



- (d) report accurate information on filed forms, and
  - (e) properly record penalties assessed by the Board.
6. On January 6, 2006, the Board certified these findings to the Superintendent as required by 39-A M.R.S. § 359(2).
  7. Between April 13 and October 13, 2006, the Company attended Board training to address the claims-handling issues identified in the 2005 Report.
  8. In September 2006, the Company adopted a Corrective Action Plan at the request of the MAE Division to address specific issues raised in the 2005 Report. The Board lifted the Corrective Action Plan in August 2007, as the Company had met or exceeded the Board's benchmarks by then.
  9. In December 2008, the MAE Division audited the records of the Company with respect to claims filed under the WCA with dates of injury during 2007. This audit included all 19 of the Company's 2007 claims and focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
  10. Maine Bureau of Insurance (the "Bureau") staff performed a targeted market conduct examination of all open indemnity claims between January 1, 2006 and December 31, 2006, with dates of injury on or after January 1, 1993 (the "Examination"). The purpose of the Examination was to determine whether the violations of 39-A M.R.S. § 359(2) found by the Board and agreed to by the Company still existed as of Examination period. The Examination covered nine claims and focused on whether the Company timely filed all required Board forms, accurately calculated indemnity benefits and timely distributed benefit payments as required by the WCA.
  11. During the Examination, Bureau staff found that the Company's compliance ratios had generally improved over those established by the 2005 Report, but that some ratios were still unacceptably low for the period of the Examination. Persistent issues included errors in calculating average weekly wages and indemnity benefits and in making timely subsequent indemnity benefit payments.
  12. The Company's June 17, 2009, response to the Examination report represented that the Company had adopted weekly indemnity payment review schedule, attended Board training concerning the Act, assigned one staff member to work on Maine claims, and adopted a protocol for properly accounting for penalties.
  13. On April 26, 2010, the Board issued a Compliance Audit Report detailing its findings resulting from the December 2008 audit (the "2010 Report"). The 2010 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included late filing of forms, unfiled forms, and inaccurate indemnity payments. The Board did not take disciplinary action as to the 2010 Report, but did conclude that, in order to avoid another certification under 39-A M.R.S. § 359(2), the Company should take measures to meet the Board's requirements concerning form filing and claims payment accuracy.

14. The following table details the findings, expressed as percentage of compliance, of the 2005 Report, the Examination, and the 2010 Report:

	2005 Report	Examination	2010 Report
WCB-1 (First Report)	79	100	29
WCB-2 (Wage Statement)	22	33	60
WCB-2A (Tax/Dependents Statement)	0	33	100
WCB-3/4A (MOP)	40	100	20
WCB-3/4/4A (Disc/Mod)	56	100	50
WCB-8/4A (Disc/Reduction)	n/reported	n/applicable	100
WCB-9 (NOC)	33	100	n/reported
WCB-11 (Initial)	25	100	
WCB-11 (Annual/Final)	n/applicable	80	57
Initial Payment of Indemnity	25	100	100
Subsequent Payment of Indemnity	76	76	91
Payment of Medical Bills	n/applicable		86
Payment of Orders	n/applicable		100
Average Weekly Wage	75	75	100
Weekly Compensation Rate	37.5	75	100
Partial Benefits	n/applicable		0
Indemnity Paid	n/applicable		50

15. Notwithstanding the findings reflected in the 2005 Report, the Examination, and the 2010 Report, and entering into the Consent Decree, the Company has not conducted a formal review for accuracy of indemnity claims paid since January 1, 2002.

## II

### MAINE LAW

16. 39-A M.R.S. § 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

17. The Company violated 39-A M.R.S. § 359(2) by engaging in a pattern of questionable claims-handling techniques through January 6, 2006.
18. The Superintendent is required, pursuant to the Board's January 6, 2006 certification of its findings that the Company engaged in a pattern of questionable claims-handling techniques, to take appropriate action to bring those practices to a halt.

## IV

### COVENANTS

19. The Company shall comply with each provision of this Agreement.
20. The Company shall bring to a halt, as set forth in this Agreement, the pattern of questionable claims-handling techniques.
21. Within thirty (30) days after the effective date of 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) taking good faith steps, including without limitation educating employers generally as to their obligations under the WCA and in specific cases promptly directing the appropriate forms to employers, to encourage employers to 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 (h) for four (4) successive calendar quarters starting January 1, 2013. The Company shall deliver each audit report within thirty (30) days after the end of the applicable calendar quarter. Each report shall be an Excel spreadsheet and contain the following data, safeguarded in accordance with the WCA, for each claim: the Board number, if known; the claimant's Social Security number (general format, no dashes); the claimant's last and first name (in that order); the date of injury; the Company claim number; and the third-party administrator, if any. 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. The Company shall compile such information in a manner acceptable to the Superintendent.

