corporation*, ceased operations and ceased being a covered employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

This decision directs that the name of Marksman Corporation will be changed to Toledo, Peoria & Western Railway Corporation, *a Delaware Corporation* to reflect the actions arising from the merger.

Original signed by:

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Jerome F. Kever