

**STATE OF MAINE  
BUREAU OF INSURANCE**

**IN RE:** )  
 )  
 ) **CONSENT AGREEMENT**  
 ) **Docket No. INS 11-215**  
**XL SPECIALTY INSURANCE CO.** )  
 )  
 )

**THIS CONSENT AGREEMENT** is entered into by and among XL SPECIALTY INSURANCE CO. (the "Company"), the MAINE SUPERINTENDENT OF INSURANCE (the "Superintendent"), and the OFFICE OF THE MAINE ATTORNEY GENERAL (the "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 (the "Board") pursuant to that provision.

**I**

**STIPULATIONS**

1. The Superintendent is the official charged with administering and enforcing Maine's insurance laws and regulations.
2. The Company is organized and domiciled under the laws of the State of Delaware, and is licensed in Maine as an insurer under License Number PCF43958, first issued November 17, 1995. The Company insures claims arising under the Maine Workers' Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the Board issued thereunder (the "WCA").
3. In 2009-10, the Board's Monitoring Audit & Enforcement Division (the "MAE Division") audited the records of the Company with respect to claims filed under the WCA with dates of injury in 2008. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
4. On September 27, 2010, the Board issued a Compliance Audit Report detailing its findings (the "Report"). The Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S.A. § 359(2) included failure to file or timely file forms with the Board, failure to pay or timely pay benefits, and failure to pay claims accurately.
5. In June, 2011, the Board and the Company entered into 6 consent decrees, in lieu of administrative hearings, addressing the findings in the Report. In one such decree (the "Consent Decree"), the Company agreed that it had "engaged in patterns of questionable claims-handling techniques in violation of Section 359(2)" of the WCA by failing to (a) file or timely file forms with the Board, (b) pay or timely pay benefits, and (c) pay claims accurately.

6. On June 8, 2011, the Board certified these findings to the Superintendent as required by 39-A M.R.S.A. § 359(2).
7. Notwithstanding the findings of the Report and the consent decrees entered into with the Board, the Company has not conducted a formal review for accuracy of indemnity claims paid since January 1, 2009.

## II

### MAINE LAW

8. 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

9. The Company violated 39-A M.R.S.A. § 359(2) by engaging in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims though June 8, 2011.
10. The Superintendent is required, pursuant to the Board's June 8, 2011 certification of its findings that the Company engaged in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims, to take appropriate action to bring those practices to a halt.

## IV

### COVENANTS

11. The Company shall comply with each provision of this Agreement.
12. The Company shall bring to a halt the pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims as set forth in this Agreement.
13. Within thirty (30) days after executing this Agreement, the Company shall adopt, and deliver to the Superintendent for approval, with a copy to the WCB Deputy Director, MAE Division, written procedures that ensure that all claims for indemnity benefits under the WCA are paid in compliance with Maine law.

At a minimum, such procedures must include plans for:

- a. ensuring compliance with the benchmarks in Exhibit A;

- b. hiring and retaining supervisory and front-line staff experienced in handling workers' compensation claims in Maine;
- c. training in-house and third-party administrator claims personnel on the provisions of the WCA concerning derivation of benefit levels from average weekly wages and accuracy of indemnity payments;
- d. ensuring that employers cooperate in meeting the reporting requirements of the WCA;
- e. ensuring that third-party administrators working on behalf of the Company comply with the requirements of the WCA;
- f. maintaining claims payment standards through ongoing staff and third-party administrator education and supervision;
- g. implementing adequate claim review procedures, to include monitoring the accuracy and timeliness of WCB form filings and indemnity payments; and
- h. auditing, on at least a quarterly basis, all indemnity claims to measure compliance with the benchmarks in Exhibit A.

The Company shall deliver to the Superintendent and the WCB Deputy Director, MAE Division, the results of the audits referred to in subparagraph (g) for four (4) successive calendar quarters starting with the quarter in which the Company executes this Agreement. The Company shall deliver each audit report within thirty (30) days after the end of the applicable calendar quarter. Within forty-five (45) days thereafter, the Superintendent may call a meeting with the Company to discuss any concerns he may have with the Company's claims performance during the period covered by such audit report. Failure to call any such meeting shall not waive any of the Superintendent's or the Attorney General's rights under this Agreement. The Company shall deliver with the last audit report (the "Final Self-Audit Report") a certification in the form attached as Exhibit B, attesting to the accuracy of all claims performance audit information required under this Agreement. The Company shall also deliver, upon the Superintendent's or the WCB Deputy Director's request, any and all work papers and documents, in any format, in its possession, custody or control, related to any Self-Audit Report.

