

**Market Conduct Examination**

**NGM INSURANCE COMPANY  
(NAIC Entity No. 14788)**

**55 West Street  
Keene, NH 03431**

**Examination Period:  
October 1, 2005 through September 30, 2006**

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December 7, 2007

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

Dear Superintendent Kofman:

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:

**NGM Insurance Company  
(NAIC Entity No. 14788)**

hereinafter referred to as the "Company". The examination covered indemnity claims that were open between October 1, 2005 and September 30, 2006, for employees residing in the State of Maine or claimants involved in losses in the State of Maine. The file review phase of the examination was conducted as a desk audit at the office of the Bureau of Insurance ("BOI") located at:

**124 Northern Ave  
Gardiner, Maine**

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, and enforcement (“MAE”) program. The functions of the MAE 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 2002 claims and reported the results in a Compliance Audit Report dated August 10, 2005 (“WCB Audit”). Findings outlined in the WCB Audit included non-filing of forms, late and inaccurate filing of forms, and untimely and inaccurate indemnity payments. The WCB determined that the pervasiveness and magnitude of the findings constituted a “pattern of questionable claims-handling techniques”. In December 2005, the WCB and the Company entered into a Consent Decree establishing the patterns of questionable claims-handling techniques and assessing fines therefor.

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

## **SCOPE OF EXAMINATION**

In order to meet the responsibilities set forth in section 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. The examination was conducted in accordance with Title 24-A M.R.S.A. and the National Association of Insurance Commissioners Market Conduct Examiners’ Handbook and Guidelines (“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 the Workers’ Compensation Act (“Title 39-A”) and the Maine WCB Rules and Regulations, were used as part of this examination. Specifically, the scope of the examination consisted of reviewing all indemnity claims that were open during the examination period of October 1, 2005 through September 30, 2006 that had dates of injury on or after January 1, 1993, to determine if all WCB forms were filed timely and accurately and if indemnity claims were paid in a timely and accurate manner.

## **METHODOLOGY**

Company records indicated a total of ten open lost time claims from October 1, 2005 to September 30, 2006. Two of these claims had dates of injury prior to January 1, 1993 and therefore, were not selected for review. The remaining eight claim files were reviewed.

## **STANDARDS**

The following standards were applied and tested through the detailed review of the selected claim files. All references are from either Title 39-A, WCB Rules and Regulations or the protocols of the MAE program. The specific Handbook standards and tests developed by the examiners are outlined in this section.

### **(1) Standard G-3**

#### **Claims are resolved in a timely manner.**

**Test Step 1:** 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).

### **(2) Standard G-4**

#### **The Company responds to claim correspondence in a timely manner.**

**Test Step 2:** Determine if claim-related correspondence (e.g. WCB forms) was correctly completed and 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 (MOP)	39-A M.R.S.A. § 205(7)
WCB-4, Discontinuance or Modification of Compensation	WCB Rules & Regs, Ch 8 § 1
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)	WCB Rules & Regs, Ch 8 § 2
WCB-11, Statement of Compensation Paid	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 39-A M.R.S.A. § 360(1)(A) or (B).

### **(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 and whether state requirements were satisfied.

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 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	% In Compliance	WCB Audit
<b>Initial Payment</b>	<b>3</b>	<b>0</b>	<b>5</b>	<b>100 %</b>	<b>42 %</b>
<b>Subsequent Payments</b>	<b>144</b>	<b>20</b>	<b>2</b>	<b>87.8 %</b>	<b>71 %</b>

### TEST 2:

Verify the timely filing of the following forms with the WCB in accordance with Title 39-A, WCB Rules & Regulations or MAE Protocols:

	Form Type	Filed Timely	Not Filed Timely	Not Filed	N/A	% In Compliance	2004 Audit (A)
Test	WCB-1	3	1 (B)	0	4	75 %	10 %
Test	WCB-2	3	0	0	5	100 %	0 %
Test	WCB-2A	2	1 (B)	0	5	66.7 %	0 %
Test	WCB-3	3	0	0	5	100 %	0 %
Test	WCB-4	3	0	0	5	100 %	60 %
Test	WCB-8	0	0	0	8	NA	0 %
Test	WCB-9	0	0	0	8	NA	83 %
Test	WCB-11 First	3	0	0	5	100 %	NA
Test	WCB-11 Annual/Final	1	3	0	4	25 %	NA

(A) - For comparative purposes, these compliant percentages are taken from the WCB Audit dated August 10, 2005 conducted on 2002 data.

(B) - The late form filing was due to the employer not notifying the Company in a timely manner.

**TEST 3:**

Verify that the average weekly wages (“AWW”) were calculated accurately and the subsequent indemnity payments were calculated accurately for both total and partial incapacity.

	Calculated Correctly	Calculated Incorrectly	NA	% of Compliance	WCB Audit
AWW	2	4	2	33.3 %	67 %

	Paid Accurately	Not Paid Accurately	N/A	% In Compliance	WCB Audit
Partial & Total Indemnity Payments	1	5	2	16.7 %	56 %

Numbers in this table represent number of claims rather than each specific calculation or payments. “Not Paid Accurately” represents five claim files where one or more payments were not made accurately.

**SUMMARY EXAMINATION REPORT**

**Timely Initial and Subsequent Payments (Test 1)**

The results of this examination indicate that the Company is in compliance with 39-A M.R.S.A. § 205(2) in regards to the timeliness of initial and subsequent payments. As the Company was deemed to be in compliance with the timeliness of payments it appears that the “pattern of questionable claims-handling techniques” regarding timeliness of payments no longer exists.

**Timely Filing of Forms (Test 2)**

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. The Company met the WCB’s initial payment benchmark of 80% for initial payment timeliness and 75% for the timely filing of WCB-3’s during the examination with a score of 100% for both requirements. It should be noted that the Company still has unacceptably low level of compliance for filing the WCB-11 annual forms. (See comments and recommendations #1.)

**Payment Accuracy (Test 3)**

Test 3 was designed to verify accurate calculation of the AWW and to determine if indemnity payments were calculated accurately for both total and partial incapacity. The compliance

percentage results of the examination in this category were lower than those of the WCB Audit. The compliance level of 33% for calculating the AWW and 17% for accuracy of the indemnity payments continues to be unacceptably low. The issues that led to incorrect payments were:

- Incorrect use of post injury wages when calculating AWW
- Incorrect tabulation of wages when calculating AWW
- Incorrect determination of number of work weeks when calculating AWW
- Incorrect use of week of injury when calculating AWW
- Incorrect use of benefit table – wrong number of dependents

The results of this examination determined that the rate of accuracy remains unacceptably low and it appears that the “pattern of questionable claims handling techniques” in regards to the accuracy of payments still exists. (See comments and recommendations #2)

## **COMMENTS AND RECOMMENDATIONS**

### **Comment 1:**

Test 2 was designed to determine compliance with Title 39-A’s form filing requirements. As shown in the Test 1 table, due to the small volume of claims tested even a few errors can have a material impact on compliance percentages. We note that the one error documented for form filing of the WCB-1 and WCB-2A was based on the same claim file where the employer failed to notify the Company in a timely manner. The WCB-3 filing benchmark of 75% was reached with 100 % compliance and the WCB-11 First Report filing also reached 100% compliance. However, the WCB-11 Annual/Final filing is still at an unacceptable compliance level of 25%.

### **Recommendation:**

We recommend that the Company develop protocols and procedures to ensure that employers notify the Company in a timely manner of lost time occurrences so required forms may be filed within allowed time limits. Specifically, the Company should continue to train and monitor its adjusting staff to ensure an adequate understanding of Maine requirements for timely filing of WCB forms, especially the WCB-11 Annual/Final filings.

### **Comment 2:**

Test 3 was designed to verify accurate calculation of the AWW and to determine if indemnity payments were calculated accurately for both total and partial incapacity. The compliance percentage during the examination was 33% for calculation of the AWW and 17% in regards to the accurate calculation of indemnity payments. The incorrect payments were the results of various actions, including:

- Incorrect use of post injury wages when calculating AWW
- Incorrect tabulation of wages when calculating AWW
- Incorrect determination of number of work weeks when calculating AWW
- Incorrect use of week of injury when calculating AWW
- Incorrect use of benefit table – wrong number of dependents

**Recommendation:**

We recommend that the Company implement policies and procedures to ensure that claims adjusters are aware of WCB payment requirements and that managers monitor the adjusters' performance regularly to ensure compliance with Maine law.

**CONCLUSION**

This examination reviewed all workers' compensation indemnity claims for Maine employees or claimants involved in losses in Maine that were open during the period of October 1, 2005 through September 30, 2006 with dates of injury occurring on or after January 1, 1993.

As noted previously, due to the limited number of open claims during the examination period, BOI staff did not select a sample, but tested the entire book of eight claims. Under these circumstances, any error has a substantial impact on compliance percentages. Notwithstanding this impact, the results of the examination are that the Company's AWW and indemnity benefit calculations still fall substantially below acceptable levels of compliance. The Company needs to focus special attention in this area.

**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

**NGM Insurance Company**

As described in the scope of examination section of the report, subscribed to by her, is true to the best of her knowledge and belief.

\_\_\_\_\_  
Carolee M. Bisson, AIE, AIRC  
Sr. Market Conduct Examiner

Subscribed and sworn to before me  
This \_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Notary Public  
My commission expires: