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DEPT. OF INSURANCE  
BY                     

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE

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| <b>In the Matter of:</b>    | ) | <b>Docket No. 96A-088-INS</b> |
|                             | ) |                               |
| <b>CATALINA CHINA, INC.</b> | ) | <b>ORDER</b>                  |
|                             | ) |                               |
| <b>Petitioner.</b>          | ) |                               |
|                             | ) |                               |
|                             | ) |                               |

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On December 11, 1996, the Office of Administrative Hearings, through Administrative Law Judge Lewis D. Kowal, submitted "Recommended Decision of Administrative Law Judge" ("Recommended Decision"), a copy of which is attached and incorporated by this reference. The Director of the Arizona Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. Recommended findings of fact 1-18 and 29 (this finding should have been numbered 19) are adopted.
2. Recommended finding of fact 20 is rejected.
3. The recommended conclusions of law are adopted.
4. The decision of the Arizona Workers Compensation Appeals Board of the NCCI to assign classification code 4053 to the Petitioner, Catalina China, Inc. is affirmed.

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1 NOTIFICATION OF RIGHTS

2 The aggrieved party may request a rehearing with respect to this Order by filing a written  
3 petition with the Office of Administrative Hearings within 30 days of the date of this Order, setting forth  
4 the basis for such relief pursuant to A.A.C. R20-6-114(B).

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

7 DATED this 30<sup>th</sup> day of December, 1996

8  
9   
10 \_\_\_\_\_  
John King  
Director of Insurance

11 A copy of the foregoing mailed  
12 this 30<sup>th</sup> day of December, 1996

13 Kathryn Leonard  
14 Assistant Attorney General  
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1 Press Forming ("classification code 4062"). Subsequently, the State Fund, Petitioner's  
2 previous workers' compensation carrier, disputed the classification change and the  
3 NCCI reversed its prior ruling and changed Petitioner's classification back to  
4 classification code 4053.

5  
6 3. Petitioner appealed to the NCCI Appeals Board the NCCI action which  
7 changed the Petitioner's classification code from 4062 to 4053. In a de novo review,  
8 the NCCI Appeals Board upheld Petitioner's classification code of 4053. Subsequently,  
9 Petitioner initiated this proceeding under A.R.S. §20-367(B) to challenge the  
10 classification decision made by the Appeals Board of the NCCI. Petitioner had the  
11 burden to prove its entitlement to the relief sought in the hearing request.  
12

13  
14 4. The NCCI is responsible for providing classification and rating services to  
15 insurance companies and their policyholders. The terms of NCCI's rating system filed  
16 with and approved by the Arizona Department of Insurance (the "Department") are  
17 contained in the Basic Manual for Workers Compensation and Employers Liability  
18 Insurance (the "Basic Manual"). The Scopes of Basic Manual Classifications (the  
19 "Scopes Manual") contains descriptions of the NCCI classification codes and is utilized  
20 as a guide by underwriters and insurance agents.  
21

22 5. According to Rule IV (D) of the Basic Manual, the object of the classification  
23 procedure is to assign the one basic classification which best describes the business of  
24 the employer within a state." Rule IV (D) of the Basic Manual further states that "it is  
25 the business which is classified, and not the individual employments, occupations  
26 operations within a business."  
27

28 6. Petitioner's business consists of manufacturing blank ceramic coffee mugs  
29 and lidded jars. The mugs are made in 11 ounce and 16 ounce sizes. One type of  
30 mug is not made with a handle. Some mugs made for the Government are thicker

1 mugs. The mugs are sold on a wholesale basis and do not contain decals, logos or  
2 designs of any kind. Petitioner utilizes a manufacturing process which ordinarily  
3 produces one item for a week at a time. The size and weight of the item as well as the  
4 type of the item produced varies , depending on the production run. Petitioner  
5 generally produces approximately 11,000 items a week.  
6

7 7. Petitioner's production process involves mixing raw material into clay which is  
8 fed into an automated press machine that creates a mold for the item being produced.  
9 In the case of mugs, the handles are separately made from the cup portion of the mug.  
10 Handles are created pumping a slurry clay mixture known as slip into plaster of paris  
11 molds. Those molds are reusable but have a limited life. Approximately 100 plaster of  
12 paris molds are made per day in the production of cup handles. The molds are then  
13 sent through a dryer which absorbs moisture . After that process, the molds are taken  
14 apart and the handles are removed from the molds. The items are then manually  
15 smoothed over with a wet sponge The cups and handles are placed into a machine  
16 wherein slip is placed onto the cup portion and the handles are attached by an  
17 automated process. The mugs are then placed on a dryer rack and set in a glaze  
18 fountain which sprays fast drying colored glazed on the mugs. Subsequently, the mugs  
19 are removed from the glaze fountain and placed on a conveyor belt to be visibly  
20 inspected. After the inspection, the mugs are stacked onto racks, placed into a kiln and  
21 fired once at 1200 degrees for 12 hours.  
22

23  
24 8. Petitioner contends that the items it produces are sold exclusively as  
25 corporate promotional and advertising products. However, it is undisputed that the  
26 blank ceramic mugs produced by the Petitioner are functional items.  
27

28 9 . In part, the Scopes Manual for classification code 4053 provides:  
29

30 Code 4053 is applied to insureds engaged in the  
manufacture of china or tableware pottery such as cups,

1 saucers, plates, soup and serving dishes, cream pitchers  
2 and sugar bowls which may be decorated, unglazed or  
3 glazed. The classification contemplates mold making,  
4 usually from plaster of paris, which is received from others  
5 along with clay, sand, decals, paints, glazing compounds  
6 and cartons with dividers for packaging. Sand, clay and  
7 water are mixed in automatic mixing machines and extruded,  
8 forming a column of clay in the desired consistency. The  
9 clay is fed to potter's wheels or automatic molding machines.  
10 At the potter's wheels, craftsmen form the products by  
11 hand. The formed greenware is stored on racks for drying in  
12 high heat kilns. Decal work or hand painting is done prior to  
13 glazing and the products are again sent through the kilns.  
14 The finished items are inspected for defects and then  
15 packaged for shipment....

16 10. The Scopes Manual for the classification code of 4062 provides:

17 Code 4062 is applied to insureds engaged in the  
18 manufacture of porcelain ware pottery by a mechanical  
19 press forming process. Using such a process enables a  
20 particular insured to produce one product in large quantities.  
21 Some of the products contemplated by this classification  
22 are electrical porcelain ware such as insulators, spark plugs,  
23 ceramic cores, ceramic wire spools, thread guides and  
24 pulleys. Other products are ceramic floor, ceiling, wall and  
25 fireplace tiles which are decorative rather structural in  
26 nature. Kaolin and china clay, steatite, talc, flint, feldspar,  
27 calcium carbonate, bauxite, silica sand, aluminum oxide,  
28 chrome oxide, pentoxide, potash, or sometimes soda are  
29 received from others. The ingredients are mixed in a typical  
30 batch mixer with water and dumped into a hammer mill. The  
stock is poured into a feed hopper and fed into various types  
of clay-forming machines that press the stock mechanically,  
either by hand or power. The formed stock is placed on  
trays and carts which pass through fired kilns under great  
heat, which produces the desired glassy porcelain product.  
Some formed stock prior to passing through the kilns may be  
hand or machine brushed to remove fins. The products are  
inspected, sorted and placed into cartons for shipment.

11 11. The evidence presented by the Petitioner established that Petitioner is the  
12 only manufacturer of blank ceramic mugs and lidded jars in the United States.

1  
2 12. Petitioner contends that the type of products which Petitioner manufactures  
3 as well as the manufacturing process utilized by the Petitioner falls within the scope of  
4 classification Code 4062 rather than classification code 4053.  
5

6 13. Petitioner's business does not meet all of the criteria set forth in the Scopes  
7 Manual for classification codes 4053 or 4062. However, this is not uncommon.  
8 Thomas Cleary, Governmental Insurance Affairs Director with NCCI, credibly testified  
9 that there are approximately 600 classification codes that are applied to businesses  
10 within the United States and that because more kinds of businesses exist than  
11 classification codes, classification of businesses are done by analogy. According to Mr.  
12 Cleary, classification codes are generated and assigned by types of businesses by  
13 looking at the experience of a business or industry which identifies broadly a group of  
14 employers in a homogeneous environment to establish a rate for workers  
15 compensation.  
16

17  
18 14. In determining a classification code, Mr. Cleary credibly testified that the  
19 NCCI considers various factors such as the types of business, the end product  
20 produced, the type of service performed and the name of the business.  
21

22 15. In Article III of Petitioner's Article of Incorporation (Exhibit 24), it states that  
23 the Petitioner initially intends to conduct the business of manufacturing ceramic  
24 products.  
25

26 16. In paragraph C of Petitioner's Annual Report for the year ending 12/31/93  
27 (Exhibit 25), manufacturing of china is stated to indicate the character of business of the  
28 Petitioner.  
29  
30



1           17. Petitioner contends that it does not manufacture tableware as contemplated  
2 by classification code 4053. In support of that contention Dirck Schou, Petitioner's  
3 President, credibly testified as to having a Masters of Business degree from Harvard  
4 University which focused on manufacturing. Since 1991, Mr. Schou has been a plant  
5 manager or an executive in charge of manufacturing of tableware for a number of  
6 manufacturing plants and has visited many ceramic plants in the United States and is  
7 familiar with the manufacturing processes in ceramic plants. According to Mr. Schou, in  
8 the ceramic industry, the term "tableware" means primarily place setting and relates to  
9 accessory equipment.  
10

11           18. The term "tableware" is defined in Websters Third New International  
12 Dictionary (unabridged) as "china, glassware, silver and other utensils used for setting a  
13 table or serving food and drinks".  
14

15           29. Classification codes 4053 and 4062 have similar criteria regarding the  
16 manufacturing process contemplated but do have several differences particularly as to  
17 the end product produced. The manufacturing process utilized by the Petitioner meets  
18 the manufacturing processes of both classifications. However, the evidence presented  
19 established that the manufacturing process and the products described for classification  
20 code 4053 are more analogous to the Petitioner's business than those described for  
21 classification code 4062.  
22

23           20. Petitioner's contention that the risk of its employees are more similar to  
24 businesses classified under classification code 4062 than classification code 4053 is  
25 outside the scope of this hearing as the request for hearing was submitted pursuant to  
26 A.R.S. §20-367 (C) and relates only to the appropriateness.  
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2 **CONCLUSIONS OF LAW**  
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4 1. Petitioner and the NCCI received notice of this proceeding as prescribed by  
5 A.R.S §§20-163 and 41-1061.

6 2. The Director of the Department has jurisdiction to hear this matter pursuant to  
7 A.R.S. §§20-142 and 20-367.

8 3. Petitioner bears the burden of proving that the action taken by the NCCI is  
9 improper. Petitioner has not met this burden.

10 4. The evidence of record supports the conclusion that the NCCI properly  
11 classified Petitioner with the classification code of 4053 in accordance with the rating  
12 and classification system filed with and approved by the Department.  
13

14 **RECOMMENDED DECISION**  
15

16 The Administrative Law Judge recommends that the decision of the Arizona  
17 Workers Compensation Appeals Board of the NCCI to assign classification code 4053  
18 to the Petitioner be affirmed.  
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22 Done this 11th day, December 1996.  
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26 \_\_\_\_\_  
27 Lewis D. Kowal  
28 Administrative Law Judge  
29  
30

1 Copy transmitted by mail/fax/certified  
2 by May Ramirez; to:

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