

Market Conduct Examination

CNA Insurance Group

**333 S. Wabash Ave, 38S
Chicago, Illinois 60604**

Companies Reviewed:

American Casualty Company of Reading, Pennsylvania

NAIC Company Code: 20427

National Fire Insurance Company of Hartford

NAIC Company Code: 20478

Transportation Insurance Company

NAIC Company Code: 20494

Continental Casualty Company

NAIC Company Code: 20443

Valley Forge Insurance Company

NAIC Company Code: 20508

NAIC Examination Tracking System: ME008-M27

**Examination Period:
January 1, 2007 through December 31, 2007**

Pursuant to Title 24-A M.R.S.A. § 221, I have caused a Targeted Market Conduct Examination to be conducted of CNA Insurance Group. I hereby accept this Report of Examination and make it an official record of the Bureau of Insurance.

Mila Kofman
Superintendent of Insurance
Maine Bureau of Insurance

Date

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January 4, 2010

The Honorable Mila Kofman
Superintendent of Insurance
Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Dear Superintendent Kofman:

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 ("WCB") and under the authority of Title 24-A M.R.S.A. § 221 and in conformity with your instructions, a targeted market conduct examination has been made of:

CNA Insurance Group

Composed of the following:

American Casualty Company of Reading, Pennsylvania
National Fire Insurance Company of Hartford
Transportation Insurance Company
Continental Casualty Company
Valley Forge Insurance Company

hereinafter referred to as the "Company". The examination covered indemnity claims that were open between January 1, 2007 and December 31, 2007, for employees residing in the State of Maine or claimants involved in losses in the State of Maine. The on-site phase of the examination was conducted at the offices of the Company located at:

1 Telergy Parkway
East Syracuse, NY 13057

The following report is respectfully submitted.

HISTORY OF ENGAGEMENT

Pursuant to 39-A M.R.S.A. § 153(9), the WCB established a Monitoring, Audit & Enforcement Division (“MAE”). The functions of the MAE division include but are not limited to audits of payment timeliness and claims-handling practices of insurers in accordance with 39-A M.R.S.A. § 359. The WCB audited selected claims of the Company with dates of injury from January 1, 2004 through December 31, 2004, in part to determine whether the Company had violated the questionable claims-handling provision of 39-A M.R.S.A. § 359(2).

The results of the audit are reported in a Compliance Audit Report dated March 9, 2006. The report’s findings relevant to Title 39-A M.R.S.A. § 359(2) included:

- Failure to file or timely file required forms
- Failure to pay claims timely (in violation of Section 205(2))
- Section 205(3) penalties
- Failure to calculate benefits accurately
- Failure to pay mandatory payment
- Failure to properly discontinue benefits
- Failure to pay benefits due

The WCB determined that the pervasiveness and magnitude of the findings constituted a “pattern of questionable claims-handling techniques”. In April 2006, the WCB and the Company entered into a Consent Decree which established patterns of questionable claims-handling techniques and assessed fines therefor.

In accordance with 39-A M.R.S.A. § 359(2), the WCB certified the audit findings to the Superintendent of Insurance. Title 39-A M.R.S.A. § 359(2) requires the Superintendent of Insurance to take appropriate action to bring such practices to a halt.

SCOPE OF EXAMINATION

In order to meet the responsibilities set forth in 39-A M.R.S.A § 359(2), the Superintendent of Insurance had to determine whether or not the patterns of questionable claims-handling techniques found by the WCB still existed; therefore, an examination was planned in accordance with the National Association of Insurance Commissioners’ Market Regulation Handbook (“Handbook”). The Bureau of Insurance examiners developed compliance verification procedures based on the Handbook to measure whether the Company filed all required WCB forms in a timely manner, accurately calculated indemnity benefits and timely distributed benefit payments as required by the Workers’ Compensation Act, Title 39-A M.R.S.A., and the WCB Rules and Regulations issued thereunder. Specifically, the scope of the examination included the review of a statistical sample of all open indemnity claims for the period from January 1, 2007 through December 31, 2007, that had dates of injury on or after January 1, 1993. ¹

METHODOLOGY

Company records indicated a total of 589 open claims from January 1, 2007 through December 31, 2007. Third Party Administrators (“TPAs”) processed 138 of these claims. The remaining 451 were handled by Company adjusters. The software program ACL was utilized to select a random sample of 50 files from the indemnity claim population.

STANDARDS

The following Handbook standards were the basis for developing the examination procedure. All references are to either Title 39-A M.R.S.A., WCB Rules and Regulations or WCB Protocols of the Monitoring, Audit & Enforcement Division.

(1) Standard G-3

Claims are resolved in a timely manner.

Test 1:

Determine if initial and subsequent indemnity claim payments are made in a timely manner.

Standard G-3 establishes a general framework for the timely payment of claims in accordance with 39-A M.R.S.A. § 205.

(2) Standard G-4

The Company responds to claim correspondence in a timely manner.

Test 2:

Determine if correspondence/WCB forms related to claims are responded to/filed as required by applicable statutes, rules, regulations or protocols.

WCB-1, First Report of Injury	39-A M.R.S.A. § 303 WCB Rule Ch. 8 § 13
WCB-2, Wage Statement	39-A M.R.S.A. § 303
WCB-2A, Schedule of Dependent(s) and Filing Status	39-A M.R.S.A. § 303
WCB-3, Memorandum of Payment	WCB Rule Ch. 1 §1.1

WCB-4, Discontinuance or Modification of Compensation	WCB Rule Ch. 8 § 11
WCB-4A, Consent Between Employer and Employee	WCB Rule Ch. 8 § 18
WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation	39-A M.R.S.A. § 205(9)
WCB-9, Notice of Controversy	WCB Rule Ch. 1 § 1.1
WCB-11, Statement of Compensation Paid	WCB Rule Ch. 8 § 1

Standard G-4 establishes a general framework for the timely filing of claim-related documents. Failure to file or timely file a required WCB form or other document on time is a violation of 39-A M.R.S.A. § 360(1)(A) or (B).

(3) Standard G-5

Claim files are adequately documented.

Test 3:

Determine if quality of the claim documentation is sufficient to support or justify the ultimate claim determination and meets state requirements.

Standard G-5 establishes a general framework for the adequacy of claim file documentation to correctly calculate claim payments in accordance with 39-A M.R.S.A. § 102, § 212, § 213 and § 215.

APPLICATION OF TESTS

This section outlines the application of the tests to the claims selected. The results of testing those open indemnity claims during the examination period are delineated in the following tables:

TEST 1: Verify that initial and subsequent indemnity payments were made in accordance with 39-A M.R.S.A. § 205(2).

	Paid Timely	Not Paid Timely	N/A	% of Compliance	2004 Audit (A)
Initial Payment	23	6 (B)	21	79%	53%
Subsequent Payments	340	29 (C)	NA	92%	66%

^A For comparative purposes, these percentages are taken from the WCB Compliance Audit Report.

^B Three of the six claim files not paid timely resulted from the employer not notifying the Company in a timely manner.

^C One of the twenty-nine claim files not paid timely resulted from the employer not notifying the Company in a timely manner.

TEST 2: Verify the timely filing of the following forms with the Workers' Compensation Board in accordance with the applicable Statute, Rules & Regulations, or MAE Protocol:

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	% of Compliance	2004 Audit (A)
Test	WCB-1	22	19 (B) (G)	0	9	54%	91%
Test	WCB-2	27	11 (C)	2	10	68%	18%
Test	WCB-2A	27	11 (D)	2	10	68%	19%
Test	WCB-3	20	10 (E)	0	20	67%	53%
Test	WCB-4	28	0	0	22	100%	53%
Test	WCB-8	7	0	0	43	100%	0%
Test	WCB-9	5	4	0	41	56%	25%
Test	WCB-11 First	13	12	1	24	50%	13%
Test	WCB-11 Annual/Final	3	4	0	43	43%	NA

^A For comparative purposes, these percentages are taken from the WCB Compliance Audit Report.

^B Nine of the nineteen claim files not filed timely resulted from the employer not notifying the Company in a timely manner.

^C Four of the eleven claim files not filed timely resulted from the employer not notifying the Company in a timely manner.

^D Three of the eleven claim files not filed timely resulted from the employer not notifying the Company in a timely manner. One of the three filed late was filed over 30 days as a result of employer late notice.

^E Three of the ten claim files not filed timely resulted from the employer not notifying the Company in a timely manner.

TEST 3: Verify that indemnity payments are calculated accurately for both total and partial incapacity.

	Paid Accurately	Not Paid Accurately	N/A	% In Compliance
Partial & Total Indemnity Payments	13	24	13	35%

Numbers in this table represent number of claims rather than each specific calculation or payment. “Not Paid Accurately” represents 24 claim files where one or more payments were not made accurately. The 24 files were composed of ten overpayments and fourteen underpayments. The circumstances relating to the under and overpayments were widely varied and no discernable pattern of causes was noted.

COMMENTS AND RECOMMENDATIONS

Comment # 1:

Test 1 was designed to determine compliance with Title 39-A requirements for timely payment of initial and subsequent benefits. The compliance level for initial indemnity payments at 79% fell below the WCB benchmark of 80%. The Subsequent indemnity payments compliance level was acceptable.

Recommendation:

It is recommended that the Company should implement policies and procedures to ensure compliance with the Board’s benchmark.

Comment # 2:

Test 2 was designed to determine compliance with Title 39-A’s form filing requirements. The overall compliance level in this area continues to be unacceptable. The compliance level for the

first report of injury was at 54% and the notice of controversy filing was at 56%. The filing of the memorandum of payment at 67% fell below the benchmark of 75%.

Discussions with the Syracuse Claims Manager disclosed circumstances affecting the level of compliance with form filings. For example, in October of 2006, the Company's Quincy, Massachusetts claims office was closed and claims transferred to the Syracuse office. During the first half of 2007, the Syracuse office lost two of their Maine claims handlers. The current primary Maine adjuster started working Maine claims in September 2007.

An area of particular concern was the number of first reports being filed as medical only and then being changed to lost time indemnity claims. The Company explained that it uses an independent intake firm whose intake personnel work from a phone script. It would appear that the phone script was inadequately designed to allow accurate determination whether an incoming claim is medical only or a lost time claim. The claim data was forwarded to the Company's data facility in the Midwest and then transmitted back to Syracuse. By the time that the adjusters in Syracuse were assigned the claim, time had elapsed and that resulted in late filings of the first report of injury. The Company indicates that during 2006 and 2007, CNA incorrectly believed that medical only filings served to satisfy the reporting requirements. And, in 2008 the Company no longer maintains that practice and is aware of the proper reporting protocols. Unfortunately, the correction in 2008 does not alter the calculation of errors which occurred during the 2007 audit period.

Recommendation:

It is recommended that the Company should implement policies and procedures to ensure compliance with the Board's benchmarks.

Comment # 3:

Test #3 was designed to verify accurate calculation of indemnity payments for both total and partial incapacity. The level of compliance is unacceptable at 35% and the pattern of questionable claims handling techniques continues as to the calculation of payments.

Recommendation:

The company should implement policies and procedures to ensure that claims adjusters understand Title 39-A and WCB Rules and Regulations, and that managers monitor performance regularly to ensure compliance with Maine law.

CONCLUSIONS

This examination reviewed a statistical sample of workers' compensation indemnity claims for Maine employees that were open during the period from January 1, 2007 through December 31, 2007, that had dates of injury occurring on or after January 1, 1993.

- The compliance ratio for timely initial indemnity payments was at 79%. The benchmark was 80%.
- The timely payment of subsequent payments was at an acceptable compliance level.
- The overall compliance ratios for the timeliness of form filings were at unacceptable levels.
- The compliance ratio for the memorandum of payment was at 67%. The benchmark was 75%.
- The accuracy of indemnity payments at 35% was not at an acceptable compliance level.

There are two recurring issues that appear to be common in the workers' compensation insurance market to which the Company is no exception. The Company needs to impress upon its TPAs that, although ultimate responsibility for compliance with the Act falls on the underwriting Company, the TPAs are accountable for their own failure to comply with the Act. Both CNA and its TPAs need to communicate to the accounts they serve the vital requirement that employers/clients promptly report injuries so that the insurer and TPAs can timely file required documents and accurate calculations of average weekly wage and compensation rate for both partial and total disability. It is especially important that first reports of injury and wage information be filed timely as these are the basis for calculating indemnity payments.

ACKNOWLEDGMENT

The courtesy and cooperation extended by the officers and employees of the Company 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

Carolee M. Bisson, being duly sworn according to law, deposes and says that in accordance with the authority vested in her by Mila Kofman, Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, she has made an examination on the condition and affairs of the

CNA INSURANCE GROUP

of Chicago, Illinois, for the period January 1, 2007 through December 31, 2007, 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:

Van Sullivan
Paul Greenier

Carolee M. Bisson AIRC, AIE
Market Regulation Supervisor

Subscribed and sworn to before me

This 4th day of January, 2010

Brenda Cadwallader, Notary Public

My commission expires:

¹ The Maine Legislature significantly revised the workers' compensation statute effective January 1, 1993.