

**STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION  
BUREAU OF INSURANCE**

**IN RE:**

**DUSTIN W. BLACK  
National Producer # 3688040  
Maine License # ADR44191**

**Docket No. INS 06-502**

**DECISION AND ORDER  
REVOKING  
INSURANCE ADJUSTER  
LICENSE**

**INTRODUCTION**

1) This matter is before the Superintendent of Insurance, after notice and opportunity for hearing, pursuant to a Petition to REVOKE the resident adjuster license of Dustin W. Black, dated October 13, 2006, and filed by the Staff of the Maine Bureau of Insurance.

2) The Maine Insurance Code regulates persons who offer or sell insurance products and services in the State of Maine, including adjusters. The Superintendent of Insurance has jurisdiction over this matter pursuant to the Insurance Code generally, Title 24-A Maine Revised Statutes Annotated, and in particular, 24-A M.R.S.A. §§211, 220, 1413, 1417, 1420-K and 1472.

**FINDINGS OF FACT  
and  
CONCLUSIONS OF LAW**

3) Dustin W. Black has been licensed in Maine as a resident insurance adjuster since 1995. His license number in Bureau records is ADR44191. His National Producer Registry Number is 3688040.

4) Mr. Black's last known address, as specified in Bureau of Insurance license records, is:

27 Old Port Road  
Kennebunk, ME 04043

5) At all times relevant to the facts set forth in this Petition, between 1998 and 2005, Mr. Black was a workers' compensation claims representative for ESIS Inc., a licensed adjuster firm and third party administrator. In such capacity, Mr. Black was responsible for the

administration of specific claims in Maine, and was the designated "responsible person" for the firm under its adjuster business entity license pursuant to 24-A M.R.S.A §1413(3) which states in relevant part: "At least one individual licensee must be designated responsible for the business entity's compliance with the insurance laws and rules of this State."

6) Pursuant to its regulatory function under the Maine Workers' Compensation Act, Title 39-A Maine Revised Statutes Annotated §§101 - 409, the Workers Compensation Board ("Board") audited 84 claims administered by ESIS in 2004 for the exam period of 2001, to determine compliance with requirements concerning: form filing; timeliness of indemnity payments; and accuracy of indemnity payments. The Board's Office of Monitoring, Audit & Enforcement issued its Compliance Audit Report February 14, 2005.

7) Due to questionable claims handling techniques identified in the above audit process, the audit was expanded to include a limited scope audit of 61 claims from 2003 and 5 claims from 2004. This limited scope audit concerned: apparent use of fictitious data in Box 24 and 28 of the Memorandum of Payment ("MOP") form; late initial payments; and violations subject to penalty under 39-A M.R.S.A. §205(3).

8) The Board certified its findings to the Superintendent pursuant to 39-A M.R.S.A. §359(2), and referred its findings for the Superintendent's review of Mr. Black's activities under his adjuster license and appropriate action against this license in accordance with the Insurance Code. The specific purpose of a certification under §359(2) is for the Superintendent to take appropriate action so as to bring patterns of questionable claims-handling practices to a halt on the part of an employer, insured, or third party administrator. No further action by the Superintendent is needed under §359(2), as ESIS has taken steps to improve its procedures. However, although ESIS has terminated Mr. Black's employment, he remains individually licensed. The Board's referral concerns matters which implicate the Superintendent's authority to take action directly under the Insurance Code against Mr. Black's adjuster license.

9) The Bureau provided notice by U.S. Certified Mail to Mr. Black of the Petition to revoke, and provided opportunity for hearing, directed to his address of record, 27 Old Port Road, Kennebunk, ME 04043, on October 16, 2006, in accordance with the requirements of 24-A M.R.S.A. §213.

10) The Bureau later received the Certified Mail receipt, indicating receipt of the Petition and Notice and Opportunity for Hearing at Mr. Black's address of record on October 17, 2006.

11) Mr. Black has not requested a hearing on this matter, and the time period allotted for the filing of any such request has expired.

### **Late filings of required forms**

12) Title 39-A M.R.S.A. §360(1) provides:

§360. Penalties.

1. Reporting violations. The board may assess a civil penalty not to exceed \$100 for each violation on any person:
  - A. Who fails to file or complete any report or form required by this Act or rules adopted under this Act; or
  - B. 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.

13) The WCB-1 form, "Employer's First Report of Occupational Injury or Disease," is required to be filed with the Board under 39-A M.R.S.A. §303, which provides:

When any employee has reported to an employer under this Act any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work, or when the employer has knowledge of any such injury, the employer shall report the injury to the board within 7 days after the employer receives notice or has knowledge of the injury.

14) The "Wage Statement" form, WCB-2, is also required to be filed under 39-A M.R.S.A. §303.

15) Form WCB-2A, "Schedule of Dependents and Filing Status," must also be filed under 39-A M.R.S.A. §303.

16) Form WCB-3, "Memorandum of Payment" or the WCB-9 "Notice of Controversy" form as warranted in particular cases, are required to be filed under Board Rule Chapter 1, §1.1, which provides as follows:

§ 1. Claims for Incapacity and Death Benefits

1. Within 14 days of notice or knowledge of a claim for incapacity or death benefits for a work-related injury, the employer or insurer will:
  - A. Accept the claim and file a Memorandum of Payment checking "Accepted" in Box 18; or
  - B. Pay without prejudice and file a Memorandum of Payment checking "Voluntary Payment Pending Investigation" in Box 18; or
  - C. Deny the claim and file a Notice of Controversy.

17) Form WCB-4, "Discontinuance or Modification of Compensation," must be filed under Board Rule Chapter 8, §11, which provides:

The Discontinuance or Modification of Compensation (WCB 4) shall be filed by the employer or insurer when the employee returns to work or receives an increase in pay pursuant to 39 A M.R.S.A. § 205(9)(A).

18) The "Statement of Compensation Paid," form WCB-11, is required under Board Rule Chapter 8, §1, as follows:

The initial Statement of Compensation Paid, Interim Report (WCB-11) shall be filed with the Board within 195 days of the date of an injury where indemnity payments have been made, and as a Final Report when no further payments are anticipated. Subsequent Statements of Compensation Paid (WCB-11) shall thereafter be filed with the Board within fifteen (15) days of each anniversary date of an injury when payments of any type have been made since the previous Statement of Compensation Paid (WCB-11). The Statement of Compensation Paid (WCB-11) is required when only medical payments are made subsequent to the filing of a Final Report. There is no requirement to file the Statement of Compensation Paid on claims when payments are made for medical only services and no indemnity was ever paid on the claim.

19) In April 2005, ESIS and the Board entered into a Consent Decree based upon 30 specific instances of late filings of forms in twelve cases for which Mr. Black was responsible as a function of his duties on behalf of ESIS, resulting in a total penalty of \$3,000, based upon a civil forfeiture of \$100 for each of 30 separate violations of 39-A M.R.S.A. §360(1)(B). A copy of this Consent Decree is attached as Exhibit 1, and indicates the following:

- a) Three late filings of Form WCB-1, "Employer's First Report of Occupational Injury or Disease;"
- b) Six late filings of Form WCB-2, "Wage Statement;"
- c) Ten late filings of Form WCB-2A, "Schedule of Dependents and Filing Status;"
- d) Three late filings of Form WCB-3, "Memorandum of Payment;" and
- e) Eight late filings of Form WCB-11, "Statement of Compensation Paid."

### **Incorrect information in filed forms**

20) The Board's certification to the Superintendent described in Paragraph 8 above cites 26 instances of incorrect information or fictitious data entered on Form WCB-3, "Memorandum of Payment," in particular at Box 24, "Date check mailed," and Box 28, "First Day of Compensability After Waiting Period is Met," in the following cases for which Dustin Black served as claims representative, and which are identified here by the Board's file number and the initials of the 25 injured employees:

Injured employee "I. A." Board file#1001924;  
Injured employee "K. A." Board file#3013513;

Injured employee "T. B." Board file#1001850;  
Injured employee "G. B." Board file#3010380;  
Injured employee "S. B." Board file#3006543;  
Injured employee "R. C." Board file#1017083;  
Injured employee "D. C." Board file#3007715;  
Injured employee "U. C." Board file#1002838;  
Injured employee "B. D." Board file#1018577;  
Injured employee "S. G." Board file#1-7897;  
Injured employee "W. H." Board file#3008212;  
Injured employee "B. K." Board file#3014937;  
Injured employee "J. L." Board file#3012747;  
Injured employee "B. L." Board file#3014979;  
Injured employee "W. L." Board file#4002913;  
Injured employee "A. L." Board file#3001511;  
Injured employee "J. M." Board file#3013880;  
Injured employee "B. M." Board file#3008318;  
Injured employee "B. M." Board file#3016311 (same employee as #3008318);  
Injured employee "G. P." Board file#1012697;  
Injured employee "S. P." Board file#1017310;  
Injured employee "D. P." Board file#4001627;  
Injured employee "E. R." Board file#3015749;  
Injured employee "M. R." Board file#3014148;  
Injured employee "J. T." Board file#3012391; and  
Injured employee "R. V." Board file#3010675.

### **Late payments of benefits**

21) Title 39-A M.R.S.A. §205 provides in relevant part:

**1. Prompt and direct payment.** Compensation under this Act must be paid promptly and directly to the person entitled to that compensation at the employee's mailing address, or where the employee designates, without an award, except in cases when there is an ongoing dispute.

**2. Time for payment.** The first payment of compensation for incapacity under section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date all compensation then accrued must be paid. Subsequent incapacity payments must be made weekly and in a timely fashion. Every insurance carrier, self-insured and group self-insurer shall keep a record of all payments made under this Act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the board as it may reasonably require.

**3. Penalty for delay.** 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.

22) In April 2005, ESIS and the Board entered into ten Consent Decrees involving late payments in the following cases, for which Mr. Black had served as ESIS Claims Representative:

- a) The initial indemnity payment made on May 11, 2001 was 72 days after compensation became due and payable to injured employee Irene Abbott in Board File #1-1924 and ESIS File #86764450537394, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 2.
- b) The initial indemnity payment made on April 1, 2002 was 110 days after compensation became due and payable to injured employee Randy Cloutier in Board File #1-17083 and ESIS File # C445C2200506, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 3.
- c) The initial indemnity payment made on January 16, 2002 was 65 days after compensation became due and payable to injured employee Beth Dana in Board File #1-18577 and ESIS File #8574452355650, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 4.
- d) The initial indemnity payment made on June 22, 2001 was 72 days after compensation became due and payable to injured employee Shane Gionette in Board File #1-7879 and ESIS File #86094452129611, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 5.
- e) The initial indemnity payment made on November 4, 2003 was 56 days after compensation became due and payable to injured employee Jason Barry in Board File #3-10128 and ESIS File # C445C2592821, resulting in a \$1,300 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 6.
- f) The initial indemnity payment made on June 13, 2003 was 48 days after compensation became due and payable to injured employee Samuel Blackstone in Board File #3-6543 and ESIS File # C445C225974-1, resulting in a \$900 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 7.
- g) The initial indemnity payment made on April 25, 2003 was 57 days after compensation became due and payable to injured employee Allen Libby in Board File #3-1511 and ESIS File #86094452260467, resulting in a \$1,350 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 8.
- h) The payment made on December 14, 2004, for five days out of a total of six days of incapacitation, was 314 days after compensation became due and payable to injured employee Bruce McLeod in Board File #3-16311 and ESIS File #92504452271379, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 9.
- i) The payment made on December 15, 2004 was 398 days after compensation became due and payable to injured employee Joseph Medeiros in Board File #3-16311 and ESIS File #92504452271379, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 10.
- j) Further, in the case of injured employee Samuel Blackstone, Board File #3-6543 and ESIS File # C445C225974-1, benefits were increased from partial to total on December 11, 2003 which was 122 days after compensation became due and payable, resulting in a \$1,500 penalty pursuant to 39-A M.R.S.A. §205(3) under the Consent Decree attached as Exhibit 11.

### **Incorrect calculations of benefits**

23) The Board's certification to the Superintendent described in Paragraph 8 above cites 6 instances of incorrect benefit calculations in the following

cases for which Dustin Black served as claims representative, and which are identified here by the Board's file number and the initials of the 6 injured employees:

Injured employee "N. B." Board File #1010632;  
Injured employee "R. C." Board File #1017083;  
Injured employee "B. D." Board File #1018577;  
Injured employee "S. G." Board File #1-7897;  
Injured employee "T. M." Board File #1017095; and  
Injured employee "G. P." Board File #1012697.

### **Questionable claims handling in general**

24) Title 39-A M.R.S.A. §359 provides in relevant part:

§359. Audits; penalty; monitoring

1. Audits. The board shall audit claims, including insurer, self-insurer and 3rd-party administrator claim files, on an ongoing basis to determine whether insurers, self-insured employers and 3rd-party administrators have met their obligations under this Act and to identify the disputes that arose, the reasons for the disputes, the method and manner of their resolution, the costs incurred, the reasons for attorney involvement and the services rendered by the attorneys.

If as a result of an examination and after providing the opportunity for a hearing the board determines that any compensation, interest, penalty or other obligation is due and unpaid to an employee, dependent or service provider, the board shall issue a notice of assessment detailing the amounts due and unpaid in each case and shall order the amounts paid to the unpaid party or parties.

2. Penalty. 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.

25) As described in Paragraph 5 above, Mr. Black was generally responsible for ESIS's compliance with the Insurance Code under its license, and as a licensed adjuster Mr. Black was responsible as claims representative for specific ESIS Maine claims, including those referred to in each specific allegation above.

26) In April 2005, ESIS and the Board entered into a Consent Decree based upon overall noncompliance with claims handling requirements resulting in a total penalty of \$10,000 under 39-A M.R.S.A. §359. A copy of this Consent Decree is attached as Exhibit 12, and indicates the following:

- a) failing to pay claims timely;
- b) failing to pay benefits due;
- c) failing to calculate benefits accurately;
- d) failing to file or timely file required forms with the Board; and
- e) failing to file accurate information on forms filed with the Board.

## **SPECIFIC GROUNDS FOR REVOCATION OF LICENSE**

### **VIOLATION OF INSURANCE LAWS**

27) The Superintendent may, after notice and opportunity for hearing, revoke an Adjuster's license under 24-A M.R.S.A. §1417 and §1420-K(1)(B), based upon "violating any insurance laws, or violating any rule, regulation, subpoena or order of the superintendent or of another state's insurance commissioner."

28) The above findings and conclusions pertain to insurance laws administered through Title 39-A, the Maine Workers Compensation Code.

29) Mr. Black's violations of such laws included conduct which resulted in 13 consent decrees with the Workers Compensation Board imposing penalties totalling \$27,050.00, as follows:

- 30 specific violations of law subjecting ESIS to a penalty of \$3,000 under the consent decree described in Paragraph 19 above;
- late payments to nine injured employees who were due compensation, ranging from periods of 48 days late to 398 days late, subjecting ESIS to total penalties of \$14,050 under the 10 consent decrees described in Paragraph 22 above; and
- Pervasive improper claims-handling practices in general, subjecting ESIS to a penalty of \$10,000 under the consent decree described in Paragraph 26.

30) Mr. Black violated workers compensation insurance laws on numerous occasions in his role as the individual responsible for ESIS's conduct as an adjuster business entity in Maine under 24-A M.R.S.A. §1413, and as claims representative on specific files, all as more specifically stated above, constituting statutory grounds for revoking Mr. Black's Adjuster license under 24-A M.R.S.A. §1420-K(1)(B).

### **FRAUDULENT, COERCIVE OR DISHONEST PRACTICES; INCOMPETENCE OR UNTRUSTWORTHINESS**

31) The Superintendent may, after notice and opportunity for hearing, revoke an Adjuster's license under 24-A M.R.S.A. §1417 and §1420-K(1)(H), based upon "using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere."



32) Mr. Black's incompetent, coercive, or dishonest practices and untrustworthy conduct in the course of his activities under his adjuster license included all of the above referenced conduct which related to the consent decrees and penalties for specific violations, as well as:

- 26 instances of incorrect information in filed forms, including misinformation regarding the timing of payments, regarding the cases of 25 injured employees who were due compensation, as described in Paragraph 20 above; and
- 6 instances of incorrect calculations of benefits due to 6 injured employees, as described in Paragraph 23 above.

33) Mr. Black used coercive or dishonest practices, and demonstrated incompetence or untrustworthiness on numerous occasions in his conduct as an adjuster as more specifically stated above, constituting statutory grounds for revoking Mr. Black's Adjuster license under 24-A M.R.S.A. §1420-K(1)(H).

### **FAILURE TO MEET BASIC QUALIFICATIONS FOR ADJUSTER LICENSE**

34) Title 24-A M.R.S.A. §1472 specifies that: "The superintendent may not issue, continue or permit to exist any license as an adjuster, except in compliance with this chapter or unless the person meets the requirements of subsection 2." Subsection (2)(B) of §1472 specifies that an adjuster: "Must be competent, trustworthy, financially responsible, and of good personal and business reputation."

35) The above described incidents establish that Mr. Black engaged in conduct that deprived injured employees of compensation as and when it was legally due them, provided inaccurate information on required forms, and exposed ESIS to liability based upon claims-handling practices. To the extent such conduct related to late or improperly calculated benefits, Mr. Black caused particular harm to injured employees. To the extent such conduct related to incorrect information in filed forms and late filings, Mr. Black caused particular harm to the Board's discharge of the regulatory oversight responsibility with which it is charged for the protection of the public. All such conduct establishes that Mr. Black is not competent, trustworthy, or of good business reputation, and that therefore he is not eligible to continue to hold an Adjuster license in Maine.

### **ORDER REVOKING LICENSE of DUSTIN W. BLACK**

Per Order of the Superintendent of Insurance, after notice and opportunity for hearing, the resident insurance adjuster license of **Dustin W. Black, # ADR 44191**, is hereby **REVOKED** pursuant to the above

grounds under Maine Insurance Code and in accordance with the above Findings of Fact and Conclusions of Law.

The effective date of this Order is November 21, 2006.

### **NOTICE OF APPEAL RIGHTS**

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedures Act. It is appealable to the Superior Court in the manner provided in 24-A M.R.S.A. §236, 5 M.R.S.A. §11001, *et seq.*, and M.R.Civ.P. 80C. Any party to the proceeding may initiate an appeal within thirty (30) days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by the Decision and Order may initiate an appeal within forty (40) days of the issuance of this Decision and Order. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S.A. §11004.

November 20, 2006

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ALESSANDRO A. IUPPA  
Superintendent, Maine Bureau of  
Insurance