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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	
E M MACHINING,	)	
	)	
Appellant,	)	
	)	ALB-WCA-00-30
From a Decision of	)	
	)	
THE WORKERS' COMPENSATION INSURANCE RATING BUREAU,	)	
	)	
Respondent.	)	
	)	

PROPOSED DECISION

Introduction

E M Machining (EMM), a manufacturer of super conductive electro magnets, appeals the workers' compensation insurance rating classification 3643 (1), "Electric Power or Transmission Equipment Mfg. — N.O.C." assigned to its operations by the Workers' Compensation Insurance Rating Bureau of California (WCIRB).[1] The

[1] The WCIRB is a rating organization licensed by the Insurance Commissioner under Insurance Code section 11750, et seq., to assist the Commissioner in the development and administration of workers' compensation insurance classification and rating systems. The WCIRB serves as the Commissioner's designated statistical agent for the purpose of gathering and compiling experience data developed under California workers' compensation and employers' liability insurance policies. (Ins. Code § 11751.5.)

WCIRB's rating classification assignment affects the premium rates EMM must pay for its workers' compensation insurance coverage provided by Sentry Insurance Group (Sentry) under insurance policy number 49-30856-200 issued to EMM and effective from March 1, 2000, to March 1, 2001.

EMM's appeal to the Insurance Commissioner is authorized by Insurance Code section 11737 (c).[2] For the reasons set forth below, the WCIRB's determination is affirmed.

Statement of Issue

This appeal raises the question whether the WCIRB properly assigned classification 3643 (1), "Electric Power or Transmission Equipment Mfg. — N.O.C." to EMM's operations by analogy, pursuant to the Standard Classification System, Part 3, of the California Workers' Compensation Uniform Statistical Reporting Plan ("Plan").[3]

Contentions of the Parties

The WCIRB contends that the super conductive electromagnetic component parts produced by EMM are electronic in nature. Consequently, EMM's operations must be assigned to a class under the electronics industry group. Classification 3643(1), one of the electronics industry group classifications, includes the manufacture of large transformers. The WCIRB argues that the manufacture of electromagnets is analogous to the manufacture of transformers because the process and hazards are similar in both

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[2] Section 11737(c), provides in pertinent part: "Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard on written request to review the manner in which the rating system has been applied in connection with the insurance offered or afforded. . . . Any party affected by the action of the insurer or rating organization on the request may, within 30 days after written notice of the action, appeal to the commissioner . . . ."

[3] The Plan has been approved by the Insurance Commissioner and is incorporated by reference into Title 10 of the California Code of Regulations at section 2353.1. The 2000 version of the Plan is applicable to the Policy at issue here.

these operations. Therefore, EMM is properly assigned to classification 3643(1) "Electric Power or Transmission Equipment Mfg. — N.O.C.".

EMM argues that its operations should be assigned to classification 3681, "Instrument Mfg.—Professional or Scientific — N.O.C" because the end product produced by EMM is used in scientific experiments. At the hearing, Mr. Tad Hannigan, President of EMM, introduced the additional argument that, if EMM's operations did not fall within classification 3681, EMM should be reassigned to classification 3632, "Machine Shops — N.O.C." because EMM's operations resembled a machine shop.

History

The Insurance Policy

On or about March 1, 2000, Sentry issued to EMM a workers' compensation insurance policy that assigned EMM's operations to classification code 3681, "Instrument Mfg.—Professional or Scientific — N.O.C." Subsequently, on July 27, 2000, Sentry's underwriting department contacted the WCIRB and requested that the WCIRB conduct a physical inspection of EMM's plant to verify whether EMM's operations were properly assigned to classification code 3681, "Instrument Mfg.—Professional or Scientific — N.O.C.". (Exhibit 8.)

The WCIRB Inspection Reports and EMM's Appeal

Following its inspection, the WCIRB issued a Classification Inspection Report dated August 4, 2000, that reassigned EMM's operations to classification 3643(2), "Electric Control Panel or Switchgear Manufacturing. (Exhibit 16.) On October 9, 2000, Mr. Tad Hannigan appealed the WCIRB classification assignment on the grounds that EMM did not manufacture any items described under classification code 3643(2). Mr.

Hannigan contended that EMM's operations should be assigned to classification 3681, "Instrument Mfg.—Professional or Scientific — N.O.C." because its products were used by his customers in scientific experiments. (Exhibit 11.)

On October 19, 2000, Tod W. Libbe, Manager of the WCIRB's Classification and Test Audit division, wrote to Mr. Hannigan to inform him that the WCIRB's August 4, 2000, report mistakenly assigned the wrong "phraseology" for code 3643. Mr. Libbe explained that the proper code was actually 3643(01) "Electric Power or Transmission Equipment Mfg. – NOC". Mr. Libbe further indicated that the WCIRB viewed the product produced by EMM to be analogous to a solenoid with a rating over 746 watts and that Mr. Hannigan could appeal the WCIRB decision to the Insurance Commissioner. (Exhibit 12.)

The Administrative Hearing Bureau received Mr. Hannigan's appeal on October 26, 2000. Subsequently, the Administrative Hearing Bureau granted the WCIRB an extension of time to respond to EMM's appeal so that the WCIRB could conduct another inspection of EMM's operations. Vice President Warren Clark of the WCIRB completed the inspection on May 17, 2001, and issued a second Classification Inspection Report on June 7, 2001, that also assigned EMM's super conductive electromagnet manufacturing operations to classification code 3643 (1). (Exhibit 19.) After receiving this Inspection Report, EMM elected to pursue its appeal.

An evidentiary hearing was held before Administrative Law Judge Marjorie A. Rasmussen in San Francisco on August 29. 2001. EMM was represented at the hearing by its President, Mr. Tad Hannigan. Testifying on EMM's behalf were Mr. Tad Hannigan and Mr. James P. Sanders, Sentry's Sales Representative . John N. Frye, Esq.

of the Law Offices of John N. Frye represented the WCIRB. Mr. Frye was accompanied by Mr. Brian Gray, the WCIRB's Quality Assurance Director, and Ms. Renee Berthenal, in house counsel for the WCIRB. Testifying on behalf of the WCIRB was its Vice President, Mr. Warren Clark. The parties called and cross-examined witnesses, presented documentary evidence and argued their respective positions on the issues. The WCIRB filed a prehearing brief. Both parties have submitted the matter for decision.

Findings of Fact

EMM is the sole California manufacturer of super conductive electromagnets. The parties agree that there is no classification code directly on point in the Plan that describes EMM's operations and, therefore, the operations of EMM must be classified by analogy. As indicated above, the WCIRB assigned EMM's operation to classification 3643(1), "Electric Power or Transmission Equipment Mfg. — N.O.C." EMM argues that its operations should be assigned to either classification 3681 "Instrument Mfg.— Professional or Scientific — N.O.C." or 3632, "Machine Shops — N.O.C." The evidence establishes the following facts regarding the operations under each classification that are relevant to a determination of the issues on appeal.[4]

Description of EMM's Manufacturing Operations

EMM's manufacturing operation is located in a single story building. A separate company performs EMM's clerical office duties. The parties agree that EMM's business

[4] Evidence about the process, materials, tools and equipment used by employers assigned to Codes 3643(1) and 3681and 3632 comes primarily from Mr. Hannigan's, and Mr. Clark's testimony. Some additional evidence was gleaned from the WCIRB's inspection reports of EMM's operations and other enterprises classified under Code 3643(1); the WCIRB's published *Classification Reference*; 2000, Vols. I & II, and the photographs and customer letters submitted by Mr. Hannigan. (Exhibits 1-8, 21-23.) While the WCIRB's *Classification Reference* 2000 is published as a guide for insurers and employers, it has not been adopted or approved by the Insurance Commissioner and is subject to change not only by the Commissioner's decisions but also by C&R Committee decisions. As such, it has no legal significance.

and operations are accurately set forth in the WCIRB's Inspection Report issued on June 7, 2001(Exhibit 19) and photographically depicted in Exhibit 23 (photograph numbers 1-39.)

EMM's operations consist of two main components: castings and copper coils.

Castings: EMM receives castings made from special magnet iron from an outside foundry and then employees grind off the bumps and blemishes from these castings using hand grinders. The castings are then mounted on boring machines and bored to the required diameter and sleeved. Rod and bar stock, also received from outside concerns, are cut to size and the pieces are then milled, drilled, turned and ground to blue print specifications to form steel cores. The steel core is installed into the casting with epoxy after being cut to size. Necessary holes are drilled into the steel cores and additional metal stock is machined to produce legs and tips. Purchased eye bolts are secured to the castings, utilizing nuts and bolts and the completed casting sections are sent out to another company to be painted.

Copper Coils: EMM also manufactures the copper coils that are fitted into the completed castings. The copper coils are made up of several layers of coil wafers, copper cooling plates and a plastic tube. Initially, the copper wire is placed in a winder and wound on itself in a mandrel while epoxy is applied to form a wire wafer. Each wire is wound to a specified length while being coated with epoxy. When the winding process is completed, the mandrel holding the wound epoxy coated wire is removed from the winder and baked in an oven until the epoxy covering the wire is cured. The mandrel is then removed from the oven and taken apart to reveal a finished epoxy coated wire wafer.

The wire wafer core sections are then placed between layers of copper sheet stock or plates. These copper plates serve no electrical purpose but cool the coil while in operation. EMM receives the copper sheet stock from an outside source. The plates are sanded to size and a copper tube is soldered around the edge of each plate. The copper plates are layered between the copper wire wafers using epoxy. Before the last wafer is layered, a central plastic tube is pushed through the center hole of the layered wire wafers and copper cooling plates. The wires from all the wafers are soldered together and wired to a terminal block. Necessary holes are drilled and purchased fittings and plastic tubing is secured to the coil sections. The "sandwiched" coil is further machined and wrapped with plastic and filled with epoxy. The outside of the plastic covered coil is sanded before it is sent to an outside source to be painted.

The coils are secured within the painted metal casting to form a component part of a super conductive electromagnet. The completed magnetic components, that range in size from 2' x 2' up to 3' x 3', are inspected, packed into wooden crates and set aside for delivery by common carrier.

Raw Materials: The raw materials used in the manufacture of electromagnets include heavy steel castings, rod, bar and other metal stock, copper wire and copper sheet stock.

Tools and Equipment: EMM uses milling machines, lathes, drill presses surface grinders, band saws and various hand tools in manufacturing super conductive electro magnets. EMM's employees use the hand grinders to grind bumps and blemishes off the steel castings that are received from separate concerns. The boring machines are used to bore the castings to the required diameter. Rod and bar stock are cut with band saws to

size and then milling machines are used to mill the stock according to blueprint specifications to form steel cores. Drilling equipment is utilized to drill necessary holes in the castings and hand tools are used to secure eyebolts to the castings. Band saws also are employed in cutting the copper wire and copper sheet stock while hand tools are used to fasten the purchased fittings and plastic tubing to the copper coil sections

When completed, the electro magnets produced by EMM are connected to a power source in excess of 746 watts and, in conjunction with additional components assembled by EMM customers, are used for various scientific tests.

Classification 3643(1) – "Electric Power or Transformer Equipment Mfg – N.O.C."

The descriptive footnote to classification 3643(1) in the Plan describes the types of end products to which the classification applies, in pertinent part, as follows:

> "This classification contemplates the manufacture or repair of generators, converters, transformers, power supplies or similar equipment with a power rating of one horsepower or more."

Of the operations described in this classification, transformers are most like electromagnets. Transformers are designed to change electrical current from one voltage to another. The process of manufacturing transformers typically involves the machining of metal strip stock and the winding of copper wire. After the metal strip stock is sheared and stacked to form laminated cores, copper wire is wound onto the cores to produce coils. The coils are coated with epoxy and subsequently baked in an oven to cure. Purchased parts such as terminals, capacitors, resistors, adaptors and housing covers are attached and wire connections secured to complete the assembly operations.

Raw Materials: The raw materials used in the production of transformers include steel castings, rod, bar and other metal stock, copper wire and copper sheet stock.

Tools and Equipment: The types of tools and equipment used in the production of transformers include laminating machines, band saws, drill presses, laths, milling machines, tapping machines, table saws, belt sanders, grinding wheels and hand tools.

Classification 3681 "Instrument Mfg. -- Professional and Scientific – N.O.C."

While the descriptive footnote to Classification 3681 in the Plan does not define the end product or manufacturing process contemplated by this classification code, evidence offered by WCIRB establishes that Classification 3681 encompasses a broad spectrum of professional and scientific instruments such as oscilloscopes, Geiger counters, spectrophotometers, and ohmmeters. Typically, professional or scientific instruments receive information, process it and provide some form of output. However, microscopes and hypodermic syringes, which are included within this classification, are not necessarily measuring devices.

The production of professional or scientific instruments generally involves assembling electronic components onto printed circuit boards and securing other electronic components, such as power supplies, sensors, fuses, transformers and filters to a chassis, housing or frame. These tasks are often performed in a "clean room."

Raw Materials: The materials used in making professional or scientific instruments include chassis, housings, circuit boards and power supplies.

Tools and Equipment: The employees engaged in manufacturing professional or scientific instruments typically use hand tools, wave soldering machines, soldering irons and electronic test and calibration equipment.

Classification 3632 "Machine Shops – N.O.C."

The Plan does not contain a descriptive footnote defining the end product or manufacturing process encompassed by classification 3632. Evidence establishes that classification 3632 contemplates a wide array of metal machining and assembling operations. End products included within this classification are: automobile jacks, ball bearings, bridge operating machinery, dishwashers, elevators, escalators and metal hoses.

Raw Materials: The principle material used by these operations is metal stock.

Tools and Equipment: Machining operations typically use lathes, drill presses, milling machines, abrasive stands, metal saws and welding equipment.

ANALYSIS

Applicable Law

Background

A California employer's workers' compensation premium rate is determined, in part, by the classification to which its operations are assigned under the provisions of the Plan. The objective of the Plan's workers' compensation classification system is to group employers into classifications that reflect the risk of loss common to these employers. Generally, it is the business of the employer within California that is classified, not the separate employments, occupations or operations within the business. (Plan, Part 3, Section I, II (1).)

Pursuant to Insurance Code section 11734(b), the WCIRB is required to set "pure premium rates" and keep historical loss and payroll statistics for each classification.[5] To

[5] "Pure premium rates" are defined as "the loss cost per exposure, including loss adjustment expense, for standard classifications." The pure premium rate structure is based upon data reported in accordance with the Plan. (Plan, Part 1, Section I, (1); Section II (15).)

this end, the WCIRB submits a proposed Plan that includes an extensive listing of classification codes and accompanying pure premium rates for various industries, businesses, and occupations to the Commissioner for his/her approval each year.[6] Every workers' compensation insurer must record and report its workers' compensation experience to the WCIRB pursuant to the provisions of the Plan (Insurance Code section 11734). The WCIRB uses this loss history to determine whether any change in the Plan for the following year is necessary.

Thus, the rate for each classification reflects the payroll data and loss history associated with the particular operations assigned to that classification[7]. As a consequence, if the operations assigned to a classification have a high loss history, the rate for that classification will tend to be higher than the rate for a classification in which the included operations have fewer losses. For example, the pure premium rate for tree trimmers is higher than the rate for clerical office employees because, in part, the loss history for these employees indicates that tree trimmers incur more work related injuries than clerical office employees[8]. With respect to the operations at issue in this appeal, the pure premium rate for operations assigned to classification 3643(1) "Electric Power or Transmission Equipment Mfg. — N.O.C." is higher than the rate for the operations

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[6] "The Plan is designed to develop experience in standard classification detail on a policy year incurred losses – earned exposure and premium basis, by means of separate reports for every workers' compensation policy. Under this policy year method of compiling statistics, the loss and claim experience of a policy is brought together in direct relationship with exposures and premium of the policy." (Plan, Part 1, Section I, (1).) An insurer may develop and file with the Department of Insurance its own classification system upon which a rate may be made. Alternatively, an insurer may incorporate the WCIRB's classification system and develop rates based on the pure premium rates in the Plan. In any event, the insurer's rate filing is subject to the Commissioner's disapproval. (Insurance Code section 11734 (b).)

[7] Rate, as used in the Plan, means the cost of the insurance per unit of exposure (payroll) prior to any application of individual risk variations based on loss or expense considerations applicable to an insurer's classification.

