

**MEGA INDUSTRIES, LLC**  
**v.**  
**MAINE EMPLOYERS' MUTUAL**  
**INSURANCE COMPANY**  
**and**  
**NATIONAL COUNCIL ON COMPENSATION**  
**INSURANCE, INC.**  
**Docket NO. INS-04-107**

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**DECISION AND ORDER**

This proceeding arises from a petition filed with the Superintendent of Insurance, pursuant to 24 A M.R.S.A. §§ 229 and 2320(3), by MEGA Industries, LLC, which contends that it was erroneously reclassified for rating purposes from Code 3681 (Television, Radio, Telephone, or Communication Device Manufacturing – Not Otherwise Classified) to the higher-risk Code 3632 (Machine Shop – Not Otherwise Classified) by MEMIC and by National Council on Compensation Insurance, Inc. (“NCCI”), the advisory organization designated by the Superintendent pursuant to 24 A M.R.S.A. § 2382-B to administer the uniform classification system for workers’ compensation risks.<sup>1</sup> For the reasons set forth below, I find that a reclassification substantially similar to NCCI’s recommended reclassification is appropriate.

An adjudicatory hearing was held before the Superintendent on August 9, 2004.<sup>2</sup> At the hearing, both MEGA’s president and NCCI’s inspector presented evidence describing MEGA’s operations. The essential facts are not materially in dispute. In the introduction to its catalogue, MEGA describes itself as “a world leader in the manufacture of microwave transmission equipment” with many scientific, commercial, and military applications. MEGA can “provide a complete line of materials and services related to the microwave industry.... In addition to our microwave product lines, MEGA INDUSTRIES’ machining and fabrication departments can provide equipment for shipboard systems, commercial metal fabrications, research and development applications or other products requiring expertise in metal working.”

Most of the products MEGA makes are “waveguide” – lengths of hollow aluminum or copper that transmit low-frequency electromagnetic waves – and various components and devices that incorporate waveguide. Waveguide comes in various sizes, depending on the range of wavelengths for which the waveguide is intended to be used. MEGA has historically been classified in Code 3681, which, according to the *Scopes Manual*:

... covers the manufacture of apparatus related to the telephone, telegraph, radio and television industries and related electronic products, which in their manufacturing processes involve a substantial proportion of assembling, testing and packaging operations.

This classification is applied to the manufacture of complete radio and television sets, hearing aids, transformers, coils, sockets, condensers, switches, antennae, phones, speaker units, dials, rheostats, plugs, arrestors, resistors, wire harnesses for radio and television sets, printed circuits, custom coil winding of electronic coils

used in aircraft control devices and computers, electrical control relays for aircraft missiles and miniature compensators.

Tools used in the manufacturing of the aforementioned products may include saws, drill presses, sheet metal shears, lathes and punch presses.

Code 3681 is assigned to insureds who manufacture electronic components for signal-receiving satellite dishes. This classification procedure is applicable to insureds who do not manufacture a complete dish. Insureds who do manufacture complete dishes may still have the electronic component manufacturing portion of their operation assigned to Code 3681 provided *Basic Manual* rules pertaining to payroll records and physical separation without interchange of labor are adhered to. Code 3681 is not applicable to insureds who will purchase the complete electronic receiving unit from others and only bolt it to a dish.

The parties were generally in agreement that no classification perfectly matches MEGA's operations. Therefore, the task is to find, from among the governing classifications, "the one basic classification that best describes the business of the employer within a state." *Basic Manual Rule I-D; Imagineering, Inc. v. Superintendent of Insurance*, 593 A.2d 1050 (Me. 1991). On balance, I find satellite dishes to be the most pertinent analogy that is expressly described in the *Scopes Manual*.

MEGA provided uncontested evidence that its processes "involve a substantial proportion of assembling, testing and packaging operations," and as MEGA persuasively argued, its products from a scientific perspective are electronic apparatus. They include some high-precision components with finely calibrated moving parts, though built on a larger scale from their more familiar counterparts. If I understand the physics correctly, much of what MEGA manufactures constitutes a type of antenna, notwithstanding NCCI's description of the waveguide as a passive "non-electronic metal form." However, what is ultimately important for risk classification purposes is the nature of the manufacturing processes, not the electronic laws governing the finished product. The differences between the reception, transmission, and measurement of low-frequency electromagnetic waves and broadcast-frequency electromagnetic waves might simply be a matter of scale, but the differences in the manufacturing processes are qualitative differences. MEGA's products may be electronic in nature, but so are complete satellite dishes and complete cellular towers, and the uniform classification system clearly and reasonably provides that the manufacture of such systems does not fall within Code 3681.

Therefore, by analogy, I find that Code 3681 can be used for any operations of MEGA that sufficiently resemble "the electronic component manufacturing portion" of satellite dish manufacture, as long as those operations are sufficiently physically and operationally separated from the remainder of the business to qualify under the *Basic Manual* for a split governing classification. The remainder of MEGA's operations should be assigned to Code 3632, unless NCCI and MEMIC determine upon further analysis, with MEGA's consent, that some other metal fabrication classification is more appropriate. Although MEGA has noted that performing

custom machine shop work for others is only a small portion of its operations, the description of Code 3632 makes clear that this classification is not limited to such machine shop work, but also encompasses a range of manufacturing operations using similar processes.

### ***Order and Notice of Appeal Rights***

It is therefore *ORDERED* that the Petition is *GRANTED IN PART AND DENIED IN PART*. MEMIC and NCCI may apply Code 3632, or other appropriate classification or classifications consistent with this Decision and Order, subject to MEGA's right to retain Code 3681 for a portion of the operations if a traditional electronic apparatus manufacturing operation can be separated out.

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 October 4, 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.

<sup>1</sup> Pursuant 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"). Pursuant to 5 M.R.S.A. § 9058, 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).

<sup>2</sup> Pursuant to 24-A M.R.S.A. § 210, the Superintendent has appointed Bureau of Insurance Attorney Robert Alan Wake to serve as hearing officer, with full decisionmaking authority.

**PER ORDER OF THE SUPERINTENDENT OF INSURANCE**

**AUGUST 25, 2004**

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**ROBERT ALAN WAKE  
DESIGNATED HEARING OFFICER**