

Market Conduct Examination
The St. Paul Travelers Companies, Inc.

Suite 2L
15 Constitution Drive
Bedford, New Hampshire 03110

Examination Period:
1/1/05 thru 6/30/05

STATE OF MAINE

BUREAU OF INSURANCE

IT IS HEREBY CERTIFIED THAT THE ANNEXED REPORT OF EXAMINATION FOR

The St. Paul Travelers Companies, Inc.

has been compared with the original on file in this bureau and that it is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF,

I have hereunto set my hand and affixed the official seal of this Office at the City of Augusta this

4th day of November, 2006

Alessandro A. Iuppa
Superintendent
Bureau of Insurance

I hereby certify that the attached report of a targeted market conduct examination dated December 4, 2006 shows the condition and affairs of The St. Paul Travelers Companies, Inc. as of June 30, 2005 and has been filed in the Bureau of Insurance as a public document.

This report has been reviewed.

Eric A. Cioppa
Deputy Superintendent

This 4th day of December, 2006

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December 4, 2006

The Honorable Alessandro A. 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 39-A M.R.S.A § 359(2) from the State of Maine Workers' Compensation Board ("WCB") and under the authority of 24-A M.R.S.A. § 221 and in conformity with your instructions, a targeted market conduct examination has been made of:

The St. Paul Companies

Composed of the following:

Fidelity & Guaranty Insurance Company, NAIC Co. Code 35386

St. Paul Fire & Marine Insurance Company, NAIC Co. Code 24767

St. Paul Guardian Insurance Company, NAIC Co. Code 24775

St. Paul Mercury Insurance Company, NAIC Co. Code 24791

United States Fidelity & Guaranty Company, NAIC Co. Code 25887

hereinafter referred to collectively as the "Company". The examination covered indemnity claims with dates of injury from January 1, 2005 thru June 30, 2005 and those indemnity claims with dates of injury which occurred on or after January 1, 1993 and were open on January 1, 2005, 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 St. Paul Travelers Companies Inc.

15 Constitution Drive, Suite 2L

Bedford, New Hampshire 03110

The onsite phase also included visits to the two Third Party Administrators (TPAs) used by the Company in Maine, namely:

Gallagher Bassett Services, Inc.

111 Commercial St., Suite 401

Portland, Maine 04101

Sedgwick Claims Management Services Inc.

45 Mallett Drive

Freeport, Maine 04032

The following report is respectfully submitted.

HISTORY OF ENGAGEMENT

Pursuant to 39-A M.R.S.A. § 153(9), the Workers' Compensation Board established 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. The WCB audited year 2001 claims and reported its results in a WCB Compliance Audit Report dated May 25, 2004. Findings outlined in the audit report included non-filing of forms, late and inaccurate filing of forms, and failing to have complete and available claim files during on-site examination. The WCB determined that the pervasiveness and magnitude of the findings constituted a pattern of questionable claims-handling techniques. In July 2004, the WCB and the Company entered into five Consent Decrees establishing the patterns of questionable claims-handling techniques and assessing fines therefore. In accordance with 39-A M.R.S.A. § 359(2), the WCB certified the audit findings to the Superintendent of Insurance. Section 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 statutory responsibilities of the Superintendent of Insurance, a determination as to whether or not the "pattern of questionable claims-handling techniques" found by the WCB still exists is in order. The examination was conducted in accordance with Title 24-A M.R.S.A. and the National Association of Insurance Commissioners (NAIC) Market Conduct Examiners' Handbook and Guidelines (the "Handbook") for purposes of sample determination and overall guidance. Specific procedures from the Handbook that apply 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, 2005 thru June 30, 2005 dates of injury and indemnity claims with dates of injury on or after January 1, 1993 and were open as of January 1, 2005 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.

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.

Company records indicated a total of 38 lost time claims between January 1, 2005 and June 30, 2005. Additionally there was a total of 73 lost time claims open as of January 1, 2005 with dates of injury prior to our examination period. Due to the relatively small population of lost time claims, all were selected for testing. For the 38 lost time claims between January 1, 2005 and June 30, 2005 it should be noted that only 30 of the 38 claims were ultimately reviewed and

tested due to the fact that 8 of the original claims were determined to be medical only or for reporting purposes only (not required) and not reviewed.

STANDARDS

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., WCB Rules and Regulations or 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 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 Rules & Regs, 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	Rules & Regs, Ch 1 § 1.1
WCB-4, Discontinuance or Modification of Compensation	Rules & Regs, Ch 8 § 11
WCB-4A, Consent Between Employer and Employee	Rules & Regs, 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 (NOC)	Rules & Regs, Ch 1 § 1.1
WCB-11, Statement of Compensation Paid	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 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 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 39-A M.R.S.A. § 212, § 213 and § 215.

APPLICATION OF TESTS

This section outlines the application of the tests to the claims selected. The results of testing those claims with dates of injury during the examination period and those indemnity claims that were open at the beginning of the examination period are combined in the following tables. The latter group is the sole source of Test 1 WCB-11 Annual results. They are combined with the examination period claims and reported in Test 2 – Subsequent payments and Test 3 - Partial & Total Indemnity Payments. 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 Claims

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	% in Compliance	2001 Audit (A)	CHG
Test 1	WCB-1	33	6 (B)	0	64	84.6%	53.33%	58.6% +
Test 1	WCB-2	25	6	6	66	67.6%	37.50%	80.3% +
Test 1	WCB-2A	14	9	11(C)	69	41.2%	25.00%	64.8% +
Test 1	WCB-3	21	9	0	73	70.0%	62.50%	12% +
Test 1	WCB-9	10	0	0	93	100.00%	100.00%	None
Test 1	WCB-11 First	3	5	2	93	30.0%	NA	NA
Test 1	WCB-11 Annual	6	12	10(D)	75	21.4%	NA	NA

(A) - For comparative purposes, these compliant percentages are taken from the Compliance Audit dated May 25, 2004 conducted on 2001 data.

(B) – Two of the “Not Filed Timely” were the responsibility of the employer.

(C) – Three of the “Not Filed” were due to the employee failing to return the completed WCB-2A to the carrier.

(D) – The 10 WCB-11’s not filed have subsequently been filed with the Maine Workers’ Compensation Board.

Test 2 Table 2 Claims

	Paid Timely	Not Paid Timely	N/A	% In Compliance	2001 Audit (A)
Initial Payment	26	7 (B)	70	78.8%	50.0%
Subsequent Payments	69	10	24	87.3%	61.0%

(A) - For comparative purposes, these compliant percentages are taken from the Compliance Audit dated May 25, 2004 conducted on 2001 data.

(B) – One of the “Not Paid Timely” was the result of the employer reporting the injury to the carrier so late that initial payment due date had already passed.

The seven claims whose initial payment was not made within the 14 days required by 39-A M.R.S.A. § 205(2) were paid within 30 days of becoming due. They therefore avoided penalty under § 205(3).

Test 3 Table 3 Claims

	Paid Accurately	Not Paid Accurately	N/A	% In Compliance	2001 Audit (A)
Partial & Total Indemnity Payments	57	18	28	76.0%	71.42 %

(A) - For comparative purposes, these compliant percentages are taken from the Compliance Audit dated May 25, 2004 conducted on 2001 data.

The eighteen files that were not paid accurately consisted of 8 claims that were over-paid and 10 claims that were under-paid.

Summary of Testing

In reviewing the information contained in the preceding tables, there are a couple of items that should be kept in mind. First, the WCB applies two benchmarks of compliance to its 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. Second, the population tested consisted of all subject claims. There was therefore no extrapolation of results.

COMMENTS AND RECOMMENDATIONS

1) Comment :

Test #1 was designed to determine compliance with Title 39-A form filing requirements. As shown in the Test #1 table, only the WCB-1, First Report of Injury, and the WCB-9, Notice of Controversy, had what could be considered acceptable compliance rates. While the compliance percentages for the WCB-2, 2A and WCB-3 showed increases in compliance over the Board audit of 2001 data, the compliance rate leaves room for improvement. It is important to file these forms accurately and timely as they are relied upon by the Board to monitor whether or not an injured worker is being paid in accordance with the statute.

The WCB-11s were tested for the open claims with dates of injury prior to the examination period and are included in the tables in the body of this report. It should be noted that during the summer of 2005, the Company was directed by the Monitoring Division of the WCB to bring the open files current with filings of WCB-11s. These filings were accomplished during August and September 2005.

Recommendation:

It is recommended that the Company continue to emphasize to both its internal adjusters and its TPAs the importance of timely filing of WCB forms. The timely filing of WCB-2As has been particularly problematic because it is necessary for the injured employee to complete the form and return it to the Company in order to allow the Company to correctly calculate indemnity benefits. The WCB has been putting forth a concentrated effort through on-site training and newsletters to the industry to inform insurers, TPAs and employers that if the employee fails to return the form timely, they may file the form using single and zero for a federal filing status and submit the form to the WCB in a timely manner. Once the form is received from the employee, the Company may file an amended form with the WCB, if necessary.

It is also recommended that a checklist be developed to track the timely filing of MWCB forms. Whether manual or automated, a file checklist seems to be the only way for adjusters and front line managers to monitor and meet the filing deadlines on a routine basis. 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 percentage of compliance in both categories has improved markedly from the levels of the 2001 audit. The initial payment ratio is still just slightly below the benchmark standard set by the WCB.

Recommendation:

It is recommended that the Company continue their policy and procedures to ensure that claims adjusters are aware of timely payment requirements and that managers monitor performance

regularly to ensure compliance. The Company should also closely monitor its TPAs for compliance with Title 39-A's requirements; such is especially appropriate in the case of Gallagher Bassett. While it is reasonable for the Company to expect a certain level of proficiency on the part of its TPAs, the Company is ultimately responsible if its TPAs do not comply with Title 24-A or Title 39-A. Steps that the Company might take to ensure compliance with the law include training both in-house and TPA claims personnel on the provisions of Title 39-A concerning calculation of average weekly wages, derivation of benefit levels from average weekly wages, indemnity payment, and completing and filing relevant forms with the WCB; maintaining claims payment standards through ongoing staff education and supervision; and auditing claims payments through the Company's internal performance management audit program in order to assess employee understanding of claims payment under, and compliance with, Title 39-A. Additionally, the Company may want to consider linking TPA compensation to performance.

3) Comment:

Test #3 was designed to verify that indemnity payments were calculated accurately for both total and partial incapacity. There was an overall increase in compliance from the 2001 audit. The incorrect payments noted were the result of various actions, including:

- Not applying 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 the Company implement policy and procedures to ensure that claims adjusters are aware of the appropriate Maine statutes and regulations and that managers monitor performance regularly to ensure compliance. The Company should also apply its internal performance management audit program to indemnity payments.

CONCLUSION

This examination reviewed workers' compensation claims for Maine employees for the period of January 1, 2005 thru June 30, 2005 and open indemnity claims as of January 1, 2005 with dates of injury occurring on or after January 1, 1993. After reviewing the WCB Compliance Audit Report dated May 25, 2004 and comparing its results to those of this examination, we conclude that the Company has made improvement concerning the questionable claims-handling practices cited in the report. There is obviously still room for improvement for their in-house adjusted claims and **substantial** room for improvement on the part of Gallagher Bassett. Analysis by the WCB Monitoring Division of 2005 data indicates that the Company has met the Board's benchmarks to the point of warranting the lifting of the Corrective Action Plan entered into by St. Paul Travelers and the WCB in October of 2004. This is in spite of the fact of sub-benchmark

performance by their TPAs. It should also be noted that the Company is bringing its adjusting back in-house as policies renew and contracts expire.

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

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 an examination on the condition and affairs of the

The St. Paul Travelers Companies, Inc.

As described in the scope of examination section of the report, 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

Van E. Sullivan
Market Conduct Division Supervisor

Subscribed and sworn to before me
This ____ day of November, 2006

Notary Public
My commission expires: