STATE OF CALIFORNIA

DEPARTMENT OF INSURANCE

SAN FRANCISCO

In the Matter of the Appeal of SIERRA CHILDREN'S HOME Appellant, From a Decision of THE WORKERS' COMPENSATION INSURANCE RATING BUREAU OF CALIFORNIA, Respondent.	DECISION File No. SF 6960-R-98

FACTS

1. Appellant was fully insured for its workers' compensation liability during all times pertinent to this appeal.

2. Respondent, Workers' Compensation Insurance Rating Bureau of California ("Bureau"), is a rating organization licensed pursuant to the provisions of California Insurance Code Section 11750, et seq.

3. On March 26, 1986, a change in the ownership of Appellant occurred; this change constituted a material change of interest under the rules of the California Experience Rating Plan, 10 California Code of Regulations Section 2353. (Plan.)

4. The experience modification applied to the September 1, 1986 renewal policy of Appellant was not withdrawn as the Bureau acted on a February 20, 1989 letter informing it of the change of interest. This was more than one year following the expiration date of the September 1, 1986 policy.

5. Appellant appealed the ruling to the Bureau, where it was heard before the Classification and Rating Committee on April 10, 1990. The decision of the Bureau staff was sustained.

6. Appellant has appealed this decision to the Insurance Commissioner, which appeal was heard on October 5, 1990.

Dr. Kindsvater, Director of Sierra Children's Home, testified at the hearing as to the steps taken by Appellant to make everyone aware that in fact a change of interest had occurred in March 1989. He testified that his broker had been notified. Further, he testified that the broker had informed the insurer that the change of interest had occurred. Shortly after the change of interest, on March 30, 1986, a field auditor from the Bureau was on Appellant's premises for purposes of conducting an audit. Mr. Kindsvater testified that he spoke to the auditor from the Bureau about the matter. Thus, Appellant maintains that it had notified numerous people of the fact that ownership had changed.

A new broker on the account informed Appellant that the experience modification for the 1986 policy year could be withdrawn based upon the material change of interest which had occurred. Appellant was previously unaware of this possibility. Immediately, Appellant wrote the Bureau directly, informing it of the change of interest. This was in February 1989.

The Bureau did not withdraw the experience modification for the September 1, 1986/1987 policy. The Bureau contends that the first notice it received, from anyone, about the change of iterest was the Appellant's letter of February 20, 1989. Section III, Rule (10)(b) of the Plan requires that, in order to modify an experience modification because of a change of interest, notice of the change of interest must be given by the insurer or the insured to the Bureau within one year following the expiration of the policy year affected. The notice to the Bureau from the Appellant, in February 1989, was approximately 17 months after the expiration of the September 1, 1986 policy. The debit experience modification was not withdrawn.

DISCUSSION

It was not disputed that Appellant had notified both the broker and the insurance carrier of the change of interest. Appellant testified further that the Bureau was notified, producing a document purportedly imputing knowledge of the change of interest to the Bureau as early as September 1986. However, on its face the document offered did not clearly show knowledge by the Bureau, and the Bureau contends that the document in question was not related in any way to this change of interest. Nevertheless, it is apparent that the Appellant had notified everyone it could think of about the change.

Unless the Appellant possessed special knowledge of the workings of the Plan, it would have no reason to suspect that everything which should have been done had indeed been done. Withdrawal of experience modifications for the 1987 and 1988 policy years was done. The Appellant did not realize that withdrawal of the 1986 experience modification was also a possibility. Appellant did not realize this until the new broker informed it of this fact, whereupon Appellant immediately took steps to notify the Bureau directly.

The Rule contemplates that a written notice from the carrier is acceptable as well as from the insured. Here, the carrier should have relayed the information on to the Bureau. It appears that the Appellant, a lay person, did all that could reasonably be expected of a person not familiar with the intricacies of the Plan to make known the fact that ownership had changed. This is unlike some situations where delay in notification to the Bureau of a change of interest occurs simply because the insured told no one that a change had occurred. Here, Appellant told everyone, apparently, except the Bureau. Further, Appellant had no reason to expect that anything further could be done, other than what was done, until notified by a new broker.

We realize that the Classification and Rating Committee has been guided by the letter of the regulation. However, the facts of this specific appeal compel a finding that Appellant acted reasonably in notifying the proper parties of a change of interest, and thus should not be penalized.

ORDER

THEREFORE, IT IS ORDERED that, in accordance with the rules of the California Experience Rating Plan, the experience modification of the Appellant be withdrawn, effective September 1, 1986, because of a material change of interest which occurred on March 26, 1986.

DATED: December 13, 1990

Joseph P. Powers

JOSEPH P. POWERS
Hearing Officer