

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**T.H.E. Insurance Company
Engagement Date: October 31, 2018
Issue Date: September 16, 2019**

Office of Monitoring, Audit & Enforcement

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Executive Director

CONTENTS

SUMMARY	1
◆ Form filing.....	2
◆ Timeliness of benefit payments	4
◆ Accuracy of indemnity payments	5
◆ Accuracy of medical payments.....	6
◆ Other significant issues.....	7
PENALTIES	8
◆ Penalties payable to providers and/or injured employees.....	8
Title 39-A M.R.S.A. Section 205(3).....	8
◆ Penalties payable to the State General Fund.....	8
Title 39-A M.R.S.A. Section 359(2).....	8
Title 39-A M.R.S.A. Section 360(1)(A).....	10
Title 39-A M.R.S.A. Section 360(1)(B).....	9
Title 39-A M.R.S.A. Section 360(2).....	11
COMPLIANCE TABLES.....	12
◆ Form Filing.....	12
A. First Report of Occupational Injury or Disease (WCB-1).....	12
B. Wage Statement (WCB-2).....	12
C. Fringe Benefits Worksheet (WCB-2B).....	11
D. Memorandum of Payment (WCB-3 or WCB-4A).....	12
E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)	13
F. Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A)	13
G. Notice of Controversy (WCB-9)	13
H. Statement of Compensation Paid (WCB-11).....	13
◆ Timeliness of Benefit Payments	13
I. Initial Payment of Indemnity Benefits.....	13
J. Subsequent Payment of Indemnity Benefits.....	13
K. Medical Payments.....	13
◆ Accuracy of Indemnity Payments.....	15
L. Average Weekly Wage.....	15
M. Weekly Compensation Rate	15
N. Amount Paid.....	14
◆ Accuracy of Medical Payments	16
O. Amount Paid.....	16

SUMMARY

T.H.E. Insurance Company (T.H.E.) provides a wide variety of business insurance products including workers' compensation.

In June 2012, T.H.E. entered into an agreement with the Superintendent of the Maine Bureau of Insurance (Superintendent) and the Office of the Maine Attorney General for the purpose of bringing to a halt, without resort to an adjudicatory proceeding, violations of 39-A M.R.S.A. certified to the Superintendent by the Workers' Compensation Board (Board) pursuant to Title 39-A M.R.S.A. Section 359(2). The agreement was terminated on September 9, 2014.

The Audit Division of the Board examined two (2) claim files where indemnity benefits were paid for the period under examination (July 1, 2015 through June 30, 2018) as well as twenty (20) medical payments for the period under examination (July 1, 2015 through June 30, 2018) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of T.H.E.'s July 1, 2015 through June 30, 2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of T.H.E.'s July 1, 2015 through June 30, 2018 medical payments for those claims in the sample.

T.H.E. handles its Maine workers' compensation claims solely in Treasure Island, Florida. T.H.E. also utilizes the services of Thomas Quartararo, Esq. of Robinson Kriger & McCallum as its claims agent within the State, although neither of the claims under review were adjusted by Attorney Quartararo.

The audit work was conducted as a desk audit.

The Detailed Claims Information provided as an appendix of this report is representative of Board findings as of October 31, 2018. Since that time, the Audit Division has received additional information and form corrections.

Following is a discussion of the aforementioned Detailed Claims Information. This discussion also includes other significant issues identified by the audit.

The compliance tables found on pages 10 through 14 of this report are representative of Board findings as of October 31, 2018.

Following is a discussion of the aforementioned compliance tables and of the steps taken since October 31, 2018 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Form filing**

- Title 39-A M.R.S.A. and the Board Rules and Regulations provide the requirements for reports to the Board:

<i>WCB-1, First Report of Occupational Injury or Disease</i>	<i>39-A M.R.S.A. Section 303, Rules & Regs, Ch 8 Section 13, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-2, Wage Statement</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-2B, Fringe Benefits Worksheet</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-3, Memorandum of Payment (MOP)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 1 Section 1.3, 39-A M.R.S.A. Section 205(7), Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4, Discontinuance or Modification of Compensation</i>	<i>Rules & Regs, Ch 8 Section 11, Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4A, Consent Between Employer and Employee</i>	<i>Rules & Regs, Ch 8 Section 18</i>
<i>WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation</i>	<i>39-A M.R.S.A. Section 205(9)</i>
<i>WCB-9, Notice of Controversy (NOC)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-11, Statement of Compensation Paid</i>	<i>Rules & Regs, Ch 8 Section 1, Rules & Regs, Ch 8 Section 12</i>

- Failure to file any Board form within established time frames is a violation of Title 39-A M.R.S.A. Section 360(1) (A) or (B).
- First Report of Occupational Injury or Disease (WCB-1):
 - Zero (0) First Report of Occupational Injury or Disease forms were filed in accordance with the above requirements.
 - T.H.E.'s compliance rate for First Report of Occupational Injury or Disease filings is 0%, which is below the Board's performance benchmark of 85%.
 - Two (2) First Report of Occupational Injury or Disease forms were filed late.
- Wage Statement (WCB-2) and Fringe Benefits Worksheet (WCB-2B):
 - One (1) Wage Statement and one (1) Fringe Benefits Worksheet were filed in accordance with the above requirements.
 - Two (2) Wage Statements and two (2) Fringe Benefits Worksheets were filed late.

- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - One (1) Memorandum of Payment form and one (1) Notice of Controversy (“lost time”) form were filed in accordance with the above requirements.
 - T.H.E.’s compliance rate for Memorandum of Payment filings is 50%, which is below the Board’s performance benchmark of 85%.
 - T.H.E.’s compliance rate for Notice of Controversy filings is 100%, which is above the Board’s performance benchmark of 90%.
 - One (1) Memorandum of Payment form was filed late.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
 - Zero (0) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
 - One (1) Discontinuance or Modification of Compensation form was filed late.
 - One (1) Discontinuance or Modification of Compensation form was filed, but not required.
- (21 Day) Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A):
 - Zero (0) (21 Day) Certificate of Discontinuance or Reduction of Compensation forms were filed in accordance with the above requirements.
 - One (1) (21 Day) Certificate of Discontinuance or Reduction of Compensation form was required, but not filed.
- Statement of Compensation Paid (WCB-11):
 - Two (2) Statement of Compensation Paid forms were filed in accordance with the above requirements.
 - Two (2) Statement of Compensation Paid forms were required, but not filed.

◆ **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:
 - One (1) initial indemnity payment was made timely.
 - T.H.E.'s compliance rate for initial indemnity payments is 50%, which is below the Board's performance benchmark of 87%.
 - One (1) initial indemnity payment was made late.
- Subsequent Indemnity Payments:
 - Eight (8) subsequent indemnity payments were made timely.
 - Two (2) 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."
 - Fourteen (14) medical payments were made timely.
 - Six (6) 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 two (2) claims.
- Average Weekly Wage:
 - One (1) AWW was correct.
 - One (1) AWW was incorrect.
- Weekly Compensation Rate:
 - One (1) WCR was correct.
 - One (1) WCR was incorrect.
- Amount Paid:
 - One (1) claim was compensated correctly.
 - One (1) claim was underpaid (\$43,778.07).

◆ **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 two (2) claims.
- Amount Paid:
 - Medical payments sampled for two (2) claims were correct.

◆ **Other significant issues**

- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.

- Incorrect dates were reported in Box 24 of the MOPs that were filed for two (2) 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.”

A delay of an “other” indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Patricia Levesque vs. Central Maine Pyrotechnics Date of Injury: 7/22/17 Date ER Notified of Incapacity: 10/11/17 Claim # 8968 Board # 17016870	The claimant’s benefits were improperly discontinued on 1/8/18. Payment of accrued benefits has not yet been made.	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$1,500.00*

*This claim has been settled by Lump Sum Settlement and the Audit Division is not pursuing penalties (on behalf of the corresponding employee) arising from the violation cited.

◆ 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 3rd-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), T.H.E. must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
- Failure to pay or timely pay benefits

- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(1)(A)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(A) were found on the following claims:

Employee	Date of Injury	Forms Not Filed	Penalty Exposure
	7/22/17	WCB-11, Statement of Compensation Paid	\$100.00
	5/24/17	WCB-11, Statement of Compensation Paid	\$100.00
TOTAL:			\$200.00

Title 39-A M.R.S.A. Section 360(1)(B)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(B) were found on the following claims:

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
	7/22/17	WCB-1, Employer’s First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement ER of Injury	\$100.00
		WCB-2, Wage Statement Concurrent ER	\$100.00
		WCB-2B, Fringe Benefits Worksheet ER of Injury	\$100.00
		WCB-2B, Fringe Benefits Worksheet Concurrent ER	\$100.00
	5/24/17	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
TOTAL			\$800.00

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 360(2) and/or 359(2), T.H.E. must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
 - Failure to pay or timely pay benefits
 - Failure to pay benefits accurately
-
- T.H.E failed to respond/respond fully to the Exit Conference document requests and requests for additional information including but not limited to the following:
 - Failure to sign Exit Conference
 - Failure to provide requested form corrections
 - Failure to provide requested forms

COMPLIANCE TABLES

◆ Form Filing

A. First Report of Occupational Injury or Disease (WCB-1)

		7/1/15-6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		2	100%
Total		2	100%

B. Wage Statement (WCB-2)

		7/1/15-6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	33%
Late		2	67%
Total		3	100%

C. Fringe Benefits Worksheet (WCB-2B)

		7/1/15-6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	33%
Late		2	67%
Total		3	100%

D. Memorandum of Payment (WCB-3 or WCB-4A)

		7/1/15-6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Late		1	50%
Total		2	100%

E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)

7/1/15-6/30/18			
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		1	100%
<hr/>			
Total		1	100%

F. Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A)

7/1/15-6/30/18			
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Not Filed		1	100%
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Total		1	100%

G. Notice of Controversy (WCB-9)

7/1/15-6/30/18			
		Number	Percent
Received at the Board:			
Filed	Compliant	1	100%
<hr/>			
Total		1	100%

H. Statement of Compensation Paid (WCB-11)

7/1/15-6/30/18			
		Number	Percent
Received at the Board:			
Filed	Compliant	2	50%
Not Filed		2	50%
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Total		4	100%

◆ **Timeliness of Benefit Payments**

I. Initial Payment of Indemnity Benefits

			7/1/15-6/30/18	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	1	50%
15-44	Days		1	50%
Total			2	100%

J. Subsequent Payment of Indemnity Benefits

			7/1/15-6/30/18	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	8	80%
8-37	Days		2	20%
Total			10	100%

K. Medical Payments

			7/1/15-6/30/18	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	14	70%
31+	Days		6	30%
Total			20	100%

◆ **Accuracy of Indemnity Payments**

L. Average Weekly Wage

		7/1/15-6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	1	50%
Incorrect		1	50%
Total		2	100%

M. Weekly Compensation Rate

		7/1/15-6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	1	50%
Incorrect		1	50%
Total		2	100%

N. Amount Paid

		7/1/15-6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	1	50%
Underpaid		1	50%
Total		2	100%

◆ Accuracy of Medical Payments

O. Amount Paid

				7/1/15-6/30/18	
				Number	Percent
Calculated:					
Correct	Compliant		2	100%	
Total			<u>2</u>	<u>100%</u>	