

FEB 22 1995

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

DEPARTMENT OF INSURANCE
By

In the Matter of)	Docket No. 8608
)	
LEISURE WORLD COMMUNITY ASSOCIATION,)	ORDER
)	
Petitioner.)	
_____)	

On December 14, 1994, a hearing took place in the above-referenced matter. Steven Guttell appeared on behalf of Petitioner Leisure World Community Association ("Leisure World"). S. David Childers and John P. Flynn appeared on behalf of the National Council on Compensation Insurance ("NCCI"). Assistant Attorney General Peter H. Schelstraete appeared on behalf of the Arizona Department of Insurance ("Department").

Based upon the entire record in this matter, including all pleadings, motions, testimony, and exhibits admitted during the hearing of this matter, Administrative Law Judge Gregory Y. Harris has prepared the following Findings of Fact, Conclusions of Law, and Order for consideration and approval by the Director of the Arizona Department of Insurance (the "Director"). The Director adopts and enters the following Findings of Fact, Conclusions of Law and enters the following Order:

FINDINGS OF FACT

1. Leisure World is a nonprofit corporation doing business in Mesa, Arizona.

2. Leisure World initiated this proceeding under A.R.S. §20-367 to challenge the classification decision made by its workers compensation insurer, Industrial Indemnity Company

1 ("Industrial"). Leisure World had the burden to prove its
2 entitlement to the relief sought in its hearing request.

3 3. The NCCI holds a license in Arizona as a workers
4 compensation rating organization. Under Arizona's laws relating
5 to the establishment of workers compensation rates, insurers
6 which sell workers compensation insurance in Arizona must belong
7 to a rating organization and follow the rating system filed by
8 the rating organization when classifying risks.

9 4. For the coverage at issue in this proceeding,
10 Industrial subscribes to the rating and classification system
11 NCCI has filed with the Department. The Department has approved
12 this NCCI rating system, including the portion of the rating
13 system at issue in this proceeding.

14 5. Like other Arizona employers, Leisure World pays
15 workers compensation insurance premiums based upon a percentage
16 of its payroll. Industrial used the uniform payroll rating and
17 classification system administered by the NCCI to determine the
18 premium to be paid by Leisure World to secure workers
19 compensation insurance.

20 6. The terms and rules of the NCCI's rating system
21 filed with and approved by this Department are published in the
22 NCCI's Basic Manual for Workers Compensation and Employers
23 Liability Insurance (the "Basic Manual"). Another publication,
24 also filed with and approved by this Department, the Scopes of
25 Basic Manual Classifications (the "Scopes Manual") contains
26 detailed descriptions of the classification codes.

27 7. According to the Basic Manual, "[t]he object of
28 the classification procedure is to assign the one basic

1 classification which best describes the business of the employer
2 within a state." The Basic Manual further states that "[i]t is
3 the business which is classified, and not the individual
4 employments, occupations or operations within a business."

5 8. The Basic Manual further provides that within
6 narrowly tailored limits, if a business operates multiple
7 business operations, more than one classification code may be
8 applied to these operations. Basic Manual Rule IV(D). At no
9 time relevant to this proceeding has Leisure World's operations
10 fallen within these limits. Thus, at all times relevant to this
11 proceeding, the business operations of Leisure World should have
12 been subject to the one classification applicable to its business
13 operation and the standard classification applicable to the
14 portion of Leisure World's work force that performs exclusively
15 clerical functions.

16 9. Nevertheless, in both 1992 and 1993, Leisure
17 World's previous insurer improperly applied eight separate
18 classifications when calculating Leisure World's workers
19 compensation insurance premium.

20 10. In 1994, Industrial applied a single
21 classification (classification code 9015) to the bulk of Leisure
22 World's payroll to calculate Leisure World's workers compensation
23 insurance premium. Industrial classified the balance of Leisure
24 World's payroll to the standard clerical employee classification
25 (classification code 8810). Due to this classification change,
26 Leisure World's workers compensation insurance coverage costs
27 increased approximately \$40,000.00 over what the premium cost
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1 would have been had Leisure World's labor force continued to be
2 classified improperly in several different classifications.

3 11. In early 1994, Leisure World filed a request with
4 the NCCI to challenge the rating classification assigned by
5 Industrial to calculate Leisure World's workers compensation
6 insurance premium.

7 12. On July 14, 1994, the NCCI convened its Arizona
8 Classification and Review Panel (the "Panel") to consider Leisure
9 World's challenge to the rating classification applied to
10 calculate the cost of Leisure World's workers compensation
11 coverage. The Panel considered and rejected Leisure World's
12 challenge.

13 13. On July 19, 1994, the NCCI sent a copy of the
14 Panel's decision to Leisure World. In this decision, the NCCI
15 advised Leisure World that Leisure World's challenge had been
16 rejected and that the rating classification would not be changed.

17 14. On August 16, 1994, Leisure World filed a timely
18 request for hearing pursuant to A.R.S. §20-367. Leisure World
19 disputed the NCCI's conclusion that Leisure World's business
20 operation fell within the scope of classification code 9015.
21 Leisure World contends that it should have been assigned to
22 classification code 9060 in view of its operation of a golf club.

23 15. The central question to be resolved in this matter
24 concerns the identification of the type of business Leisure World
25 operates. The determination of Leisure World's business will in
26 turn lead to the identification of the classification code
27 applicable to Leisure World's business.

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1 otherwise. For each of the past three years, these activities
 2 have accounted for less than 30% of Leisure World's payroll.
 3 Exhibit 27. Leisure World's other departments have accounted for
 4 more than 70% of its payroll during this time. Id.

5 <u>Leisure World</u>	1992	1993	1994	3 Year
6 <u>Department</u>	<u>Payroll %</u>	<u>Payroll %</u>	<u>Payroll %</u>	<u>Average</u>
7 Golf	23.06	23.46	23.75	23.43
8 Other				
Recreation	5.55	5.50	5.95	5.67
Landscaping	18.83	19.36	18.09	18.75
Security	14.65	14.38	13.86	14.29
Building				
Maintenance	11.82	12.53	12.44	12.27
Administration				
and finance	12.05	9.76	10.03	10.60
Health Care	7.16	7.62	7.59	7.46
Realty	3.36	3.40	3.50	3.42
Housekeeping	2.68	3.30	4.04	3.35
Bus Service	0.84	0.69	0.75	0.76

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 14 20. The NCCI contends that Leisure World operates as a
 15 homeowners association. As such, the NCCI contends that its
 16 rating system dictates that Leisure World should be classified in
 17 classification code 9015, applicable to "Buildings -- Operation
 18 by owner or lessee."

19 21. The Scopes Manual provides in relevant part that
 20 the following business operations fall within the scope of
 21 classification code 9015:

22 The Basic Manual Underwriting Guide classifies the
 23 following operations to Code 9015: bank and trust
 24 company employees engaged in care, custody or
 25 maintenance; night watch guards; elevator operators and
 26 starters; Boy and Girl Scout councils' camp operations;
building maintenance and repair by real estate managing
agents; condominiums or cooperatives; recreation
 vehicle campgrounds or parks; swimming pools, public;
 and trailer parks or trailer camps.

27 (emphasis added).
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1 22. NCCI's rating system does not contain a separate
2 classification code for every type of business. Instead, the
3 classification system groups businesses which face similar risks
4 as a means of spreading the risk of loss consistent with the
5 policy underlying Arizona's workers compensation laws. The
6 classifications, as further described by the Scopes Manual serve
7 as a guide to the determination of the applicable classification
8 code. As explained in the Basic Manual, if the rating system
9 does not describe a business, the classification code which most
10 closely describes the business shall be applied to that business.
11 "Such an assignment is controlled by all of the rules applicable
12 to the assigned classification." Basic Manual, Rule IV(F).

13 23. Neither the Basic Manual or the Scopes Manual
14 specifically refer to "homeowners associations" in any
15 classification code, including 9015. However, classification
16 code 9015 discusses operations that constitute substantial
17 elements of the activities of Leisure World, or that describe the
18 essence of its activities.

19 24. Leisure World functions in part as the operator of
20 a condominium complex. As such, Leisure World performs building
21 maintenance related to its care, maintenance and repair of
22 condominium living units. In addition, Leisure World also
23 performs the care, maintenance and repair of the community's
24 common structures. Further, Leisure World maintains the
25 landscaping of the community's common grounds. The Scopes Manual
26 provides that businesses engaged in the performance of these
27 tasks fall within the scope of classification code 9015.

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28. The NCCI's most recent audit of Leisure World occurred in March 1994. In this audit conducted during an on-site visit to Leisure World, the NCCI concluded that the activities of Leisure World's leasing agent, golf course maintenance department, golf pro shop, landscape maintenance, security department, health services, recreation department, housekeeping, building maintenance, physical properties manager, community manager, administrative assistant, and transportation all fell within the scope of classification code 9015. At the same time, the audit concluded that employees involved in the realty department, security office, recreation office, and administrative office fell within the scope of classification code 8810. Leisure World did not refute this evidence.

29. Leisure World failed to establish that the NCCI and Industrial improperly classified the business operations of Leisure World. The record of this proceeding supports the finding that the operation of golf courses and other recreational facilities does not constitute Leisure World's principal business. Instead, the record of this proceeding supports the conclusion that the NCCI properly classified the entire business of Leisure World as a homeowners association falling within the scope of classification code 9015. Therefore the NCCI properly classified the business operations of Leisure World in classification code 9015 and appropriately rejected Leisure World's effort to categorize its primary business operation within the scope of classification code 9060.

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CONCLUSIONS OF LAW

1. Leisure World Community Association and the National Council on Compensation Insurance received notice of this proceeding as prescribed by A.R.S. §§20-163 and 41-1061.

2. The Director has jurisdiction over this matter pursuant to A.R.S. §§20-142 and 20-367.

3. Leisure World Community Association bears the burden of proving that the action taken by the National Council on Compensation Insurance is in violation of the Insurance Code. Leisure World Community Association has not met this burden.

4. The evidence supports the conclusion that the National Council on Compensation Insurance properly classified Leisure World Community Association's risk in classification code 9015 in accordance with the rating and classification system filed with and approved by the Department.

ORDER

IT IS ORDERED that the the petition for relief filed by Leisure World Community Association is denied.

EFFECTIVE this 22nd day of February, 1995.


CHRIS HERSTAM
Director of Insurance


GREGORY Y. HARRIS
Chief Administrative Law Judge

NOTIFICATION OF RIGHTS

The aggrieved party may request a rehearing with respect to this Order by filing a written petition with the Administrative

1 Law Division within 30 days of the date of this Order, setting
2 forth the basis for such relief pursuant to A.A.C. R4-14-114(B).

3 The final decision of the Director may be appealed to
4 the Superior Court of Maricopa County for judicial review pursuant
5 to A.R.S. §20-166.

6
7 COPY of the foregoing mailed/delivered
8 this 22nd day of February, 1995, to:

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