22. The Company shall, for the period starting January 1, 2002 and ending December 31, 2012:

- (a) review the indemnity claims presented to the Company under the WCA, which shall include their incapacity periods, and the indemnity benefits, penalties and interest originally paid thereon, unless the claims files have been destroyed. If the claim files have been destroyed, the date of such destruction will be provided, where available, along with a copy of the company's record retention policy for the respective time period;
- (b) recalculate the benefits, penalties and interest to ensure their compliance with the WCA;
- (c) pay to the appropriate claimants, by certified mail, return receipt requested, at their addresses last known to the Company, any deficiencies, with the penalties and interest provided for in the WCA, and file with the Board such related forms as the WCA requires, provided that the Company will comply with applicable escheat law concerning any undeliverable amounts; 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;
  - vi. the incapacity periods;
  - vii. the amount of indemnity originally paid;
  - viii. whether or not the claim was settled under 39-A M.R.S. § 352 (Y or N) and the date of such settlement;
  - ix. the amount of indemnity paid after review;
  - x. the amount of penalties paid after review;
  - xi. the amount of interest paid after review;
  - xii. the amount of overpayment upon review; and
  - xiii. 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.

This paragraph shall not apply to any (i) claim activities that are subject to the audits described in paragraph 21, (ii) claims with dates of injury after December 31, 1992, (iii)

claims that have been discharged under 39-A M.R.S. § 352, or (iv) 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.

23. 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 21, then the Company shall deliver a civil penalty of Fifteen Thousand Dollars (\$15,000) to the Superintendent, within thirty (30) days of receiving the determination, or
  - (b) failed to correct deficiencies in indemnity benefits as required by paragraph 22(c), including penalties and interest due thereon, pursuant to the WCA, resulting in compliance with the WCA in less than 93 percent of the claims required to be reviewed pursuant to paragraph 22, then the Company shall deliver a civil penalty of Five Thousand Dollars (\$5,000) to the Superintendent, within thirty (30) days of receiving the determination.

The Company agrees that (i) any civil penalties assessed under subsection (a) 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 the 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 32 below.

24. 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.
25. 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.
26. 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 the 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

27. 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 penalty specified in paragraph 23 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.
28. The Company acknowledges that this Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for public inspection and copying as provided for by 1 M.R.S. § 408, and will be reported to the Regulatory Information Retrieval System database at the National Association of Insurance Commissioners.
29. The Company has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
30. 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.
31. 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. § 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, 2002, as the Superintendent or the Board, in their 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. § 359(2) found by the Board; or
  - (b) accuracy of the self-audit quarterly review described in paragraph 21; or
  - (c) accuracy of the indemnity claim review described in paragraph 22.
32. The purpose of the self-audit quarterly review described in paragraph 21 and the indemnity claim review described in paragraph 22 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 21 and paragraph 22 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. § 359(2) after the period of the paragraph 21 and paragraph 22 reviews; or
- b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 23; or
- c. otherwise violate Maine law.

33. The effective date of this Agreement is the date entered in the Superintendent's signature line below.

34. This Agreement may be modified only by the written consent of all parties.

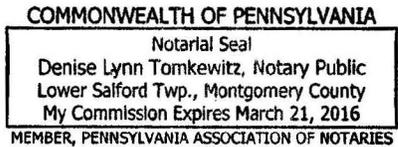
Dated: 12/11/12, 2012

**HARLEYSVILLE WORCESTER INSURANCE COMPANY**

By: Kathryn A. Heakle  
Its: VP Claims  
Printed Name and Title

Subscribed and sworn to before me this 11<sup>th</sup> day of December, 2012.

Denise Lynn Tomkewitz  
Notary Public  
Denise Lynn Tomkewitz  
Printed name  
03/21/16  
Date commission expires



Dated: 12/20, 2012

**OFFICE OF THE MAINE ATTORNEY GENERAL**

[Signature]  
Jonathan R. Bolton  
Assistant Attorney General

Effective Date: December 20, 2012

**MAINE BUREAU OF INSURANCE**  
[Signature]  
Eric A. Cioppa  
Superintendent



Exhibit B

Form of Certification

IN RE:

Harleysville Worcester Insurance Company

)
)
) AFFIDAVIT OF
) CORPORATE OFFICER
)
) Docket No. INS-12-239
)
)

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 above Company, the Superintendent and the Attorney General under Bureau docket number INS-12-239.
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 21/paragraph 22] 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-12-239.

(name typed or printed)

(position typed or printed)

(company name typed or printed)

Acknowledgement

State of
County of

Personally appeared before me on , 201\_, the above named 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:

My Commission Expires: