

**Market Conduct Examination**  
**The Harleysville Worcester Insurance Company**

**355 Maple Street  
Harleysville, PA 19438-2297**

**NAIC Company Code: 26182**

**NAIC Exam Tracking System: ME008-M21**

**Examination Period:  
January 1, 2006 through December 31, 2006**



**STATE OF MAINE  
BUREAU OF INSURANCE**

*IT IS HEREBY CERTIFIED THAT THE ANNEXED REPORT OF EXAMINATION FOR*

**Harleysville Worcester Insurance Company**

has been compared with the original on file in this bureau and that it is a correct transcript thereof and of the whole of said original.

***IN WITNESS WHEREOF,***

I have hereunto set my hand and affixed the official seal of this Office at the City of Gardiner this

\_\_\_\_\_ th day of \_\_\_\_\_, 2009

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Mila Kofman  
Superintendent  
Bureau of Insurance

I hereby certify that the attached report of examination dated May 11, 2009 of The Harleysville Worcester Insurance Company, Harleysville, PA has been filed in the Bureau of Insurance as a public document.

This report has been reviewed.

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Eric A. Cioppa  
Deputy Superintendent

This \_\_\_\_\_ day of \_\_\_\_\_, 2009

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September 28, 2009

The Honorable Mila Kofman  
Superintendent of Insurance  
State Of Maine  
Bureau of Insurance  
State House Station #34  
Augusta, ME 04333

Dear Superintendent:

Pursuant to the certification of findings in accordance with 39-A M.R.S.A § 359(2) from the State of Maine Workers' Compensation Board ("WCB") and under the authority of 24-A § 221 and in conformity with your instructions, a targeted market conduct examination has been made of:

**Harleysville Worcester Insurance Company**  
**(NAIC Company Code 26182)**

hereinafter referred to as the "Company". The examination covered indemnity claims that were open between January 1, 2006 and December 31, 2006, for employees residing in the State of Maine or claimants involved in losses in the State of Maine. The file review phase of the examination for submitted Workers Compensation claims was conducted as a desk audit at the offices of the Bureau of Insurance located at:

**124 Northern Ave**  
**Gardiner, Maine**

The following report is respectfully submitted:

## **HISTORY OF ENGAGEMENT**

Pursuant to 39-A M.R.S.A. §153(9), the WCB established a monitoring, audit and enforcement (“MAE”) program. The functions of the MAE program include but are not limited to auditing timeliness of payments and the claims handling practices of insurers including the requirements of 39-A M.R.S.A. § 359. The WCB audited year 2002 claims and reported its results in a Compliance Audit Report dated August 10, 2005. Findings outlined in the audit report included late and inaccurate filing of forms, untimely and inaccurate indemnity payments, and failure to properly record penalties assessed by the WCB. The WCB determined that the pervasiveness and magnitude of the findings constituted a pattern of questionable claims-handling techniques. In December 2005, the WCB and the Company entered in to a Consent Decree establishing “patterns of questionable claims-handling techniques” and assessing fines therefor.

In accordance with 39-A M.R.S.A. § 359(2), the WCB certified the audit findings to the Superintendent of Insurance. Section 359(2) requires the Superintendent of Insurance to take appropriate action to bring such practices to a halt.

## **SCOPE OF EXAMINATION**

In order to meet the statutory responsibilities of the Superintendent of Insurance, a determination as to whether or not the “pattern of questionable claims-handling techniques” found by the WCB still exists is in order. The examination was conducted in accordance with Title 24-A M.R.S.A. and the National Association of Insurance Commissioners (“NAIC”) Market Conduct Examiners’ Handbook and Guidelines (the “Handbook”) for purposes of sample determination and overall guidance. Specific procedures from the Handbook that apply to verifying the Company’s compliance with certain form filing and claim processing procedures, as outlined in the Maine Workers’ Compensation Act (“Title 39-A”) and the WCB Rules and Regulations, were used as part of this examination. Specifically, the scope of the examination consisted of reviewing all indemnity claims that were open during the examination period of January 1, 2006 through December 31, 2006 with dates of injury on or after January 1, 1993. The examination was intended to determine if all WCB forms were filed timely and accurately, if indemnity claims were paid in a timely and accurate manner and if assessed penalties were recorded correctly.

## **METHODOLOGY**

Company records indicated that thirty-six claims were open between January 1, 2006 and December 31, 2006. Of these files, there were nine lost time claims. All nine files were reviewed.

## **STANDARDS**

The following standards were applied and tested through review of the selected claim files. All references are from either Title 39-A, WCB Rules and Regulations or MAE Protocols. The specific Handbook standards and tests developed by the examiners are outlined in this section.

### **(1) Standard G-3**

**Claims are resolved in a timely manner.**

**Test Step 2:** Determine if initial and subsequent claim payments are made in a timely manner.

Standard G-3 establishes a general framework for the timely settlement of claims in accordance with 39-A M.R.S.A. § 205(2).

### **(2) Standard G-4**

**The Company responds to claim correspondence in a timely manner.**

**Test Step 1:** Determine if correspondence (e.g. WCB forms) related to claims is responded to (filed) as required by applicable statutes, rules, regulations or protocols.

WCB-1, First Report of Injury	39-A M.R.S.A. § 303
WCB-2, Wage Statement	39-A M.R.S.A. § 303
WCB-2A, Schedule of Dependent(s) And Filing Status	39-A M.R.S.A. § 303
WCB-3, Memorandum of Payment	WCB Rules & Regs, Ch 1 § 1.1
WCB-9, Notice of Controversy	WCB Rules & Regs, Ch 1 § 1.1
WCB-11, Statement of Compensation Paid	WCB Rules & Regs, Ch 8 § 1

Standard G-4 establishes a general framework for the timely correspondence of claim documentation. Failure to file any WCB forms within established time frames is a violation of 39-A M.R.S.A. § 360(1)(A) or (B).

### **(3) Standard G-5**

**Claim files are adequately documented.**

**Test Step 3:** Determine if quality of the claim documentation (e.g. wage statements, schedule of dependents and filing status) is sufficient to support or justify the ultimate claim determination and meets state requirements.

Standard G-5 establishes a general framework for the adequacy of claim file documentation to correctly calculate claim payments in accordance with 39-A M.R.S.A. § 212, § 213, § 215.

#### (4) Standard G-14

##### Loss statistical coding is complete and accurate.

**Test Step 4:** Determine that the Company accurately codes the penalties separately from the loss amounts.

Standard G-14 establishes a general framework that encompasses all loss data coding. For purposes of ratemaking, penalties do not constitute elements of loss. The following Title 39-A M.R.S.A. sections apply: § 205(3), § 324(2)(B), § 360(5).

#### APPLICATION OF TESTS

This section outlines the application of the tests to the claims selected for review. The results of testing those open indemnity claims during the examination period are delineated in the following tables:

##### **TEST 1: Verify that initial and subsequent indemnity payments were made in accordance with 39-A M.R.S.A. § 205(2).**

	<b>Paid Timely</b>	<b>Not Paid Timely</b>	<b>NA</b>	<b>% In Compliance</b>	<b>2002 Audit</b>
<b>Initial Payment</b>	2	0	7	100%	25%
<b>Subsequent Payments</b>	57	18	0	76%	76%

It should be noted that 15 of the 18 subsequent payments not paid timely were from one claim in which multiple benefit payments were lumped together. Five (5) of these late payments exceed 37 days and are therefore subject to penalty under § 205 (3).

##### **TEST 2: Verify the timely filing of the following forms with the Workers' Compensation Board in accordance with the applicable Statute, Rules & Regulations or Protocol:**

	<b>Form Type</b>	<b>Filed Timely</b>	<b>Not Filed Timely</b>	<b>Not Filed</b>	<b>N/A</b>	<b>2006 Compliance Pct%</b>	<b>2002 Audit (A)</b>
<b>Test 1</b>	<b>WCB-1</b>	6	0	0	3	100%	79%
<b>Test 1</b>	<b>WCB-2</b>	1	1	1	6	33%	22%
<b>Test 1</b>	<b>WCB-2A</b>	1	2	0	6	33%	0%
<b>Test 1</b>	<b>WCB-3</b>	2	0	0	7	100%	40%

<b>Test 1</b>	<b>WCB-4</b>	1	0	0	8	100%	56%
<b>Test 1</b>	<b>WCB-9</b>	2	0	0	7	100%	33%
<b>Test 1</b>	<b>WCB-11 Initial</b>	1	1	0	7	50%	25%
<b>Test 1</b>	<b>WCB-11 Annual/final</b>	4	0	1	4	80%	N/A

(A) - For comparative purposes, these compliant percentages are taken from the WCB Compliance Audit Report conducted on 2002 data.

**TEST 3: Verify that indemnity payments are calculated accurately for both total and partial incapacity.**

	<b>Calculated Correctly</b>	<b>Calculated Incorrectly</b>	<b>NA</b>	<b>% of Compliance</b>	<b>2002 Audit</b>
<b>Average Weekly Wage (AWW)</b>	3	1	5	75%	75%
<b>Partial &amp; Total Indemnity Payments</b>	3	1	5	75%	37.5%

**Results of testing:**

The incorrectly calculated AWW and indemnity payment were due to one claim where the Company did not calculate the AWW properly. The Company incorrectly included the first week of employment in the AWW calculation even though doing so reduced the AWW and led to the claimant receiving less than the full benefit due. In addition to the incorrectly calculated AWW, the claimant was further underpaid because the Company incorrectly deducted one day's benefits due to a holiday during the incapacity period.

**COMMENTS AND RECOMMENDATIONS**

**Comment # 1:**

Test #1 was designed to determine compliance with Title 39-A requirements for timely payment of initial and subsequent benefits. The percentage of compliance for initial payments made timely improved substantially. The compliance percentage concerning timeliness of subsequent payments did not change. One claim reviewed had multiple payments lumped together. This delayed one benefit period payment a total of 63 days. Section 205(2) of the Maine Workers' Compensation Act requires that "...subsequent incapacity payments must be made weekly and in a timely manner". This applies both to total and partial disability payments and regardless of the



employer's regular pay cycle. Thus, a worker must receive indemnity payments every week even if his or her regular pay period is every two weeks.

**Recommendation:**

It is recommended that the Company continue to develop and implement policies and procedures to ensure that claims adjusters are aware of WCB payment requirements and that manager's monitor performance regularly to ensure compliance.

**Comment #2:**

Test #2 was designed to determine compliance with Title 39-A's form filing requirements. As shown in the Test #2 table, there has been an improvement in the timely filing of most required forms. The errors noted under the WCB-2 And WCB-2A were the result of the adjuster not being aware that these forms were still required when a Notice of Controversy ("WCB-9") was filed.

**Recommendation:**

It is recommended that the Company develop protocols and procedures to train and monitor its adjusting staff in order to ensure an adequate understanding of Maine requirements, including timely filing of WCB forms.

**Comment #3:**

Test #3 was designed to verify accurate calculation of the AWW and determine if indemnity payments were calculated accurately for both total and partial incapacity. The accuracy of calculating the AWW remained consistent with the WCB audit and the accuracy of the determination of indemnity benefits increased to an acceptable level.

**Recommendation:**

It is recommended that the Company continue to train claims adjusters to ensure they understand Title 39-A and that managers continue to monitor performance to ensure compliance with Maine law.

**Comment #4:**

The WCB audit noted that the Company had recorded penalties assessed under Title 39-A as elements of loss. Sections 205(3), 324(2) (B) and 360(5) state that such penalties are not an element of loss for purposes of establishing rates for workers' compensation insurance. There were no occurrences of penalties to test during the examination period.

**Recommendation:**

It is recommended that the Company properly account for and record such penalties.

## CONCLUSION

This examination reviewed all workers' compensation indemnity claims for Maine employees that were open during the period of January 1, 2006 through December 31, 2006 with dates of injury occurring on or after January 1, 1993. While there has been an improvement, there are still areas that need attention to bring them into acceptable levels of compliance. The Company must continue to improve the weak areas and maintain those performance levels that do meet compliance requirements.

## ACKNOWLEDGMENT

The courtesy and cooperation extended by the officers and employees of the Company during the course of the examination is hereby acknowledged. The examination was conducted and is respectfully submitted by the undersigned.

STATE OF MAINE

COUNTY OF KENNEBEC, SS

Kendra L. Godbout, being duly sworn according to law, deposes and says that in accordance with the authority vested in her by Mila Kofman, Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, she has made an examination on the condition and affairs of the

### **Harleysville Worcester Insurance Company**

as described in the scope of examination section of the report, subscribed to by her, is true to the best of her knowledge and belief.

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Kendra L. Godbout  
Director of Financial Analysis

Subscribed and sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2009

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Notary Public  
My commission expires: