

# COMPLIANCE AUDIT REPORT

STATE OF MAINE  
WORKERS' COMPENSATION BOARD



**Atlantic Mutual Insurance Company**  
**February 28, 2003**

**Monitoring, Audit & Enforcement (MAE) Division**

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## SUMMARY

The Audit Division of the Maine Workers' Compensation Board examined *all* 135 claim files for the period under examination (2001) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the claims files audited, there were 36 “lost time” claims, 61 “medical only” claims and 38 “incident only”<sup>1</sup> claims.

Our audit revealed:

All claims handling, checks issued and form submissions (except for initial WCB-1's) come from Atlantic Mutuals' (A.M.) Glastonbury, Connecticut location.

A 24-hour Central Reporting Unit (CRU) is used by employers to report injuries. Once it is reported to the CRU, a First Report of Occupational Injury or Disease (WCB-1) is sent to the Maine Workers' Compensation Board (MWCB), regardless of its filing requirements. Also an electronic file is set up and forwarded to A.M. for further processing.

- Of the 36 lost time claims, there were numerous instances where a “Medical Only” WCB-1 was filed with the Workers' Compensation Board, these WCB-1's were NOT amended when the claim became reportable according to the MWCB Rules and Regulations Chapter 8 Section 16. The penalties on these WCB-1's will be evaluated and imposed by Steve Minkowsky, Deputy Director of Benefits Administration. The penalty exposure for these forms is listed in the Penalty section of this report.
- It came to the attention of the auditors that subsequent indemnity payments were not being made weekly, rather biweekly in some cases. Subsequent indemnity payments are to be made weekly and in a timely fashion (Title 39-A Section 205 (2)). This claims handling technique has been corrected to the best of the auditor's knowledge.
- The auditor noted that on several claims overpayment were being “recouped” or subtracted from the claimants weekly indemnity payments. Title 39-A clearly has no mechanism for an insurer to recoup overpayments on indemnity. This claims handling technique has been corrected to the best of the auditor's knowledge.

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<sup>1</sup> “Incident only” Claims incur no medical expenses and less than a day of lost time.

## SUMMARY (continued)

- Of the thirty-six (36) lost time claims identified;
  - 23 were found to be compensated, only 21 were compensable
    - ✓ One (1) was a mandatory payment based on a late filed Notice of Controversy (WCB-9) and,
    - ✓ One (1) was a payment made on a claim that was not determined to be compensable.

Of the 21 claims that were determined to be compensable, both AWW and Rate were calculated correctly in only 10 claims.

The other claims were either not paid timely or calculated incorrectly. Two auditors from the Audit Division attempted to reconstruct the payment schemes on all claims and were very unsuccessful. Furthermore, when asked about the unidentifiable payment calculations, A.M. was unable themselves to determine where the calculations came from as the claims handler that handled those claims was no longer employed with them. It is notable however that the aggregate amount of miscalculations for all claims is an over payment of \$6,137.76.

Following is a discussion of the compliance tables on pages 11 through 13 of this report and of the steps taken by A.M. to rectify identified noncompliance issues.

- Form filing compliance ranged from 8.7 percent to 100.0 percent.
  - ◆ The highest percent of compliance (100 percent) was found in the filing of the WCB-8, Certificate of Discontinuance or Reduction of Compensation forms.
  - ◆ The second highest percent of compliance (89.4 percent) was found in the filing of WCB-4, Discontinuance or Modification of Compensation forms.
    - The WCB-4 form shown as “Not Filed” represents a claim where compensation had been discontinued, but no WCB-4 form had been filed. This Division requested that form on March 21, 2002, and imposed a response deadline of April 5, 2002. This form still has not been filed with the MWCB.
    - The WCB-4 form shown as “Filed Late” represents a claim where compensation had been discontinued, but no WCB-4 had been filed. This Division requested that form on March 21, 2002, and imposed a response deadline of April 5, 2002. The form was not filed until July 8, 2002.
  - ◆ Followed very closely (89 percent) by the filing of WCB-9, Notice of Controversy (NOC) forms.
    - The NOC shown as “Filed Late” represents a claim where the NOC was filed 251 days after the employer was notified of the incapacity. There is no penalty exposure for this form as a mandatory payment was made as a result of the late filed NOC.

## SUMMARY (Continued)

- ◆ Approximately forty- three percent compliance was found in the filing of WCB-1, Employer's First Report of Occupational Injury or Disease forms.
  - Of the twenty-five WCB-1's shown as "Filed Late", all were all filed later than seven days after the employer's notice of incapacity and only 5 had been filed prior to our on-site work.
  - The remaining 20 were filed late (or amended) based on Audit Division requests.
    - ✓ One WCB-1 was filed late (and payments were made) but there was no compensable incapacity found.
    - ✓ One WCB-1 was filed late, and a letter was sent out by the MWCB Abuse Investigation Unit (AIU) imposing a 360(1) B penalty, however it was discovered that the actual date of the employer's notice of the incapacity was later than the WCB-1 stated, therefore eradicating the penalty exposure.

It became apparent to the Audit Division, during exam, that A.M. was instructed by it's CPU to amend the medical only WCB-1's once a claim was deemed "reportable" or a claimant lost a day or more of time. A.M. neglected to amend any WCB-1's for that reason during the entire year under examination. Once brought to their (A.M.) attention, a training session with the Monitoring Division was set up and executed. It is the hopes of the Audit Division that A.M. now recognizes their obligation.

- ◆ Approximately thirty-three percent compliance was found in the filing of WCB-11, Statement of Compensation Paid forms.
  - The ten WCB-11's shown as "Filed Late" were filed, on average, 207 days late, only one had been filed prior to our on-site work. Nine were requested and all of those were filed with the MWCB.
  - The two WCB-11's shown as "Not Filed" have still not been filed with the MWCB, one was requested on March 21, 2002 and the other was part of a Complaint for Audit.
- ◆ Approximately twenty-six percent compliance was found in the filing of WCB-3 Memorandum of Payment forms (MOP). This neither equals nor exceeds the Maine Workers Compensation Boards' performance benchmark of 75%.
  - The 17 MOP's shown as "Filed Late" were all filed later than fourteen days after the employer's notice of incapacity. On average the filing lag was 138 days.
- ◆ The most significant form filing compliance problem appears to be in the filings of the Wage Statement (WCB-2) and Schedule of Dependents (WCB-2A). Compliance is only 8.7 % for both forms. It appears that Atlantic Mutual Insurance Company does not have a clear understanding of their obligation to file these forms.

## SUMMARY (Continued)

- The twenty WCB-2 forms shown as “Filed Late” were all filed after their due dates, only two had been filed at the time of our on site, one of which was not a Maine form.
- The one WCB-2 form shown as “Not Filed” was requested on June 24, 2002 and imposed a response deadline of July 8, 2002. This form has still not been filed with the MWCB.
- The twenty-one WCB-2A’s shown as “Filed Late” were all filed after their due dates, only two had been filed at the time of our on site, one of which was not a Maine form.
  
- ◆ Approximately fifty three percent of the initial indemnity payments were made timely. This neither equals nor exceeds the Maine Workers Compensation Boards’ performance benchmark of 80%.
  - Two out of the ten payments shown as “15+” was made later than 44 days after payment became due and payable.
    - ✓ One payment is subject to the provisions of §205(3) (see page 8)
    - ✓ One payment was protected by a late-filed NOC
  
- ◆ Approximately thirty-nine percent of the subsequent indemnity payments were made timely.
  - All subsequent payments were made within 30 days of becoming due and payable therefore none of the payments, however late and not being made timely (see above note, and page 9) are subject to the provisions of §205(3).
  
- ◆ The average weekly wage (AWW) was calculated correctly for sixty-nine and six tenths percent of the compensated claims audited.
  - The claim shown as “Unknown” is for a claim where a WCB-2 has not been filed with the MWCB, and therefore the correct AWW is unknown.
  
- ◆ Weekly benefits rates were calculated correctly forty-seven and eight tenths percent of the compensated claims audited.
  - The claim shown as “Unknown” is for a claim where a WCB-2 has not been filed with the MWCB, and therefore the correct compensation rate cannot be determined.

Atlantic Mutual had a total of four (4) “Complaint for Audits” filed with the MWCB. Of these, three (3) were filed prior to our on site examination and one subsequent.

- ✎ One complaint was from a claimant who had a long standing claim that was not being administered timely even though the claim was very well established. A representative from the Audit Division spoke with this claimant and was assured that all issues had been resolved and the claimant was given a direct contact at A.M.

## **SUMMARY (continued)**

- ✦ One complaint was submitted because an order signed by a MWCB Hearing Officer was not promptly handled. This claimant was due money from a settlement and the payment came 89 days after becoming due and payable. See penalty Section 324 (2)(A) M.R.S.A. in this report for further details.
- ✦ One complaint came from a recent claim and has been and currently is in the MWCB formal hearing process. A representative from the Audit Division spoke with the party filing the complaint and discussed the claimant's options with them. It was decided to let the formal hearing procedures take their course. The claimant was comfortable with this.
- ✦ The final complaint came subsequent to the on site evaluation of A.M. and is currently being reviewed by all parties involved.

During the initial on site evaluation (March 28, 2002), there were numerous errors, omissions, and missing forms found on most of the cases chosen for audit. The decision was made by Steve Minkowsky, Deputy Director of Benefits Administration to expand the scope of the audit based on the auditors initial findings. Therefore the scope was expanded to include the entire population of claims for the date of injury year in question.

The Audit Division would like to thank Atlantic Mutual insurance Company and its staff for the use of its facilities and providing the audit staff the necessary materials needed to complete the audit in a proficient manner. The Audit Division was on sight for two separate visits and both visits were handled with utmost professionalism and courtesy.

## PENALTIES

◆ **Section 205(3), M.R.S.A. Penalties (payable to injured employees)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 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.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Crystal Lamoreau vs. Smartstyle Date of Injury: 6/14/01 A.M. File Number: 25916610 WCBN Number: TBD	Initial payment made approximately 269 days after becoming due and payable	\$1,500.00
<b>Total Penalties to Injured Employees</b>		<b>\$1,500.00</b>

◆ **Section 324 (2)(A)M.R.S.A. Penalties (payable to both injured employees and Maine Workers' Compensation Board)**

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

A violation of §324 was found on the following claim:

- Cynthia Turner vs. Van Baalen/ Nautica  
 Date of Injury: 8/9/00  
 WCB File # 00-01-69-08  
 Date of Agreement: 1/16/02, Date payment due: 1/26/02  
 Indemnity payment made 89 days after becoming due and payable.  
 Possible penalty exposure: \$17,800.00

## PENALTIES (Continued)

### ◆ Penalties Allowed by Law (Payable to the Workers' Compensation Board)

39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 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 Deputy Director of Benefits Administration has the authority to and may refer Atlantic Mutual to the Abuse Investigation Unit to pursue penalties under §359(2) for the following reasons, (including, but not limited to):

- Required forms not being filed with the MWCB
- Subsequent indemnity payments being made bi-weekly rather than weekly
- Overpayments being “recouped” from weekly indemnity payments
- Incorrect and unexplainable wage calculations

Possible penalty exposure: \$10,000.00

39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

➤ Four (4) forms were not filed (\$400.00).

39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

➤ Ninety-Four (94) forms were filed late (\$9,400.00).

## **PENALTIES (Continued)**

39-A M.R.S.A. Sec. 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.

## INDEMNITY BENEFITS

### A. Prompt Initial Payment of Benefits

			<b>2001</b>	
			Number	Percent
Check Mailed Within:				
0-14	Days	<b>Compliant</b>	13	53.5%
15 +			10	43.5%
Total Due			23	100.0%

### B. Prompt Subsequent Payment of Benefits

			<b>2001</b>	
			Number	Percent
Check Mailed Within:				
0-7	Days	<b>Compliant</b>	13	39.4%
8-14	Days		12	36.4%
15 +	Days		8	24.2%
Total Due			33	100.0%

### C. Accuracy of Average Weekly Wage

			<b>2001</b>	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	16	69.6%
Incorrect			6	26.1%
Unknown			1	4.3%
Total			22	100.0%

### D. Accuracy of Weekly Benefit Rate

			<b>2001</b>	
			Number	Percent
Calculated:				
Correct		<b>Compliant</b>	11	47.8%
Incorrect			11	47.8%
Unknown			1	4.4%
Total			22	100.0%

## FORM FILING

### A. First Report (WCB-1)

		2001	
		Number	Percent
Filed	<b>Compliant</b>	19	43.2%
Filed Late		25	56.8%
Total		44	100.0%

### B. Wage Statement (WCB-2)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	8.7%
Filed Late		20	87.0%
Not Filed		1	4.3%
Total		23	100.0%

### C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	2	8.7%
Filed Late		21	91.3%
Total		23	100.0%

### D. Memorandum of Payment (WCB-3)

		2001	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	6	26.1%
Filed Late		17	73.9%
Total		23	100.0%

## FORM FILING (Continued)

### E. Discontinuance or Modification (WCB-4)

		<b>2001</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	17	89.4%
Filed Late		1	5.3%
Not Filed		1	5.3%
Total		19	100.0%

### F. Discontinuance or Reduction Of Compensation (WCB-8)

		<b>2001</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	1	100.0%
Not Filed		0	0.0%
Total		1	100.0%

### G. Notice of Controversy (WCB-9)

		<b>2001</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	8	89.0%
Filed Late		1	11.0%
Total		9	100.0%

### H. Statement of Compensation Paid (WCB-11)

		<b>2001</b>	
		Number	Percent
Received at the Board:			
Filed	<b>Compliant</b>	6	33.3%
Filed Late		10	55.6%
Not Filed		2	11.1%
Total		18	100.0%