[8] Under the 2000 version of the Plan, the pure premium rate per $100.00 of payroll for classification 0106, "Tree Pruning Repairing or Trimming" is $31.86. The pure premium rate for classification 8810, "Clerical Office Employees" is $.76.

assigned to classification 3681, "Instrument Mfg.—Professional or Scientific — N.O.C. and classification 3632, "Machine Shops — N.O.C.".[9]

The classification to which an operation is assigned will clearly impact an employer's overhead costs. In this case, Sentry initially charged EMM $2.17 per $100.00 of payroll when its operations were assigned to classification code 3681. EMM's premium rate was raised to $4.57 per $100.00 payroll after its operations were reassigned to classification code 3643(1). As a consequence, EMM's workers' compensation insurance premium more than doubled and its concern over whether its operations were accurately assigned by analogy is understandable. (Exhibit 16.)

Classification by Analogy

The Plan requires that, when a business or operation is specifically described by a particular classification, it should be assigned to that classification. (Plan, Part 3, Section II (1)(a)) However, some types of businesses or operations, like EMM's; may not generate enough loss and payroll data that is statistically viable to use in developing a specific classification code and rate. According to the Plan, these enterprises shall be classified by analogy:

> "Any business or operation not described by a classification shall be assigned to the classifications(s) most analogous from the standpoint of process and hazard. The limitations and conditions of the classification(s) so assigned and all rules pertaining thereto shall be applicable." (Plan, Part 3, Section II, 1(b).)

Based on the above regulatory language, the analysis in an assignment by analogy case necessarily must focus on the employer's activities from the standpoint of "*process and hazard.*" It is an analysis that looks at the various risk components of what an

[9] Under the 2000 version of the Plan, the pure premium rates per $100.00 of payroll for these operations is as follows: classification code 3632 – $4.07; classification code 3643 - $4.16; classification code 3681 - $2.27.

employer does in creating a product or providing a service in relation to what other employers do that are assigned to a specific classification.

Despite the mandate to consider the process and hazards associated with a particular business or operation when assigning a classification by analogy, the testimony by the WCIRB and EMM, at times, seemed to focus solely on how EMM's end product (super conductive electromagnets) was more similar to the end products of operations assigned to classifications 3681 "Professional and Scientific Instruments Mfg. – N.O.C." or 3643, "Electric Power or Transmission Equipment Mfg. — N.O.C."[10] Such comparisons shed little light on whether the process and hazards (i.e. losses) associated with EMM's manufacture of super conductive electromagnets are similar to the process and hazards associated with the production of scientific instruments or transformers.

This is not to say that a consideration of an operation's end product is never relevant in an assignment by analogy. Such an assignment must be made within the context of the entire rating and classification system. In a direct classification assignment, which is governed by the Plan under Part 3, Section II (1)(a), a manufacturing operation is typically classified by its end product. However, when assigning an operation to a classification by analogy, the nature of the end product is relevant only to the extent that it identifies potential classifications to consider and sheds light on the process and the skills required to do the job. Thus, it is reasonable to initially look at other manufacturing classifications that describe similar end products to those

[10] During the communications exchanged between the parties leading up to this appeal, the WCIRB and EMM seemed to emphasize the arguments which compared EMM's end product with products manufactured by operations assigned to classifications 3681 and 3643(1) (See, Exhibits 12 & 19.)

produced by the employer whose operations are being assigned by analogy. Among those similar classifications, similarities in process and hazard are then analyzed.

Warren Clark's testimony on behalf of the WCIRB provides a useful analytical framework for classifying businesses or operations by analogy under the Plan that is generally adopted by this decision with the explicit exception that identifying analogous end products is not the primary focus of the analysis, but merely an initial step. When analyzing process and hazard in the context of a classification by analogy, the following factors should be considered: 1) industry type, referring to the end product and the types of skills required by the employees to perform the job; 2) raw materials involved in the job, 3) types of tools and equipment used; and 4) what the employees actually do with the tools and materials in performing the work.

Since the WCIRB regularly utilizes this analytical framework in assigning operations by analogy, the WCIRB is ordered to incorporate these factors into the Plan under Part 3, Section II, 1(b) as part of the WCIRB's 2003 rate filing, without unduly weighting industry type.[11] Alternatively, if the WCIRB believes that industry type should be the primary determinate of classification by analogy, the WCIRB's 2003 rate filing should amend the Plan to make that viewpoint clear.

Applying the four factors in the above analysis to EMM's operations supports the conclusion that the manufacture of super conductive electromagnets, when compared to existing rating classifications in the Plan, is most analogous to classification code 3643(1) "Electric Power or Transmission Equipment Mfg. — N.O.C."

[11] The WCIRB should consider incorporating an analysis of these four factors in its Inspection Reports to aid insurers and employers in interpreting the intent of the Plan with respect to classification by analogy.

Application of the Law to the Facts

Industry Type: End Product and Employee Skills

Since the super conductive electromagnetic components produced by EMM are electronic in nature it is reasonable to compare the process and hazards related to their manufacture with the process and hazards associated with the production of end products made by operations classified under the electronics industry group. Classifications 3643(1) "Electric Power or Transmission Equipment Mfg. – N.O.C." and 3681 "Instrument Mfg. – professional or scientific – N.O.C.", are both found under the electronics industry subheading in the classification section of the Plan.

Electromagnets are similar to electric transformers because both products perform a specific function when an electrical charge is applied -- transformers change electrical current and electro magnets produce a magnetic field. In contrast, most scientific instruments are measuring and analyzing devices, while EMM's electromagnets are not.

Additionally, it is apparent that the manufacture of electromagnets requires the knowledge of a variety of skills similar to those needed in the manufacture of electric transformers, such as: milling, drilling, turning, grinding and boring of metal parts, the winding of copper wire and use of epoxy. In contrast, the manufacturing of scientific instruments typically involves the assembly of electronic components onto printed circuit board and securing other electronic components to a chassis, housing or frame. These tasks are often performed in a "clean room."

Under cross-examination by Mr. Hannigan, Mr. Clark admitted that classification 3681 operations are not confined to the manufacture of electrical products. This

classification also encompasses operations that manufacture microscopes, hypodermic syringes, plastic tubing kits for hospitals and surveying equipment. EMM correctly argues that these types of scientific instruments, like electromagnets, are not necessarily devices that measure and analyze data. However, EMM failed to introduce any evidence that tends to support its proposition that the skills associated with the production of electromagnets are similar to the skills required in the production of scientific instruments.

EMM's contention that its operations should be assigned to classification 3632 also is not supported by a preponderance of the evidence. EMM concedes that its operations are not limited to manufacturing metals castings. EMM's operations connected with its production of copper coils tends to prove that the process and hazards associated with EMM's operations extend beyond those found in machine shops assigned to classification 3632.

Raw Materials: The hazards to which employees are exposed often are determined by the type of raw materials used in an operation. The raw materials used in the manufacture of electromagnets, include heavy steel castings, rod, bar and other metal stock, copper wire and copper sheet stock. These materials, likewise, are more similar to the raw materials used in the manufacture of transformers than those used in the production of scientific instruments. Furthermore, these raw materials are not used in the production of hypodermic syringes and the other scientific devices that do not process and analyze data. EMM did not offer any evidence to refute this point.

Tools and Equipment and the Manner in Which They are Used: The types of tools used and the manner in which they are used to process the raw materials into a

finished product also contribute to job hazard. During the manufacture of electromagnets, as in the manufacture of electric transformers, employees use milling machines, lathes, drill presses surface grinders, band saws and various hand tools to produce the metal castings and copper coils. This evidence was not refuted by EMM nor did EMM introduce any evidence that tends to prove its operation uses similar tools and equipment in a fashion like plants that manufacture scientific instruments.

Conclusion

Pursuant to California Code of Regulations, title 10, section 2509.61(a), a "party has the burden of poof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he or she is asserting."

Based on the evidence submitted by the parties, the record on appeal and the foregoing analysis of the facts and law at issue, the Administrative Law Judge concludes that the WCIRB met its burden of proof by showing the end product, employee skills, raw materials and type and use of equipment associated with the manufacture of electromagnets are more like those associated with the manufacture of electric transformers than scientific instruments. EMM failed to meet its burden to show the contrary. Therefore, the determination of the WCIRB to assign EMM's operations to classification 3643 (1) is affirmed.

ORDER

1. The determination of the WCIRB to assign EMM's operations to classification 3643 (1) under its 2000 policy of workers' compensation insurance with Sentry is affirmed.

I submit this proposed decision based on the evidentiary hearing, records and files in this matter and I recommend its adoption as the decision of the Insurance Commissioner of the State of California.

Dated: October 23, 2001

MARJORIE A. RASMUSSEN
Administrative Law Judge