

# COMPLIANCE AUDIT REPORT

STATE OF MAINE  
WORKERS' COMPENSATION BOARD



**Continental Indemnity Company**  
**Engagement Date: September 14, 2016**  
**Issue Date: October 24, 2017**

**Office of Monitoring, Audit & Enforcement**

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## SUMMARY

Continental Indemnity Company (CIC) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined ten (10) claim files where indemnity benefits were paid for the period under examination (2013-2015) as well as sixty (60) medical payments for the period under examination (2013-2015) to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of CIC's 2013-2015 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of CIC's 2013-2015 medical payments for those claims in the sample.

CIC handles its Maine workers' compensation claims primarily in Omaha, Nebraska. CIC also utilizes the services of Thomas Quatararo of Robinson, Kriger & McCallum as its claims agent within the State, although none of the claims under review were adjusted by Attorney Quatararo.

The audit work was conducted as a desk audit.

The compliance tables found on pages 8 through 10 of this report are representative of Board findings as of September 14, 2016. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since September 14, 2016 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
  - Five (5) initial indemnity payments were made timely.
    - CIC's compliance rate for initial indemnity payments is 50%, which is below the Board's performance benchmark of 87%.
    - Five (5) initial indemnity payments were made late.
- Subsequent Indemnity Payments:
  - Seventy-six (76) subsequent indemnity payments were made timely.
  - Eight (8) subsequent indemnity payments were made late.
- Board Rules and Regulations Chapter 5 states in part, "The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider's bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider."
  - Fifty (50) medical payments were made timely.
  - Ten (10) medical payments were made late.

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for ten (10) claims.
- Average Weekly Wage:
  - Nine (9) AWWs were correct.
  - One (1) AWW was incorrect.
- Weekly Compensation Rate:
  - Nine (9) WCRs were correct.
  - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
  - The method used to calculate partial benefits was correct for four (4) claims.
  - The method used to calculate partial benefits was incorrect for three (3) claims.
- Amount Paid:
  - Four (4) claims were compensated correctly.
  - One (1) claim was underpaid (\$303.38 aggregately).
    - Since 09/14/2016, CIC paid the amount due.
  - Five (5) claims were overpaid (\$1,878.38 aggregately).
  - Collectively, the aforementioned errors resulted in a net overpayment of \$1,294.61 to injured workers.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5, provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of medical payments was reviewed for ten (10) claims.
- Amount Paid:
  - Medical payments sampled for seven (7) claims were correct.
  - Medical payments sampled for three (3) claims were incorrect.

◆ **Other significant issues**

- Box 2b (Was Employee Paid for ½ Day or More on Day of Injury?) must accurately reflect whether the employee was paid for ½ day or more on the day of injury. Board Rules and Regulations Chapter 8, Section 3 states, “When an employee is paid 1/2 day or more wages on the date of injury, the date of injury will not be considered a day of incapacity.”
  - Incorrect information was reported in Boxes 2b and 43 of the FROIs that were filed for six (6) claims.
- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board’s Forms and Petitions Manual.
  - Incorrect dates were reported in Box 22 of the MOPs that were filed for three (3) claims.

## PENALTIES

◆ Penalties payable to providers and/or injured employees

**Title 39-A M.R.S.A. Section 205(3)**

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

<b>CLAIM</b>	<b>PENALTY JUSTIFICATION</b>	<b>PENALTY EXPOSURE</b>
Ashley Clark vs. Appalachian Mountain Club Date of Injury: 9/9/14 Date ER Notified of Incapacity: 9/9/14 Claim # 86195 Board # 14020492	Payment for the 7-day waiting period was made 12/29/16, which was 835 days after compensation became due and payable (9/16/14).	\$1,500.00*
<b>Total Penalties to Injured Employees for Delays of Initial Indemnity Payments</b>		<b>\$1,500.00</b>

\*Paid



◆ **Penalties payable to the State General Fund**

**Title 39-A M.R.S.A. Section 359(2)**

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3<sup>rd</sup>-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), CIC must take corrective measures to address the following inadequacies:

- Failure to pay benefits accurately

**Title 39-A M.R.S.A. Section 360(2)**

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), CIC must take corrective measures to address the following inadequacies:

- Failure to pay benefits accurately

# COMPLIANCE TABLES

## ◆ Timeliness of Benefit Payments

### A. Initial Payment of Indemnity Benefits

			2013-2015	
			Number	Percent
Check Issued Within:				
0-14	Days	<b>Compliant</b>	5	50%
15-44	Days		5	50%
Total			10	100%

### B. Subsequent Payment of Indemnity Benefits

			2013-2015	
			Number	Percent
Check Issued Within:				
0-7	Days	<b>Compliant</b>	76	90%
8-37	Days		8	10%
Total			84	100%

### C. Medical Payments

			2013-2015	
			Number	Percent
Check Issued Within:				
0-30	Days	<b>Compliant</b>	50	83%
31+	Days		10	17%
Total			60	100%

◆ Accuracy of Indemnity Payments

D. Average Weekly Wage

		2013-2015	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	9	90%
Incorrect		1	10%
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Total		10	100%
		<hr/> <hr/>	

E. Weekly Compensation Rate

		2013-2015	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	9	90%
Incorrect		1	10%
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Total		10	100%
		<hr/> <hr/>	

F. Partial Benefits

		2013-2015	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	4	57%
Incorrect		3	43%
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Total		7	100%
		<hr/> <hr/>	

G. Amount Paid

		2013-2015	
		Number	Percent
Calculated:			
Correct	<b>Compliant</b>	4	40%
Underpaid		1	10%
Overpaid		5	50%
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Total		10	100%
		<hr/> <hr/>	

◆ Accuracy of Medical Payments

H. Amount Paid

				<b>2013-2015</b>	
				Number	Percent
Calculated:					
Correct	<b>Compliant</b>		7	70%	
Incorrect			3	30%	
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Total			10	100%	
				<hr/>	<hr/>