

Market Conduct Examination  
Zurich American Insurance Company  
Federal Id #36-4233459  
Maine License #PCF61397

500 Enterprise Drive  
Rocky Hill, CT 06067

Examination Period:  
1/1/06 thru 12/31/06

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I hereby certify that the attached report of a targeted market conduct examination dated June 7, 2007 shows the condition and affairs of Zurich American Insurance Company of Rocky Hill, Connecticut as of December 31, 2006 and has been filed in the Bureau of Insurance as a public document.

This report has been reviewed.

Eric A. Cioppa

Deputy Superintendent

June 7, 2007

Honorable Eric Cioppa  
Acting Superintendent of Insurance  
State of Maine  
Bureau of Insurance  
State House Station #34  
Augusta, ME 04333

Dear Sir:

Pursuant to the certification of findings in accordance with Title 39-A M.R.S.A § 359 (2) from the State of Maine Workers' Compensation Board (hereinafter, "WCB") and under the authority of Title 24-A § 221 (1) and in conformity with your instructions, a targeted market conduct examination has been made of:

Zurich American Insurance Company  
(Federal Id #36-4233459)  
(Maine License #PCF61397

(hereinafter, "Zurich"). The examination covered indemnity claims with dates of injury (hereinafter, "DOI") after December 31, 1992 and with indemnity payments paid during the examination period from January 1, 2006 through December 31, 2006. These indemnity payments relate to injuries filed under Maine Workers' Compensation Law Title 39-A M.R.S.A.

The following report is respectfully submitted.

## SCOPE OF EXAMINATION

The targeted market conduct examination of Zurich was the result of a WCB Audit conducted in February 2005 culminating in the issuance of a Maine Workers' Compensation Board Compliance Audit Report, dated June 28, 2005 (hereinafter, "WCBAR"). Findings outlined in the audit report consisted of failure to pay claims timely, failure to pay benefits due, failure to calculate benefits accurately and failure to file or timely file required forms with WCB. The pervasiveness and magnitude of the findings as determined by WCB constituted a "pattern of questionable claims-handling techniques". Pursuant to Title 39-A M.R.S.A. § 359 (2) the audit findings were certified to the Superintendent of Insurance. Accordingly, the Superintendent of Insurance was charged with the responsibility to take appropriate action as to bring any such practices to a halt.

In as much as the Superintendent of Insurance was tasked to "take appropriate action so as to bring any such practices to a halt", a determination as to whether or not the "pattern of questionable claims-handling techniques" still exists was necessary. Therefore, the Bureau of Insurance staff developed and deployed certain examination procedures in order to enable the Superintendent to arrive at a reasonable conclusion as to Zurich's continuance or discontinuance of a "pattern of questionable claims-handling techniques". The examination was conducted in accordance with Title 24-A M.R.S.A., Title 39-A M.R.S.A and the National Association of Insurance Commissioners Market Conduct Examiners Handbook and Guidelines (hereinafter, "Handbook") for purposes of sample determination and overall guidance. Specific procedures from the Handbook that applied to verifying Zurich's compliance with certain form filing and claim processing procedures, as outlined in Title 39-A M.R.S.A. and the WCB Rules and Regulations were used as part of this examination. The scope of the examination consisted of reviewing indemnity claims with DOI's from January 1, 2006 through December 31, 2006 to determine if all WCB forms were filed timely, accurately and if indemnity claims were paid in a timely and accurate manner. From a population of 85 claims that fit the aforementioned criteria, 40 were randomly selected for review. In addition, 10 claims with a date of injury from January 1, 1993 through December 31, 2005 that had indemnity payments paid during the examination period were selected randomly as well. Since the consent agreements between Zurich and the WCB were not signed until August 2005, it was deemed appropriate to select claims from 2006 to determine what actions or corrective steps had been implemented by Zurich.

## HISTORY OF ENGAGEMENT

Pursuant to Title 39-A M.R.S.A. § 153 (9), the WCB was required to establish an audit, enforcement and monitoring program. The functions of the audit and enforcement program include, but are not limited to, auditing the timeliness of payments and the claims-handling practices of insurers including the requirements of Title 39-A M.R.S.A. § 359. In February 2004, the Audit Division of the WCB began an audit of Zurich's claims-handling processes. As a result of the WCBAR and the State of Maine Workers' Compensation Board v. Zurich American Insurance Company Consent Decree dated August 29, 2005, the WCB certified its findings to the Superintendent of Insurance in accordance with Title 39-A M.R.S.A. § 359 (2).

