



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Paul R. LePage
GOVERNOR

Eric A. Cioppa
Superintendent

BY E-MAIL AND U.S.P.S.

September 25, 2012

Brenda G. Corey, CIPP
Vice President
Compliance and Regulatory Affairs Director
Sedgwick Claims Management Services, Inc.
1100 Ridgeway Loop Road, Suite 200
Memphis, Tennessee 38120

Re: Consent Agreement


Dear Ms. Corey:

I enclose an original Consent Agreement endorsed by Assistant Attorney General Jon Bolton and signed by Superintendent Cioppa. The effective date of the agreement is September 25, 2012.

Please let me know if you have any questions.

Thank you.

Sincerely,


Benjamin Yardley
Attorney
Property & Casualty Division

Encl.



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OFFICES LOCATED AT 76 NORTHERN AVENUE, GARDINER, MAINE 04345

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Customer Complaint: 1-800-300-5000

Fax (207) 624-8599

IN RE:

**SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.**

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)
) **CONSENT AGREEMENT**
) **Docket No. INS-12-230**
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THIS CONSENT AGREEMENT is entered into by and among SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. (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.A. § 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. The Company is organized and domiciled under the laws of the State of Illinois, and is licensed in Maine as a third-party administrator under License Number AFN55558, first issued in June 1998. The Company administers claims arising under the Maine Workers' Compensation Act of 1992, M.R.S.A. Title 39-A, as amended, and regulations of the Board issued thereunder (the "WCA").
3. In February 2007, the Board's Monitoring Audit & Enforcement Division (the "MAE Division") audited the records of the Company with respect to claims filed under the WCA with dates of injury during 2005. This audit focused on compliance with WCA requirements for form filing, timeliness of indemnity payments, and accuracy of indemnity benefits.
4. On August 30, 2007, the Board issued a Compliance Audit Report detailing its findings (the "2007 Report").
5. In April 2008, the Board and the Company entered into twelve consent decrees, in lieu of administrative hearings, addressing the findings in the Report. In one such decree (the "Consent Decree"), the Company agreed that it had "engaged in patterns of questionable claims-handling techniques in violation of Section 359(2)" of the WCA by failing to:
 - a. Use licensed claim adjusters,
 - b. File or timely file forms with the Board,
 - c. Pay medical benefits timely,
 - d. Pay Board-approved agreements timely,

- e. Pay claims accurately, and
 - f. Correct issues of non-compliance revealed in a prior Board 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. Between June 19 and 24, 2008, the Company attended Board training to address the claims-handling issues identified in the 2007 Report.
 8. In September 2008, the Company adopted a Corrective Action Plan at the request of the MAE Division to address specific issues raised in the 2007 Report. The MAE Division released the Company from the Corrective Action Plan in January 2010.
 9. Between March 29 and April 9, 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 through June 30, 2009, with dates of injury on or after January 1, 1993 (the "Examination"). The sample consisted of 49 indemnity claims. 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 Examination focused on whether the Company timely filed required Board forms, accurately calculated indemnity benefits and timely distributed benefit payments as required by the WCA.
 10. The Examination results showed that the Company's compliance ratios had generally improved over those established by the 2007 Report, but that the Company had not reached Board benchmarks for timely filing first reports of injury, memoranda of payment, notices of controversy, and initial indemnity payments. The Company's accuracy of indemnity payments was 55 percent. More specifically, 22 of the 49 indemnity claims had inaccurate indemnity payments. Errors included incorrect weekly compensation rate in one or more calculations in eight claims, unpaid waiting periods in five claims, the lost time claim did not exceed the waiting period in two claims, indemnity was paid beyond the employee's return to work date in two claims, tabulation errors in two claims, one day unpaid in one claim, and no offset for the employee's actual earnings in one claim and incorrect calculation under 39-A M.R.S. § 102(4)(B) in one claim. Cumulative underpayments (\$3,186.58) exceeded cumulative overpayments (\$1,756.57) in the claim files that had inaccurate indemnity payments. The Company did correct the underpayments. Overall accuracy of indemnity payments fell slightly compared to the 2007 Report. The Company's accuracy of indemnity payments was 55 percent.
 11. In March 2011, the Board's Monitoring Audit & Enforcement Division (the "MAE Division") again audited the records of the Company with respect to claims filed under the WCA with dates of injury during 2010. This audit focused on compliance with WCA requirements for timeliness and accuracy of indemnity payments.
 12. On May 26, 2011, the Board issued a Compliance Audit Report detailing its findings (the "2011 Report"). The 2011 Report's finding relevant to questionable claims-handling techniques that violated 39-A M.R.S.A. § 359(2) included inaccurate claims payments. Cumulative overpayments exceeded cumulative underpayments in the claim files that had inaccurate indemnity payments. Overall accuracy of indemnity payments fell to 38 percent from 55 percent found in the Examination.

13. In July 2011, the Board and the Company entered into six consent decrees, in lieu of administrative hearings, addressing the findings in the 2011 Report.
14. The Company has completed some formal reviews, under insurer audits, of claims.

II

MAINE LAW

15. 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

16. 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.
17. 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

18. The Company shall comply with each provision of this Agreement.
19. The Company shall bring to a halt the pattern of questionable claims-handling techniques as set forth in this Agreement.
20. 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. ensuring that supervisory and front-line staff are experienced in handling workers' compensation claims in Maine;
- c. training in-house claims personnel 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. maintaining claims payment standards through education and supervision of in-house claims personnel handling claims for the Company;
- f. implementing adequate claim review procedures, to include monitoring the accuracy and timeliness of WCB form filings and indemnity payments; and
- g. 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 (g) for four (4) successive calendar quarters starting with the fourth quarter of 2012. 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. The Company may assert the confidentiality of any work papers and documents so delivered as to any entity other than the Board or the Attorney General.

21. The Company shall, for the period starting January 1, 2005 and ending as of the effective date of this Agreement:
- a. submit to the Bureau of Insurance within thirty (30) days of the effective date of this Agreement, an electronic spreadsheet listing all claims adjusted in the above time period presented to the Company under the WCA, for the purpose of allowing the Bureau to designate a statistically valid random sample of claims, selected in accordance with National Association of Insurance Commissioners ("NAIC") standards to produce a 95 % confidence level and a 5 % upper error limit, for each calendar year (the "Designated Claims") for further review by the Company as set forth in this paragraph;
 - b. upon receiving the list of Designated Claims from the Superintendent, review the incapacity periods, and indemnity benefits, penalties and interest originally paid thereon;
 - c. recalculate the benefits, penalties and interest for the Designated Claims to ensure their compliance with the WCA;
 - d. pay to the appropriate claimants for the Designated Claims 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. 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 20, 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 entities for which the Company handles claims that were previously audited by the Board and subsequently corrected by the Company or other entity.

22. 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 20, then the Company shall deliver to the Superintendent a civil penalty to be determined at the sole and absolute discretion of the Superintendent, not to exceed Fifty-six Thousand Two Hundred Fifty Dollars (\$56,250), within thirty (30) days of receiving the determination, or
 - b. failed to correct deficiencies in indemnity benefits as required by 21.c., with the penalties and interest due thereon, pursuant to the WCA, in at least 93 percent of the claims required to be reviewed pursuant to paragraph 21, then the Company shall deliver to the Superintendent a civil penalty to be determined at the sole and absolute discretion of the Superintendent, not to exceed Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750), 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 30 below.

23. Should the Superintendent, in his sole and absolute discretion, determine, within nine (9) months after receiving the Look-Back Report, that the Company, for any calendar year for which Designated Claims were reviewed, 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, in his sole and absolute discretion, order the Company to review up to all other claims paid Company during the period identified in paragraph 21 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 three (3) months but not more than nine (9) months, (ii) upon completion of the review, submit a report to the Superintendent, in the 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, specified in the subparagraph above, in a reviewed claim, the Company shall correct such element and pay the related benefits, penalties and interest as required by the WCA.

24. 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

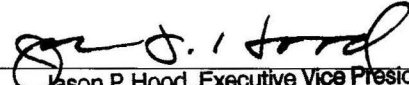
MISCELLANEOUS

25. 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 22 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.
26. 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 NAIC.


27. The Company has been advised of its right to consult with counsel before executing this Agreement.
28. 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.
29. 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, 2005;
 - b. accuracy of the self-audit quarterly review described in paragraph 20; or
 - c. accuracy of the indemnity claim review described in paragraph 21.
30. The purpose of the self-audit quarterly review described in paragraph 20 and the indemnity claim review described in paragraph 21 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 20 and paragraph 21 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 20 and paragraph 21 reviews; or
 - b. violate any provision of this Agreement other than as described in subsections (a) and (b) of paragraph 22; or
 - c. otherwise violate Maine law.
31. The effective date of this Agreement is the date entered in the Superintendent's signature line below.
32. This Agreement may be modified only by the written consent of all parties.

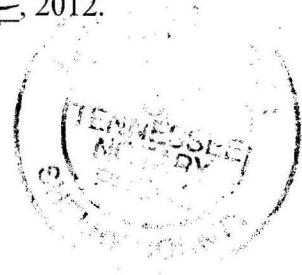
Dated: _____, 2012

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.

By: 
Jason P. Hood, Executive Vice President
Its: Chief Legal Officer and Secretary
Printed Name and Title

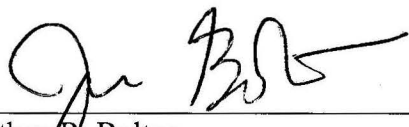
Subscribed and sworn to before me this 18th day of Sept, 2012.


Notary Public
Nancy D. Mattem
Printed name
August 1, 2016
Date commission expires



Dated: Sept 25, 2012

OFFICE OF THE MAINE ATTORNEY GENERAL


Jonathan R. Bolton
Assistant Attorney General

Effective
Date: Sept 25, 2012

MAINE BUREAU OF INSURANCE


Eric A. Cioppa
Superintendent

Exhibit B

Form of Certification

IN RE:

Sedgwick Claims Management Services, Inc.

)
)
) AFFIDAVIT OF CORPORATE OFFICER
)
) Docket No. INS-12-230
)
)

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-12-230.
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 20/paragraph 21] 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-12-230.

(name typed or printed)

(position typed or printed)
Sedgwick Claims Management Services, Inc.

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: