

IN RE:

Gates, McDonald & Company

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CONSENT AGREEMENT

Docket No. INS-06-201

I

STIPULATIONS

THIS CONSENT AGREEMENT is entered into by and among Gates, McDonald & Company (“GatesMcDonald”), the Superintendent of the Maine Bureau of Insurance (the “Superintendent”), and the Office of the Attorney General. Its purpose is to bring to an end, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. § 359(2) certified to the Superintendent by the Maine Workers’ Compensation Board (“WCB”) pursuant to 39-A M.R.S.A. § 359(2) and confirmed in the Examination, defined below.

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations.
2. Organized and incorporated under the laws of the State of Ohio, GatesMcDonald is licensed in Maine as a third party administrator under license # TAF 33842, first issued in November 1991. GatesMcDonald administers claims under the Maine Workers’ Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the WCB issued thereunder (the “WCA”) and disability claims for several group plans.
3. In January 2003, the Monitoring Audit & Enforcement Division of the WCB audited the records of GatesMcDonald with respect to 61 claims with dates of injury during 2001 filed under M.R.S.A. Title 39-A. This audit focused on compliance with the WCA concerning form filing, timeliness of indemnity payments and accuracy of indemnity benefits.
4. On October 14, 2003, the WCB issued a Compliance Audit Report (the “Report”) detailing its findings. The Report’s findings reflect that GatesMcDonald did not timely and accurately file WCB forms and pay indemnity claims in violation of 39-A M.R.S.A. § 359(2).
5. In November 2003, the WCB and GatesMcDonald entered into three consent decrees, in lieu of administrative hearings, related to the findings in the Report. One such decree established that GatesMcDonald had “engaged in patterns of questionable claims handling techniques in violation of Section 359(2) [of the WCA] by failing” to file certain forms timely with the WCB, to calculate injured workers’ average weekly wages accurately, and to pay timely indemnity benefits to injured workers.
6. On December 29, 2003, the WCB certified such findings to the Superintendent pursuant to 39-A M.R.S.A. § 359(2).
7. Maine Bureau of Insurance (the “Bureau”) staff performed a targeted market conduct examination of all claims for indemnity benefits under the WCA administered by GatesMcDonald and having dates of injury from January 1, 2003 through June 30, 2004 (the “Examination”). The Examination covered 34 claims. The purpose of the Examination was to determine whether the violations of 39-A M.R.S.A. § 359(2) found by the WCB still existed as of the time of the Examination, namely whether

GatesMcDonald timely and accurately paid indemnity benefits and filed WCB forms with respect to such claims.

8. During the course of the Examination, Bureau staff found that, as to its claims-handling practices in Maine, GatesMcDonald had improved its compliance with form filing and indemnity payment requirements but that its compliance ratios remained unacceptably low for the period of the Examination.

II

MAINE LAW

9. 39-A M.R.S.A. § 359(2) provides in part that:

[T]he [workers' compensation] board . . . 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. . . . shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

III

CONCLUSIONS OF LAW

10. GatesMcDonald violated 39-A M.R.S.A. § 359(2) by failing to bring to a halt the pattern of questionable claims-handling techniques through the Examination period.

IV

COVENANTS

11. GatesMcDonald shall immediately bring to a halt all questionable claims-handling techniques and represents that it has put into effect procedures to file WCB forms timely and accurately and to pay indemnity benefits as required by the WCA.
12. Within ten (10) days after executing this Agreement, GatesMcDonald shall deliver to the Superintendent a civil penalty of Five Thousand Dollars and No Cents (\$5,000.00). GatesMcDonald confirms its understanding and agreement that: (i) this penalty results from its failure, as documented by the Examination, to halt through June 30, 2004 the pattern of questionable claims-handling techniques established by the November 2003 consent decrees entered into between GatesMcDonald and the WCB, and (ii) the amount of this penalty will not limit further civil penalties that the Superintendent may impose under paragraph 22 below.
13. Within ten (10) days after executing this Agreement, GatesMcDonald shall deliver to the Superintendent a copy of its Statement on Auditing Standards No. 70 ("SAS 70") audit report for 2005 and the results of its internal performance management audits since January 2005. GatesMcDonald shall deliver to the Superintendent a copy of its SAS 70 report for 2006 on or before December 1, 2006; however, this requirement will not apply

should GatesMcDonald withdraw completely from the business of an administrator as provided in paragraph 16 below.

14. Within thirty (30) days after executing this Agreement, GatesMcDonald shall adopt, and submit to the Superintendent for approval, written procedures for ensuring that all claims for indemnity benefits under the WCA are paid in compliance with Maine law. At a minimum, such procedures must include plans for:
 - a. training claims personnel on the provisions of the WCA concerning calculation of average weekly wages, derivation of benefit levels from average weekly wages, indemnity payment, and completing and filing with the WCB relevant forms;
 - b. maintaining claims payment standards through ongoing staff education and supervision;
 - c. providing for adequate sums in its indemnity payment accounts at all times for the timely payment of benefits;
 - d. correcting any internal control deficiencies identified in the SAS 70 audit reports; and
 - e. auditing claims payments through GatesMcDonald's internal performance management audit program in order to assess employee understanding of claims payment under, and compliance with, the WCA. Such audits must include daily reviews by GatesMcDonald's Boston manager of pending claims reports for coverage issues and payment reports for timely payment of benefits and monthly random audits of new and pending cases to ensure adequate reserves and compliance with the report filing.

GatesMcDonald shall simultaneously deliver a copy of such procedures to the Deputy Director, Monitoring Audit & Enforcement Division at the WCB.

15. GatesMcDonald has notified the Superintendent of its business decision to stop acting as an administrator, as defined at 24-A M.R.S.A. § 1901, as to WCA claims no later than October 31, 2006. GatesMcDonald intends to continue administering non-WCA disability claims under its Maine license. GatesMcDonald shall notify the Superintendent of any agreements relating to the transfer of its WCA claims administrator duties, and deliver to the Superintendent copies thereof, within forty-eight (48) hours after the execution of such agreements or upon signing this Consent Agreement if GatesMcDonald has already executed such agreements. If GatesMcDonald has not completely stopped administering WCA claims in Maine as of October 31, 2006, GatesMcDonald shall notify the Superintendent on November 1, 2006 of any claims for which GatesMcDonald remains responsible as an administrator and agrees that the Superintendent will conduct a targeted market conduct examination of GatesMcDonald's WCA claims administration activities in Maine. The scope of such examination shall be all claims for indemnity benefits under the WCA administered by GatesMcDonald between July 1, 2005 and March 31, 2006 and having dates of injury after December 31, 1992. The purpose of such examination is to determine whether GatesMcDonald has brought to an end the violations of 39-A M.R.S.A. § 359(2) established by the WCB. GatesMcDonald shall pay the costs of such examination as set forth in 24-A M.R.S.A. § 228.

If the results of such examination are that GatesMcDonald has not met or exceeded the WCB benefit payment and form filing benchmarks or has not, pursuant to the National Association of Insurance Commissioners Market Conduct Examination Handbook and Guidelines, accurately paid indemnity benefits, the Superintendent may:

- a. order GatesMcDonald to engage an independent auditor, mutually acceptable to the Superintendent and GatesMcDonald, to audit GatesMcDonald's claims payment and form filing practices under the WCA. Before starting such audit, the auditor must deliver in writing to the Superintendent its consent to the terms of this paragraph, and its agreement to deliver to the Superintendent upon his request any and all work papers or documents, in any format, in its possession, custody or control, related to such audit. Such audit will: (i) cover the period starting April 1, 2006 through March 31, 2008, and (ii) be on a quarterly basis. Such audit will include without limitation review of GatesMcDonald's adherence to: (i) WCB benefit payment and form filing benchmarks, and (ii) GatesMcDonald's internal quality standards and procedures and client service plans. Such audit will also recommend corrective action, if any, for GatesMcDonald to take. GatesMcDonald shall file the reports of such audit with the Superintendent and the WCB within thirty (30) days of the end of the preceding three-month period. If the Superintendent determines that any such report is unsatisfactory, he may terminate the auditor retained by GatesMcDonald and engage an auditor of his own choice to fulfill GatesMcDonald's obligations under this paragraph; or
 - b. declare GatesMcDonald to have violated the terms of this Agreement and proceed as set forth in paragraph 22 below.
16. GatesMcDonald shall pay: (i) \$12,740 for the cost of the Examination, and (ii) all reasonable costs and expenses related in any manner to its obligations under, its compliance with, and the enforcement of this Agreement.
17. GatesMcDonald shall not administer any additional Title 39-A claims in Maine without the Superintendent's prior approval.

V

MISCELLANEOUS

18. GatesMcDonald waives formal hearing in this matter and will make no appeal from this Agreement.
19. GatesMcDonald acknowledges that this Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the NAIC RIRS database.
20. GatesMcDonald has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
21. Nothing herein shall affect any right or interest of any person or entity not a party to this Agreement.
22. In consideration of GatesMcDonald's execution of and compliance with the terms of this Agreement, the Superintendent and the Office of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanctions for the

actions described in this Agreement, other than those agreed to herein. However, should GatesMcDonald violate this Agreement, nothing herein shall prohibit the Superintendent or the Office of the Attorney General from seeking any available legal remedy for such violation, including without limitation expansion of the Examination to cover GatesMcDonald's compliance with the Maine Insurance Code, imposition of additional civil penalties, and the suspension or revocation of all licenses issued to GatesMcDonald by the Superintendent.

23. The effective date of this Agreement is the date entered in the Superintendent's signature line below.

24. This Agreement may only be modified by the written mutual consent of all parties.

Dated: _____, 2006

GATES, McDONALD & COMPANY

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2006.

Notary Public

Printed name

Date commission expires

Dated: _____, 2006

**MAINE OFFICE OF THE ATTORNEY
GENERAL**

Thomas C. Sturtevant, Jr.
Assistant Attorney General

Effective
Date: October 27, 2006

MAINE BUREAU OF INSURANCE

Alessandro A. Iuppa
Superintendent