## METHODOLOGY

In order to fulfill the intent of Title 39-A M.R.S.A. § 359 (2), the Bureau of Insurance worked closely with the WCB to gain an understanding of the "pattern of questionable claims-handling techniques" identified as a result of the WCB audit. Subsequently the ultimate goal of the examination was developed. The goal was to determine whether or not Zurich's "pattern of questionable claims-handling techniques" still exists and if so, what action is necessary to bring such practices to a halt.

## STANDARDS

The population of indemnity claims subject to review for examination purposes included all indemnity claims with DOI's from January 1, 1993 to December 31, 2006 that had indemnity payments paid during the January 1, 2006 to December 31, 2006 examination period. These claims were separated into two populations. The first population included claims with DOI's from the January 1, 2006 to December 31, 2006 examination period (hereinafter, "new claims"). The second population included claims with DOI's from January 1, 1993 to December 31, 2005 that had payments made during the January 1, 2006 to December 31, 2006 examination period (hereinafter, "old claims"). The new claim population was comprised of eighty-five (85) claims. A random sample of forty (40) new claims was selected for detailed review. The old claim population was comprised of one hundred eighty-five (185) claims. A random sample of ten (10) old claims was selected for detailed review.

The following standards were applied to and tested for through the detailed review of the selected claim files. All references are from either Title 39-A M.R.S.A., Maine WCB Rules and Regulations or the WCB Protocols of the Monitoring, Audit & Enforcement Division. The specific Handbook standards and tests developed by the examiners are outlined in this section.

(1) Standard G-4

The Company files claim correspondence in a timely manner.

Test Step 1: Determine if claim related correspondence (e.g. WCB forms) was correctly completed and filed as required by applicable statutes, rules, regulations or protocols.

WCB-1, First Report of Injury	Title 39-A M.R.S.A. § 303
WCB-2, Wage Statement	Title 39-A M.R.S.A. § 303
WCB-2A, Schedule of Dependent(s) And Filing Status	Title 39-A M.R.S.A. § 303
WCB-3, Memorandum of Payment (MOP)	Title 39-A M.R.S.A. § 205 (7)
WCB-9, Notice of Controversy (NOC)	ME WCB Rules & Regs, Ch 8 § 2
WCB-11, Statement of Compensation Paid	ME WCB Rules & Regs, Ch 8 § 1

Standard G-4 established a general framework for the timely correspondence of claim documentation. Failure to file any WCB forms within established time frames was a violation of Title 39-A M.R.S.A. § 360 (1) (A) or (B).

(2) Standard G-3

Claims are resolved in a timely manner.

Test Step 2: Determine if initial and subsequent claim payments were made in a timely manner.

Standard G-3 established a general framework for the timely settlement of claims pursuant to Title 39-A M.R.S.A. § 205 (2).

(3) Standard G-5

Claim files are adequately documented.

Test Step 3: Determine if the quality of the claim documentation (e.g. wage statements, schedule of dependents and filing status) was sufficient to support or justify the ultimate claim determination (accuracy of payment) and whether state requirements were satisfied.

## APPLICATION OF TESTS

This section briefly describes the results of the tests applied to the sample of claims selected. The sample consisted of forty (40) new claims and ten (10) old claims. It should be noted that the fifty (50) claim sample was comprised of eleven claim files prepared and managed by Zurich staff and thirty-nine (39) claim files prepared and managed by certain third party administrators (hereinafter, "TPA"). While this stratification was not considered in the original sample selection process, the tables reported below, offer results segregated between Zurich and TPAs.

TEST 1: Verify the timely filing of the following forms with the WCB in accordance with the applicable Statute, Rules & Regulations, or Protocol and that the forms are completed accurately (the second table reports results by entity):

<b>Test Description</b>	<b>Filed Timely</b>	<b>Not Filed Timely</b>	<b>Not Applicable</b>	<b>Percent in Compliance 2006</b>	<b>WCBARA</b>
WCB-1	23	20	7	53%	65%
WCB-2	26	18	6	59%	56%
WCB-2A	27	17	6	61%	45%
WCB-3	22	18	10	55%	41%
WCB-9	5	2	43	71%	86%
WCB-11 (195 day)	17	6	27	74%	53%B
WCB-11 (Annual)	8	4	38	67%	53%B

**A** For comparative purposes, these compliance percentages of timely form filing were taken from the WCBAR.

**B** WCBAR compliance rate of 53% did not separate between filing of WCB 11, 195 Day Reports or Annual Reports.

Test Description	Zurich/ TPA	Filed Timely	Not Filed Timely	Percent in Compliance 2006
WCB-1	Zurich	7	3	70%
	TPA	16	17	48%
WCB-2	Zurich	9	1	90%
	TPA	17	17	50%
WCB-2A	Zurich	8	2	80%
	TPA	19	15	56%
WCB-3	Zurich	9	1	90%
	TPA	13	17	43%
WCB-9	Zurich	0	0	-
	TPA	5	2	71%
WCB-11 (195 day)	Zurich	7	1	88%
	TPA	10	5	67%
WCB-11 (Annual)	Zurich	2	1	67%
	TPA	6	3	67%

TEST 2: Verify that initial and subsequent indemnity payments were made in accordance with Title 39-A M.R.S.A. § 205 (2) (the second table reports results by entity):

	Paid Timely	Not Paid Timely	Not Applicable	Percent in Compliance	WCBARA
Initial Payment	27	14	9	66%	55%
Subsequent Payments	284	29	0	90%	70%

**A** For comparative purposes, these compliant percentages were taken from the WCBAR.

		Paid Timely	Not Paid Timely	Percent in Compliance
Initial Payment	Zurich	9	1	90%
	TPA	18	13	58%
Subsequent Payments	Zurich	61	14	77%
	TPA	223	15	93%

TEST 3: Verify that indemnity payments are calculated accurately for both total and partial incapacity (the second table reports results by entity)

	Paid Accurately	Not Paid Accurately	Percent In Compliance	WCBARA
Partial & Total Indemnity Payments	27	23	54%	62%

**A** For comparative purposes, these compliant percentages were taken from the WCBARA.

		Paid Accurately	Not Paid Accurately	Percent In Compliance
Partial & Total Indemnity Payments	Zurich	7	4	64%
	TPA	20	19	51%

There were 15 claims with one or more instances of overpayments and 8 claims with one or more instances of underpayments in the claim files reviewed. These under and overpayments resulted from a variety of actions, including:

- Use of the wrong number of weeks in certain benefit calculations
- Incorrect use of benefits table – wrong number of dependents
- Incorrect use of benefits table – wrong year
- Incorrect use of week of hire in the Average Weekly Wage (hereinafter, “AWW”) calculation
- Incorrect use of week of injury in the AWW calculation
- Paying an AWW above the state maximum rate
- Incorrectly paying benefits during the waiting period
- Unknown Reasons

## SUMMARY EXAMINATION REPORT

### Timely Filing of Forms (Test 1)

Test #1 was designed to determine compliance with Title 39-A's form filing requirements. As demonstrated in the Test #1 table, while there has been improvement in the timely filing of a few required forms, the overall compliance ratio is still at an unacceptable level. In the case of the WCB-1 and the WCB-9 the percentage of compliance actually decreased from the WCBAR. Insurers must file these forms accurately and timely as they are relied upon by the Board to monitor whether or not insurers are paying injured workers in accordance with the statute.

(See comments and recommendations #1)

### Timely Initial and Subsequent Payments (Test 2)

The review of subsequent payments indicated that Zurich has made significant improvements in this area and that the "pattern of questionable claims-handling techniques" in regards to the timeliness of subsequent payments no longer exists. Although there was an improvement in the timeliness of initial payments compared to the results of the WCBAR, the rate was still unacceptably low and it appears that the "pattern of questionable claims-handling techniques" in regards to the timeliness of initial payments still exists.

(See comments and recommendations #2)

### Payment Accuracy (Test 3)

The primary causes of inaccurate indemnity payments identified in the WCBAR were incorrectly calculated AWW and incorrectly calculated weekly benefit ratios. The incorrect calculations were due to dividing or adding incorrectly when calculating the AWW, referencing an incorrect AWW, wrong number of dependents, not modifying the maximum compensation rate, incorrectly including weeks in the AWW calculation, using estimates when calculating the AWW and other unknown reasons. During the WCBAR the compliance rate for accuracy of payments was 62%.

The results of this Market Conduct examination indicate that the rate of compliance for payment accuracy was 54%. The issues that led to inaccurate payments were:

- Use of the wrong number of weeks in certain benefit calculations
- Incorrect use of benefits table – wrong number of dependents
- Incorrect use of benefits table – wrong year

- Incorrect use of week of hire in the AWW calculation
- Incorrect use of week of injury in the AWW calculation
- Paying an AWW above the state maximum rate
- Incorrectly paying benefits during the waiting period known reasons

The results of this examination show that the accuracy of payments actually decreased when compared to the results of the WCBAR. It was determined that the rate of accuracy remains unacceptably low and it appears that the “pattern of questionable claims-handling techniques” in regards to the accuracy of payments still exists.

(See comments and recommendations #3)

## COMMENTS AND RECOMMENDATIONS

**1) Comment:** Test #1 was designed to determine compliance with Title 39-A’s form filing requirements. As demonstrated in the Test #1 table, while there has been improvement in the timely filing of certain required forms, the overall compliance ratio is still at unacceptable levels. The WCB has a benchmark for the timely filing of the Memorandum of Payment (WCB-3) form of 75%. During this audit it was determined that the WCB-3 form was filed timely 55% of the time which is well below the WCB benchmark of 75%. It was also noted that for both the WCB-1 and WCB-9 forms, the rate of timely filing actually decreased from the rates reported in the WCBAR. Insurers must file these forms accurately and timely as they are relied upon by the WCB to monitor whether or not insurers are paying injured workers in accordance with the statute.

**Recommendation:** It is recommended that the Company continue to train and monitor its claim adjusting staff to ensure an adequate understanding of Maine requirements for timely filing of WCB forms. It is also recommended that the Company develop a system to track the timely filing of WCB forms. Managers should also review claims regularly to improve performance.

**2) Comment:** Test #2 was designed to determine compliance with Title 39-A requirements for timely payment of initial and subsequent benefits. The WCB has an established bench mark for the timeliness of initial payments of 80%. Zurich appeared to have improved to a 66% compliance rate on the initial payment timeliness test from the WCBAR rate of 55%. However, the 80% benchmark was not achieved.

**Recommendation:** It is recommended that the Company continue to develop and implement policies and procedures to ensure that insured employers and claim adjusters are aware of WCB payment requirements and that manager’s monitor performance

regularly to ensure compliance. It is advised that specific Title 39-A M.R.S.A. training be developed and presented to both Zurich employees and TPA claims personnel.

**3) Comment:Test:** #3 was designed to verify that indemnity payments were calculated accurately for both total and partial incapacity. The compliance percentage during the examination period was 54%. The incorrect payments were the result of various actions, including:

- Use of the wrong number of weeks in certain benefit calculations
- Incorrect use of benefits table – wrong number of dependents
- Incorrect use of benefits table – wrong year
- Incorrect use of week of hire in the AWW calculation
- Incorrect use of week of injury in the AWW calculation
- Paying an AWW above the state maximum rate
- Incorrectly paying benefits during the waiting period

**Recommendation:** It is recommended that Zurich implement certain policies and procedures to ensure that claims adjusters are aware of the Maine statutes, Maine rules and Maine regulations governing workers' compensation claim payments. Zurich managers should monitor performance to ensure accuracy and compliance.

## CONCLUSION

This examination focused on workers' compensation indemnity claims that were in payment status during the examination period, January 1, 2006 through December 31, 2006, for employees injured pursuant to Title 39-A M.R.S.A. The claim population reviewed included new claims (DOI January 1, 2006 through December 31, 2006) and old claims (DOI January 1, 1993 through December 31, 2005) that were in payment status during the examination period. A sample of claims was reviewed in order to determine the continuance of "questionable claims-handling techniques" as cited in the WCBAR and the consent agreement dated August 29, 2005. Based upon the results of our audit it appears that, while Zurich has made certain improvements in some areas, Zurich has not raised its operations to the required level of compliance. It is worth noting that Zurich's compliance rate as compared to their TPA's is substantively better in almost every category. However, ultimately the Company is responsible for the actions of their TPAs.

## ACKNOWLEDGMENT

The courtesy and cooperation extended by the officers and employees of Zurich during the course of the Examination is hereby acknowledged. The Examination was conducted and is respectfully submitted by the undersigned.

STATE OF MAINE

COUNTY OF KENNEBEC, SS

Kendra L. Godbout, CPA, CFE, being duly sworn according to law, deposes and says that in accordance with the authority vested in her by Eric A. Cioppa, Acting Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, she has made a targeted market conduct examination on the condition and affairs of

Zurich American Insurance Company

of Rocky Hill, Connecticut as of December 31, 2006 and that the foregoing report of examination, subscribed to by her, is true to the best of her knowledge and belief.

The following examiners from the Bureau of Insurance assisted:

Stuart Turney, CPA

William Bourne, CPA

Kendra L. Godbout  
Director of Financial Analysis