

The shock loss which had affected the rates in the 1990s is no longer part of the recent experience base, and the indicated Maine loss costs for Code 5480, if it were separately rated, are once again lower than the indicated Maine loss costs for Code 5445. Accordingly, Colonial Plastering asked its workers' compensation insurer, the Maine Employers' Mutual Insurance Company ("MEMIC"), to reclassify it as "Plastering – NOC," Code 5480.

MEMIC agrees that Plastering – NOC is a more appropriate classification for Colonial Plastering's business. This point was never in dispute, neither in the current proceeding nor in *Colonial Plastering I*, and it is also undisputed that the nature of Colonial Plastering's operations has not materially changed in the intervening six years. However, MEMIC has objected to the requested reclassification on two grounds – first, that the merger of the two classifications for rating purposes means that the requested reclassification would not change Colonial Plastering's premium, so that NCCI is the only party that can provide any meaningful remedy beyond the schedule rating credit that MEMIC has already given Colonial Plastering. Second, MEMIC is concerned that a policyholder should not be able to move back and forth between classifications at will, picking and choosing whichever one is lower.

Because the key issues, both here and in *Colonial Plastering I*, relate to the classification system as a whole rather than Colonial Plastering's particular circumstances, NCCI is an indispensable party. Accordingly, the hearing originally scheduled for November 21, 2003 was rescheduled to December 3 because NCCI's counsel was unable to attend. Unfortunately, NCCI failed to appear at the December 3 hearing.

However, the Bureau's records show that NCCI sent a letter on July 23, 1998 to Bureau of Insurance actuary Richard Johnson, outlining proposed changes to its small volume class ratemaking methodology. These changes were specifically designed to address the issues identified in *Colonial Plastering I*. The Superintendent takes official notice of that letter, which has been attached to this Decision and Order as an appendix, and takes official notice that the Bureau's actuary has approved the changes.

Since there is now a rating methodology in place that appears to reasonably address the differences in hazard between Codes 5445 and 5480, the reasons for merging those two classifications are no longer applicable. This is not an endorsement of *ad hoc* "rate shopping," since it is based on principles of general applicability and since *Colonial Plastering I* had contemplated from the beginning that the merger of the two classifications was to be a temporary expedient until NCCI had a more appropriate rating methodology in place for "orphan classifications" where there is too little recent in-state experience to be a reliable indicator of future losses, and where increased reliance must be given to out-of-state experience and historical rate relativities. The Bureau will continue to monitor these issues to ensure that the new methodology has no unintended consequences and continues to yield actuarially appropriate results.

Codes 5445 and 5480 should therefore be restored as separate classifications for ratemaking purposes. However, in the absence of any evidence of a compelling reason to recalculate rates retroactively, the new rates shall be applied prospectively, to policies issued and renewed on or after January 1, 2004, with the exception of Colonial Plastering, whose premium shall be recalculated as of April 9, 2003, the effective date of the current policy. MEMIC may make appropriate adjustments to the schedule rating and experience rating to the extent necessary to put Colonial Plastering in the same position as if the new manual rate for Code 5480 had been available at the time the policy was renewed. In establishing loss costs for Code 5480, NCCI shall review the "on-level premium" component and make any adjustments that might be necessary to ensure that this component is not adversely impacted by the residual effects of past shock losses that would be excluded under the new methodology, or by the effects of the temporary merger with Code 5445.

Order and Notice of Appeal Rights

It is therefore *ORDERED* that Colonial Plastering's Petition is hereby *GRANTED*. NCCI shall recalculate loss cost rates for Codes 5445 ("Wallboard Installation") and 5480 ("Plastering - NOC"), and MEMIC shall recalculate the premium for the current Colonial Plastering policy, in a manner consistent with this Decision and Order.

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 January 27, 2004. 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

DECEMBER 18, 2003

**ROBERT ALAN WAKE
DESIGNATED HEARING OFFICER**