

IN RE:

Protective Insurance Company

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) **CONSENT AGREEMENT**
) **Docket No. INS-13-209**
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THIS CONSENT AGREEMENT is entered into by and among PROTECTIVE INSURANCE COMPANY (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. Organized and domiciled under the laws of the State of Indiana, the Company holds a license in Maine as an insurer (License Number PCF655), first issued on April 26, 1965. The Company has authority to insure 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 January 2009, the Board’s Monitoring Audit & Enforcement Division (the “MAE Division”) audited the records of the Company with respect to the eleven claims filed under the WCA between January 1, 2006 and December 31, 2008, six of which were for indemnity benefits. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
4. On July 27, 2009, the Board issued a Compliance Audit Report detailing its findings (the “2009 Report”). The 2009 Report’s findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included non-filing of forms, late forms filings, and inaccurate indemnity payments.
5. The Board did not take enforcement action based on the 2009 Report’s findings concerning the Company’s questionable claims-handling techniques. However, the 2009 Report states that the Company “must take corrective measures to address [its f]ailure to file or timely file forms with the Board[, f]ailure to pay benefits or pay benefits timely[, and f]ailure to pay claims accurately.”
6. In August 2009, the Company represented to the Board that it had already implemented “Best Practices program” steps, including “measurable peer review standards, ongoing adjuster training and the acquisition of new claims technology” and that, because of the 2009 Report, a Portland, Maine law firm would conduct a form filing training seminar for the Company’s adjusters in September 2009.

7. In April 2010, the Company entered into six consent decrees with the Board in which it agreed to pay civil penalties to various workers' compensation claimants and to the State of Maine because of the violations documented in the 2009 Report.
8. In June 2012, the MAE Division audited all 14 claims filed with the Company under the WCA having indemnity benefits paid between January 1, 2009 and December 31, 2011. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits. The Board was able to calculate the accuracy of indemnity benefits in 13 of these claims. The Company paid three claims accurately, underpaid two claims by \$108 in aggregate, and overpaid eight claims by \$8,931 in aggregate.
9. On August 9, 2013, the Board issued a Compliance Audit Report detailing its findings (the "2013 Report"). The 2013 Report's findings relevant to questionable claims-handling techniques that violated 39-A M.R.S. § 359(2) included non-filing of forms, late forms filings, and inaccurate indemnity payments.
10. The following table details the findings, expressed as percentage of compliance, of the 2009 Report and 2013 Report:

	2009 Report	2013 Report
WCB-1 (First Report)	0	14
WCB-2 (Wage Statement)	0	20
WCB-2A (Tax/Dependents Statement)	0	7
WCB-3/4A (MOP)	0	18
WCB-3/4/4A (Disc/Mod)	0	35
WCB-8/4A (Disc/Reduction)	n/reported	50
WCB-9 (NOC)	0	n/reported
WCB-11	0	0
Initial Payment of Indemnity	67	41
Subsequent Payment of Indemnity	85	95
Payment of Medical Bills	73	n/reported
Payment of Orders	n/reported	100
Average Weekly Wage	67	57
Weekly Compensation Rate	34	43
Partial Benefits	n/reported	n/reported
Indemnity Paid	0	22

11. In September 2013, the Board and the Company entered into a consent decree, in lieu of an administrative hearing, addressing the findings in the 2013 Report (the "Consent Decree"). The Company agreed in the Consent Decree that it had "engaged in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims 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 benefits accurately.

The Company agreed to pay a civil penalty of \$10,000 based on the violation of 24-A M.R.S. § 359(2).

12. On September 17, 2013, the Board certified these findings to the Superintendent as required by 39-A M.R.S. § 359(2).
13. On November 15, 2013, the Company had Board training at its expense to address the claims-handling issues identified in the 2009 Report and the 2013 Report.

II

MAINE LAW

14. 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

15. The Company violated 39-A M.R.S. § 359(2) by engaging in a pattern of questionable claims-handling techniques through December 31, 2011.
16. The Superintendent is required, pursuant to the Board's September 17, 2013 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

17. The Company shall comply with each provision of this Agreement. The Company agrees that its obligations under this Agreement are enforceable as orders of the Superintendent.
18. The Company shall bring to a halt, as set forth in this Agreement, the pattern of questionable claims-handling techniques and represents that the Company has put into effect written procedures to file Board forms timely and accurately and to pay indemnity benefits as required by the WCA.
19. Within thirty (30) days after the effective date of this Agreement, the Company shall update as necessary, and deliver to the Superintendent for review, with a copy to the WCB Deputy Director, MAE Division, its "Best Practices program" for WCA claims. The purpose of this covenant is to ensure that the Company pays all claims for indemnity benefits under the WCA 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. encouraging employers' cooperation 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 a quarterly basis starting January 1, 2014 and ending December 31, 2014, all indemnity claim activity within the applicable quarter for all claims with dates of injury on or after January 1, 1993 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 each quarterly audit referred to in subparagraph (h) 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 the results of 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 request, any and all work papers and documents, in any format, in its possession, custody or control, for the Superintendent to review any Self-Audit Report. The Company shall compile such information in an electronic format acceptable to the Superintendent.

20. The Company shall, for the period starting January 1, 2012 and ending December 31, 2013:
- a. review the indemnity claims with dates of injury on or after January 1, 1993 presented to the Company under the WCA, their 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 Deputy Director, MAE Division, by the date the Company must deliver the Final Self-Audit Report, an Excel spreadsheet report 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 quarterly audits described in paragraph 19, (ii) claims that have been discharged under 39-A M.R.S. § 352, (iii) claims that were previously audited by the Board and subsequently corrected by the Company or third-party administrator or found not to need correction, or (iv) claims activities that are the subject of a look-back and reporting provision in a consent agreement to which the Bureau and a third-party administrator working on behalf of the Company were party.

The Company shall also deliver, upon the Superintendent's request, any and all work papers and documents, in any format, in its possession, custody or control, for the Superintendent to review the Look-Back Report. The Company shall compile such information in an electronic format acceptable to the Superintendent.

21. Should the Superintendent determine, within twelve (12) months after receiving the Final Self-Audit Report, Look-Back Report and papers and documents responding to the Superintendent's request under paragraph 19 or paragraph 20, that the Company either did not meet or exceed on average the benefit payment and form filing benchmarks in Exhibit A during the review period described in paragraph 19 or did not correct deficiencies in indemnity payments as required by paragraph 20, 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 20, then the Superintendent may:
- a. impose a civil penalty up to Fifty Thousand Dollars (\$50,000), and the Company shall deliver the penalty to the Superintendent within thirty (30) days of receiving the determination, and
 - b. suspend the Company's authority to write new business in Maine until the Company demonstrates to the Superintendent's satisfaction that the Company has halted the questionable claims-handling practices.

The Company agrees that:

- w. the Superintendent's actions under this paragraph will be in his sole and absolute

discretion, except that he will, in determining the amount of the civil penalty, take into account (i) the number and relative significance of the benchmarks that the Company missed and (ii) for each missed benchmark, the margin by which the Company missed it,

- x. any action that the Superintendent takes under this paragraph will have resulted from the Company's continued failure through the last date that it delivers the Final Self-Audit Report, Look-Back Report or papers and documents responding to the Superintendent's request under paragraph 19 or paragraph 20, to halt the pattern of questionable claims-handling techniques established by the Consent Decree,
 - y. in taking such action, 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
 - z. such action will not limit further measures, penalties or remedies that the Superintendent or the Attorney General may impose or seek under paragraph 31 below.
22. If the Company fails to deliver any report required under this Agreement within 14 business days of the report's deadline, the Superintendent may in his sole and absolute discretion impose an additional civil penalty of \$500 for each failure and for each week thereafter until the late report is delivered.
23. 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.
24. 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.
25. 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

26. The Company waives:
- a. formal hearing in this matter;
 - b. its right to appeal from this Agreement;
 - c. objection to or appeal from any action that may be taken by the Superintendent or the Attorney General pursuant to this Agreement, including but not limited to the imposition of the penalties or suspension specified in paragraph 21 and paragraph 22; and

- d. 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.
27. 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.
28. The Company has been advised of its right to consult with counsel and has, in fact, consulted with counsel before executing this Agreement.
29. 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.
30. 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, 2011;
 - b. accuracy of the self-audit quarterly review described in paragraph 19; or
 - c. accuracy of the indemnity claim review described in paragraph 20.
31. The purpose of the self-audit quarterly review described in paragraph 19 and the indemnity claim review described in paragraph 20 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 19 and paragraph 20 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 19 and paragraph 20 reviews; or
 - b. violate any provision of this Agreement other than as described in paragraph 21; or
 - c. otherwise violate Maine law.
32. The effective date of this Agreement is the date entered in the Superintendent's signature line below.

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

Dated: 12/17, 2013

PROTECTIVE INSURANCE COMPANY

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

Subscribed and sworn to before me this 17 day of December, 2013.

[Signature]
Notary Public
Christi A. Venable
Printed name
10-12-2016
Date commission expires



Dated: 12/19, 2013

OFFICE OF THE MAINE ATTORNEY GENERAL

[Signature]
Jonathan R. Bolton
Assistant Attorney General

Effective Date: Jan 2, 2013
2014

MAINE BUREAU OF INSURANCE

[Signature]
Eric A. Cioppa
Superintendent