

6. On July 23, 2009, the Board certified these findings to the Superintendent as required by 39-A M.R.S.A. § 359(2).
7. Company adjusters attended Board training on January 29 – 30, 2010. Company personnel attended a day of training with Board counsel on April 12, 2011. The Company continues internal training, as well.
8. Notwithstanding the findings of the Report and the consent decrees entered into with the Board, the Company has not undergone a formal review for accuracy of indemnity claims paid after January 1, 2008. By letter dated November 10, 2011, the Board advised the Company that an audit of indemnity claims with 2009 – 2011 dates of injury is about to be conducted (“2009 – 2011 Claims Audit”).

II

MAINE LAW

9. 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

10. The Company violated 39-A M.R.S.A. § 359(2) by engaging in a pattern of questionable claims-handling techniques through December 31, 2007.
11. The Superintendent is required, pursuant to the Board's July 23, 2009 certification of its findings that the Company engaged in a pattern of questionable claims-handling techniques and/or repeated unreasonably contested claims, to take appropriate action to bring those practices to a halt.

IV

COVENANTS

12. The Company shall comply with each provision of this Agreement.
13. The Company shall bring to a halt the pattern of questionable claims-handling techniques as set forth in this Agreement.
14. 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 claims personnel and employees of other entities handling claims for the Company 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 other entities handling claims for the Company comply with the requirements of the WCA;
- f. maintaining claims payment standards through education and supervision of in-house claims personnel and employees of other entities handling claims for the Company;
- 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 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 (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. 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.

15. The Company shall, for the period starting January 1, 2008 and ending December 31, 2008:
- a. submit to the Bureau of Insurance within 30 days of the execution of this Agreement, an electronic spreadsheet listing all claims adjusted in the above time period, excluding those discharged under 39-A M.R.S.A. § 352, for the purpose of allowing the Bureau to designate a statistically valid random sample of claims for the period (the "Designated Claims"), for further review by the Company;
 - b. review the Designated Claims, 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, within three (3) months after receiving the Designated Claims as determined by the Bureau, 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 Designated 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; 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 14, 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 other entities handling claims for the Company that were previously audited by the Board and subsequently corrected by the Company or other entity.

- 16. Should the Superintendent, in his sole 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 14, then the Company shall deliver a civil penalty to be determined at the sole discretion of the Superintendent but not exceeding 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 15.d, (including penalties and interest provided for in the WCA), or as may be further required pursuant to paragraph 17, resulting in compliance with the WCA in less than 93 percent of the claims required to be reviewed pursuant to those

paragraphs, then the Company shall deliver a civil penalty to be determined at the sole discretion of the Superintendent but not exceeding 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 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 25 below.

17. Should the Superintendent, in his sole discretion, determine within twelve (12) months after receiving either the Look-Back Report or the Board's report of the 2009 - 2011 Claims Audit that the Company, for any calendar year for which claims were reviewed, failed to achieve a 93% compliance rate in accurately calculating either (a) average weekly wage, (b) weekly compensation rate, (c) partial benefits, or (d) indemnity, the Company shall review all claims paid in each calendar year in which the Company was noncompliant for the specific purposes of identifying and correcting inaccurate payments to claimants. Should the Superintendent order such an expanded review, the Company shall within twelve (12) months complete the review and submit a report to the Superintendent setting forth the process employed to conduct the review and the results of the review. The Company shall provide, upon the Superintendent's request, any additional documentation reasonably necessary for the Superintendent to verify that the review was properly completed.
18. 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.

V

MISCELLANEOUS

19. 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 16 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.
20. Nothing in this agreement prohibits the Company from requesting the Superintendent to reconsider any exercise of his discretion under this Consent Agreement. The Company

acknowledges and agrees, however, that its waiver of hearing rights in paragraph 19(a) above and its appeal rights in paragraph 19(b) includes any right to a hearing or appeal based on the Superintendent's denial of (or failure to act upon) any such request.

21. 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.
22. The Company has been advised of its right to consult with counsel before executing this Agreement.
23. 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 other entity handling claims for the Company.
24. Nothing in this Agreement shall limit the ability of the Superintendent, in his sole 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. accuracy of the self-audit quarterly review described in paragraph 14; or
 - b. accuracy of the indemnity claim review described in paragraph 15 or paragraph 17.
25. The purpose of the self-audit quarterly review described in paragraph 14 and the indemnity claim review described in paragraphs 15 or 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 reviews described in paragraph 14, 15, and 17. 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 reviews described in paragraph 14, 15, and 17; or
 - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 16; or
 - c. otherwise violate Maine law.
26. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
27. This Agreement may be modified only by the written consent of all parties.

Dated: 5/8, 2012

THE FRANK GATES SERVICE COMPANY

By:

Its: Mark A. ... Executive Vice President
Printed Name and Title

Subscribed and sworn to before me this 8 day of May, 2012.

Notary Public

Doreen S. Koffman

Printed name

June 9 2016

Date commission expires

DOREEN S. KOFFMAN
Notary Public, State of New Jersey
My Commission Expires
June 09, 2016

Dated: May 11, 2012

**OFFICE OF THE MAINE ATTORNEY
GENERAL**

Jonathan R. Bolton
Assistant Attorney General

Effective
Date: May 14, 2012

MAINE BUREAU OF INSURANCE

Eric A. Cioppa
Superintendent

Exhibit B

Form of Certification

IN RE:
THE FRANK GATES SERVICE
COMPANY

)
)
) AFFIDAVIT OF
) CORPORATE OFFICER
)
)
) Docket No. INS-11-229
)
)
)

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-11-229.

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 14 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-11-229.

(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: _____