

Market Conduct Examination

The Hanover Insurance Company

27 Pearl Street

P.O. Box 9801-5004

Portland, ME 04104

Examination Period

1/1/02 thru 12/31/02

I hereby certify that the attached report of examination dated March 8, 2004 of The Hanover Insurance Company, Portland, Maine has been filed in the Bureau of Insurance as a public document.

This report has been reviewed.

Eric A. Cioppa
Deputy Superintendent

This ____ day of _____, 2004

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March 8, 2004

Honorable Alessandro Iuppa
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 (WCB) and under the authority of Title 24-A § 221 and in conformity with your instructions, a targeted market conduct examination has been made of:

**The Hanover Insurance Company
(NAIC Company Code 22292)**

hereinafter referred to as the "Company". The examination covered indemnity claims with 2002 dates of injury for employees residing in the State of Maine or claimants involved in losses in the State of Maine. The onsite phase of the examination was conducted at the offices of the Company servicing Maine businesses located at:

**The Hanover Insurance Company
27 Pearl Street
Portland, Maine**

The following report is respectfully submitted.

SCOPE OF EXAMINATION

The targeted market conduct examination of The Hanover Insurance Company was the result of a Workers' Compensation Board Audit conducted in 2000 culminating in the issuance of a Maine Workers' Compensation Board Compliance Audit Report dated November 7, 2000. Findings outlined in the audit report ranged from non-filing of forms, late and inaccurate filing of forms, untimely and inaccurate indemnity payments and improper coding of penalty payments. The pervasiveness and magnitude of the findings was determined by the Workers' Compensation Board to constitute a pattern of questionable claims-handling techniques and in accordance with 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 such practices to a halt.

In as much as the Superintendent of Insurance is tasked to "take appropriate action so as to bring such practices to a halt", a determination as to whether or not the "pattern of questionable claims-handling techniques" still exists is in order. This examination consisted of developing and

employing procedures to enable the Superintendent of Insurance to arrive at a reasonable conclusion as to the Company's continuance or discontinuance of a "pattern of questionable claims-handling techniques". The examination was conducted on-site at the Company's main administrative office in Portland, Maine. 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 (NAIC) Market Conduct Examiners' Handbook and Guidelines for purposes of sample determination and overall guidance. Specific procedures from the Handbook that applied to verifying the Company's compliance with certain form filing and claim processing procedures, as outlined in Title 39-A M.R.S.A. and ME WCB Rules and Regulations were used as part of this examination. Specifically, the scope of the examination consisted of statistically sampling indemnity claims with 2002 dates of injury to determine if certain Workers' Compensation Board forms are filed timely and accurately as it relates to WCB-11 paid indemnity information and if indemnity claims are paid in a timely and accurate manner. Additionally, penalties assessed against the Company for claims with 2002 dates of injury were reviewed for proper payment coding.

HISTORY OF ENGAGEMENT

Pursuant to 39-A M.R.S.A. § 153 (9), the Workers' Compensation Board 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 timeliness of payments, claims-handling practices of insurers, etc. including the requirements of 39-A M.R.S.A. § 359. In November of 1999, the Audit Division of the Workers' Compensation Board began conducting an audit of the Company's claims-handling processes. As a result of the Maine Workers' Compensation Board Compliance Audit Report dated November 7, 2000, State of Maine Workers' Compensation Board v. The Hanover Insurance Company Consent Decree dated February 1, 2001 and State of Maine Workers' Compensation Board Abuse Investigation Unit v. The Hanover Insurance Company dated December 31, 2002, the Workers' Compensation Board certified its findings to the Superintendent of Insurance in accordance with 39-A M.R.S.A. § 359 (2).

METHODOLOGY

This being the first market conduct examination conducted pursuant to 39-A M.R.S.A. § 359 (2), the Bureau of Insurance worked closely with the Workers' Compensation Board to gain an understanding of the "pattern of questionable claims-handling techniques" identified as a result of the Workers' Compensation Board audit as well as obtain certain technical training regarding issues exclusive to workers' compensation. The ultimate goal of the examination is to determine whether or not the Company's "pattern of questionable claims-handling techniques" still exists and if so, what action is necessary to bring such practices to a halt.

STANDARDS

In accordance with the NAIC Market Conduct Examiners Handbook a random sample of 50 indemnity claim files with dates of injury in 2002 was selected for testing. The following standards were applied and tested through review of the 50 selected claim samples. All

references are from either Title 39-A M.R.S.A., Maine Workers' Comp Board Rules and Regulations or Workers' Comp Board 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 responds to claim correspondence in a timely manner.

Test Step 1: Determine if correspondence (e.g. WCB forms) related to claims is 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-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	ME WCB Rules & Regs, Ch 1 § 1.1
WCB-9, Notice of Controversy	39-A M.R.S.A. § 205 (2)
WCB-11, Statement of Compensation Paid	ME WCB Rules & Regs, Ch 8 § 1

Standard G-4 establishes a general framework for the timely correspondence of claim documentation. Failure to file any WCB forms within established time frames is 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 are made in a timely manner.

Standard G-3 establishes a general framework for the timely settlement of claims in accordance with Title 39-A M.R.S.A. § 205 (2).

(3) Standard G-5

Claim files are adequately documented.

Test Step 3: Determine if quality of the claim documentation (e.g. wage statements, schedule of dependents and filing status) is sufficient to support or justify the ultimate claim determination (**accuracy of payment**) 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 Title 39-A M.R.S.A. § 212, § 213, § 215.

(4) Standard G-14

Loss statistical coding is complete and accurate.

Test Step 4: Determine that the Company accurately codes the penalties separately from the loss amounts.

Standard G-14 establishes a general framework that encompasses all loss data coding. For purposes of ratemaking, penalties do not constitute elements of loss. The following Title 39-A M.R.S.A. sections apply: § 205 (3), § 324 (2) (B), § 360 (5).

APPLICATION OF TESTS

This section outlines the application of the tests to the random sample of 50 claims selected from a population of indemnity claims with a date of injury in 2002, with the exception of penalty payments in Test 4 which were 100% tested. The results of applying the criteria outlined in the tests are as follows:

TEST 1: Verify the timely filing of the following forms with the Workers' Compensation Board in accordance with the applicable Statute, Rules & Regulations, or Protocol:

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	2004 Exam Pct%	2000 Audit (A)
Test 1	WCB-1	42	8 (B)	0		84%	<50%
Test 1	WCB-2	35	12 (C)	3 (D)		70%	<50%
Test 1	WCB-2A	36	11 (E)	3 (F)		72%	<50%
Test 1	WCB-3	47	3	0		94%	~67%
Test 1	WCB-9	9	0	0	41	100%	66%
Test 1	WCB-11	46	32 (G)	5 (H)		55% (I)	<50%

- A. For comparative purposes, these percentages of timely form filing are taken from the Hearing Officers' Decree dated 12/31/02.
- B. Of the 8 late filings, 1 was due to the employer sending the form to the wrong address; 3 were due to late notification from the employer; and 4 late filings were due to the Company not filing the form in a timely manner.
- C. Due to various reasons, the WCB-2 was not filed timely by the employer; however, the Company is ultimately responsible for ensuring compliance of timely filing.
- D. For 1 of the WCB-2s, the Company's claim file contained the WCB-2 date stamped with the date sent to the WCB; however, the WCB did not have the form in their claim file. The 2 remaining WCB-2s had not been received from the employer at the time of the testing.
- E. Due to late receipt from employee; however, the Company is ultimately responsible for ensuring compliance of timely filing.
- F. WCB-2A had not been received from employer at the time of testing.
- G. The Company explained the timely filing of the WCB-11s is system generated; however, the printing and submission of the WCB is a manual process. Currently, the printing and submission is accomplished on a bi-weekly basis; however, due to the results of this examination, the printing and submission will be modified to be accomplished on a weekly basis. This should remedy the timeliness of the forms since the average late filing was 4.72 days.
- H. Of the 5 non-filings of the WCB-11s, 2 were in the Company's claim file annotated with the date submitted to the WCB; however, the WCB did not have the WCB-11s in their