14. The Company shall, for the period starting January 1, 2009 and ending as of the effective date of this Agreement:
  - a. review the indemnity claims, except those discharged under 39-A M.R.S.A. § 352, presented to the 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 Board such related forms as the WCA requires; and
  - d. deliver to the Superintendent and the WCB Deputy Director, MAE Division, by the date the Company must deliver the Final Self-Audit Report, an electronic spreadsheet report viewable in Microsoft Excel listing each claim so reviewed (the "Look-Back Report"). The Look-Back Report shall contain the following data, safeguarded in accordance with the WCA, for each claim:

- i. the Board number, if known;
- ii. the claimant's Social Security number (general format/no dashes);
- iii. the claimant's last and first name (in that order);
- iv. the date of injury;
- v. Company name and claim file number; the incapacity periods;
- vi. the amount of indemnity originally paid;
- vii. whether or not the claim was settled under 39-A M.R.S.A. § 352 (Y or N) and the date of such settlement;
- viii. the amount of indemnity paid after review;
- ix. the amount of penalties paid after review;
- x. the amount of interest paid after review;
- xi. the amount of overpayment upon review; and
- xii. the name of the person conducting the review.

The Company shall deliver with the Look-Back Report a certification attesting to the accuracy of all information in the report, in the form attached as Exhibit B.

15. This paragraph shall not apply to any claims that are subject to the audits described in paragraph 13, to any claims that have been discharged under 39-A M.R.S.A § 352, or to any claims that were previously presented to the Company or third-party administrator working on behalf of the Company that were previously audited by the Board and subsequently corrected by the Company or third-party administrator.
16. Should the Superintendent, in his sole and absolute discretion, determine, within twelve (12) months after receiving the (i) Final Self-Audit Report or (ii) Look-Back Report, that the Company:
  - a. did not meet or exceed on average the benefit payment and form filing benchmarks in Exhibit A during the self-audit review period described in paragraph 13, then the Company shall deliver a civil penalty of \$15,000 to the Superintendent, within thirty (30) days of receiving the determination; and/or
  - b. did not accurately pay any indemnity benefits, with the penalties and interest due thereon, pursuant to the WCA, in at least 93 percent of the claims required to be reviewed pursuant to paragraph 14, then the Company shall deliver a civil penalty of \$5,000 to the Superintendent, within thirty (30) days of receiving the determination.

The Company agrees that (i) any civil penalties assessed in accordance with subsection (a) and/or (b) above will have resulted from its continued failure through the delivery date of either the Final Self-Adult Report or the Look-Back Report, to halt the pattern of questionable claims-handling techniques established by the Consent Decree, (ii) in declaring a civil penalty due, the Superintendent may rely on the Self-Audit Reports and the Look-Back Report as conclusive evidence of the fact and extent of such failure, and (iii) the amount of this penalty will not limit further measures, penalties or remedies that the Superintendent or the Attorney General may impose or seek under paragraph 24 below.

17. The Company shall pay, as provided by law, the Superintendent's reasonable costs and expenses of monitoring its compliance with, and enforcing the Company's obligations under, this Agreement.
18. The Company shall not recoup any payments of refunds, interest, or civil penalties made under this Agreement or any costs associated with complying with this Agreement in any future rate adjustments.
19. The Company shall ensure that third-party administrators working on its behalf comply with the WCA and this Agreement. If any third-party administrator fails to comply with the WCA or this Agreement, the Company will consider removing the non-compliant third-party administrator from Company's Maine panel of approved third-party administrators. The Company acknowledges its continued responsibility for the actions of any third-party administrator not removed from such panel.

## V

### MISCELLANEOUS

20. The Company waives any:
  - a. hearing rights arising from this Agreement,
  - b. objection to any action that may be taken by the Superintendent pursuant to this Agreement, including but not limited to the imposition of the penalties specified in paragraph 15 and agrees it will make no appeal from this Agreement; and
  - c. objection to the Board's release to the Superintendent and the Attorney General of "audit working papers", as defined in section 153 of the WCA, related to any audit of the Company and, in connection with this waiver, to the use of such papers by the Superintendent and Attorney General for purposes related to the implementation and enforcement of this Agreement.
21. The Company acknowledges 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 Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.
22. The Company has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
23. This Agreement does not bind 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 Company affiliate or subsidiary not a party to this Agreement or against any entity from which the Company obtains WCA claims administrator services.
24. Nothing in this Agreement shall limit the ability of the Superintendent, in his sole and absolute discretion, in order to determine whether the Company has brought to a halt all violations of 39-A M.R.S.A. § 359(2) established by the Consent Decree, to investigate the:
  - a. handling of the Company's indemnity claims having dates of injury after December 31, 2008;
  - b. accuracy of the self-audit quarterly review described in paragraph 13; or
  - c. accuracy of the indemnity claim review described in paragraph 14.

25. The purpose of the self-audit quarterly review described in paragraph 13 and the indemnity claim review described in paragraph 14 is to bring to a halt the violations established by the Consent Decree. Therefore, in consideration of the Company's execution of this Agreement, the Superintendent and the Attorney General shall not pursue civil penalties, disciplinary measures or other civil or administrative sanctions, other than those agreed to herein, for violations established by the Consent Decree that continue through the period of the paragraph 13 and paragraph 14 reviews. However, the Superintendent or the Attorney General may pursue any available legal remedy, including without limitation imposition of additional civil penalties and the limitation, suspension or revocation of workers' compensation authorities issued to the Company by the Superintendent should the Company:
- a. engage in conduct that violates 39-A M.R.S.A. § 359(2) after the period of the paragraph 13 and paragraph 14 reviews; or
  - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 15; or
  - c. otherwise violate Maine law.
26. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
27. This Agreement may be modified only by the written consent of all parties.

**[THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.]**

Dated: September 29, 2011

**XL SPECIALTY INSURANCE CO.**

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Printed Name and Title

Subscribed and sworn to before me this 29th day of September, 2011

\_\_\_\_\_  
Notary Public

\_NANCY LEE BROWN\_\_\_\_\_  
Printed

\_12/31/2012\_\_\_\_\_  
Date commission expires




	<b>Annual WCB-11 Filed W/in 15 Days of Anniversary of Claim</b>	<b>Initial TTD Timely</b>	<b>Subsequent TTD/TP D Timely</b>	<b>Payment of Medical Bills Timely</b>	<b>Payment of Approved Agreements, Orders, Decisions</b>	<b>TTD/TP D Accuracy</b>	<b>Average Weekly Wage</b>	<b>Weekly Benefit Rate</b>	<b>Partial Indemnity</b>
<b>Benchmark (%)</b>	80	87	87	80	90	75	80	75	75
<b>xx/10</b>									
<b>xx/10</b>									
<b>xx/10</b>									
<b>xx/10</b>									
<b>xx/10</b>									
<b>xx/10</b>									

**Exhibit B**  
**Form of Certification**

**IN RE:  
XL SPECIALTY INSURANCE CO.**

)  
)  
) **AFFIDAVIT OF**  
) **CORPORATE OFFICER**  
)  
)  
) **Docket No. INS 11-215**  
)  
)

The undersigned, being duly sworn, says:

1. Terms used but not defined in this affidavit shall have the meanings given them in the Consent Agreement entered into between the XL Specialty Insurance Co. (the "Company"), the Superintendent and the Attorney General under Bureau docket number INS-11-215.
2. I have read and understand the Consent Agreement and exhibits attached thereto.
3. I understand that the Board and Bureau may rely on the truthfulness of the information contained in and materials attached to this affidavit and that the truthfulness of this information is material to the ability of the Superintendent and the Board to evaluate the Company's compliance with the Consent Agreement.
4. I have read the materials attached to this affidavit. They accurately and completely summarize the information contained therein, as required by [paragraph 13/paragraph 14] of the Consent Agreement.
5. I hold the position identified below and have obtained all necessary authority from the Company to give this affidavit on its behalf in connection with the proceedings undertaken as Bureau Docket No. INS-11-215.

\_\_\_\_\_  
(name typed or printed)

\_\_\_\_\_  
(position typed or printed)

\_\_\_\_\_  
(company name typed or printed)

**Acknowledgement**

State of Connecticut  
County of Hartford

Personally appeared before me on Sept. 29th, 2011, the above named James M. DiVirgilio and, being duly sworn, affirmed that this affidavit is based upon his or her personal knowledge and is true and correct.

Before me,

\_\_\_\_\_  
Notary Public/Attorney-at-Law

[seal]

Printed Name: NANCY LEE BROWN

My Commission Expires: 12/31/2012