

COMPLIANCE AUDIT REPORT

STATE OF MAINE
WORKERS' COMPENSATION BOARD



W. R. Berkley Corporation Group
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Office of Monitoring, Audit & Enforcement

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SUMMARY

W. R. Berkley Corporation Group (Berkley) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined sixty (60) claim files where indemnity benefits were paid for the period under examination (2014-2015) as well as sixty (60) medical payments for the period under examination (2014-2015) 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 Berkley's 2014-2015 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Berkley's 2014-2015 medical payments for those claims in the sample.

Berkley handles its Maine workers' compensation claims primarily at Acadia Insurance Group (Acadia) in Westbrook, Maine. All claims under review were adjusted by Acadia.

The on-site audit work was conducted in Westbrook from August 8 through August 10, 2016.

The compliance tables found on pages 12 through 14 of this report are representative of Board findings as of May 25, 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 May 25, 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:
 - Fifty-eight (58) initial indemnity payments were made timely and five (5) claims received “salary continuation” from their respective employers.
 - Acadia’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 89%, which is above the Board’s performance benchmark of 87%.
 - Eight (8) initial indemnity payments were made late.
 - Three (3) late initial indemnity payments were made later than 30 days after they became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Five hundred (500) subsequent indemnity payments were made timely.
 - Ninety-nine (99) 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-five (55) medical payments were made timely.
 - Five (5) medical payments were made late.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
 - Two (2) mediation agreements, four (4) Consents Between Employer and Employee and one (1) decision were paid timely.

- One (1) mediation agreement was paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

◆ **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 sixty (60) claims.
- Average Weekly Wage:
 - Forty-six (46) AWWs were correct.
 - Fourteen (14) AWWs were incorrect.
- Weekly Compensation Rate:
 - Forty-six (46) WCRs were correct.
 - Fourteen (14) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for twenty-eight (28) claims.
 - The method used to calculate partial benefits was incorrect for four (4) claims.
- Amount Paid:
 - Eighteen (18) claims were compensated correctly.
 - Twenty-one (21) claims were underpaid (\$5,932.98 aggregately).
 - Since May 25, 2016, Acadia paid the amounts due.
 - Twenty-one (21) claims were overpaid (\$3,946.16 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$1,986.82 to injured workers.

In response to notice of these problem areas, Acadia has taken steps to improve future compliance by providing additional staff training and implementing new procedures to ensure accurate payments.

◆ **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 thirty-five (35) claims.
- Amount Paid:
 - Medical payments sampled for thirty-four (34) claims were correct.
 - Medical payments sampled for one (1) claim were incorrect.

◆ **Other significant issues**

- 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 nine (9) claims.
- Box 25 (Average Weekly Wage) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the average weekly wage (AWW) from Box 22 of the WCB-2, Wage Statement. If the initial AWW is estimated, a provisional AWW must be entered and indicated as such. Once known, Box 25 of the MOP is to be revised to reflect the correct AWW. Also, unless the employee is being paid at varying rates, Box 26 (Current Weekly Compensation Rate) of the MOP must accurately reflect the correct weekly compensation rate (WCR). If the initial WCR is estimated, a provisional WCR must be entered and indicated as such. See the Board's Forms and Petitions Manual.
 - The term "TBD" (to be determined) rather than an AWW and/or WCR was reported in Box 25 and/or 26 of the initial MOPs that were filed for seventeen (17) claims.
- Medical Treatment reported on the WCB-11, Statement of Compensation Paid form must not include expenses such as bill review and case management services. It should be reported as other expense. See the Board's Forms and Petitions Manual.
 - The auditor noted that payments for medical bill review services and/or case management services are reported as Medical Treatment on the WCB-11 for twenty-seven (27) 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 initial indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Kenneth Brown vs. Johnson & Jordan, Inc. Date of Injury: 9/9/15 Date ER Notified of Incapacity: 9/10/15 Claim # 20204283 Board # 15019123	No NOC was filed, and the initial indemnity payment was made 3/3/16, which was 161 days after compensation became due and payable (9/24/15).	\$1,500.00
Danielle Hinkley vs. Goodwill Industries of Northern New England Date of Injury: 3/23/14 Date ER Notified of Incapacity: 3/23/14 Claim # 20176303 Board # 14005699	No NOC was filed, and the initial indemnity payment was made 5/29/14, which was 49 days after compensation became due and payable (4/10/14).	\$950.00
Michael Michaud vs. West Branch Choppers, Inc. Date of Injury: 12/15/14 Date ER Notified of Incapacity: 1/5/15 Claim# 20190521 Board# 14027521	No NOC was filed, and the initial indemnity payment was made 4/10/15, which was 56 days after compensation became due and payable (2/13/15).	\$1,300.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$3,750.00

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Kenneth Brown vs. Johnson & Jordan, Inc. Date of Injury: 9/9/15 Date ER Notified of Incapacity: 9/10/15 Claim # 20204283 Board # 15019123	Payment for the 7-day waiting period was made 3/3/16, which was 143 days after compensation became due and payable (10/12/15).	\$1,500.00
Todd Emery vs. Precision Tanks, Inc. Date of Injury: 1/10/14 Date ER Notified of Incapacity: 1/11/14 Claim # 20172332 Board # 14000577	Payment for the 7-day waiting period was made 12/9/16, which was 1040 days after compensation became due and payable (2/3/14).	\$1,500.00
Albert Grant vs. Arbo Transport Co., Inc. Date of Injury: 12/4/15 Date ER Notified of Incapacity: 12/5/15 Claim # 20208650 Board # 15026286	The claimant was totally incapacitated from 12/5/15 through 1/4/16. Payment for two (2) days (1/3/16 & 1/4/16) of that incapacity was made 12/9/16, which was 326 days after compensation became due and payable (1/18/16).	\$1,500.00
Danielle Hinkley vs. Goodwill Industries of Northern New England Date of Injury: 3/23/14 Date ER Notified of Incapacity: 3/23/14 Claim # 20176303 Board # 14005699	Payment for the 7-day waiting period was made 5/29/14, which was 41 days after compensation became due and payable (4/18/14).	\$550.00
Erik Holbrook vs. Auburn Transport Date of Injury: 11/15/14 Date ER Notified of Incapacity: 11/17/14 Claim # 20188264 Board # 14024190	Payment for the 7-day waiting period was made 12/9/16, which was 712 days after compensation became due and payable (12/28/14).	\$1,500.00
Alana Magyar vs. Wildwood Corp. Date of Injury: 7/25/15 Date ER Notified of Incapacity: 8/1/15 Claim # 20201827 Board # 15015264	The claimant’s benefits were improperly reduced on 8/21/15. Payment of accrued benefits was made 12/9/16, which was 462 days after compensation became due and payable (9/4/15).	\$1,500.00
Reid Pomerleau vs. Yvon’s Supersonic Car Wash, Inc. Date of Injury: 7/9/15 Date ER Notified of Incapacity: 7/10/15 Claim # 20200803 Board # 15013558	The claimant’s benefits were improperly reduced on 7/31/15. Payment of accrued benefits was made 12/9/16, which was 483 days after compensation became due and payable (8/14/15).	\$1,500.00
Colleen Prout vs. Alliance Printers, LLC Date of Injury: 8/19/15 Date ER Notified of Incapacity: 8/20/15 Claim # 20203109 Board # 15017501	Payment for the 7-day waiting period was made 12/9/16, which was 446 days after compensation became due and payable (9/20/15).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Jessica Roberge vs. Nicholson & Associates CPA, P.A. Date of Injury: 10/28/15 Date ER Notified of Incapacity: 10/29/15 Claim # 20206704 Board # 15023155	The claimant was totally incapacitated from 11/19/15 through 11/30/15. Payment for that incapacity was made 12/9/16, which was 361 days after compensation became due and payable (12/14/15).	\$1,500.00
James Szafranski vs. Kingsley Pines, Inc. Date of Injury: 6/3/15 Date ER Notified of Incapacity: 7/13/15 Claim # 20200454 Board # 15013091	The claimant was totally incapacitated from 7/19/15 through 10/4/15. Payment for one (1) day (7/19/15) of that incapacity was made 12/9/16, which was 418 days after compensation became due and payable (10/18/15).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$14,050.00

◆ **Penalties payable to injured employees and the Workers’ Compensation Board Administrative Fund**

Title 39-A M.R.S.A. Section 324(2)(A)

“Except as otherwise provided by Section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the Board may assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

A violation subject to penalty under Section 324(2) was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Mark Davis vs. Forest Freight LLC Date of Injury: 6/3/14 Date ER Notified of Incapacity: 6/4/14 Claim # 20180719 Board # 14012344	One (1) day (12/9/14) of compensation was paid 625 days after the date of the corresponding mediation signed 12/3/14.	\$123,000.00
Total		\$123,000.00

◆ **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 360(2) and/or 359(2), Berkley/Acadia 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 360(2) and/or 359(2), Berkley/Acadia 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

			2014-2015	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	63	89%
15-44	Days		5	7%
45+	Days		3	4%
Total			71	100%

B. Subsequent Payment of Indemnity Benefits

			2014-2015	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	500	83%
8-37	Days		99	17%
Total			599	100%

C. Medical Payments

			2014-2015	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	55	92%
31+	Days		5	8%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2014-2015	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	7	88%
10 +	Days		1	12%
Total			8	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2014-2015	
		Number	Percent
Calculated:			
Correct	Compliant	46	77%
Incorrect		14	23%
Total		60	100%

F. Weekly Compensation Rate

		2014-2015	
		Number	Percent
Calculated:			
Correct	Compliant	46	77%
Incorrect		14	23%
Total		60	100%

G. Partial Benefits

		2014-2015	
		Number	Percent
Calculated:			
Correct	Compliant	28	88%
Incorrect		4	12%
Total		32	100%

H. Amount Paid

		2014-2015	
		Number	Percent
Calculated:			
Correct	Compliant	18	30%
Underpaid		21	35%
Overpaid		21	35%
Total		60	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2014-2015	
		Number	Percent
Calculated:			
Correct	Compliant	34	97%
Incorrect		1	3%
Total		<u>35</u>	<u>100%</u>