files and 3 of the WCB-11s were for salary continuation only (no indemnity payments made) and the Company was unaware of the requirement to file with the WCB (it should be noted the requirement to file a salary continuation form is contained in the WCB Protocols only and not pursuant to statute or rule).

- I. The percentage reflected here is based on the review of 50 claim samples that required the submission of 83 WCB-11s. Of the 83 WCB-11s, 46 were filed timely (46/83=55%).

TEST 2: 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	% In Compliance
Initial Payment	50	0	100 %
Subsequent Payments	50	0	100 %

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

	Paid Accurately	Not Paid Accurately	% In Compliance
Partial & Total Indemnity Payments	28	22	56 %

Results of testing:

There were 18 instances of overpayments and 4 instances of underpayments due to the following reasons:

- Five payments incorrect due to receiving wage information late (WCB-2) (4 overpayment and 1 underpayment)
- Two payments incorrect due to the Company’s improper method of calculating the average weekly wage by using 39-A M.R.S.A § 102 (4) (A) instead of § 102 (4) (B) (1 overpayment and 1 underpayment)
- Six payment errors attributed to mathematical errors as follows (5 overpayment and 1 underpayment):
 - Adjuster and admin clerk both attempted to issue a supplemental payment
 - Adding tape had correct wage information, calculator/adjuster error when total divided by weeks for AWW
 - Adjuster addition error regarding wages and/or day counts
- Two payment errors due to wrong yearly benefit table used (2 overpayment)
- Four payment errors attributed to the Company not being notified timely that claimant returned to work (4 overpayment)
- One payment error attributed to wrong wage information included in calculation (overpayment)
- One claim paid with the assumption of becoming a compensable claim but injured employee incapacitated only seven days (overpayment)
- One claim case where there were three mediations with overpayments and underpayments resulting in an underpayment of \$768 as the end result (underpayment)

TEST 4: Verify that the Company accurately codes the penalties separately from the loss amounts.

The WCB provided the examination team with 23 penalties (actual or pending) for 2002 dates of injury. Of the 23 penalties, only 1 was identified as a penalty against the Company which was subsequently traced to the Company's claim system and found to be properly coded as a penalty. The remaining 22 penalties were either penalties against the employer or pending further review by the WCB.

SUMMARY EXAMINATION REPORT

Timely Filing of Forms (Test 1)

The Company has significantly improved the timely filing of all forms and improved the accuracy of indemnity payment information contained within the WCB-11s. The most "frequent and egregious" problem identified in the Hearing Officer's Decree dated December 31, 2002 related to the Company's computer system deficiency as it specifically related to the timely and accurate filing of WCB-11s. The results of this examination indicate that the untimely submission of WCB-11s is now a manual problem due to the Company requesting the printing of the WCB-11s on a bi-weekly basis. Whereas the average late filing was 4.72 days and the Company is implementing a change to request the printing of WCB-11s on a weekly basis, this problem should no longer exist. Furthermore, it was also noted in the Hearing Officer's Decree that the Company had "taken appropriate action to correct its questionable claims-handling techniques, including fixing the computer system", with which the Superintendent of Insurance agrees and further proof of the Company's progress was the removal of the WCB Corrective Action Plan in May 2003. Although the Company has room for improvement, the Company is implementing action to prevent the untimely filing of the WCB-11s. (See Comments and Recommendations #1)

The untimely filing of WCB-1s, WCB-2s and WCB-2As was also identified as a "questionable claims-handling technique" in the Hearing Officer's Decree dated December 31, 2002. The Company has substantially fixed the problem surrounding the timely filing of WCB-1s as evidenced by the removal of the WCB Corrective Action Plan in May 2003 and further substantiated by the results of this examination. The Company has improved the timeliness of filing WCB-2s and WCB-2As; however, the untimely filing of these forms contributed to the Company's inability to accurately calculate some indemnity payments as indicated in Test 3. The Superintendent of Insurance recognizes the Company has to continue to aggressively scrutinize the timely filing of WCB-2s and WCB-2As. (See Comments and Recommendations #2)

Based on the results of this examination, it is in the opinion of the Superintendent of Insurance that a "pattern of questionable claims-handling techniques" no longer exists in regards to the untimely filing of forms, and as it pertains to WCB-11s, the inaccurate reporting of indemnity payment information.

Timely Initial and Subsequent Payments (Test 2)

The results of this examination indicate the Company is in compliance with Title 39-A M.R.S.A. § 205 (2), as no deficiencies were noted during this examination and a “pattern of questionable claims-handling techniques” no longer exists.

Payment Accuracy (Test 3)

The primary cause of inaccurate indemnity payments identified in the Maine Workers’ Compensation Board Compliance Audit Report dated November 7, 2000 and State of Maine Workers’ Compensation Board Abuse Investigation Unit v. The Hanover Insurance Company dated December 31, 2002 were: 1) Company reliance on employer calculations of the average weekly wages (AWW) and 2) the Company’s incorrect application of Title 39-A M.R.S.A. § 102 (4) (A) and (B) as it pertains to averaging weekly wages regardless of whether employees wages vary or not.

Based on the results of this examination, the Company no longer relies on employer calculations to arrive at the AWW and independently recalculates each AWW; therefore, this practice no longer exists. Regarding the Company’s incorrect application of Title 39-A M.R.S.A. § 102 (4) (A) and (B), it was noted that for 2 claims the Company incorrectly applied Title 39-A M.R.S.A. § 102 (4) (A) and (B); however, not in the same manner as identified in the Hearing Officers Decree. These 2 errors were attributed to an error in judgment on the part of the claim adjuster which resulted in an incorrect calculation. As such, the Superintendent of Insurance deems that a “pattern of questionable claims-handling techniques” no longer exists.

As a result of this examination, it was noted that the Company has deficiencies (human errors) regarding the accurate mathematical application and attention to detail in the calculation of indemnity payments. (See Comments and Recommendations #3)

Miscoding of Penalties

The examination consisted of verifying only 1 penalty assessed against the Company, no exception was noted. Miscoding of penalties was not identified as a “questionable claims-handling technique”; however, miscoding of penalties was identified in the 2000 Audit and it was determined to incorporate the verification of coding penalties into this examination. No further action is required by the Company.

COMMENTS AND RECOMMENDATIONS

Comment #1:

As noted during the testing of untimely form filing in Test 1, the WCB-11s were sometimes filed late due to the manual requirement to initiate the printing of the WCB-11. It is noted the Company intends to initiate the printing of the WCB-11s weekly instead of bi-weekly which should help to remedy the late filings.

Recommendation #1:

The Company should require the computer system to automatically (without manual intervention) generate the WCB-11 within 5 days prior to the date required to be filed at the WCB.

Comment #2:

While the Company has made significant strides in increasing its timeliness of filing WCB-2s and WCB-2As, there is room for improvement which will greatly aid in the Company's ability to make accurate indemnity payments. The Superintendent of Insurance recognizes that cooperation of the employer is tantamount to solving this issue.

Recommendation #2:

There is no easy solution to this problem, only diligence and perseverance will improve this situation. The Company needs to continue its efforts to educate employers through education, training and personal communication of the employers' requirement to file WCB-2s and WCB-2As in a timely manner. Only through the training and education of employers and highlighting their significance in this process will further improvement be made.

Comment #3:

During the testing of the accuracy of indemnity payments, the following was noted: on 6 occasions a mathematical error contributed to the over or under payment of an indemnity payment; on 2 occasions the adjuster used the wrong yearly benefit table; on 1 occasion the adjuster included the wrong wage information; and on 2 occasions the adjuster misapplied Title 39-A M.R.S.A. § 102 (4) (A) (B).

Recommendation #3:

While the overall error rate was 44% (22/50) and a significant percentage of the errors was directly related to human error, this error rate is excessive. The Company shall establish a corrective action plan to address these issues and provide the corrective action plan to the Superintendent of Insurance for his review and approval within 45 days of the date of acceptance of this report of examination. In addition, the Company shall provide a copy of the approved corrective action plan to the Workers' Compensation Board.

CONCLUSION

The Superintendent of Insurance recognizes the significant improvements made by the Company since the WCB audit in 2000. Based on the results of this examination and charged with the task of taking appropriate action as to bring such practices to a halt, the Superintendent of Insurance concludes the following:

1. Regarding the Company's untimely and inaccurate form filing, the Superintendent of Insurance concludes that a "pattern of questionable claims-handling techniques" has been brought to a halt. Noted in the WCB Compliance Audit Report was the Company's non-filing of forms. It was noted during this examination that the Company routinely files the required form (with a few noted exceptions) and the accuracy has improved. However, the Company should institute a system to automatically generate WCB-11s as noted in Recommendation #1 since the date of receipt at the WCB for late filings was on average 4.72 days.
2. Regarding the Company's timeliness of initial and subsequent indemnity payments, the Superintendent of Insurance concludes that a "pattern of questionable claims-handling techniques" has been brought to a halt.
3. Regarding the accuracy of indemnity payments, the Superintendent of Insurance concludes:
 - a. Noted in the Hearing Officer's Decree as a "questionable claims-handling technique" was the Company's reliance on the employers' calculation of the AWW rather than performing their own calculations. As a result of this examination, it is determined that the Company no longer relies on employer calculations of the AWW and has adopted the practice of independently calculating each AWW; therefore, this "questionable claim-handling technique" no longer exists.
 - b. Also noted in the Hearing Officer's Decree as a "questionable claims-handling technique" was the Company's misapplication of Title 39-A M.R.S.A. § 102 (4) (A) and (B) as it pertains to calculating the AWW. During this examination, it was noted the Company miscalculated 2 indemnity payments based on the misapplication of 39-A M.R.S.A. § 102. However, these errors were determined to be an error in judgment on the part of the claim adjuster and not a "questionable claims-handling technique". However, it is worthy of noting that in addition to the 2 aforementioned errors, an additional 9 incorrect payments were attributable to human error. Although these errors resulted in overpayment of benefits in 73% of the cases, the Superintendent of Insurance finds that this error rate is excessive and a "pattern of questionable claims-handling techniques" exists and corrective action shall be taken as identified in Recommendation #3.

STATE OF MAINE

COUNTY OF KENNEBEC, SS

James C. Williams, CPA, CFE, being duly sworn according to law, deposes and says that in accordance with the authority vested in him by Alessandro Iuppa, Superintendent of Insurance, pursuant to the Insurance Laws of the State Of Maine, he has made an examination of the condition and affairs of

The Hanover Insurance Company

of Portland, Maine for indemnity claims with 2002 dates of injury and that the foregoing report of examination subscribed to by him is true to the best of his knowledge and belief.

The following examiners from the Bureau of Insurance assisted:

Jill C. Tobey, CPA, CFE
Bradford L. Brown
Faith Talbot

James C. Williams CPA, CFE
Director of Financial Affairs and Solvency

Subscribed and sworn to before me this ____ day of _____, 2004

_____ My Commission Expires:
Notary Public