

CROWE ROPE INDUSTRIES, LLC]	
]	
<i>v.</i>]	
]	
WAUSAU UNDERWRITERS INSURANCE]	DECISION AND ORDER
COMPANY, <i>et al.</i>]	
]	
Docket NO. INS-00-11]	

Crowe Rope Industries, LLC contends that it has been overbilled for workers' compensation insurance coverage by Wausau Underwriters Insurance Company, which conducted a policy audit and retroactively reassigned all of Crowe Rope's production workers to the single classification of "Yarn or Thread Manufacturing." According to Crowe Rope, the reclassification was both untimely and substantively erroneous. Because Wausau's reclassification could not be implemented retroactively, I am granting the requested relief from the premium audit adjustment. The dispute over the merits of the reclassification is therefore moot because Wausau is no longer on the risk and only the 1998 premium is at issue in this proceeding.

Crowe Rope, as the name implies, is a rope manufacturer. It uses two different processes. About 80% of their production consists of polypropylene rope made in a continuous process which begins with pellets of raw polypropylene resin. Machines extrude polypropylene filaments which pass next into twisting machines, come out at the other end twisted into strands which are in turn twisted or braided into rope in the ropemaking machines. The remaining 20% of their rope is made from natural, nylon, or polyester fiber purchased from others. Although Crowe Rope has on occasion in the past sold relatively small amounts of polypropylene fiber to others, it currently uses all the fiber it produces to make rope.

Crowe Rope acknowledges that all its specific operations – synthetic fiber extrusion, twisting, rope braiding, and rope twisting – are part of a single business and largely are part of a single manufacturing process. Nevertheless, Crowe Rope's production payroll had historically been divided among three different classifications: Synthetic Textile Fiber Manufacturing (Code 2305), Webbing Manufacturing (Code 2380), and Yarn or Thread Manufacturing (Code 2220).¹

When Wausau audited Crowe Rope's 1998 policy after the close of the policy term, however, Wausau determined that the entire business should be assigned Code 2220 as its single governing classification. Crowe Rope challenged the reclassification, contending that it was erroneous on the merits, and also that it was untimely both under Bureau of Insurance Rule 470, § 5, which with limited

exceptions prohibits retroactive premium increases resulting from audit adjustments more than 120 days after the close of the policy period, and under Uniform Classification System Rule IV(G)(2),² which prohibits retroactive premium increases resulting from corrections to classifications more than 120 days after the issuance or renewal of the policy. After 120 days of coverage, such an increase can only be implemented prospectively on a *pro rata* basis, and it cannot be applied at all on a post-term policy audit or during the last 90 days of coverage.

In response, Wausau asserts that the reclassification was appropriate, that it completed the audit and billed Crowe Rope in a timely manner, and that the increase is governed not by Rule IV(G)(2), but by Rule IV(G)(5), which expressly provides that "reallocation of payroll among classifications on the policy" is not "a change or correction" within the meaning of Rule IV(G)(2) and therefore may be applied on audit. One of the central purposes of policy audits, after all, is to ensure that workers have been assigned to the correct classification. Although Crowe Rope had asserted that Code 2220 was only nominally "on the policy," Wausau introduced persuasive evidence proving that a significant portion of Crowe Rope's payroll had been assigned Code 2220 even before the audit.

The interplay between Rules IV(G)(2) and IV(G)(5) has been analyzed in *Kevlaur Industries, Inc. v. MEMIC*, No. INS-94-12 (Me. Bur. Ins. Aug. 9, 1994). Rule IV(G)(2) protects the employer's ability to rely on the unit cost of insurance it has been quoted when pricing its products or services, whereas Rule IV(G)(5) protects the insurer's ability to apply that unit cost fairly and accurately. Whether or not all of the relevant classifications were already in use is one factor – but not the sole determining factor – in determining whether an audit adjustment is a permissible "reallocation of payroll" or an impermissible reclassification of the employer's business. The central issue is whether the audit addresses the proper boundaries between the different classifications on the policy, or the validity of the classifications themselves as they have been assigned to the employer's operations. Where "it is the classification of the entire ... operation that is at issue," Rule IV(G)(2) applies and the classification may not be eliminated on audit. *Kevlaur* at 4, note 4.

Here, the operations at issue had historically been assigned Codes 2305 and 2380 and were understood by both Wausau and Crowe Rope to be within the scope of those classifications at the time of the 1998 policy renewal. There was no material change in those operations during the policy period. The audit adjustment was not based on a determination that workers were erroneously allocated between those operations and the operations that had historically been assigned Code 2220. Rather, it was based on a determination that the overall classification of the business was erroneous in the first place. Therefore, it is a correction to the classification itself, and may not be implemented on audit.

Furthermore, even if this were an appropriate audit adjustment, the timeliness of the audit is questionable. The policy expired at 12:01 a.m. on January 1, 1999, so the deadline for final determination of the premium was 12:01 a.m. on May 1, 1999. As a practical matter, this means on or before April 30. The audit was not conducted until April 23. Although Wausau asserts that Crowe Rope was responsible for the delay, I find based on the evidence before me that the timing was to accommodate Wausau's convenience as well as Crowe Rope's, and that Wausau never requested an extension of the deadline. Although Wausau presented credible and uncontested evidence that the bill was mailed on either April 28 or April 29, that bill was not mailed to Crowe Rope or to its authorized representative, but rather to Crowe Rope's former producer of record, and Wausau conceded that it was on actual notice since the fall of 1998 that Crowe Rope had changed producers.

It is therefore *ORDERED*, pursuant to 24-A M.R.S.A. §§ 12-A(2), 2320, and 2382-B, that Wausau bill Crowe Rope for the 1998 policy period in accordance with the classifications initially assigned to the policy rather than the reclassification assigned on audit.

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. § 236 (2000) and M.R. Civ. P. 80C. Any party to the hearing may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal on or before July 31, 2000. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. § 11004.

¹Pursuant to 24-A M.R.S.A. § 2382-B, workers' compensation insurers must adhere to a uniform classification system approved by the Superintendent and administered by the designated workers' compensation advisory organization, which is the National Council on Compensation Insurance ("NCCI"). The Superintendent has taken official notice of both the NCCI *Basic Manual*, filed by NCCI pursuant to 24-A M.R.S.A. § 2382-B(3), and the NCCI *Scopes Manual* (formally entitled *Scopes of Basic Manual Classifications*), containing more detailed descriptions of the various classification codes. These manuals, to the extent that their provisions have been approved by the Superintendent, have the same legal effect as rules adopted by the Superintendent. *Imagineering, Inc. v. Superintendent of Insurance*, 593 A.2d 1050, 1052 (Me. 1991).

²As set forth in the *Basic Manual*; see Note 1 above.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

JUNE 21, 2000

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER