

IN RE:

GALLAGHER BASSETT SERVICES,  
INC.

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)  
)  
) **CONSENT AGREEMENT**  
) **Docket No. INS-12-238\_**  
)  
)

**THIS CONSENT AGREEMENT** is entered into by and among GALLAGHER BASSETT SERVICES, INC. (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. § 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 Illinois and is licensed in Maine as a third-party administrator under License Number TAF32160 issued in July 2009. The Company administers claims arising under the Maine Workers' Compensation Act of 1992, M.R.S. Title 39-A, as amended, and regulations of the Board issued thereunder (the "WCA").
3. In December 2006, 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 between January 1, 2005 and June 30, 2006. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
4. On January 17, 2007, the Board issued a Compliance Audit Report detailing its findings (the "2007 Report"). The 2007 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included unfiled, late and inaccurate forms; untimely and inaccurate indemnity payments; and improper recovery of overpaid benefits.
5. In January 2007, the Board and the Company entered into 23 consent decrees, in lieu of administrative hearings, addressing the findings in the 2007 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 (i) failing to file or timely file forms with the Board, report accurate information on WCB-3 forms, pay benefits timely, and pay claims properly, and (ii) improperly recovering benefits.
6. On March 15, 2007, the Board certified these findings to the Superintendent as required by 39-A M.R.S. § 359(2).

7. The Company attended Board training to address the claims-handling issues identified in the Report at various times.
8. In August 2007, the Company adopted a Corrective Action Plan at the request of the MAE Division to address specific issues raised in the Report. The Board lifted the Corrective Action Plan in mid-2011.
9. Maine Bureau of Insurance (the "Bureau") staff performed a targeted market conduct examination of all open indemnity claims with dates of injury on or after January 1, 1993 that were open during 2007 (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 a sample of 50 indemnity and medical payment 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.
10. During the Examination, Bureau staff found that the Company's compliance ratios had improved over those established by the 2007 Report. Specifically, the Company surpassed the Board's benchmarks for timely initial indemnity payments and memoranda of payment. The Company's its overall compliance ratios for the timeliness of form filings and for timely medical payments were acceptable. However, The Company did not meet acceptable compliance levels for either timeliness of wage statement filings and waiting period payments or accuracy of indemnity payments.
11. In October 2010, the Company acquired substantially all the third-party administrator assets of GAB Robins North America Inc. ("GAB Robins"). This transaction included GAB Robins' Maine workers' compensation claims. GAB Robins' claims personnel who had worked on those claims became employees of the Company.
12. In March 2011, the MAE Division audited the records of the Company with respect to claims filed under the WCA with dates of injury during 2010. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
13. On August 11, 2011, the Board issued a Compliance Audit Report detailing its findings (the "2011 Report"). The 2011 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included untimely benefit payments, inaccurate claims payments, late payment under approved agreements, orders or decisions, and late or unfiled WCB-1 and WCB-9 forms. The 2011 Report did not measure timely payment of medical bills. The Company's compliance rates were otherwise acceptable.
14. The Company's August 17, 2011 letter accepting the Examination results represented that Company staff had taken steps to verify average weekly wage and weekly benefit rate calculations, monitor partial indemnity payments, and monitor open indemnity claims for form filing errors.
15. In August 2011, the Board and the Company entered into eight consent decrees, in lieu of administrative hearings, addressing the findings in the 2011 Report.

16. The following table details the findings, expressed as percentage of compliance, of the 2007 Report, the Examination, and the 2011 Report:

	2007 Report	MCE	2011 Report
WCB-1 (First Report)	49	80	82
WCB-2 (Wage Statement)	40	56	90
WCB-2A (Tax/Deps. Stmt)	28	88	94
WCB-3/4A (MOP)	47	80	89
WCB-3/4/4A (Disc/Mod)	71		78
WCB-8/4A (Disc/Reduction)	80	n/a	100
WCB-9 (NOC)	43	86	67
WCB-11 (Initial)	56 (comb.)	89	85 (comb.)
WCB-11 (Annual/Final)		75	
Initial Payment of Indemnity	63	82	90
Waiting Period Payment	n/a	55	n/a
Subsq. Payment of Indemnity	81	95	94
Payment of Medical Bills	72	79	n/a
Payment of Orders	50	n/a	50
Average Weekly Wage	47	n/a	78
Weekly Compensation Rate	31	n/a	74
Partial Benefits	0	n/a	62
Indemnity Paid	16	50	36

17. The Company has completed some formal reviews, under insurer audits, of claims.

## II

### MAINE LAW

18. 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

19. The Company violated 39-A M.R.S. § 359(2) by engaging in a pattern of questionable claims-handling techniques through December 31, 2010.
20. The Superintendent is required, pursuant to the Board's March 15, 2007 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

21. The Company shall comply with each provision of this Agreement.

22. The Company shall bring to a halt, as set forth in this Agreement, the pattern of questionable claims-handling techniques.
23. 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 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) maintaining claims payment standards through education and supervision of in-house claims personnel;
- (f) implementing adequate claim review procedures, to include monitoring the accuracy and timeliness of WCB form filings and indemnity payments; and
- (g) 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 beginning of 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. 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.

24. The Company shall, for the period starting January 1, 2005 and ending as of the effective

date of this Agreement:

- (a) submit to the Bureau of Insurance within thirty (30) days of the effective date of this Agreement, an electronic spreadsheet listing all indemnity claims adjusted in the above period presented to the Company under the WCA, for the purpose of allowing the Bureau to designate a statistically valid random sample of claims, selected in accordance with National Association of Insurance Commissioners (“NAIC”) standards to produce a 95 % confidence level and a 5 % upper error limit, for each calendar year (the “Designated Claims”) for further review by the Company as set forth in this paragraph;
- (b) upon receiving the list of Designated Claims from the Superintendent, review the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
- (c) recalculate the benefits, penalties and interest for the Designated Claims to ensure their compliance with the WCA;
- (d) pay to the appropriate claimants for the Designated Claims 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
- (e) 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. insurer 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 claims that (w) are subject to the audits described in paragraph 23, (x) have been discharged under 39-A M.R.S. § 352, (y) were previously audited by the Board and subsequently corrected by the Company, or (z) the Company has reviewed and corrected under the look-back provision of an agreement between the

Bureau and an insurer for which the Company adjusted claims during the above period.

25. 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 23, then the Company shall deliver a civil penalty of up to Thirty-seven Thousand Five Hundred Dollars (\$37,500) to the Superintendent, within thirty (30) days of receiving the determination, or
  - (b) failed during the look-back review period described in paragraph 24 to correct deficiencies in indemnity benefits as required by subparagraph 24(d), 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 24, then the Company shall deliver a civil penalty of up to Twelve Thousand Five Hundred Dollars (\$12,500) 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-Audit Report or the Look-Back Report, to meet the benchmarks set forth in Exhibit A, (ii) in declaring any 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 34 below.

In making the determination under subsection (a) above, the Superintendent will take into account the degree, expressed as a percentage, to which the Company complied with the Exhibit A benchmarks.

26. Should the Superintendent, in his sole and absolute discretion, determine, within twelve (12) months after receiving the Look-Back Report, that the Company, for any calendar year for which Designated Claims were reviewed, failed to achieve a 93% compliance rate in accurately calculating:
- (a) average weekly wage,
  - (b) weekly compensation rate,
  - (c) partial benefits, or
  - (d) indemnity benefits,

he may, in his sole and absolute discretion, order the Company to review up to all other claims paid during the period identified in paragraph 24 for the specific purpose of identifying and correcting inaccurate payments to claimants.

Should the Superintendent order such an expanded review, the Company shall (i) complete the review within the time specified by the Superintendent, which shall be no less than three (3) months but not more than twelve (12) months, (ii) upon completion of the review, submit a report to the Superintendent, in the format required for the Look-Back Report, listing each claim so reviewed, and (iii) provide, upon the Superintendent's

request, any additional documentation, in a compiled in a format acceptable to the Superintendent, necessary for the Superintendent to verify that the review was properly completed. Within thirty (30) days of receiving notice from the Superintendent of any improperly calculated element, specified in the subparagraphs above, in a reviewed claim, the Company shall correct such element and pay the related benefits, penalties and interest as required by the WCA.

27. 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.
28. 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.

## V

### MISCELLANEOUS

29. 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 civil penalties specified in paragraph 25 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.
30. 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.
31. The Company has been advised of its right to consult with counsel before executing this Agreement.
32. 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.
33. 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, 2010; or

- (b) accuracy of the self-audit quarterly review described in paragraph 23; or
  - (c) accuracy of the indemnity claim review described in paragraph 24.
34. The purpose of the self-audit quarterly review described in paragraph 23 and the indemnity claim review described in paragraph 24 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 23 and paragraph 24 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 23 and paragraph 24 reviews; or
  - (b) violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 25; or
  - (c) otherwise violate Maine law.
35. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
36. This Agreement may be modified only by the written consent of all parties.

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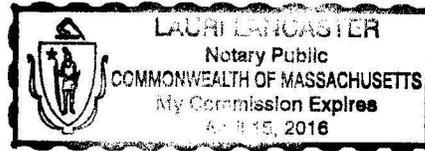
Dated: Nov 5<sup>th</sup>, 2012

**GALLAGHER BASSETT SERVICES, INC.**

By: Joseph R. Coughlan  
Its: JOSEPH R. COUGHLAN, VICE PRESIDENT  
Printed Name and Title

Subscribed and sworn to before me this 5<sup>th</sup> day of November 2012.

Laura Lancaster  
Notary Public  
Laura Lancaster  
Printed name  
April 15, 2016  
Date commission expires



Dated: Nov 7, 2012

**OFFICE OF THE MAINE ATTORNEY  
GENERAL**

Jonathan R. Bolton  
Jonathan R. Bolton  
Assistant Attorney General

Effective  
Date: Nov 7, 2012

**MAINE BUREAU OF INSURANCE**

Eric A. Cloppa  
Eric A. Cloppa  
Superintendent



Exhibit B

Form of Certification

IN RE:  
GALLAGHER BASSETT SERVICES,  
INC.

)  
)  
) AFFIDAVIT OF  
) CORPORATE OFFICER  
)  
)  
) Docket No. INS-12-238  
)  
)

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-12-238.
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 23/paragraph 24] 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-12-238\_.

JOSEPH R. COUGHLIN

(name typed or printed)

VICE PRESIDENT

(position typed or printed)

GALLAGHER BASSETT SERVICES, INC.  
(company name typed or printed)

Acknowledgement

State of Massachusetts  
County of Norfolk

Personally appeared before me on November 5th, 2012, the above named Joseph Coughlin and, being duly sworn, affirmed that this affidavit is based upon his or her personal knowledge and is true and correct.

Before me,



Lauri Lancaster  
Notary Public/Attorney-at-Law

Printed Name: Lauri Lancaster

My Commission Expires: 4/15/14