

IN RE:

**Zurich American Insurance Company
American Guarantee & Liability Insurance
Company)
American Zurich Insurance Company)
Assurance Company of America)
Maine Bonding & Casualty Company)
Maryland Casualty Company)
Northern Insurance Company of New York
Valiant Insurance Company**

**CONSENT AGREEMENT
Docket No. INS-09-205**

THIS CONSENT AGREEMENT is entered into by and among Zurich American Insurance Company, American Guarantee & Liability Insurance Company, American Zurich Insurance Company, Assurance Company of America, Maine Bonding & Casualty, Maryland Casualty Company, Northern Insurance Company of New York, and Valiant Insurance Company (collectively, “Zurich” or the “Companies”, individually a “Company”), the Superintendent of the Maine Bureau of Insurance (the “Superintendent”), and the Office of the Maine Attorney General. Its purpose is to bring to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. § 359(2) certified to the Superintendent by the Maine Workers’ Compensation Board (“WCB”) pursuant to 39-A M.R.S.A. § 359(2) and confirmed in the Examination, defined below.

I
STIPULATIONS

1. The Superintendent is the official charged with administering and enforcing Maine’s insurance laws and regulations.
2. Each Company has authority to insure employers for claims arising under the Maine Workers’ Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the WCB issued thereunder (the “WCA”). The Companies are licensed to do business in Maine and domiciled as follows:

Name of Company	State of Domicile	NAIC Code	Maine License Number	Date of First Maine License
Zurich American Insurance Company	New York	16535	PCF61397	12/31/1998
American Guarantee & Liability Insurance Company	New York	26247	PCF366	12/01/1939
American Zurich Insurance Company	Illinois	40142	PCF914	04/05/1985
Assurance Company of America	New York	19305	PCF651	06/01/1970
Maine Bonding & Casualty Company	Maine	19321	PCD499	09/01/1939

Maryland Casualty Company	Maryland	19356	PCF500	05/01/1901
Northern Insurance Company of New York	New York	19372	PCF501	03/20/1938
Valiant Insurance Company	Iowa	26611	PCF752	02/09/1976

3. In 2005, the Monitoring Audit & Enforcement Division of the WCB audited the records of the Companies with respect to claims filed under the WCA with dates of injury from January 1, 2003 through June 30, 2004. This audit focused on compliance with the WCA concerning form filing, timeliness of indemnity payments and accuracy of indemnity benefits.
4. On June 28, 2005, the WCB issued a Compliance Audit Report (the "Report") detailing its findings. The Report's findings reflect that Zurich did not timely and accurately file WCB forms or pay indemnity claims in violation of 39-A M.R.S.A. § 359(2).
5. In August 2005, the WCB and Zurich entered into eleven consent decrees, in lieu of administrative hearings, related to the findings in the Report. One decree established that Zurich had "engaged in a pattern of questionable claims-handling techniques in violation of Section 359(2) [of the WCA] for" failing to pay claims timely, to pay benefits due to injured workers, to calculate injured workers' benefits accurately, and to file or timely file forms required under the WCA.
6. On August 29, 2005, the WCB certified such findings to the Superintendent pursuant to 39-A M.R.S.A. § 359(2).
7. Maine Bureau of Insurance (the "Bureau") staff performed a targeted market conduct examination of (i) claims for indemnity benefits under the WCA insured by Zurich and having dates of injury from January 1, 2006 through December 31, 2006 and (ii) claims having dates of injury from January 1, 1993 through December 31, 2005 for which Zurich paid indemnity benefits between January 1, 2006 and December 31, 2006 (the "Examination"). The purpose of the Examination was to determine whether the violations of 39-A M.R.S.A. § 359(2) found by the WCB still existed as of the time of the Examination, specifically whether Zurich timely and accurately paid indemnity benefits and filed WCB forms timely and accurately with respect to such claims.
8. During the course of the Examination, Bureau staff found that, compared to the findings of the Report as to its claims-handling practices in Maine, for the period of the Examination, Zurich's:
 - a. form filing compliance had improved in some respects, decreased in others, and remained unacceptably low,
 - b. initial indemnity benefit timeliness had improved but remained below the WCB benchmark, and
 - c. indemnity benefit payment accuracy remained unacceptably low.
9. Notwithstanding the findings of the Report, the consent decrees entered into with the WCB, and the findings of the Examination, Zurich has not conducted a formal review for accuracy of indemnity payments between January 1, 2003 and January 1, 2005.
10. Data from the WCB shows that Zurich's compliance with WCA requirements for initial indemnity benefit timeliness, Memorandum of Payment filing and Notice of Controversy filing improved yearly from 2004 through 2006. The WCB's 2006 year-end compliance report described Zurich as a "high compliance performer." This assessment does not account for claims handled by third-party administrators. The WCB's pro forma data for

the first six months of 2007 shows that Zurich's performance, including the claims handled by third-party administrators, was less even.

II **MAINE LAW**

11. 39-A M.R.S.A. § 359(2) provides in part that:

[T]he [workers' compensation] board ... upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims ... shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt.

III **CONCLUSIONS OF LAW**

12. Each Company violated 39-A M.R.S.A. § 359(2) by failing to bring to a halt the pattern of questionable claims-handling techniques through the Examination period.

IV **COVENANTS**

13. Each Company shall immediately bring to a halt all questionable claims-handling techniques and represents that it has put into effect procedures to file WCB forms timely and accurately and to pay indemnity benefits as required by the Workers' Compensation Act, as stated on Exhibit A to this Agreement [Self-Audit Sheet].
14. Within ten (10) days after executing this Agreement, each Company shall deliver to the Superintendent a civil penalty of One Thousand Dollars and No Cents (\$1,000.00). Each Company confirms its understanding and agreement that: (i) this penalty results from its failure, as documented by the Examination, to halt through December 31, 2006 the pattern of questionable claims-handling techniques established by the August 2005 consent decrees entered into between Zurich and the WCB, and (ii) the amount of this penalty will not limit further civil penalties that the Superintendent may impose under paragraph 25 below.
15. Within thirty (30) days after executing this Agreement, each Company shall adopt, and submit to the Superintendent for approval, written procedures for ensuring that all claims with active indemnity benefit payments under the WCA as of the date that each Company executes this Agreement, whether handled in-house at Zurich or through a third-party administrator, are paid in compliance with Maine law at the levels of WCB benchmarks as they may exist from time to time, with evidence that the Company has devoted adequate resources to implement such procedures. At a minimum, such procedures must include plans for:
- a. hiring and retaining supervisory and front-line staff experienced in handling workers' compensation claims in Maine;

- b. training in-house and third-party administrator claims personnel on the provisions of the WCA concerning waiting period, calculation of average weekly wages, the correct number of dependents, maximum indemnity benefit rate, derivation of benefit levels from average weekly wages, and completing and filing with the WCB relevant forms;
- c. ensuring that employers cooperate in meeting the reporting requirements of the WCA;
- d. ensuring that third-party administrators cooperate in meeting the terms of their administrator contracts with the Company and the requirements of the WCA;
- e. maintaining claims payment standards through ongoing staff and third-party administrator education and supervision;
- f. implementing adequate claim review procedures, to include monitoring on a monthly basis the accuracy and timeliness of WCB form filings and indemnity payments;
- g. monthly auditing of claims payments in order to assess each Company's in-house and each third-party administrator's compliance with WCB requirements, standards and benchmarks for form filing and claims payment, and such audits shall encompass only required actions relating to payment of the claim that fall within that specific month of reporting; and
- h. delivering to the Bureau and the WCB the results of the audits referred to in subparagraph (g) no later than the twenty-first day of each month for the preceding month.

Zurich shall simultaneously deliver a copy of such procedures to the Deputy Director, Monitoring Audit & Enforcement Division at the WCB.

16. Zurich shall deliver to the Superintendent the monthly audits referred to in paragraph 15(h) for six (6) months, starting the month after Zurich executes this Agreement. Zurich shall also deliver, upon request, any and all work papers and documents, in any format, in its possession, custody or control, related to each such audit. If, after six (6) months, Zurich has not met the WCB benefit payment and form filing benchmarks or has not, pursuant to the WCA, accurately paid indemnity benefits, the Superintendent may declare Zurich to have violated the terms of this Agreement and may proceed as set forth in paragraph 25.
17. Within three hundred sixty-five (365) days after executing this Agreement, Zurich shall, for the period starting January 1, 2003 and ending as of the effective date of this Agreement:
 - a. review the indemnity claims, presented to any Company under the WCA, the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
 - b. recalculate the benefits, penalties and interest to ensure their compliance with the WCA;
 - c. pay to the appropriate claimants any deficiencies, with the penalties and interest provided for in the WCA, and file with the WCB such related forms as the WCA requires; and

- d. submit to the Superintendent and the WCB a report by Company of each claim so reviewed, the claimant, the incapacity periods, the amounts originally paid, and the deficiencies, penalties and interest paid.

This paragraph shall not apply to any claims that are subject to the monthly audits described in paragraph 15, to any claims that have been discharged under 39-M.R.S.A § 352, or to any claims that were previously presented to any Company or third-party administrator that were previously audited by either the WCB or the Superintendent and subsequently corrected by the Company or third-party administrator.

18. Zurich shall pay all reasonable costs and expenses related in any manner to its obligations under, its compliance with, and the enforcement of this Agreement.

V

MISCELLANEOUS

19. Any action that this Agreement permits the Superintendent to take may be taken against all or any of the Companies.
20. The Companies waive formal hearing in this matter and will make no appeal from this Agreement.
21. The Companies acknowledge that this Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S.A. § 408, and will be reported to the NAIC RIRS database.
22. The Companies have been advised of its right to consult with counsel and have, in fact, consulted with counsel before executing this Agreement.
23. Nothing herein shall affect any right or interest of any person or entity not a party to this Agreement or limit the Superintendent's ability to seek any available legal remedy for alleged or actual violations of the WCA or the Maine Insurance Code against any Zurich affiliate or subsidiary not a party to this Agreement or against any entity from which any Company obtains WCA claims administrator services.
24. Nothing in this Agreement shall limit the ability of the Superintendent to examine:
 - a. Zurich's indemnity claims having dates of injury after the Examination period, as he, in his sole discretion, at any time may determine advisable in order to determine whether any Company has brought to a halt the violations of 39-A M.R.S.A. § 359(2) found by the WCB; and
 - b. the review described in Paragraph 17 to determine its accuracy.
 - o In consideration of the Company's execution of and compliance with the terms of this Agreement, the Superintendent and the Office of the Attorney General agree to forgo pursuing further disciplinary measures or other civil or administrative sanctions for the actions described in this Agreement, other than those agreed to herein. Should any Company violate this Agreement, nothing herein shall prohibit the Superintendent or the Office of the Attorney General from seeking against Zurich any available legal remedy for such violation, including without limitation imposition of additional civil penalties, and the limitation, suspension or

revocation of workers' compensation authorities issued to the Companies by the Superintendent.

- o The effective date of this Agreement is the date entered in the Superintendent's signature line below.
- o This Agreement may be modified only by the written mutual consent of all parties.

Dated: _____, 2009

**ZURICH AMERICAN INSURANCE
COMPANY**

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

**AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY**

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

**AMERICAN ZURICH INSURANCE
COMPANY**

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

ASSURANCE COMPANY OF AMERICA

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

**MAINE BONDING & CASUALTY
COMPANY**

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

MARYLAND CASUALTY COMPANY

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

**NORTHERN INSURANCE COMPANY OF
NEW YORK**

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

VALIANT INSURANCE COMPANY

By: _____

Its: _____

Printed Name and Title

Subscribed and sworn to before me
this _____ day of _____, 2009.

Notary Public

Printed name

Date commission expires

Dated: _____, 2009

**MAINE OFFICE OF THE ATTORNEY
GENERAL**

Thomas C. Sturtevant, Jr.
Assistant Attorney General

Effective Date: _____, 2009

MAINE BUREAU OF INSURANCE

Mila Kofman,
Superintendent