

**Market Conduct Examination
ESIS/ACE American Insurance Company**

**Federal Id #95-2210809
Maine License #TAF34553**

**2 Waterside Crossing
Windsor, CT 06095**

**Examination Period:
10/1/05 thru 2/28/06**

Contents

SCOPE OF EXAMINATION..... 4

HISTORY OF ENGAGEMENT 4

METHODOLOGY 5

STANDARDS..... 5

 1. Standard G-4 The Company responds to claim correspondence in a timely manner. 5

 2. Standard G-3 Claims are resolved in a timely manner. 6

 3. Standard G-5 Claim files are adequately documented. 6

APPLICATION OF TESTS 6

 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: 6

 TEST 2: Verify that initial and subsequent indemnity payments were made in accordance with 39-A M.R.S.A. § 205 (2)..... 7

 TEST 3: Verify that indemnity payments are calculated accurately for both total and partial incapacity. 7

SUMMARY EXAMINATION REPORT 8

 Timely Filing of Forms (Test 1) 8

 Timely Initial and Subsequent Payments (Test 2)..... 8

 Payment Accuracy (Test 3)..... 8

COMMENTS AND RECOMMENDATIONS..... 9

 Comment: 9

 Recommendation: 10

 Comment: 10

 Recommendation: 10

CONCLUSION..... 10

I hereby certify that the attached report of a targeted market conduct examination dated June 21, 2006 shows the condition and affairs of ESIS/ACE American Insurance Company of Windsor, Connecticut as of February 28, 2006 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 _____, 2006

June 21, 2006

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 (hereinafter, "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:

ESIS/ACE American Insurance Company
(Federal Id #95-2210809)
(Maine License #TAF34553)

(hereinafter, "ESIS"). The examination covered indemnity claims with dates of injury (DOI) after December 31, 1992 and with indemnity payments paid during the examination period from October 1, 2005 through February 28, 2006. These indemnity payments relate to injuries 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 ESIS was the result of a WCB Audit conducted in July 2004 culminating in the issuance of a Maine Workers' Compensation Board Compliance Audit Report, dated February 14, 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, failure to file or timely file required forms with WCB and failure to report accurate information on forms filed with the WCB. The pervasiveness and magnitude of the findings was determined by the WCB 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 ESIS'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 ESIS'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 October 1, 2005 thru February 28, 2006 DOI to determine if all WCB forms are filed timely and accurately and if indemnity claims are paid in a timely and accurate manner. Additionally a random sample of claims with a date of injury from January 1, 1993 through September 30, 2005 that had indemnity payments paid during the examination period were reviewed. Since the consent agreements between ESIS and the WCB were not signed until April, 2005, it was deemed appropriate to select claims from the last quarter of 2005 and the first two months of 2006 to determine what actions or corrective steps had been implemented by ESIS.

HISTORY OF ENGAGEMENT

Pursuant to 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 timeliness of payments and the claims-handling practices of insurers including the requirements of 39-A M.R.S.A. § 359. In July 2004, the Audit Division of the WCB began conducting an audit of ESIS's claims-handling processes. As a result of the WCBAR, and the State of Maine Workers' Compensation Board v. ESIS/Ace American Insurance Company Consent Decree dated April 11, 2005 the WCB 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 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. The ultimate goal of the examination is to determine whether or not ESIS’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 fifteen (15) indemnity claims with dates of injury between October 1, 2005 and February 28, 2006 would be selected for testing as well as a random sample of 35 claims with a date of injury from January 1, 1993 through September 30, 2005 that had indemnity payments paid during the examination period. 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 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 responds to claim correspondence in a timely manner.

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

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 (MOP)	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 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 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 outlines the application of the tests to the sample of claims selected. The sample consisted of all indemnity claims with a DOI during the examination period (15) as well as a random sample of 35 claims with a DOI from January 1, 1993 through September 30, 2005 with indemnity payments made during the examination period. The results of criteria application follow:

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:

Test 1

	Form Type	Filed Timely	Not Filed Timely	Not Filed	Not Applicable	Percent in Compliance 2006	2004 Audit (A)
Test	WCB-1	16	3 (B)	0	31	84%	90%
Test	WCB-2	15	4 (C)	0	31	79%	29%
Test	WCB-2A	18	1 (D)	0	31	95%	7%
Test	WCB-3	18	2 (E)	1 (F)	29	86%	73%
Test	WCB-9	1	0	0	49	100%	100%
Test	WCB-11 First	15	0	0	35	100%	34%
Test	WCB-11 Annual	18	0	0	32	100%	34%

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

- B. Of the three determined to be not filed timely, two were the result of a data submission problem with IBM where the Company showed the form as being electronically sent, but it was not actually received by the WCB. This problem was corrected on October 18, 2005.
- C. In two instances of untimely filed forms, the insured employer did not submit the information to ESIS promptly which resulted in ESIS's failure to comply with the form filing deadline.
- D. This form was not filed within the required timeline due to ESIS not receiving the information in a timely manner from the employer.
- E. One of the late filed forms related to a WCB-3 was required to be filed within 10 days of a decree.
- F. ESIS failed to file a WCB-3 after a decree.

It should be noted that in the WCBAR, ESIS was found to be using fictitious data in Box 24 and Box 28 of the MOP (WCB-3). During this examination, no instances of the use of fictitious data were identified. Therefore, it appeared that this "questionable claims-handling technique" was no longer an issue at February 28, 2006.

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

Test 2

	Paid Timely	Not Paid Timely	Not Applicable	Percent In Compliance	2004 Audit (A)
Initial Payment	19	0	31	100%	60%
Subsequent Payments	37	5 (B)	8	88%	88%

- A. For comparative purposes, these compliant percentages were taken from the WCBAR.
- B. Two of these payments were due to ESIS not setting the claimant on a automated repetitive payment schedule so payments were to be done manually and were missed due to human error. One payment was not paid timely due to the insured employer failing to provide ESIS with information in a timely manner.

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

Test 3

	Paid Accurately	Not Paid Accurately	Percent In Compliance	2004 Audit (A)
Partial & Total Indemnity Payments	36	14	72%	22%

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

There were 6 claims with one or more instances of overpayments and 8 claims with one or more instances of underpayments in the claims files reviewed. These under and overpayments resulted from a variety of actions, including:

- Use of the wrong number of weeks in certain benefit calculations
- Average Weekly Wage (hereinafter, “AWW”) miscalculations due to subtraction or rounding error
- Incorrect use of benefits table – wrong number of dependents
- Incorrect use of benefits table – wrong year
- Failure to include a recent raise in pay in the AWW calculation
- Incorrect use of week of hire in the AWW calculation
- Incorrect use of week of injury in the AWW calculation

Failure to calculate correct benefits pursuant to a decree

It should also be noted that in our sample of 50 claims we found three instances where ESIS made initial estimated payments in excess of the actual amount due. ESIS subsequently netted the initial overpayment from the next payment sent to the claimant. This issue was brought to the attention of ESIS management. Through discussion it was discovered that ESIS had interpreted the pertinent rules and regulations to allow for overpayment offsets. Once ESIS management was advised that offsets of future payments were implicitly prohibited by the WCB, ESIS claims processors were instructed to cease all offset practices.

SUMMARY EXAMINATION REPORT

Timely Filing of Forms (Test 1)

The WCB applies two benchmarks of compliance during their audits. The benchmark for timely initial indemnity payments is 80% and for timely filing of WCB-3 forms the benchmark is 75% compliance. All tests showed an increase in compliance from the 2004 Audit. ESIS met the WCB’s initial payment benchmark of 80% for the examination period with a percentage of 100%. ESIS also met the WCB’s benchmark of 75% for the timely filing of WCB-3’s during the examination with a score of 86%.

Timely Initial and Subsequent Payments (Test 2)

The results of this examination indicate that ESIS is in compliance with Title 39-A M.R.S.A. § 205 (2), as ESIS was deemed to be in compliance with the timeliness of payments during this examination and “a pattern of questionable claims-handling techniques” did not appear to exist.

Payment Accuracy (Test 3)

The primary cause of inaccurate indemnity payments identified in the WCBAR were: incorrectly calculated AWW and incorrectly calculated weekly benefit rates. The incorrect calculations were due to not using overtime and bonus pay in the AWW calculation, not including week of hire in

the equation, adding incorrectly and incorrectly counting the days of incapacity. During the WCBAR the compliance rate for accuracy of payments was 22%.

The results of this Market Conduct examination indicate that the rate of compliance for payment accuracy was 72%. The issues that led to inaccurate payments were:

- Incorrect use of number of weeks in the benefit calculation
- Incorrect calculation of AWW due to subtraction or rounding error
- Incorrect use of benefits table – wrong number of dependents
- Use of benefits table from the wrong year
- Not computing the AWW using a recently received raise
- Incorrect use of week of hire in the AWW calculation
- Incorrect use of week of injury in the AWW calculation
- Failure to calculate benefits correctly pursuant to a decree

Although there was a significant improvement in the accuracy of payments when compared to the results of the WCBAR, the error rate of 28% was still considered high. However, an additional mitigating note related to the combination of underpayments and overpayments was observed. When underpayment issues were separated from overpayment issues, the error rate improved to 16% and the accuracy rate improved to 84%. Therefore, while it was determined that the “pattern of questionable claims-handling techniques” no longer exists, there was still an unacceptable amount of errors documented during the examination. (See comments and recommendation #1)

It was observed that ESIS offset initial overpayments by reducing future payments. While the offset practice did not appear to result in aggregate underpayments the practice is implicitly prohibited by the WCB. Discussions with ESIS management resulted in the immediate cessation of payment offsets by ESIS claims staff. (See comments and recommendation #2)

It should be noted that ESIS has taken steps to ensure that the personnel responsible for processing and overseeing Maine claims receive additional training to make sure they process claims accurately. Shortly after the commencement of the examination, ESIS hosted Marlene Swift of the WCB onsite to provide training on advanced payment calculations to the home office manager and all staff that handle Maine claims. This training will hopefully eliminate the issues noted above that led to inaccurate claim payments.

COMMENTS AND RECOMMENDATIONS

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 72%. The incorrect payments were the result of various actions, including:

1. Incorrect use of number of weeks in the benefit calculation
2. Incorrect calculation of AWW due to subtraction or rounding error

3. Incorrect use of benefits table – wrong number of dependents
4. Use of benefits table from the wrong year
5. Not computing the AWW using a recently received raise
6. Incorrect use of week of hire in the AWW calculation
7. Incorrect use of week of injury in the AWW calculation
8. Failure to calculate benefits correctly pursuant to a decree

Recommendation:

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

Comment:

Test #3 was designed to verify that indemnity payments were calculated accurately for both total and partial incapacity. While performing this test step we noticed three instances where the initial claims payment was an estimate that exceeded the amount that was determined to be due once all the documentation was received. ESIS would then offset the initial overpayment against the next indemnity payment sent to the claimant. According to the WCB in no instance can a third party adjuster offset for an overpayment. Through discussion it was discovered that ESIS had interpreted the pertinent rules and regulations to allow for overpayment offsets. When it was brought to their attention that the practice of payment offsets was not allowed, ESIS promptly instructed their claims adjusters to cease offsetting overpayments immediately.

Recommendation:

It appears that ESIS has taken steps to ensure that the practice of offsetting overpayments does not continue going forward. It is recommended that ESIS follow up with the claims adjusters to ensure that this practice has been halted.

CONCLUSION

The Superintendent of Insurance recognizes the significant improvements made by the Company since the WCBAR. Based on the result of this examination, while charged with the task of taking appropriate action as to bring such company practices to a halt, the Superintendent of Insurance concludes the following:

1. Regarding ESIS's untimely and inaccurate form filing, the Superintendent of Insurance concluded that a "pattern of questionable claims-handling techniques" had been brought to a halt. Noted in the WCBAR was ESIS's non-filing of forms. It was noted during the examination that ESIS routinely filed the required forms (with one noted exception) and the accuracy appeared to have improved.

2. Regarding ESIS's timeliness of initial and subsequent indemnity payments, the Superintendent of Insurance concluded that a "pattern of questionable claims-handling techniques" had been brought to a halt.
3. Regarding the accuracy of indemnity payments, the Superintendent concluded that ESIS maintained a 28% error rate, which appeared to be excessive. While the Superintendent observed that a significant improvement in this category occurred since the WCBAR, the 28% error rate remained high. However, an additional mitigating note related to the combination of underpayments and overpayments was observed. When underpayment issues were separated from overpayment issues, the error rate improved to 16%. In other words, injured workers received payments at or above their statutorily determined benefit 84% of the time. Therefore, while it was determined that the "pattern of questionable claims-handling techniques" had been halted, there was still an unacceptable amount of errors documented and certain corrective actions shall be taken as identified in Recommendation #1.

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 Alessandro A. Iuppa, 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

ESIS/ACE American Insurance Company

of Windsor, Connecticut as of February 28, 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

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

Notary Public
My commission expires: