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STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE

IN THE MATTER OF )  
PRECISION BOATWORKS )  
Appellant. )  
\_\_\_\_\_ )

Case No. H 16-04

**PROPOSED DECISION**

**Introduction**

Precision Boatworks (Precision) is primarily engaged in commercial fishing boat repair and is insured for workers' compensation purposes by Republic Indemnity Company of California (Republic). In July, 2015, the National Council on Compensation Insurance (NCCI) performed a classification inspection of Precision which resulted in Republic changing Precision's workers' compensation insurance policy classification for most of Precision's employees from Code 3365 – Welding or Cutting NOC & Drivers, to Codes 6834 and 6824F – Boatbuilding or Repair & Drivers.<sup>1</sup> As a result of the new classification, Precision's policy rate was reduced and Republic refunded premium to Precision for payments made in 2015. Republic also refunded premium for the years 2013 and 2014 but did not refund premium, as requested by Precision, for the years 2001 – 2012. Precision, under the *Basic Manual* Dispute Resolution Process for Alaska (Dispute Resolution Process), contested Republic's denial of

<sup>1</sup> Code 6824F is used only when employees are working on boats that are in the water.

1 refunding premium for the years 2001 – 2012 before the Alaska Review and Advisory  
2 Committee's Workers' Compensation Grievance Committee (Committee) which adopted  
3 Republic's position. Precision, under AS 21.39.090, appealed the Committee's decision to the  
4 Division of Insurance (Division) director who appointed a hearing officer to hear the case. For  
5 the reasons which follow, I as the hearing officer, decline to grant the relief sought by Precision  
6 and uphold the Committee's decision in this case to the extent consistent herein.

7 **Discussion**

8 **I. ISSUE PRESENTED**

9 Do the NCCI Rules provide a remedy to an employer for refund of premium when the  
10 employer for many years was assigned an incorrect classification code?

11 **II. BACKGROUND**

12 AS 23.30.045 makes an employer liable for workers' compensation payments to its  
13 employees. AS 23.30.075 requires an employer under AS 23, unless exempted, to either insure  
14 the employer's liability under AS 23 or furnish to the Division of Workers' Compensation,  
15 Alaska Department of Labor and Workforce Development (DOLWD), satisfactory proof of the  
16 employer's ability to pay directly the compensation provided for.

17 Workers' compensation insurance rates, manuals, and rating rules are proposed by the  
18 NCCI and approved by the director under AS 21.39.040. The NCCI is a licensed rating  
19 organization approved by the director under AS 21.39.060. NCCI's *Basic Manual for Workers*  
20 *Compensation and Employers Liability Insurance - 2001 Edition (Basic Manual)* sets out rules  
21 for classification assignment.

22 Rule 1(A) of the *Basic Manual* provides:

23 "1. The purpose of the classification system is to group employers with similar  
24 operations into classifications so that:  
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- The assigned classification reflects the exposures common to those employers
- The rate charged reflects the exposure to loss common to those employers

2. Subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations or operations within the business."

Rule 1(D) of the *Basic Manual* provides:

"The purpose of the classification procedure is to assign the one basic classification that best describes the business of the employer within a state.

It is the business that is classified, not the individual employments, occupations or operations within the business."

The importance of correctly assigning a classification code to an employer cannot be overestimated. If an employer is assigned an incorrect code that reflects less risk than common for that type of employer then the employer has paid too little premium. If an employer is assigned an incorrect code that reflects more risk than common for that type of employer then the employer has paid too much premium.

### III. FACTS AND PROCEEDINGS

#### A. Initial Facts and Proceedings

Republic has insured Precision for workers' compensation since at least 2001.<sup>2</sup> In July, 2015, an auditor, on behalf of Republic, conducted an on-site audit of Precision and informed Precision that he wanted to do a classification review. Later that year, Ted Snider of NCCI

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<sup>2</sup> Precision's assertion that Republic was Precision's workers' compensation insurer during the period in dispute (2001 – 2012) was uncontested by Republic. Moreover, documentation in the record titled "Precision Boatworks All Transactions for Republic Indemnity" indicates transactions occurred between Precision and Republic beginning in 2001 and continuing through to 2016.

1 inspected Precision. In November, 2015, Precision received a refund check in the mail for  
2 \$13,411 from Republic. Enclosed with the check were invoices for the period from May 5,  
3 2014 – May 5, 2015 indicating that Precision had been reclassified from Code 3365 to Code  
4 6834. Precision also received a refund check for \$7,066 from Republic for the period from May  
5 5, 2013 – May 5, 2014. Precision also noticed that the autopay monthly payments for their  
6 workers' compensation insurance dropped considerably for the period May 5, 2015 – May 5,  
7 2016.

8 After conducting an investigation, Precision determined that Precision had been  
9 incorrectly classified since 2001.

10 Karl Stedman, Precision's insurance agent<sup>3</sup> initiated Step 1 of the Dispute Resolution  
11 Process by e-mailing Greg Leo, Senior Underwriter with Republic on February 2, 2016 asking  
12 them to reconsider Republic's decision, go back to the first year of the policy period, and  
13 correct the classification and premium.<sup>4</sup> Mr. Leo responded by email on February 3, 2016  
14 stating: "I have reviewed this with our audit department and our position is that we have met  
15 and gone beyond our obligation by revising the current and two terms. No further revisions will  
16 be made."  
17

18 Michael Litman, owner of Precision, initiated Step 2 of the Dispute Resolution Process  
19 by submitting a letter to NCCI via an email sent on February 26, 2016 to NCCI by Susan  
20 Litman, the wife of Mr. Litman and Precision's bookkeeper.<sup>5</sup> Mr. Litman, in his letter, noted  
21 Precision's "main activity has always been boat repair" and "[e]ach year, Republic Indemnity  
22

23 <sup>3</sup> The term "agent" is rarely used in the state's statutes and regulations and has been replaced by the term  
24 'producer'. This Proposed Decision uses the term "agent" as that is the term used throughout the record of this  
25 case.

26 <sup>4</sup> Step 1 of the Dispute Resolution Process provides that "[a] policyholder may obtain dispute resolution services  
only after the policyholder has made a reasonable attempt to first resolve the dispute directly with the insurance  
carrier."

<sup>5</sup> Step 2 of the Dispute Resolution Process provides that "[i]f a policyholder cannot resolve the dispute directly  
with the carrier, then the policyholder may ask for NCCI's assistance with the dispute."

1 sends us a form to fill out for our audit" and "[e]ach year, we have listed commercial fishing  
 2 boat repair as our primary activity in the section titled 'Description of Business'". Mr. Litman  
 3 requested NCCI to assist Precision with the dispute stating: "I believe that our agent, the  
 4 auditors and Republic Indemnity had a duty to us to reclassify us properly back in 2001. Their  
 5 mistake has cost us a considerable amount of money". Mr. Litman noted that he "wouldn't be  
 6 surprised if we are still owed over \$100,000 due to overcharges."

7 Mr. Tim Hughes, Underwriting Dispute consultant with NCCI responded by electronic  
 8 mail<sup>6</sup> addressed to Mr. Litman and sent to Ms. Litman, Precision, and Mr. Stedman. Mr.  
 9 Hughes noted "[t]he disputes that are eligible to be addressed by the Alaska Workers  
 10 Compensation Grievance Committee (Committee) are those pertaining to NCCI's manual rules.  
 11 NCCI does have a rule addressing changes or corrections in classifications. The rule is found in  
 12 NCCI's *Basic Manual*, Rule 1-F." This rule provides:

13 **"Basic Manual Rule 1-F, Changes in Classifications**

- 14 1. Changes in classification due to changes in an insured's operation will be applied as of  
 15 the date the change in operations occurred.
- 16 2. Corrections in classifications that result in a *decrease* in premium, whether  
 17 determined during the policy period or at audit, must be applied retroactively to the  
 18 inception of the policy.
- 19 3. Correction in classifications that result in an *increase* in premium, must be applied  
 20 as follows:

| 21 If the correction in classification is effective ...                            | 22 Then the correction is applied ...                                     |
|--|---|
| 23 During the first 120 days of the policy term ...                                | 24 Retroactively to the inception of the policy.                          |
| 25 After the first 120 days of the policy term, but<br>before the final 90 days... | 26 As of the date the company discovers the cause for that<br>correction. |
| During the last 90 days of the policy term...                                      | Only to a renewal policy, if any.   |

<sup>6</sup> The documents in the record do not indicate the date of Mr. Hughes email, however, in the email Mr. Hughes asked Precision to advise him by March 18, 2016 if Precision wanted to have the Grievance Committee address the dispute. Therefore, Mr. Hughes email to Precision must have been sent after Ms. Litman's email dated February 26, 2016 was received and before March 18, 2016.

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1 The effective date of change, for purposes of the time periods noted in the table above, is the  
2 date a carrier applies a classification change."

3 However, Mr. Hughes also noted "that this rule does not address making changes to prior  
4 policies. It simply states when, during the current policy, a change can be applied by the  
5 carrier." Mr. Hughes also informed Precision that "NCCI also has a rule in its *Experience*  
6 *Rating Plan Manual* that addresses changes or corrections in payroll. This rule states that an  
7 insured's experience rating modifier will be amended when a carrier determines a revision is  
8 warranted. As the rule states, the revision is limited to the current and two preceding policy  
9 terms." This rule provides:

10 "Experience Rating Plan Manual – 2003 Edition

11 **Rule 4 – Application and Revision of Experience Rating Modifications**

12 **B. Inclusion of Payroll and Losses**

13 **1. Revision of Payroll**

14 An insurance provider may discover within the audit period (within three years of policy  
15 expiration) that previously reported payroll must be revised. When the rating organization  
16 receives correction reports according to the Statistical Plan, it will revise the current and up to  
17 two preceding experience rating modifications."

18 Mr. Hughes additionally referenced the basic coverage form that applies to a worker  
19 compensation policy, **WC 00 00 00 C – WORKERS COMPENSATION AND**  
20 **EMPLOYERS LIABILITY POLICY**, noting the audit section addresses "time periods when  
21 changes can be made. This section of the form provides:

22 **"PART FIVE – PREMIUM**

23 **G. Audit**

24 You will let us examine and audit all your records that relate to this policy. These records  
25 include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement  
26 records, and programs for storing and retrieving data. We may conduct the audits during  
regular business hours during the policy period and within three years after the policy period

1 ends. Information developed by audit will be used to determine final premium. Insurance rate  
2 service organizations have the same rights we have under this provision."

3 After citing the above referenced documents, Mr. Hughes concluded stating: "the NCCI  
4 rules and coverage form do not address or require a carrier to amend a policy beyond the time  
5 frames noted. As such, NCCI cannot direct Republic Indemnity to amend policies beyond what  
6 have already been amended. This concludes NCCI's review of the matter." Thereafter,  
7 Precision initiated Step 3 of the Dispute Resolution Process.<sup>7</sup>

8 B. Grievance Committee Facts and Proceedings

9 On July 21, 2016, the Committee met and heard the dispute between Precision and  
10 Republic. NCCI provided the Committee with a Case Summary which included the documents  
11 referenced in Mr. Hughes email (noting they may be informative concerning this dispute), the  
12 NCCI inspection report, and the correspondence. The Case Summary also noted that  
13 classification code 6834 "was established in December 1974."

14 During the hearing Mr. Litman asked "What is the guiding principal [sic] of this  
15 Committee? It does not appear to be a legal setting so what is the Committee basing its decision  
16 on? The Committee chair responded stating: "The Rules of NCCI."<sup>8</sup>

17 Precision noted during the hearing that Precision had been "misclassified since 2001";  
18 "[t]he effect of the misclassification was a doubling of the yearly policy premiums during these  
19 many policy terms"; "there is no argument by all parties that the policies were misclassified";  
20 "Republic Indemnity only returned premium for three of those years"; "Republic Indemnity  
21 provided no justification for refusing to return over paid premiums dating back to the 2001  
22

23 \_\_\_\_\_  
24 <sup>7</sup> Step 3 of the Dispute Resolution Process provides that {i}f a policyholder is unable to resolve the dispute to the  
25 policyholder's satisfaction with NCCI's assistance, then the policyholder may request in writing ...that NCCI refer  
26 the dispute for a hearing by the Alaska Review and Advisory Committee's Workers Compensation Grievance  
Committee."

<sup>8</sup> The Committee chair is correct. The Dispute Resolution Process provides: "The purpose of the Process is to  
provide policyholders with an efficient mechanism for objective review of the application or interpretation of  
NCCI manual rules with regard to a particular workers compensation insurance policy."

1 policy term"; and [b]oth the insurance agent and Republic had a duty to determine the correct  
2 classification back in 2001."<sup>9</sup>

3 Precision maintained that Rule 4-B of the Experience Rating Plan "has nothing to do  
4 with corrections in classifications" and "[n]either does the Audit section of the coverage form."  
5 Regarding *Basic Manual* Rule 1-F, Precision maintained the "wording of the rule makes sense  
6 if it is assumed that the carrier discovers the error and corrects the classification during the  
7 policy period or the audit" and "[i]t does not appear that the rule-makers anticipated that an  
8 error in classification could go uncorrected for 14 years." Precision noted that "[w]hen the rule  
9 is read in its entirety, it's clear that the guiding principal [sic] is fairness to both parties.  
10 However, this does not address the issue where the correction is made years later."

11 Precision also informed the Committee of the portion of the *Basic Manual* Rule 1-F  
12 that was not included in Mr. Hughes' email to Precision or in the materials provided to the  
13 Committee:

14 "Exceptions to the table above:

15 a. If the correction in classification is the result of a misrepresentation or omission by  
16 the insured, its agents, employees, officers or directors, then the correction must be applied  
17 from the date on which the change would have applied if such misrepresentation [or] omission  
18 had not been made.

19 b. The above rules do not apply to the following types of operations; therefore,  
20 classifications are assigned and applied at any time during the term of the policy or at audit:

- 21 • Construction or erections risks
- 22 • Employee leasing firms
- 23 • Labor contractors
- 24 • Temporary labor services"

25 Precision argued "[t]his rule covers a situation where a mistake is not discovered for a period of  
26 time. The rule-makers assumed that the 'misrepresentation or omission' would be on the part of

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<sup>9</sup> Whatever duties the insurance agent and Republic may owe to Precision under any agreement between them are outside the rules of NCCI and beyond the scope of the Committee's jurisdiction.



1 the insured, but the intent of the rule is clearly to correct the mistake all the way back to the  
2 beginning, and make the final premium amount reflect the actual exposure. There is no time  
3 limit for the correction." Precision also argued that "[i]t is Republic Indemnity's responsibility  
4 to confirm the correct classifications for a business. It is not clear how 15 years of audits could  
5 have missed this misclassification when the very name of the business itself, Precision  
6 Boatworks, clearly identifies the operation as boat repair and boat building."

7  
8 When asked by a Committee member if Precision's agent had provided a description of  
9 the codes to Precision when Precision was first issued a policy, Mr. Litman responded "Not that  
10 I recall." When asked by a Committee member if Precision's agent agreed to assist you with the  
11 Committee hearing process, Mr. Litman stated: "The agent started the dispute process by  
12 requesting NCCI's review. We are surprised that he did not call into the Committee meeting.  
13 However, it is not our agent that is holding our overpayment of premium, it is Republic  
14 Indemnity." Ms. Litman asked "why did it take so many years for,.. especially an auditor who  
15 was not...I think he was a contractor auditor, to realize that we were misclassified and to ask  
16 the NCCI to come in and look at our classification? It seems like our insurance agent...I mean  
17 he has been in our business many times. I figure we paid over \$100,000 extra over the years in  
18 workers' compensation which...there's no way we could have known that. That was somebody  
19 else's responsibility, either Republic Indemnity, or our insurance agent.<sup>10</sup> We are at the mercy  
20 of those two...the person and the entity because we don't know...we didn't know there was a  
21 classification in boat building-boat repair."

22 Mr. Michael Menacho, Vice President, Western Division of Republic responded stating:  
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26 <sup>10</sup> Whatever responsibilities the insurance agent and Republic may have regarding Precision under any agreements between them are outside the rules of NCCI and beyond the scope of the Committee's jurisdiction.

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1 "As far at trying to answer Ms. Litman's question, I can only look back at the file when the app  
2 came to us ...the description operation on the original application etc. at that time the account  
3 had been classified to the welding class for many years prior to us,...based on [inauditable]  
4 application etc. ... I can only surmise that the underwriter...cause I can't go back that far in the  
5 person's mind...either agreed that that application of 3365 made sense, the rate made sense for  
6 the exposure that we had at that time and that carried through many audits obviously until it  
7 was caught on the 2014 audit at which time we took immediate action and got an NCCI  
8 inspection to get it resolved at least to...classification part of it. I am sorry it goes back that far.  
9 It's too bad we didn't catch it sooner."

10  
11 After discussion on the fact that code 6834 was established in December 1974, Ms.  
12 Litman said: "So it looks like our insurance agent who we've had since...that's the only agent  
13 ...like maybe we had his father...but Stedman Insurance that misclassified us to begin with.  
14 What we are doing hasn't changed."

15 When asked by a Committee member how the audits were conducted, Mr. Menacho  
16 responded saying "they were done in a variety of forms...situations over the years. Some were  
17 physical. This particular one was physical. Some were phone audits, a variety and a variety of  
18 auditors obviously looked at it."

19 Republic noted that prior to the policy being written by Republic, it was "apparent that  
20 other carriers used Code 3365 as confirmed by this code appearing on prior experience rating  
21 worksheets." Republic told the Committee that when they "learned of the misclassification, it  
22 relied on *Basic Manual* Rule 1-F-2 which addresses corrections in classification that results in  
23 a decrease of premium" and "[t]his rule applies to the current policy term and makes no  
24 reference to corrections on prior policies." Republic stated that it is their practice "to go back to  
25 two prior policy terms when discovering a misclassification that results in a decreased  
26

1 premium, even though there are no NCCI rules that requires [sic] a revision to prior policy  
2 terms." Republic also argued that it would be inappropriate for the Committee to consider  
3 *Basic Manual* Rule 1-F-a [sic; Rule 1-F-3-a] because "consideration of willful  
4 misrepresentation requires a legal review/determination and is not appropriate for this  
5 Committee's consideration." Republic felt they had "met and gone beyond its obligation by  
6 revising the current and two prior policy terms."

7 After hearing the parties, the Committee met in executive session and issued the  
8 following decision:

9 "**RESOLVED**, that because there are no *Basic Manual* rules that require a carrier to revise  
10 classifications beyond the current policy in dispute, the request of Precision Boatworks to  
11 revise classifications back to its 2001 policy term is denied.

12 The Case Summary & Decision included the following:

13 The Committee's decision is based on the following:

- 14 • The insurance agent is in part responsible for assisting the policyholder in securing  
15 correct classifications.
- 16 • The only NCCI rule that addresses misclassifications is *Basic Manual* Rule 1-F. Rule  
17 1-F-2 addresses corrections involving premium decreases. This rule does not direct a  
18 carrier to go back beyond the current policy term.
- 19 • A carrier has a reasonable expectation that it can close out a policy term without its  
20 policyholder requesting revisions to a policy that expired many years ago.
- 21 • If the requested reclassification was granted, the experience rating modifications for  
22 each year, as well as premium discounts, would require revisions."

23 On July 28, 2016, Mr. Hughes, in his capacity as the Grievance Committee Secretary,  
24 notified Precision and Republic of the Committee's decision, by providing them with the Case  
25 Summary & Decision.

### 26 C. Hearing Officer Proceedings

On August 8, 2016, the Division received a letter from Precision appealing the  
Committee's decision. During pre-hearing teleconferences before the hearing officer appointed

1 by the director to hear the case, the parties agreed no hearing would be necessary and written  
2 briefings would be submitted to the hearing officer.

3 Precision, in its Appellant's Brief, stated their main activity is "commercial fishing boat  
4 repair" and they also "build and repair non-commercial boats and do a little general metal  
5 fabrication." Precision noted: "Our insurance agent is Karl Stedman at Stedman Insurance in  
6 Sitka Alaska. Stedman Insurance has been our insurance agent since the 1980's."

7 Precision argued that "[p]olicy holders have no way to check the correctness of their  
8 classification. The required classification listings and manuals are guarded by the NCCI and not  
9 shared with policy holders- policy holders are deliberately prevented from being able to verify  
10 their classification, so how in fairness can we be penalized for an incorrect classification on the  
11 part of our carrier?"<sup>11</sup>

12 Precision cited numerous examples in support of their position that "[t]he evidence of  
13 the nature of our business is unmistakable."<sup>12</sup> Precision stated that "[e]ach year, Republic  
14 Indemnity has always sent us a form to fill out for our audit" and "[e]ach year, we have listed  
15 commercial fishing boat repair as our primary activity in the section titled 'Description of  
16 Business'..." Precision also attached a letter dated April 3, 2002 in support of its position that  
17 Republic was aware that Precision was a boatshop back then.

18 Republic, in its Appellee's Response, set forth the history of the case, noted Precision  
19 had conceded that Republic had "paid Precision for the past three years based on the class code  
20 change", noted Precision "continues to seek re-classification of the codes for its workers'  
21

22  
23  
24 <sup>11</sup> Actually, the *Basic Manual*, which includes a listing of the classifications is filed with the Division of Insurance  
by NCCI and are public records.

25 <sup>12</sup> These examples included the name of the business, the large sign over the door, a customer list consisting of  
26 almost exclusively the names of hundreds of boats, the workers' payroll timesheets recording the names of the  
boats the workers worked on, the work schedule entries organized by boat name, the work history file folders,  
almost without exception labeled with boat names, work orders labeled by boat name, and, at any given moment,  
the presence of boats in the shop and stored outside.

1 compensation insurance policies with Republic from 2001-2012" and argued "Precision  
2 provided no NCCI Basic Manual provision, or other authoritative legal authority to contradict  
3 NCCI's above-stated decision in its Brief."<sup>13</sup> Republic also stated: "Precision has cited no  
4 authority within the NCCI Basic Manual , nor any other authority to support the argument that  
5 Republic Indemnity was required to go back to 2001 and recalculate Precision's premium based  
6 on the class code change."

7 Republic also contended that NCCI's above decision is correct because it is based on the  
8 Dispute Resolution Process Rule B-3-c "which only gives the policyholder, i.e., Precision, 3  
9 years from the policy expiration date to request an NCCI dispute resolution on the policy; and  
10 Republic has already paid Precision for those 3 years – Precision's 2001-2012 policies are  
11 outside the 3 year limitation." Republic also included in its Response the complete Rule B-3  
12 which provides:

### 13 "3. Scope

- 14 a. Neither NCCI nor the Committee have any authority to interpret, apply, or provide an  
15 opinion on state or federal laws, rules, or regulations; or decisions of courts or  
16 administrative proceedings; to hear disputes brought by carriers; or to hear disputes that  
17 are not confined to the application or interpretation of NCCI rules or rating system.  
18 b. It is not within the jurisdiction of either NCCI or the Committee to make exceptions  
19 to rules that are approved by the Alaska Division of Insurance. The Committee will  
20 exercise its discretion to interpret and apply NCCI's manual rules to the facts of each  
21 dispute.  
22 c. This process applies to any dispute arising out of a policy issued either before or after  
23 the effective date of these rules. Policyholders seeking dispute resolution under this  
24 Process must request dispute resolution services from NCCI within three (3) years of  
25 the expiration date of the policy in question. Any extension of time to file a request for  
26 review after three (3) years of the policy expiration will be granted at the sole discretion  
of the Committee. An extension of time under this section will be granted only once."

23 Precision in its Appellant's Response (to the Appellee's Response) noted that neither  
24 Republic or NCCI disputed that Republic misclassified Precision since 2001; that Republic

26 <sup>13</sup> The decision being appealed is actually the decision of the Committee and not NCCI.

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1 overcharged Precision for those years by an estimated \$100,000; that Republic was responsible  
2 for assigning the correct classification based on their audit; that the main activity of Precision's  
3 business of boat building and repair was very obvious from visual and documentary evidence;  
4 that Republic's audits were negligent; and that the policies and actions of Republic and NCCI  
5 make it difficult for the insured to understand or verify their classification.

6 Precision also challenged the statement in Appellant's Response that Precision had cited  
7 no authority to support Precision's argument that Republic was required to go back to 2001 and  
8 recalculate Precision's premium based on the class code change. Precision pointed out that  
9 Precision specifically cited both the *Basic Manual* Rule 1-F-a [sic; Rule 1-F-3-a] and the  
10 Dispute Resolution Process Rule B-3-c.

11 Regarding Rule 1-F-3-a, and Republic's assertion that the "consideration of willful  
12 misrepresentation requires a legal review/determination and is not appropriate for this  
13 Committee's consideration" Precision agreed with the statement but countered saying Precision  
14 "never suggested or intended to suggest that the misrepresentation was willful", that the rule  
15 does not "make any reference to willfulness or intention", and that Precision "believe[s]  
16 Republic's misrepresentation was accidental, the result of sloppy or weak auditing procedures."

17 Regarding Rule B-3-c, the record does not indicate Precision cited the rule previously,  
18 however, Precision, in its Response did reference the following two portions of the rule noting  
19 the highlighted passages were very relevant to Precision's appeal:

20 "The Committee will exercise its discretion to interpret and apply NCCI's manual rules  
21 to the rules and facts of each dispute.

22 Any extension of time to file a request for review after three (3) years of the policy  
23 expiration will be granted at the sole discretion of the Committee. An extension of time  
24 under this section will be granted only once."

25 Precision argued they specifically requested the Committee to grant me an extension under  
26 paragraph c on the grounds Precision had no way of knowing that Precision had been

1 overcharged before 2015 and they had not received any response from the Committee as to  
2 whether it considered my request for an extension.

3 **Conclusion**

4 I. THE CORRECT CLASSIFICATION CODES FOR PRECISION ARE CODES 6834 and 6824F --  
5 BOATBUILDING OR REPAIR & DRIVERS AND CODE

6 The NCCI Inspection & Classification Report completed in 2015 noted "[b]oat building  
7 and repair work constitutes 80% of the insured's work" and provided "[t]he correct codes for  
8 the insured's work is 6834 and 6824F. The Report also noted that there had not been "a change  
9 in the business in the last four years that would affect a basic classification change." Moreover,  
10 Precision's assertion that their main activity has always been boat repair" was uncontested by  
11 Republic. During the hearing before the committee, when Ms. Litman asked "why did it take so  
12 many years...to realize that we were misclassified", Republic's representative responded "I can  
13 only surmise that the underwriter...cause I can't go back that far in the person's mind...either  
14 agreed that that application of 3365 made sense, the rate made sense for the exposure that we  
15 had at that time and that carried through many audits obviously until it was caught on the 2014  
16 audit at which time we took immediate action and got an NCCI inspection to get it resolved at  
17 least to...classification part of it. I am sorry it goes back that far. It's too bad we didn't catch it  
18 sooner."<sup>14</sup>

19 II. PRECISION EFFECTIVELY SOUGHT, AND THE COMMITTEE EFFECTIVELY  
20 GRANTED, AN EXTENSION OF TIME TO FILE A REQUEST FOR REVIEW UNDER  
21 DISPUTE RESOLUTION PROCESS RULE B-3-c

22 Under Rule B-3-c of the Dispute Resolution Process, policyholders seeking dispute  
23 resolution must request dispute resolution services from the NCCI within three years of the

24 \_\_\_\_\_  
25 <sup>14</sup> The record also clearly indicates the misclassification occurred before Republic obtained Precision's account.  
26 Republic noted that prior to the policy being written by Republic it was "apparent that other carriers used Code  
3365 as confirmed by this code appearing on prior experience rating worksheets." Ms. Litman stated "it looks like  
...Stedman Insurance ... misclassified us to begin with."

1 expiration date of the policy in question. The rule also provides the Committee may grant one  
2 extension for a policyholder to file a request for review. While there was no formal request for  
3 an extension by Precision and no formal granting of a request by the Committee, the record  
4 indisputably indicates that the policies in question dated back to 2001. Throughout the Dispute  
5 Resolution Process, Precision sought a refund of premium for the policy years 2001 – 2012 and  
6 Republic, NCCI, and the Committee considered the application of the NCCI rules for all of  
7 these questioned policies. Therefore, as hearing officer, I consider Precision's actions in this  
8 matter to have effectively requested an extension and consider the Committee's actions in this  
9 matter to have effectively granted Precision's request.<sup>15</sup>

10  
11 **III. THE APPLICABLE NCCI RULE FOR DETERMINING THE REFUNDING OF  
12 PREMIUM DUE TO A CORRECTION OF A CLASSIFICATION ASSIGNMENT IS *BASIC  
13 MANUAL RULE 1-F-2***

14 **A. WC 00 00 00 C – WORKERS COMPENSATION AND EMPLOYERS LIABILITY  
15 INSURANCE POLICY IS INAPPLICABLE**

16 Rule B-3-a of the Dispute Resolution Process provides in relevant part that "n]either the  
17 NCCI nor the Committee have the authority...to hear disputes that are not confined to the  
18 application or interpretation of NCCI rules or rating system." Therefore, whatever rights,  
19 duties, obligations, and remedies may exist under any agreements, contracts, or policies  
20 between Precision, Precision's insurance agents and Precision's insurers, including Karl  
21 Stedman, Stedman Insurance, and Republic, are outside of the scope of the Committee's  
22 jurisdiction. The Committee, however, based its decision, in part, on the statement that "[a]  
23 carrier has a reasonable expectation that it can close out a policy term without its policyholder  
24 requesting revisions to a policy that expired many years ago." The Committee also based its

25  
26 <sup>15</sup> The granting of a policyholder's request for an extension seeking dispute resolution does not mean the dispute must be resolved in the policyholder's favor.



1 decision, in part, on the statement that "[t]he insurance agent is in part responsible for assisting  
2 the policyholder in securing correct classifications." To the extent the Committee's decision is  
3 based on these statements, the Committee's decision is rejected.

4 **B. THE EXPERIENCE RATING PLAN MANUAL IS INAPPLICABLE**

5 The record before the Committee includes reference to Rule 4 of the **Experience**  
6 **Rating Plan Manual**, however, nothing in the Rule or in the **Manual** addresses the issue  
7 raised by Precision's appeal to the Committee. The remedy sought by Precision before the  
8 Committee was the refund of premium during the period Republic served as Precision's  
9 workers' compensation insurance carrier. While the amount of a refund may be affected by the  
10 application of experience rating rules, such application is not relevant to the issue whether a  
11 refund is merited at all. Therefore, whatever the application of Rule 4 or the **Manual** may have  
12 on premium due to a change in classification should not have been considered by the  
13 Committee in reaching the issue before it. The Committee, however, based its decision, in part,  
14 on the statement that "if the requested reclassification was granted, the experience rating  
15 modifications for each year, as well as premium discounts, would require revisions." To the  
16 extent the Committee's decision is based on this statement, the Committee's decision is rejected.

17  
18 **C. BASIC MANUAL RULE 1-F-1 IS INAPPLICABLE**

19 Rule 1-F-1 of the *Basic Manual* applies to "[c]hanges in classifications due to changes  
20 in an insured's operations..." Here, the change in classification was not due to a change in  
21 Precision's operations but was due to a correction of the classification codes assigned to  
22 Precision. I, therefore, deem *Basic Manual* Rule 1-F-1 to be inapplicable.

23 **D. BASIC MANUAL RULE 1-F-3 IS INAPPLICABLE**

24 Rule 1-F-3 of the *Basic Manual* applies in the event "[c]orrections in classifications ...  
25 result in an *increase* in premium." (Emphasis in original). Here, the correction of the  
26

1 classification code assigned to Precision resulted in a decrease of premium. I, therefore deem  
2 *Basic Manual* Rule 1-F-3 to be inapplicable.<sup>16</sup>

3 **E. BASIC MANUAL RULE 1-F-2 IS APPLICABLE**

4 Rule 1-F-2 of the *Basic Manual* applies in the event "[c]orrections in classifications ...  
5 result in a *decrease* in premium." (Emphasis in original). Here, the correction of the  
6 classification code assigned to Precision resulted in a decrease of premium. The Committee  
7 based its decision, in part, on the statement that "[t]he only NCCI rule that addresses  
8 misclassifications is *Basic Manual* Rule 1-F. Rule 1-F-2 addresses corrections involving  
9 premium decreases." To the extent the Committee's decision is based on this statement, the  
10 Committee's decision is adopted.

11 **IV. BASIC MANUAL RULE 1-F-2 APPLIES ONLY TO CORRECTIONS IN**  
12 **CLASSIFICATIONS DETERMINED DURING THE POLICY PERIOD OR AT AUDIT**

13 Rule 1-F-2 of the *Basic Manual* requires corrections in classifications that result in a  
14 decrease in premium whether determined during the policy period or at audit to be applied  
15 retroactively to the inception of the policy. Here, the record indicates the audit occurred in 2015  
16 during which the auditor determined a classification review by NCCI was warranted. The  
17 record also indicates NCCI conducted an investigation, prepared an Inspection & Classification  
18 Report, and corrected Precision's classification assignment in 2015 and that the effective date of  
19 the classification change was July 28, 2015. Moreover, the Inspection & Classification Report  
20 clearly indicated the policy number and the May 5, 2015 effective date of the policy.

21  
22 The words of the rule must be read together in an internally consistent fashion and the  
23 presumption of consistent usage indicates the drafter of the rule intended a term to be applied in  
24

25 <sup>16</sup> *Basic Manual* Rule 1-F-3 includes (1) a table relating to the timing of when corrections are to be applied and (2)  
26 exceptions to the table. The table and exceptions to the table apply to increases in premium not to decreases in  
premium.

1 a manner consistent with the way the term is used elsewhere in the rule. Here, the term "policy"  
2 in the phrase "inception of the policy" refers back to either the policy in effect at the time the  
3 correction in classification was determined or to the policy being audited. In this case, the  
4 correction in classification was determined during the time the 2015 policy was in effect and  
5 the audit was for the 2015 policy.

6 Further, Precision's argument that the phrase "inception of the policy" applies to all  
7 policies where an incorrect classification occurred is incorrect as the term "policy" in the phrase  
8 clearly refers to a single policy, not to multiple policies.

9 To the extent the Committee's decision is consistent with these rules of construction, the  
10 Committee's decision is adopted.<sup>17</sup>

## 11 V. HOLDING

12 I find

- 13 • The correct classification codes for precision are codes 6834 and 6824F boatbuilding or  
14 repair & drivers and code 6824f
- 15 • Precision effectively sought, and the Committee effectively granted, an extension of  
16 time to file a request for review under dispute resolution process rule B-3-c
- 17 • The applicable NCCI rule for determining the refunding of premium due to a correction  
18 of a classification assignment is *Basic Manual* rule 1-F-2
- 19 • *Basic Manual* rule 1-F-2 applies only to corrections in classifications determined  
20 during the policy period or at audit

21 Therefore, I decline to grant the relief sought by Precision and uphold the Committee's  
22 decision in this case to the extent consistent herein.

23 Dated this 4 day of April, 2017

24 Joanne D Bennett  
Joanne Bennett  
Hearing Officer

25  
26 <sup>17</sup> However, the Committee's statement that Rule 1-F-2 'does not direct a carrier to go back beyond the current policy term' may not always hold true where there is an audit of a policy that is not the policy currently in effect.

STATE OF ALASKA  
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**Adoption**

The undersigned director of the Division of Insurance adopts this Proposed Decision in Case No. H 16-04 as the final administrative determination in this matter. Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

DATED this 26<sup>th</sup> day of October, 2017.

  
Lori Wing-Heier  
Director

**Non-Adoption Options**

1. The undersigned director of the Division of Insurance declines to adopt this Proposed Decision in Case No. H 16-04 and instead orders that the case be returned to the hearing officer to

\_\_\_ take additional evidence about \_\_\_\_\_

\_\_\_ make additional findings about \_\_\_\_\_

\_\_\_ conduct the following specific proceedings: \_\_\_\_\_

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Lori Wing-Heier  
Director

2. The undersigned director of the Division of Insurance revises the Proposed Decision in Case No. H 16-04 as follows: \_\_\_\_\_

Pursuant to AS 21.39.170(c) and Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days. See the attached Notice of Final Order and Appeal Rights.

STATE OF ALASKA  
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IF YOU NEED HEARING ASSISTANCE, PLEASE CALL ALASKA RELAY AT 711

1 DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

2

\_\_\_\_\_  
Lori Wing-Heier  
Director

3

4

I hereby certify that on the \_\_\_\_ day of March, 2017, I mailed copies of this document to the following parties:

5

6 Victoria N. Dorsey, Esq.  
7 Managing Attorney  
8 NCCI Holdings, Inc.  
9 901 Peninsula Corporate Circle  
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10 Michael Litman  
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12 Precision Boatworks  
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\_\_\_\_\_  
Brian Sonesen

10

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Lori Wing-Heier  
Director

I hereby certify that on the 27<sup>th</sup> day of October, 2017, I mailed copies of this document to the following parties:

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Brian Sonesen

**NOTICE OF FINAL ORDER  
AND APPEAL RIGHTS  
Case H 16-04**

The enclosed order signed by the Director of the Division of Insurance is the final order in this action.

Pursuant to AS 21.39.170(c), and the Alaska Appellate Rule 602(a)(2), you may appeal this final decision within 30 days.

AS 21.39.170(c) provides:

An order or decision of the director is subject to review by appeal to the superior court at the instance of a party in interest. The court shall determine whether the filing of the appeal will operate as a stay of an order or decision of the director. The court may, in disposing of the issue before it, modify, affirm, or reverse the order or decision of the director in whole or in part.

Alaska Appellate Rule 602(a)(2) provides:

An appeal may be taken to the superior court from an administrative agency within 30 days from the date that the decision appealed from is mailed or otherwise distributed to the appellant. If a request for agency reconsideration is timely filed before the agency, the notice of appeal must be filed within 30 days after the date the agency's reconsideration decision is mailed or otherwise distributed to the appellant, or after the date the request for reconsideration is deemed denied under agency regulations, whichever is earlier. The 30 day period for taking an appeal does not begin to run until the agency has issued a decision that clearly states that it is a final decision and that the claimant has thirty days to appeal. An appeal that is taken from a final decision that does not include such a statement is not a premature appeal.

For other applicable rules of court, see Alaska Appellate Rules 601-612.