CLYDE WEBB ]	
<i>v.</i> ]	ORDER ON MOTION FOR
MAINE EMPLOYERS' MUTUAL	RECONSIDERATION
INSURANCE COMPANY, et al.	
Docket NO. INS-99-15	

On June 21, the Superintendent issued a Decision and Order in this matter, granting the Petition on a finding that MEMIC's reclassification of Mr. Webb's business was reasonable but untimely, because a business cannot be reclassified on audit with retroactive effect.

On June 22, MEMIC moved for reconsideration, pursuant to Bureau of Insurance Rule 350, § 19, asserting that the following finding of fact was erroneous:

In consultation with his producer, he applied for coverage under Code 9102, "Park – Not Otherwise Classified," the classification applicable to lawn and grounds maintenance operations.

In its motion, MEMIC emphasized that the relief requested was limited to modification or depublication of the decision, and that it does <u>not</u> still seek to collect the disputed premium bill from Mr. Webb, nor to terminate Mr. Webb's eligibility for coverage.

According to MEMIC, the policy was actually applied for and issued under Code 8810, "Clerical," and the producer proposed Code 9102 for the first time in response to the audit. MEMIC acknowledges that the Decision and Order correctly applies the law to the facts as stated, but contends that if the policy was issued under Code 8810, then the cleanup activities in question would represent a new operation not described in the application nor in any amendment to the application, and that a classification could properly be assigned on audit. I agree.

Therefore, whether Mr. Webb did or did not owe the disputed audit premium depends on whether his 1998–99 premium was issued under the "Clerical" code or under some code intended to describe the actual brush-clearing operations.

I have carefully reviewed both the documentary evidence and the hearing transcript, and do not see any evidence that MEMIC actually issued any policies under the clerical code. A copy of the policy's declarations page would provide a conclusive answer, but that document was not introduced into evidence by either party. Although MEMIC's product manager testified at Page 26 that "In the past we made a concession and used the clerical code as Mr. Webb said his

wife was employed as his bookkeeper," his further testimony at Page 30 refers to using the clerical code "at audit."

The purpose of the hearing is to allow all interested persons to present the relevant evidence, and the hearing officer is required to base his or her decision on the evidence actually in the record so that everyone has access to the same information and the same opportunity to argue their case to the hearing officer. Ordinarily, a claim that important information is missing from the record would not be sufficient reason to reconsider the decision and reopen the hearing. However, the Petition challenged only the correctness of the reclassification. The timing was an issue I raised at my own initiative, and I raised it for the first time after the hearing was already over and the record was closed.

For this reason, I am granting the motion to reconsider. Although MEMIC had the opportunity to enter the declarations page into evidence, it did not have notice that the information on that page would decide the outcome of the case. However, it is unnecessary to actually reopen the hearing to take that evidence or any other new evidence the parties may wish to present, because MEMIC has forgiven the premium debt, so that vacating the earlier Decision and Order will provide all the relief requested by MEMIC and will have no effect on Mr. Webb.

## Order and Notice of Appeal Rights

It is therefore *ORDERED* that MEMIC's Motion to Reconsider is *GRANTED*. The Decision and Order of June 21 is *VACATED* and the Petition is hereby *DISMISSED AS MOOT*.

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 August 15, 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.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

JULY 6, 2000 \_\_\_\_\_

ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER