

# COMPLIANCE AUDIT REPORT

STATE OF MAINE  
WORKERS' COMPENSATION BOARD



**Zurich American Insurance Company**  
**Engagement Date: July 14, 2015**  
**Issue Date: March 2, 2016**

**Office of Monitoring, Audit & Enforcement**

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## SUMMARY

The Zurich American Insurance Company (Zurich) provides a wide variety of business insurance products including workers' compensation.

In January 2006, Zurich voluntarily entered into a Corrective Action Plan (CAP) at the request of the Office of Monitoring, Audit, and Enforcement of the Maine Workers' Compensation Board (Board) to address all issues identified in the June 28, 2005 audit report as well as the compliance of third-party administrators (TPAs) who administer claims covered by Zurich policies. This CAP was lifted on April 5, 2012.

In March 2013, Zurich entered into an agreement with the Superintendent of the Maine Bureau of Insurance (Superintendent) and the Office of the Maine Attorney General for the purpose of bringing to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. certified to the Superintendent by the Board pursuant to Title 39-A M.R.S.A. Section 359(2). Based on Zurich's general improvement over the last few years, on June 17, 2015 the Superintendent opted to impose no penalty under this agreement. However, due to the fact that Zurich and some of its TPAs continue to have difficulty identifying basic indemnity payment errors, the Superintendent mandated an audit be performed. This report details the findings as a result of that audit.

The Audit Division of the Board examined sixty (60) claim files where indemnity benefits were paid for the period under examination July 1, 2013 through June 30, 2015 as well as fifty-eight (58) medical payments for the period under examination July 1, 2013 through June 30, 2015 to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of Zurich's July 1, 2013 through June 30, 2015 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Zurich's July 1, 2013 through June 30, 2015 medical payments for those claims in the sample.

In addition to the use of various TPAs to investigate and submit workers' compensation claims data on behalf of its policy holders, Zurich handles its Maine workers' compensation claims in Boston, Massachusetts. Zurich also utilizes the services of Sedgwick Claims Management Services (Sedgwick) as its claims agent within the State.

The on-site audit work was conducted in Zurich's Boston office from December 7 through December 10, 2015.

The compliance tables found on pages 12 through 14 of this report are representative of Board findings as of July 14, 2015. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since July 14, 2015 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
  - Fifty-four (54) initial indemnity payments were made timely and one (1) claim received “salary continuation” from the employer.
    - Zurich’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 86%, which is below the Board’s performance benchmark of 87%.
  - Nine (9) initial indemnity payments were made late.
    - One (1) late initial indemnity payment was made later than 30 days after it became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
  - Six hundred five (605) subsequent indemnity payments were made timely.
  - Fifty-four (54) subsequent indemnity payments were made late.
    - Two (2) late subsequent indemnity payments were made later than 30 days after they became due and payable in violation of Section 205(2) and subject to penalty under Section 205(3).
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
  - Fifty-seven (57) medical payments were made timely.
  - One (1) medical payment was made late.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
  - Two (2) mediation agreements and two (2) Consent(s) Between Employer and Employee were paid timely.

- One (1) provisional order, two (2) mediation agreements and one (1) Consent Between Employer and Employee were paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for sixty (60) claims.
- Average Weekly Wage:
  - Fifty-one (51) AWWs were correct.
  - Nine (9) AWWs were incorrect.
- Weekly Compensation Rate:
  - Forty-eight (48) WCRs were correct.
  - Twelve (12) WCRs were incorrect.
- Partial Benefits Calculation Method:
  - The method used to calculate partial benefits was correct for seventeen (17) claims.
  - The method used to calculate partial benefits was incorrect for three (3) claims.
- Amount Paid:
  - Twenty-three (23) claims were compensated correctly.
  - Fourteen (14) claims were underpaid (\$2,886.89 aggregately).
    - Since July 14, 2015, Zurich resolved the above underpayment issues.
  - Twenty-three (23) claims were overpaid (\$10,798.83 aggregately).
  - Collectively, the aforementioned errors resulted in a net overpayment of \$7,911.94 to injured workers.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5, provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of medical payments was reviewed for twenty-eight (28) claims.
- Amount Paid:
  - Medical payments sampled for twenty-five (25) claims were correct.
  - Medical payments sampled for three (3) claims were incorrect.

◆ **Other significant issues**

- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board's Forms and Petitions Manual.
  - Incorrect dates were reported in Box 22 of the MOPs that were filed for eight (8) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
  - Incorrect dates were reported in Box 24 of the MOPs that were filed for nine (9) claims.
- The Maine Workers' Compensation Act provides no vehicle for the unilateral recovery of benefit overpayment(s). See Board decision *Pritchard v. S.D. Warren Co.* and Law Court decision *Bureau v. Staffing Network*. Recoveries under Section 324 and Section 360(2) fall under Board jurisdiction.
  - Evidence of successful and/or unsuccessful attempts to recover overpayments of benefits was found on three (3) claims.
- Except for an injured employee who was employed seasonally as defined by Title 39-A Section 102(4)(C), the WCB-2, Wage Statement must include the employer's payroll week ending dates and the employee's corresponding gross earnings for the prior year, where week 52 is the payroll week that includes the date of injury. See the Board's Forms and Petitions Manual.
  - The gross earnings for the payroll week ending prior to the date of injury was reported as week 52 on the WCB-2, Wage Statements filed for three (3) claims.
- Additional payments were made since the "Final" WCB-11 Statement of Compensation Paid was filed for twenty-four (24) claims.

## PENALTIES

### ◆ Penalties payable to providers and/or injured employees

#### **Title 39-A M.R.S.A. Section 205(3)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

A delay of an initial indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Averil Garnett vs. Oasis Outsourcing, Inc. Date of Injury: 1/29/15 Date ER Notified of Incapacity: 2/3/15 Claim # 8A714943190506B Board # 15011835	No NOC was filed, and the initial indemnity payment was made 7/13/15, which was 146 days after compensation became due and payable (2/17/15).	\$1,500.00*
<b>Total Penalties to Injured Employees for Delays of Initial Indemnity Payments</b>		<b>\$1,500.00</b>

\* Paid.

Delays of subsequent indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Diane Bouchard vs. Fairfield Inn Date of Injury: 1/21/15 Date ER Notified of Incapacity: 1/22/15 Claim # 2440211521 Board # 15001186	A subsequent indemnity payment was made 4/28/15, which was 41 days after the previous indemnity payment (3/18/15).	\$200.00
Jamie Pitcher vs. Oxford Casino Date of Injury: 8/14/13 Date ER Notified of Incapacity: 8/31/13 Claim # 2110090571 Board # 13019092	A subsequent indemnity payment was made 11/4/14, which was 54 days after the previous indemnity payment (9/11/14).	\$850.00
<b>Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments</b>		<b>\$1,050.00</b>

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
<p>Jeffrey Dubay vs. American Blue Ribbon Holdings, LLC  Date of Injury: 1/17/15  Date ER Notified of Incapacity: 2/13/15  Claim # 301533573070001  Board # 15002870</p>	<p>Payment for the 7-day waiting period was made 2/18/16, which was 358 days after compensation became due and payable (2/25/15).</p> <p>The claimant was totally incapacitated on 2/18/15. Payment for that incapacity was made 2/18/16, which was 351 days after compensation became due and payable (3/4/15).</p>	<p>\$1,500.00*</p>
<p>Tommy Jenkins vs. Southworth-Milton, Inc.  Date of Injury: 2/27/14  Date ER Notified of Incapacity: 2/28/14  Claim # WCVI20072014034103  Board # 14004076</p>	<p>The claimant was totally incapacitated from 5/31/14 through 6/7/14. Payment for one (1) day of that incapacity was made 2/10/16, which was 599 days after compensation became due and payable (6/21/14).</p> <p>Benefits were not increased to the Maximum Benefit Level effective 7/1/14 until 2/10/16, which was 575 days after compensation became due and payable (7/15/14).</p> <p>The claimant’s benefits were improperly discontinued on 2/24/15. Payment of accrued benefits was made 2/10/16, which was 337 days after compensation became due and payable (3/10/15).</p>	<p>\$1,500.00</p>
<p>Debra Kelsen vs. LaQuinta  Date of Injury: 3/17/14  Date ER Notified of Incapacity: 4/1/14  Claim # 000809-010608-WC-01  Board # 14005379</p>	<p>A provisional payment was used to pay benefits for week ending 6/8/14. Payment of accrued benefits has not yet been made.</p>	<p>\$1,500.00**</p>
<p>Sean Keukelaar vs. Gamestop, Inc.  Date of Injury: 1/13/15  Date ER Notified of Incapacity: 1/13/15  Claim # 301533448880001  Board # 15001184</p>	<p>Payment for part of the 7-day waiting period (1/14/15 through 1/19/15) was made 2/18/16, which is 381 days after compensation became due and payable (2/2/15).</p> <p>The claimant’s benefits were improperly discontinued on 1/25/15. Payment of accrued benefits was made 2/18/16, which is 375 days after compensation became due and payable (2/8/15).</p>	<p>\$1,500.00*</p>
<p>Paul Marascia vs. Sysco Corporation  Date of Injury: 1/30/15  Date ER Notified of Incapacity: 1/31/15  Claim # 011924-134310-WC-01  Board # 15001637</p>	<p>The claimant was totally incapacitated from 2/14/15 through 2/20/15. Payment for one (1) day of that incapacity (2/14/15) was made 2/3/16, which was 334 days after compensation became due and payable (3/6/15).</p>	<p>\$1,500.00</p>

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Shawn Mulligan vs. CoWorx Staffing Services Date of Injury: 8/14/14 Date ER Notified of Incapacity: 8/15/14 Claim # 2440197408 Board # 14017153	<p>The claimant was totally incapacitated from 8/29/14 through 9/4/14. Payment for one (1) day of that incapacity was made 2/4/16, which was 504 days after compensation became due and payable (9/18/14).</p> <p>The claimant's benefits were improperly discontinued effective 10/7/14. Payment of accrued benefits was made 2/4/16, which was 471 days after compensation became due and payable (10/21/14).</p>	\$1,500.00
Donald Prokey vs. Land Air Express Date of Injury: 10/18/13 Date ER Notified of Incapacity: 10/24/13 Claim # 003739-000980-WC-01 Board # 13024997	Provisional payments were used to pay benefits for the period 4/20/14 through 5/12/14. Payment of accrued benefits was made 2/3/16 and 2/19/16, which was 618 and 634 days respectively after compensation became due and payable (5/26/14).	\$1,500.00
Andrew Stepp vs. Donnie Elston Date of Injury: 12/14/13 Date ER Notified of Incapacity: 3/4/14 Claim # 2440175723 Board # 13029660	The claimant's benefits were improperly discontinued on 3/30/14. Payment of accrued benefits was made 12/17/15, which was 613 days after compensation became due and payable (4/13/14).	\$1,500.00
<b>Total Penalties to Injured Employees for Delays of "Other" Indemnity Payments</b>		<b>\$12,000.00</b>

\* Paid.

\*\* This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

◆ **Penalties payable to injured employees and the Workers' Compensation Board Administrative Fund**

**Title 39-A M.R.S.A. Section 324(2)(A)**

“Except as otherwise provided by Section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the Board may assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

Violations subject to penalty under Section 324(2) were found on the following claims:

<b>CLAIM</b>	<b>PENALTY JUSTIFICATION</b>	<b>PENALTY EXPOSURE</b>
Steve Borer vs. Zampell Refractories, Inc. Date of Injury: 7/7/14 Date ER Notified of Incapacity: 7/14/14 Claim # 2440193995 Board # 14013596	One or more medical bills were paid 12/2/14, which was 13 days after the date of the corresponding mediation agreement signed 11/19/14.	\$600.00
Debra Kelsen vs. LaQuinta Date of Injury: 3/17/14 Date ER Notified of Incapacity: 4/1/14 Claim # 000809-010608-WC-01 Board # 14005379	Incapacity benefits were paid 3/21/15, which was 19 days after the date of the corresponding provisional order mailed 3/2/15.	\$1,800.00*
Berneice Overlock vs. The Salvation Army Date of Injury: 6/23/14 Date ER Notified of Incapacity: 6/24/14 Claim # 14W199291E Board # 14012335	Incapacity benefits were paid 8/29/14, which was 29 days after the date of the corresponding Consent Between Employer and Employee signed 7/31/14.	\$3,800.00
Jamie Pitcher vs. Oxford Casino Date of Injury: 8/14/13 Date ER Notified of Incapacity: 8/31/13 Claim # 2110090571 Board # 13019092	Incapacity benefits were paid 11/13/13, which was 12 days after the date of the corresponding mediation agreement signed 11/1/13.	\$400.00
<b>Total</b>		<b>\$6,600.00</b>

\* This claim has been settled by Lump Sum and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

◆ **Penalties payable to the State General Fund**

**Title 39-A M.R.S.A. Section 359(2)**

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), Zurich must take corrective measures to address the following inadequacy:

- Failure to pay benefits accurately

**Title 39-A M.R.S.A. Section 360(2)**

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 360(2) and/or 359(2), Zurich must take corrective measures to address the following inadequacy:

- Failure to pay benefits accurately

## COMPLIANCE TABLES

### ◆ Timeliness of Benefit Payments

#### A. Initial Payment of Indemnity Benefits

			07/01/13 – 06/30/15	
			Number	Percent
Check Issued Within:				
0-14	Days	<b>Compliant</b>	55	86%
15-44	Days		8	13%
45+	Days		1	1%
Total			64	100%

#### B. Subsequent Payment of Indemnity Benefits

			07/01/13 – 06/30/15	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	605	92%
8-37	Days		52	7%
38+	Days		2	1%
Total			659	100%

#### C. Medical Payments

			07/01/13 – 06/30/15	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	57	98%
31+	Days		1	2%
Total			58	100%

#### D. Payment of Approved Agreements, Orders, Decisions

			07/01/13 – 06/30/15	
			Number	Percent
Check Issued Within:				
0-10	Days	<b>Compliant</b>	4	50%
10 +	Days		4	50%
Total			8	100%

◆ **Accuracy of Indemnity Payments**

**E. Average Weekly Wage**

		<b>07/01/13 – 06/30/15</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	51	85%
Incorrect		9	15%
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Total		60	100%
		<hr/>	

**F. Weekly Compensation Rate**

		<b>07/01/13 – 06/30/15</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	48	80%
Incorrect		12	20%
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Total		60	100%
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**G. Partial Benefits**

		<b>07/01/13 – 06/30/15</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	17	85%
Incorrect		3	15%
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Total		20	100%
		<hr/>	

**H. Amount Paid**

		<b>07/01/13 – 06/30/15</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	23	38%
Underpaid		14	24%
Overpaid		23	38%
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Total		60	100%
		<hr/>	

◆ **Accuracy of Medical Payments**

**I. Amount Paid**

		<b>07/01/13 – 06/30/15</b>	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	25	89%
Incorrect		3	11%
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Total		28	100%
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