

**MAINE WORKERS' COMPENSATION BOARD
COMPLIANCE AUDIT REPORT**

November 7, 2000

Hanover Insurance Company
27 Pearl Street
P.O. Box 9801-5004
Portland, ME 04104

Claims Covered by Audit: 1998 Dates of Injury

Companies Covered by Audit:

Massachusetts Bay Insurance Company	NCCI # 10006
Citizens Insurance Company of America	NCCI # 11002
Hanover Insurance Company	NCCI # 13633

Third Party Administration

Sterling Risk Management Services TPA # S371

Examination by: Michael R. Nadeau, Audit Manager
Marlene Swift, Auditor

Reviewed and Approved by: Steven Minkowsky, D.D.B.A.

The results of the audit and the procedures followed have been explained to:

Name:	Title:	Date:
Edie Taylor	Team Leader (former)	Various
Eve Alexis	Team Leader	Various
James McSheffrey	Claims Manager	Various

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SUMMARY

Hanover Insurance Company had a total of approximately 425 indemnity claims with 1998 dates of injury. The Audit Division of the Maine Workers' Compensation Board examined a sample of 100 indemnity claim files for the period under examination to determine compliance with statutory and regulatory requirements in the following areas:

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

Our audit of the sample group revealed:

- Form filing compliance ranged from 52 % to 100 %. These percentages represent filing compliance *after* Hanover responded to numerous requests (for missing forms and/or corrections) from the Board's Claims Management Unit. Copies of 102 written requests were found in 56 of the Board's files that were audited.
- Hanover has an "automated" system that generates the WCB-11, Statement of Compensation Paid. This system does not generate these reports in a timely manner. It also generates inaccurate information. The Board's Claims Management Unit provided us with 162 WCB-11 forms with various problems filed just prior to the audit. An additional batch of WCB-11 forms were sent to the Board on 3/8/00. Forty of the forms were found to be problematic. This issue may be referred to the Board's Abuse Investigation Unit for further action under §359(2).
- Fifty-six percent of initial payments were made timely. It appears that some of the untimely initial payments were a result of late notice from employers.
- Eighty-six percent of subsequent payments were made timely.
- Eighty percent of the average weekly wages audited were calculated correctly.

The employees' week of hire and/or week of injury were frequently included in the AWW calculation. (The week of hire and week of injury cannot be included if they reduce the AWW.)

Several wage statements included wages from a "comparable employee" (combined with the injured employee's wages), even though the injured employee had enough weeks of earnings to determine their AWW. This also resulted in reduced average weekly wages.

- Sixty-eight percent of the compensation rates audited were calculated correctly.

In addition to those rates that were wrong because the AWW was wrong, many others were wrong because they were not properly charted in the Weekly Benefit Table. It appears that there was no consistent method used to round average weekly wages. (Directions found in the Weekly Benefit Table instruct users to round the gross average weekly wage to the nearest dollar.)

SUMMARY

- An error was found in the method used to calculate benefits when employees were entitled to benefits under §212 (TTD) for part of a workweek, and then under §213 (TPD) for the remainder of the workweek (or vice-versa). This error resulted in overpayments to employees (based on Board-approved protocols).
- Hanover's records were examined to ensure that all 1998 lost-time claims had been reported to the Workers' Compensation Board. A sample of 159 claims was examined. Thirteen (8.2%) were found not to have been reported to the Board at the time of audit. These claims were filed promptly upon request. It is estimated that an additional 228 lost-time claims should have been reported.
- The Audit Division examined Hanover's records to ensure that all penalty payments issued by the Board had been properly recorded. Eight penalties were issued against Hanover between 7-21-97 and 2-2-99. Six of these penalties were miscoded by Hanover. The miscoding had no adverse effect on those six customers.
- Five "Complaint for Audit" forms were investigated during the audit. One complaint was resolved prior to our involvement. One involved an incorrect WCB-11 form that will be included with the other incorrect WCB-11's. The three remaining complaints involved unreasonably contested claims. Complaints of this type are beyond the scope of the audit. They will be included in any dispute analysis that may be conducted at the request of the Board.

PENALTIES

A. 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
John Allen vs. Pinehirst Tent & Trailer Date of Injury: 12-1-98 Hanover's File #01 571675 WCB File #98-17614	The second indemnity payment was made 42 days after the first indemnity payment.	\$ 250.00
Carol Chick vs. Bar Harbor Hotel Date of Injury: 7-31-98 Hanover's File #01 552239 WCB File #98-9934	The second indemnity payment (adjustment) for the “mandatory payment” period was made 215 days after the provisional indemnity payment.	\$1,500.00
Bernadette Lockard vs. Grampa's Workshop Date of Injury: 2-11-98 Hanover's File #01 504529 WCB File #98-4183	The final indemnity payment was made 60 days after the previous indemnity payment.	\$1,150.00
Robert Malenfant vs. Malenfant's Burner Service Date of Injury: 1-2-98 Hanover's File #01 492179 WCB File #98-2147	The second indemnity payment was made 64 days after the first indemnity payment.	\$1,350.00
Isabelle Wiand vs. Coopers Mills Nursing Home Date of Injury: 8-17-98 Hanover's File #01 564075 WCB File #98-18167	The final indemnity payment was made 80 days after the previous indemnity payment.	\$1,500.00
Total Penalties to Injured Employees		\$5,750.00

PENALTIES

B. Section 205(5), M.R.S.A. Potential Penalties (payable to injured employees)

Section 205(3)

“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.”

Section 205(5)

“An Employer who has notice or knowledge of the disability or death and fails to give notice to the carrier shall pay the penalty provided for in subsection 3 for the period during which the employer failed to notify the carrier.”

Petitions for penalties pursuant to §205(3) and §205(5) will be filed against employers in the cases listed below.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Carol Chick vs. Bar Harbor Hotel Date of Injury: 7-31-98 Hanover's File #01 552239 WCB File #98-9934	The first indemnity payment was made 33 days after compensation became due and payable (a NOC was sent the day <i>after</i> the payment was made).	\$150.00
Leesa Crower vs. Jasper Wyman & Son Date of Injury: 8-10-98 Hanover's File #01 547451 WCB File #98-11207	No NOC was filed until 36 days after compensation became due and payable, and no payment was made until 36 days <i>after</i> the NOC was sent to the Board.	\$300.00
Derek Hamel vs. Budget Building & Siding Date of Injury: 5-15-98 Hanover's File #01 534857 WCB File #98-6549	No NOC was filed, and the first indemnity payment was made 45 days after compensation became due and payable.	\$750.00
Lucien Potvin vs. Road & Sea Transport Date of Injury: 6-24-98 Hanover's File #01 645721 WCB File #98-19055	No NOC was filed, and the first indemnity payment was made 439 days after compensation became due and payable.	\$1,500.00
Total Penalties Pursued		\$2,700.00

PENALTIES

C. Penalties Allowed by Law (payable to injured employees and the Workers' Compensation Board)

◆ 39-A M.R.S.A. Sec. 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 shall assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

Violations of §324 were found in the following claims:

- Deborah Batlis vs. Country Manor Nursing Home
Date of Injury: 6-14-98
Hanover's File #01 532243
WCB File #98-7228
Indemnity payment made 16 days after mediation agreement.
- John Little, Jr. vs. Cyr Construction Company
Date of Injury: 9-8-98
Hanover's File #01 564675
WCB File #98-17986
Indemnity payment made 15 days after decree issued.
- Perry Morneau vs. Eastern Fire Protection Company
Date of Injury: 11-5-98
Hanover's File #01 571670
WCB File #98-14680
Indemnity payment made 20 days after mediation agreement.
- Sherry Rodgers vs. New Balance Shoe
Date of Injury: 10-29-98
Hanover's File #01 576815
WCB File #98-18275
Indemnity payment made 16 days after mediation agreement.
- David Shryock vs. Cellular One
Date of Injury: 8-28-98
Hanover's File #01 558530
WCB File #98-11875
Indemnity payment made 19 days after decree issued.

PENALTIES

D. 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 3rd-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 will refer Hanover to the Abuse Investigation Unit to pursue penalties under §359(2).

◆ 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;"

◆ 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."

One hundred-eight (108) forms were filed late (\$10,800.00).

This number reflects only those forms submitted subsequent to the audit and in response to request(s) by the Audit Division. It does not include any forms that were filed late prior to audit.

◆ 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

			1998	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	52	56%
15-28	Days		28	30%
29+	Days		12	13%
Unknown	Days		1	1%
Total Due			93	100%
NOC Filed Timely			14	

B. Prompt Subsequent Payment of Benefits

			1998	
			Number	Percent
Check Mailed Within:				
0-7	Days	Compliant	870	86%
8-14	Days		105	10%
15+	Days		42	4%
Total Due			1017	100%

C. Accuracy of Average Weekly Wage

			1998	
			Number	Percent
Calculated:				
Correct	Compliant		80	80%
Incorrect			20	20%
Total			100	100%

D. Accuracy of Weekly Benefit Rate

			1998	
			Number	Percent
Calculated:				
Correct	Compliant		67	67%
Incorrect			33	33%
Total			100	100%

CASE MANAGEMENT TECHNIQUES

A. Penalties Miscoded

Penalties Assessed

		Number	Percent
Penalties Properly Coded	Compliant	2	25%
Miscoded Penalties		6	75%
Total Penalties Assessed		8	100%

The preceding penalties were imposed between 7-21-97 and 2-2-99.

FORM FILING

A. First Report (WCB-1)

	1998	
	Number	Percent
Received at the Board:		
Not Required	146	92%
Not Filed	13	8%
Total	159	100%

B. Wage Statement (WCB-2)

	1998	
	Number	Percent
Received at the Board:		
Filed Compliant	87	87%
Not Filed	13	13%
Total	100	100%

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

	1998	
	Number	Percent
Received at the Board:		
Filed Compliant	81	81%
Not Filed	19	19%
Total	100	100%

D. Memorandum of Payment (WCB-3)

	1998	
	Number	Percent
Received at the Board:		
Filed Compliant	96	97%
Not Filed	3	3%
Total	99	100%
WCB-4A Filed ¹	1	

¹ A WCB-4A was filed in lieu of a WCB-3.

FORM FILING

E. Discontinuance or Modification (WCB-4)

		1998	
		Number	Percent
Received at the Board:			
Filed	Compliant	79	91%
Not Filed		8	9%
<hr/>		87	100%
Total		87	100%
WCB-4A Filed ²		1	

F. Certificate of Discontinuance or Reduction of Compensation (WCB-8)

		1998	
		Number	Percent
Received at the Board:			
Filed	Compliant	9	100%
Not Filed		0	0%
<hr/>		9	100%
Total		9	100%

G. Notice of Controversy (WCB-9)

		1998	
		Number	Percent
Received at the Board:			
Filed	Compliant	21	66%
Filed Late		11	34%
<hr/>		32	100%
Total		32	100%
Medical Only NOC		1	

H. Statement of Compensation Paid (WCB-11)

		1998	
		Number	Percent
Received at the Board:			
Filed	Compliant	50	52%
Not Filed		46	48%
<hr/>		96	100%
Total		96	100%

² A WCB-4A was filed in lieu of a WCB-4.