

Market Conduct Examination

Gates McDonald & Company

Federal Id # 31-4187660
Maine License #TAF 33842

212 South Front Street
Columbus, Ohio 43215

Examination Period:
1/01/03 thru 6/30/04

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APPENDIX A

I hereby certify that the attached report of a targeted market conduct examination dated July 28, 2005 shows the condition and affairs of Gates McDonald & Company of Columbus, Ohio as of June 30, 2004 and 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 _____, 2005

July 28, 2005

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:

Gates McDonald & Company

(Federal Id # 31-4187660)
(Maine License #TAF 33842)

hereinafter referred to as the "Company". The examination covered indemnity claims with January 1, 2003 thru June 30, 2004 dates of injury for employees residing in the State of Maine or claimants involved in losses in the State of Maine.

The following report is respectfully submitted.

SCOPE OF EXAMINATION

The targeted market conduct examination of Gates McDonald & Company was the result of a Workers' Compensation Board Audit conducted in January 2003 culminating in the issuance of a Maine Workers' Compensation Board Compliance Audit Report dated October 15, 2003. Findings outlined in the audit report consisted of non-filing of forms, late and inaccurate filing of forms, untimely and inaccurate indemnity 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 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 the WCB Rules and Regulations were used as part of this examination. Specifically, the scope of the examination consisted of reviewing all indemnity claims with January 1, 2003 thru June 30, 2004 dates of injury to determine if all Workers' Compensation Board forms are filed timely and accurately and if indemnity claims are paid in a timely and accurate manner. Claims from 2003 were selected because the Company was aware of the Board's issues early on in their audit. Since the consent agreements between the Company and the Board were not signed until November 2003, it was deemed appropriate to select claims from the first half of 2004 to determine what actions or corrective steps had been implemented by the Company.

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 and the claims-handling practices of insurers including the requirements of 39-A M.R.S.A. § 359. In January of 2003, 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 October 15, 2003, State of Maine Workers' Compensation Board v. Gates McDonald Consent Decrees dated November 12, 2003, the Workers' Compensation Board certified its findings to the Superintendent of Insurance in accordance with 39-A M.R.S.A. § 359 (2).

METHODOLOGY

In fulfilling the intent of 39-A M.R.S.A. § 359 (2), the Bureau of Insurance works 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. 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

Because of the relatively small population of indemnity claims, it was determined that all thirty-four (34) indemnity claims with dates of injury between January 1, 2003 and June 3, 2004 would be selected for testing. The following standards were applied and tested through review of the selected claims. 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.

APPLICATION OF TESTS

This section outlines the application of the tests to the claims selected. 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:

Test 1 Table 1 2003 Claims

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	Pct% of Compliance 2003	2001 Audit (A)
Test	WCB-1	19	5 (B)	0		79.2%	63%
Test	WCB-2	15	8	1 (C)		62.5%	7%
Test	WCB-2A	16	8	0		66.7%	0%
Test	WCB-3	15	8	1		62.5%	50%
Test	WCB-9	3	0	0	21	100%	71%
Test	WCB-11 First	8	6	10	0	33.3%	0%
Test	WCB-11 Annual	11	10	1	2	50.0%	0%

(A) - For comparative purposes, these compliant percentages of timely form filing are taken from the Compliance Audit dated October 15, 2003.

(B) – One of the “Not Filed Timely” was the responsibility of the employer, Proctor & Gamble.

(C) – The “Not Filed” WCB-2 was filed as a result of this examination.

Test 1 Table 2 1/1/04 – 6/30/04 Claims

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	Pct% of Compliance 2003	2001 Audit (A)
Test	WCB-1	8	2 (B)	0		80.0%	63%
Test	WCB-2	5	5	0		50.0%	7%
Test	WCB-2A	5	5	0		50.0%	0%
Test	WCB-3	5	5	0		50.0%	50%
Test	WCB-9	3	0	0	7	100%	71%
Test	WCB-11 First	0	0	10	0	0.0%	0%
Test	WCB-11 Annual	8	1	1 (C)		80.0%	0%

(A) - For comparative purposes, these compliant percentages of timely form filing are taken from the Compliance Audit dated October 15, 2003.

(B) – One of the “Not Filed Timely” was the responsibility of the employer, Proctor & Gamble.

(C) – The “Not Filed” was filed as a result of this examination

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

Test 2 Table 1 2003 Claims

	Paid Timely	Not Paid Timely	N/A	% In Compliance	2001 Audit (A)
Initial Payment	19	4*	1	82.6%	30%
Subsequent Payments	11	9**	4	55.0%	23.8%

Test 2 Table 2 1/1/04 – 6/30/04 Claims

	Paid Timely	Not Paid Timely	N/A	% In Compliance	2001 Audit (A)
Initial Payment	6	4***	0	60.0%	30%
Subsequent Payments	2	4****	4	33.3%	23.8%

(A) - For comparative purposes, these compliant percentages are taken from the Compliance Audit dated October 15, 2003.

*Two of the four claims had initial payments that exceeded the allowable thirty (30) days after becoming due and therefore violated Title 39-A § 205 (3).

**Two of the nine claims had subsequent payments that exceeded the allowable thirty (30) days after becoming due and therefore violated Title 39-A § 205 (3).

***All four initial payments were made within thirty (30) days of becoming due.

****Three of the four claims had subsequent payment that exceeded the allowable thirty (30) days after becoming due and therefore violated Title 39-A § 205 (3).

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

Test 3 Table 1 2003 Claims

	Paid Accurately	Not Paid Accurately	% In Compliance	2001 Audit (A)
Partial & Total Indemnity Payments	9	15	37.5%	30%

Test 3 Table 2 1/1/04 – 6/30/04 Claims

	Paid Accurately	Not Paid Accurately	% In Compliance	2001 Audit (A)
Partial & Total Indemnity Payments	8	2	80.0%	30%

(A) - For comparative purposes, these compliant percentages are taken from the Compliance Audit dated October 15, 2003.

There were eleven claims with one or more instances of overpayments and nine claims with one or more instances of underpayments in the 2003 population. Of the ten claims in 2004, there was one claim with one or more underpayments and one claim with one or more overpayments.

These under and overpayments resulted from a variety of actions, including:

- Not applying state maximum benefit rate
- Not applying correct state maximum benefit rate
- Using wrong number of days in benefit calculation
- Incorrect calculation of Average Weekly Wage
- Using benefits table incorrectly – wrong number of dependents
- Using benefits table from the wrong year

SUMMARY OF TESTING

In reviewing the information contained in the preceding kept in mind. The Workers' Compensation Board applies two benchmarks of compliance during their audits. The benchmark for timely initial indemnity payments is 80% and for timely filing of memorandum of payments (WCB-3) the benchmark is 75% compliance. Another factor to be considered is the number of

claims in the population tested. There were twenty-four claims reviewed for 2003 and ten claims for the first half of 2004. All tests showed an increase in compliance from the 2001 Audit. There were some slight inconsistencies between 2003 and 2004 performance. Even with the improvement in compliance from the 2001 data, Gates McDonald only met the Workers' Comp initial payment benchmark of 80% for 2003 but fell below 80% for the first half of 2004.

COMMENTS AND RECOMMENDATIONS

1) Comment:

Test #1 was designed to determine compliance with Title 39-A's form filing requirements. The WCB has published a benchmark of 75% compliance for the timely filing of memorandum of payments on form WCB-3. The compliance percentage for the WCB-3 during the 2001 audit was 50%. The results for 2003 were 62.5%. The results for the first half of 2004 were 50%. While compliance with form filing requirements improved in virtually all categories, Gates McDonald's overall compliance ratio is still unacceptably low. The overall ratio for the 2001 exam was 37.8%. That ratio improved to 60.4% for 2003 and slipped to 58.6% for the first half of 2004.

Recommendation:

It appears that the majority of the process associated with the filing of required forms is manual. Therefore, in looking to evaluate the basis for the error rate, a number of factors could be considered, including:

- Adequate training of claims adjusters to ensure appropriate level of familiarity with Maine Statutes and requirements.
- Appropriate case loads for claims adjusters to allow for the necessary level of attention to processing.
- Closer monitoring of case loads and work product by line and mid-level managers to ensure adequate resources are being allocated to meet the need.

It is recommended that the Company immediately address these and any other factors necessary to bring their work product into acceptable levels of compliance.

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 published a benchmark of 80% compliance for timely initial indemnity payments. The compliance ratio for these payments during the 2001 audit was 30%. The results for 2003 were 82.6%. The results for the first half of 2004 were 60%. Compliance for subsequent indemnity payments was 23.8% for 2001, 55.0% for 2003 and 33.3% for the first half of 2004. While there is an improvement from 2001 to 2003, there is regression during the first half of 2004. While Gates McDonald met the WCB's benchmark for initial indemnity payments in 2003, the overall compliance performance for initial and subsequent

indemnity payments still needs improvement. The causes for the payments not being made in accordance with statutory requirements were varied. Two causes worthy of note were:

1) In th Gates McDonald had to wait for payroll data from the employer. The employer has a bi-weekly payroll. There is no provision in the statute that exempts timely payment because of a bi-weekly payroll program.

2) In one or more claims with a particular employer, the employer had not provided funds for Gates McDonald to disburse payments in a timely manner. The statute does not exempt a third-party administrator from the duty to pay indemnity benefits promptly under that circumstance.

Recommendation:

It is recommended that Gates McDonald implement policy and procedures to ensure that claims adjusters are aware of timely payment requirements and that managers monitor performance to ensure compliance. Both claims adjusters and management should be constantly aware of employer account funding levels. Delay of benefit payments due to inadequate funding by the employer is an unacceptable practice.

3) Comment:

Test #3 was designed to verify that indemnity payments were calculated accurately for both total and partial incapacity. The compliance percentage for 2001 was 30%, 2003 was 37.5% and first half of 2004 was 80.0%. The incorrect payments were the result of various actions, including:

- Not applying state maximum benefit rate
- Not applying correct state maximum benefit rate
- Using wrong number of days in benefit calculation
- Incorrect calculation of Average Weekly Wage
- Using benefits table incorrectly – wrong number of dependents
- Using benefits table from the wrong year

Recommendation:

It is recommended that Gates McDonald implement policy and procedures to ensure that claims adjusters are aware of the appropriate Maine statutes and regulations and that managers monitor performance to ensure compliance.

CONCLUSION

This examination reviewed workers' compensation claims for Maine employees for the period of January 1, 2003 thru June 30, 2004. Upon review of Maine Workers' Compensation Board Compliance Audit Report dated October 15, 2003 and comparing the information to this examination, we conclude that Gates McDonald has not adequately corrected the questionable claims practices cited in the report and delineated in the State of Maine Workers' Compensation Board v. Gates McDonald Consent Decrees dated November 12, 2003.

STATE OF MAINE
COUNTY OF KENNEBEC, SS

Van E. Sullivan, being duly sworn according to law, deposes and says that in accordance with the authority vested in him by Alessandro A. Iuppa, Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, he has made a targeted market conduct examination on the condition and affairs of

Gates McDonald & Company

of Columbus, Ohio as of June 30, 2004, 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:

Paul C. Greenier
Carolee B. Nichols, AIE

Van E. Sullivan, Supervisor
Market Conduct Division

Subscribed and sworn to before me
This ____ day of _____, 2005

Notary Public
My commission expires:

APPENDIX A

GATES, McDONALD & COMPANY

215 N. FRONT STREET
COLUMBUS, OH 43215

Federal Id # 31-4187660
Maine License #TAF 33842

**RESPONSE TO MARKET CONDUCT
REPORT OF EXAMINATION
FOR THE PERIOD OF
JANUARY 1, 2003 THRU JUNE 30, 2004**

Gates, McDonald & Company ("GatesMcDonald") would like the following comments to be attached as an addendum to the final market conduct examination report. While Gates, McDonald & Company ("GatesMcDonald") acknowledges that there is room for improvement, it respectfully disagrees with the conclusion in the Examination Report that "Gates McDonald & Company has not adequately corrected the questionable claims practices" We disagree, because the tests were applied to a relatively small population of claims administered by GatesMcDonald, which creates misleading results when extrapolated across GatesMcDonald's entire claims administration process. For example, for the period of the examination, January 1, 2003 and June 3, 2004, GatesMcDonald administered 157 indemnity and 662 medical only claims in the State of Maine; however, only thirty-four (34) indemnity claims were selected for testing. In addition, the results of the tests show improvement since the 2001 audit. Below GatesMcDonald provides comments relative, and in sequential order, to the "Application of Tests" and "Comments and Recommendations" of the Maine Examination Report.

APPLICATION OF TESTS

Under Application of Tests, on pages 5 and 6 of the report, in relation to Test Tables 1 and 2, there is an annotation marked "(B)" which states: "One of the 'Not Filed Timely' was the responsibility of the employer, Proctor & Gamble." As clearly noted, the filing was the responsibility of the employer and not GatesMcDonald. However, the employer's inaction was factored into GatesMcDonald's percentage of compliance and negatively impacted GatesMcDonald's reported numbers. Had these numbers been omitted, the reported percentage of compliance would be higher.

COMMENTS AND RECOMMENDATIONS

Comments and recommendations contained in the Examination Report are noted below along with GatesMcDonald's comments in boldface type.

Comment No.1: (p.8 of the Report)

Test #1 was designed to determine compliance with Title 39-A's form filing requirements. The WCB has published a benchmark of 75% compliance for the timely filing of memorandum of payments on form WCB-3. The compliance percentage for the WCB-3 during the 2001 audit was 50%. The results for 2003 were 62.5%. The results for the first half of 2004 were 50%. While compliance with form filing requirements improved in virtually all categories, Gates McDonald's overall compliance ratio is still unacceptably low. The overall ratio for the 2001 exam was 37.8%. That ratio improved to 60.4% for 2003 and slipped to 58.6% for the first half of 2004.

Recommendation No.1: (pp.8-9 of the Report)

It appears that the majority of the process associated with the filing of required forms is manual. Therefore, in looking to evaluate the basis for the error rate, a number of factors could be considered, including:

- Adequate training of claims adjusters to ensure appropriate level of familiarity with Maine Statutes and requirements.
- Appropriate case loads for claims adjusters to allow for the necessary level of attention to processing.
- Closer monitoring of case loads and work product by line and mid-level managers to ensure adequate resources are being allocated to meet the need.

It is recommended that the Company immediately address these and any other factors necessary to bring their work product into acceptable levels of compliance.

To address the concerns expressed with respect to form filings, the Boston office of GatesMcDonald, which is responsible for Maine, attended a State Training in October 2004. The office attended another State Training on October 13, 2005 and is on a waiting list for wages and calculation training with Marlene Swift of the Bureau of Workers' Compensation Board of Maine. In addition, the four primary examiners and the regional performance and audit manager that handle the Maine claims attended the Maine Compensation Camp on September 25-27, 2005.

GatesMcDonald continues to be committed to improving its performance in all aspects of its claims services provided to clients. Effective January 2005, GatesMcDonald deployed its internal performance management audits for the purpose of compiling skill adequacy and compliance requirements in relation to its Standards and Procedures, Client Service Plans and SAS 70 Report. As part of these audits, on a daily basis, the Boston manager reviews a pending claims report for coverage issues and a payment report to ensure that payments are issued timely. On a monthly basis, the performance managers conduct a random audit of new and open cases to review plans of actions and adequacy of reserves, and to review the timeliness of filings of reports, issuance of payments, and reporting of claims to excess carriers.

Comment No.2: (p.9 of the Report)

Test #2 was designed to determine compliance with Title 39-A requirements for timely payment of initial and subsequent benefits. The WCB has published a benchmark of 80% compliance for timely initial indemnity payments. The compliance ratio for these payments during the 2001 audit was 30%. The results for 2003 were 82.6%. The results for the first half of 2004 were 60%. Compliance for subsequent indemnity payments was 23.8% for 2001, 55.0% for 2003 and 33.3% for the first half of 2004. While there is an improvement from 2001 to 2003, there is regression during the first half of 2004. While Gates McDonald met the WCB's benchmark for initial indemnity payments in 2003, the overall compliance performance for initial and subsequent indemnity payments still needs improvement. The causes for the payments not being made in accordance with statutory requirements were varied. Two causes worthy of note were:

- 1) In the case of calculating benefits for a partial incapacity claim, Gates McDonald had to wait for payroll data from the employer. The employer has a bi-weekly payroll. There is no provision in the statute that exempts timely payment because of a bi-weekly payroll program.
- 2) In one or more claims with a particular employer, the employer had not provided funds for Gates McDonald to disburse payments in a timely manner. The statute does not exempt a third-party administrator from the duty to pay indemnity benefits promptly under that circumstance.

Recommendation No.2: (p.10 of the Report)

It is recommended that Gates McDonald implement policy and procedures to ensure that claims adjusters are aware of timely payment requirements and that managers monitor performance to ensure compliance. Both claims adjusters and management should be constantly aware of employer account funding levels. Delay of benefit payments due to inadequate funding by the employer is an unacceptable practice.

To address the concern related to the bi-weekly payroll, GatesMcDonald has instructed all employers to provide information of hours on a weekly basis and checks are now being sent out weekly on cycle pay.

Where funds were not available to allow GatesMcDonald to disburse payments in a timely manner, as of May 2005, GatesMcDonald has educated the employer about the importance of having sufficient funds in the impressed accounts at all times. GatesMcDonald has implemented a threshold notice for employers that fund their bank accounts on a monthly basis. The notice is issued to the employer when the balance in the account falls below a specified threshold.

Comment No.3: (p.10 of the Report)

Test #3 was designed to verify that indemnity payments were calculated accurately for both total and partial incapacity. The compliance percentage for 2001 was 30%, 2003 was 34.6% and first half of 2004 was 80.0%. The incorrect payments were the result of various actions, including:

- Not applying state maximum benefit rate
- Not applying correct state maximum benefit rate
- Using wrong number of days in benefit calculation
- Incorrect calculation of Average Weekly Wage
- Using benefits table incorrectly – wrong number of dependents
- Using benefits table from the wrong year

Recommendation No.3: (p.10 of the Report)

It is recommended that Gates McDonald implement policy and procedures to ensure that claims adjusters are aware of the appropriate Maine statutes and regulations and that managers monitor performance to ensure compliance.

Currently, GatesMcDonald is on a waiting list for training on wages with Marlene Swift from the Bureau of Workers' Compensation Board in Maine and intends to complete this training. GatesMcDonald continues to be committed to improving its performance in all aspects of its claims services provided to clients and notes that it has made significant improvements in this area moving from an overall compliance percentage of 30% for the 2001 claims to 80% for the 2004 claims. Further, GatesMcDonald is committed to work with the Department of Insurance and the Worker's Compensation Board to keep its employees properly trained and compliant with the applicable Maine statutes and regulations.