



- e. Properly oversee third-party administrators; and
  - f. Correct issues of non-compliance identified in a previous audit.
6. On April 17, 2008, the Board certified these findings to the Superintendent as required by 39-A M.R.S.A. § 359(2).
  7. In August, 2008, the Company adopted a Corrective Action Plan at the request of the MAE Division to address specific issues raised in the Report. The Corrective Action Plan was lifted on November 17, 2009 pending outcome of the 2008 referral to the Superintendent.
  8. In March, 2010, Bureau staff performed a targeted market conduct examination based on a statistical sampling of all open indemnity claims for the period July 1, 2008 to June 30, 2009. The purpose of the examination was to determine whether the violations of 39-A M.R.S.A. § 359(2) agreed to in the Consent Decree still existed as of the examination period. The testing was not completed and a report of the examination was not released.
  9. In July, 2011 the MAE Division again audited the records of the Company with respect to claims filed under the WCA with dates of injury in 2010. On February 6, 2012, the Board issued a Compliance Audit Report detailing its findings (the "2012 report"). The 2012 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S.A. § 359(2) included late and inaccurate forms filings and untimely and inaccurate indemnity payments. In some areas, the 2012 Report showed improvement over the 2007 Report (the compliance rate for Memorandum of Payment filings met the Board performance benchmark and the compliance rate for initial indemnity payments was close to the Board performance benchmark). However, the compliance rate for First Report of Occupational Injury or Disease filings and for Notice of Controversy filings was significantly below the Board benchmarks. Further, the accuracy of indemnity paid was 33 percent. Aggregate underpayments in the four claims underpaid exceeded aggregate overpayments in the ten claims overpaid.
  10. 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, 2007.

## 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. The Company violated 39-A M.R.S.A. § 359(2) by engaging in a pattern of questionable claims-handling techniques through April 17, 2008.
13. The Superintendent is required, pursuant to the Board's April 17, 2008 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

14. The Company shall comply with each provision of this Agreement.
15. The Company shall bring to a halt the pattern of questionable claims-handling techniques as set forth in this Agreement.
16. 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 with dates of injury on or after January 1, 1993, to ensure 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 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. Each audit report shall be accompanied by an electronic spreadsheet report viewable in Microsoft Excel containing 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.

17. The Company shall, for the period starting January 1, 2007 and ending as of the effective date of this Agreement:
  - a. submit to the Bureau of Insurance within 30 days of the execution of this Agreement an electronic spreadsheet listing all indemnity claims adjusted in the above time period that are closed as of the effective date of this Agreement, for the purpose of allowing the Bureau to designate a statistically valid random sample of claims (the "Designated Claims") for further review by the Company as set forth in this paragraph;
  - b. review the Designated Claims and any indemnity claims adjusted in the above time period that are in active payment as of the effective date of this Agreement, the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
  - c. recalculate the benefits, penalties and interest to ensure their compliance with the WCA;
  - d. 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
  - 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. 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.

This paragraph shall not apply to any claims that are subject to the audits described in paragraph 16, 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.

18. 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 16, 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, and/or
  - b. failed to correct deficiencies in indemnity benefits as required by paragraph 17, 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 17, 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 28 below.

19. 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.
20. 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.
21. 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.

22. Should the Superintendent, in his sole and absolute discretion, determine within twelve (12) months after receiving the Look-Back Report that the Company 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 order the Company to review up to all other claims paid by the Company during the period identified in paragraph 17 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 six (6) months, (ii) submit a report to the Superintendent upon completion of the review, in a format required for the Look-Back Report, listing each claim so reviewed, and (iii) provide, upon the Superintendent's request, any additional documentation 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 in a reviewed claim, the Company shall correct such element and pay the related benefits, penalties and interest as required by the WCA.

## V

### MISCELLANEOUS

23. 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 18 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.
24. 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.
25. The Company has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
26. 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.

27. 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, 2006;
  - b. accuracy of the self-audit quarterly review described in paragraph 16; or
  - c. accuracy of the indemnity claim review described in paragraph 17.
28. The purpose of the self-audit quarterly review described in paragraph 16 and the indemnity claim review described in paragraph 17 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 16 and paragraph 17 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 16 and paragraph 17 reviews; or
  - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 18; or
  - c. otherwise violate Maine law.
29. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
30. This Agreement may be modified only by the written consent of all parties.

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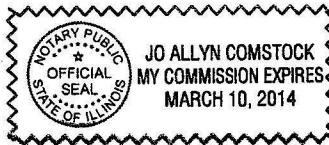
Dated: December 10, 2012

**OLD REPUBLIC INSURANCE COMPANY**

By: [Signature]  
Its: President  
Printed Name and Title

Subscribed and sworn to before me this 10<sup>th</sup> day of October, 2012.

[Signature]  
Notary Public  
Jo Allyn Comstock  
Printed name  
03/10/2014  
Date commission expires



Dated: Oct 16, 2012

**OFFICE OF THE MAINE ATTORNEY GENERAL**

[Signature]  
Jonathan R. Bolton  
Assistant Attorney General

Effective  
Date: Oct 17, 2012

**MAINE BUREAU OF INSURANCE**

[Signature]  
Eric A. Cioppa  
Acting Superintendent





Exhibit B

Form of Certification

IN RE:  
OLD REPUBLIC INSURANCE  
COMPANY

)  
)  
) AFFIDAVIT OF  
) CORPORATE OFFICER  
)  
)  
) Docket No. INS-12-215  
)  
)  
)

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 above Company, the Superintendent and the Attorney General under Bureau docket number INS-12-215.

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 16/paragraph 17] 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-12-215.

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

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

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

Acknowledgement

State of \_\_\_\_\_  
County of \_\_\_\_\_

Personally appeared before me on \_\_\_\_\_, 2012, 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: \_\_\_\_\_