

REPORT OF MARKET REGULATION EXAMINATION



Maine Insurance Guaranty Association

Guaranty Fund Management Services
One Bowdoin Square
Boston, MA 02114

Examination Period:
July 1, 2008 through June 30, 2009

In accordance with the authority vested in me, I have instructed the Bureau of Insurance to perform an examination of the Maine Insurance Guaranty Association as of July 1, 2008. As such, enclosed with this letter is one certified copy of the examination report intended for appropriate circulation to board of trustee members.

Mila Kofman
Superintendent of Insurance
Maine Bureau of Insurance

Date

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October 6, 2010

The Honorable Mila Kofman
Superintendent of Insurance
Bureau of Insurance
34 State House Station
Augusta, ME 04333-0034

Dear Superintendent Kofman:

Under the authority of 24-A M.R.S.A. §§ 221 and 4445, and in conformity with your instructions, The State of Maine Bureau of Insurance (“Bureau”) staff has made a targeted market conduct examination of:

Maine Insurance Guaranty Association

hereinafter referred to as the “Association”.

The following report is respectfully submitted.

EXECUTIVE SUMMARY

This summary of the limited scope market conduct examination of the Association is intended to provide an overview of the examination results. The body of the report provides details of the scope of the examination, tests conducted, findings and recommendations and, if warranted, subsequent Association action(s).

The following report is a summary of all substantive issues found along with related recommendations and, if applicable, subsequent actions of the Association. The limited scope market conduct examination resulted in recommendations with regard to Association Operations/Management, Complaint Handling and Claims. However examination results, obtained through transactional testing of selected claims, showed that the Association is in substantial compliance with all tested criteria.

HISTORY

The Maine Legislature created the Association as a non-profit unincorporated legal entity in 1969 to provide a mechanism for the payment of covered claims under certain insurance policies and to avoid financial loss to claimants or policyholders due to the insolvency of an insurer. The Association is responsible for carrying out its obligations under the Maine Insurance Guaranty Association Act. 24-A M.R.S.A. §§ 4431 – 4452. The Association is funded by assessments on insurers writing in Maine with said assessments recouped from the insurance-buying public through rates and premiums.

Guaranty Fund Management Services (“GFMS”) is a non-profit association formed by the Association and its counterparts in the New England states, Virginia and the District of Columbia to assist those guaranty associations in carrying out their statutory obligations.

This market conduct examination was conducted on the Association and was called pursuant to 24-A M.R.S.A. §4445. The market conduct examination was conducted by the Bureau’s Market Regulation staff.

SCOPE

Bureau staff conducted a limited scope market conduct examination of the Association at GFMS’s office, One Bowdoin Square, Boston, Massachusetts for the period of July 1, 2008 to June 30, 2009.

A tailored examination approach was developed to perform the market conduct examination of the Association using guidance from and standards of the 2009 *NAIC Market Regulation Handbook* (“Handbook”), the State of Maine insurance laws, regulations and bulletins.

Bureau staff reviewed these business areas:

- Association Operations/Management
- Complaint Handling
- Claims

Because GFMS acts in effect as a third-party administrator for the Association, Bureau staff also assessed GFMS’s internal control environment. This assessment consists of identifying controls, determining if the controls have been designed to accomplish its intended purpose and verifying that the control is functioning as intended. The assessment provides an understanding of the key controls that GFMS management uses to run its business and to meet key objectives consistent with applicable laws and regulations related to market conduct activities.

The form of this report is “Report by Test”¹ as described in Chapter 15, Section A, 4.b of the Handbook.

Bureau staff reviewed workers’ compensation and liability claims with dates of injury after December 31, 1992 and that were open during the examination period. Transactional testing was used to measure Association compliance with Maine’s applicable claim-handling statutes.

FINDINGS

A. Company Operations/Management

Standard 1

The regulated entity has an up-to-date, valid internal or external audit program.
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Findings:

Internal—self-audit program

The Association has not established an internal self-audit procedure manual. The Association does not have a written procedure for self-audits, nor did it have a record of any self-audits for the period of this examination. There is no organized method for Association management to receive meaningful information from its own staff about the Association’s ability to comply, or actual compliance, with Maine law.

Internal—consultant audit program

The Association and the claim operation of GFMS has been audited for several years by Navigant Consulting (Navigant). In an audit conducted in 2008, Navigant made a series of observations and recommendations, substantially similar to the findings in this examination, explained more fully below. The Association did not appear to have acted on any of Navigant’s recommendations.

External audit program

The Association has not established an external audit procedure manual. The Association has no procedure for external audits, nor did it contract for an external audit for the period of this examination. There is no organized method for Association management to receive meaningful information from independent outside sources about the Association’s ability to comply, or actual compliance, with Maine law.

¹ Report by Test “is where each test applied during the examination is stated and the results are reported.”

Recommendations: The Association should develop a written procedure and follow-up program to audit TPAs to measure their compliance with Maine's claim-handling requirements. The Association's should adopt an internal and external auditing program designed to measure its own compliance with these requirements. The Association should ensure that all adjusters employed by its TPAs are properly licensed.

Standard 2

The regulated entity has appropriate controls, safeguards and procedures for protecting the integrity of computer information.

Findings:

The Association has written procedures and a manual for protecting its computerized information. The company's systems are password protected. The Association has hourly off-line data back up. Information is encrypted, with the exception noted in Standard 10, below. The Association has off-site storage of backup tapes.

Recommendations: None.

Standard 3

The regulated entity has antifraud initiatives in place that are reasonably calculated to detect, prosecute and prevent fraudulent insurance acts.

Findings:

The Association has not established any antifraud initiatives or written procedures for the prevention, detection and prosecution of fraudulent insurance acts. The company has not incorporated the fraud language on the appropriate claim forms. The Association has not trained its staff in antifraud initiatives. The Association has not filed the required annual fraud reports with the Bureau.

Recommendations: The Association should develop a written procedure and follow-up program for training its own staff and auditing files to detect, prosecute and prevent fraudulent insurance acts. The Association should train the staff of TPAs retained to handle claims on its behalf to comply with 24-A M.R.S.A. M.R.S.A. § 2186.

Standard 4

The regulated entity has a valid disaster recovery plan.

Findings:

The Association has written procedures for disaster recovery. The Association has hourly off-line data back up. Information is encrypted. The Association has off-site storage of backup tapes. The Association undergoes an annual full system test.

Recommendations: The Association should ensure that its storage vendor is SAS 70 compliant.

Standard 5

Contracts between the regulated entity and entities assuming a business function or acting on behalf of the regulated entity, such as, but not limited to, managing general agents (MGAs), general agents (GAs), third-party administrators (TPAs) and management agreements, must comply with applicable licensing requirements, statutes, rules and regulations.

Findings:

The Association has one TPA contract. This contract allows the TPAs to settle claims “as they see fit”, in line with the company’s own claim handling requirements according to Association management. As described above, the Association does not have a scheduled audit procedure of its TPAs and therefore does not monitor their compliance with Maine law. The Association has, as a result of this examination, started to verify that the TPAs are employing licensed adjusters.

Recommendations: The Association should develop a written procedure and follow-up program to ensure that its TPAs are licensed, meet HIPAA requirements, and handle claims consistent with Maine statutes.

Standard 7

Records are adequate, accessible, consistent and orderly and comply with state record retention requirements.

Findings:

The Association’s records are accessible. Records are maintained for at least six (6) years after the relevant file is closed.

Recommendations: none

Standard 9

The regulated entity cooperates on a timely basis with examiners performing the examinations.

Findings:

The timely cooperation and the professionalism of its senior management team are acknowledged.

Recommendations: none

Standard 10

The regulated entity has procedures for the collection, use and disclosure of information gathered in connection with insurance transactions so as to minimize any improper intrusion into the privacy of applicants and policyholders.

Findings:

The Association has no written procedures in place to appropriately limit access to personal information. Social security numbers of claimants were observed as transferred without encryption.

Recommendations: The Association should develop a written procedure and follow-up program in conjunction with the National Conference of Insurance Guaranty Funds (NCIGF). The NCIGF advocates the adoption and implementation of data security procedures that include provisions for the protection of sensitive statutorily protected information.

Standard 11

The regulated entity has developed and implemented written policies, standards and procedures for the management of insurance information.

Findings:

The Association has no written procedures or training manuals for the management of sensitive non-public information.

Recommendations: The Association should develop a written procedure and follow-up program in conjunction with the NCIGF. The NCIGF advocates the adoption and implementation of data security procedures that include provisions for the protection of sensitive non-public information.

B. Complaint Handling**Standard 1**

All complaints are recorded in the required format on the regulated entity's complaint register.

Findings:

Association has no written procedure or documented complaint register for recording and monitoring complaints.

Recommendations: Maine’s law related to keeping records of complaints applies only to domestic stock and legal reserve insurers. Nevertheless, the failure to record and monitor complaints could be considered an unfair trade practice under Maine law. The Association should therefore develop a written procedure and follow-up program for recording and monitoring complaints.

C. Claims

Standard 3
Claims are resolved in a timely manner.

TEST 1:

Verify the timeliness of subsequent indemnity payments made in accordance with 39-A M.R.S.A. § 205(2). Tested the eleven (11) workers’ compensation claims with subsequent indemnity payments.

Verify the timeliness of approved agreements payments made timely in accordance with 39-A M.R.S.A. § 324(1). Tested the three (3) workers’ compensation claims with payments made pursuant to an approved agreement.

Verify the timeliness of health care providers’ payments in accordance with WCB Rule 5.7(2). Tested the twelve (12) workers’ compensation claims with payments to health care providers.

Payment Type	Testing	Paid Timely	Not Paid Timely	% Compliant
Subsequent Payments	Paid weekly	494	15	97%
Approved agreement payments	Paid with in 10 days of receipt of agreement	3	0	100%
Health Care Provider Payments	Paid within 30 days of receipt of bill	198	1	99%

Findings:

The examination revealed that almost all files complied with tested criteria.

Observations: The examiner noted that those subsequent payments that appear as not paid timely were subject to receipt of the injured workers’ post-injury weekly wage statements. It is noted that those post injury gross weekly wage statements were not sent to the Association timely.

Recommendations: The Association should issue subsequent payments weekly.

Standard 4

The regulated entity responds to claims correspondence in a timely manner.

TEST 2:

Verify the timely filing of the following forms with the WCB in accordance with 39-A M.R.S.A. § 360 (1) (A) or (B) and WCB Rules and Regulations. Tested the thirteen (13) workers' compensation claims with forms filed with the WCB.

Form Type	Testing	Filed Timely	Not Filed Timely	% Compliant
WCB-4	When the employee's benefits are discontinued, reduced or modified this form must be sent to the WCB	3	0	100%
WCB-11 Annual	15 days of anniversary date	11	0	100%
WCB-11 Final	when no further payments are anticipated	5	0	100%

Findings:

All files reviewed were found compliant for tested criteria.

Recommendations: None

Standard 5

Claim files are adequately documented.

Findings:

All files reviewed were well-documented.

Recommendations: none

Claims are accurately paid.

TEST 3:

Verify that payments are calculated correctly in accordance with 39-A M.R.S.A. § 212, § 213 and § 215. Tested the eleven (11) workers' compensation claims with one or more indemnity payments.

Claim	Correct	Incorrect	% Compliant
Indemnity Paid	11	0	100%

Findings:

All files reviewed were found compliant for tested criteria.

Recommendations: None

Standard 6
Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

Findings:

The examination revealed that the Association is not HIPAA compliant.

Recommendations: The Association should develop a written procedure and follow-up program in conjunction with The National Conference of Insurance Guaranty Funds which advocates the adoption and implementation of data security procedures that include provisions for the protection of sensitive non-public information.

Standard 7
Regulated entity claim forms are appropriate for the type of product.

Findings:

The examination revealed that no fraud warnings are noted. In addition, no annual fraud report is issued.

Recommendations: The Association should develop a written procedure and follow-up program for training staff and auditing files to detect, prosecute and prevent fraudulent insurance acts. The Association should train its staff and TPAs retained to handle claims on its behalf to comply with 24-A M.R.S.A. § 2186.

ACKNOWLEDGMENT

The courtesy and cooperation extended by the officers and employees of the Association during the course of the examination are gratefully acknowledged.

The examination was conducted and is respectfully submitted by the undersigned.

STATE OF MAINE

COUNTY OF KENNEBEC, SS

Allan C. Armstrong, being duly sworn according to law, deposes and says that in accordance with the authority vested in him by Mila Kofman, Superintendent of Insurance, pursuant to the Insurance Laws of the State of Maine, he has made an examination on the condition and affairs of the

Maine Insurance Guaranty Association

of Boston, MA for the period July 1, 2008 through June 30, 2009, and that the foregoing report of examination, subscribed to by him, is true to the best of his knowledge and belief.

The following examiners from the Bureau of Insurance assisted:

Mary Masi

Allan C. Armstrong, CWCLA
Market Regulation Division Manager

Subscribed and sworn to before me

This 6 day of, Oct 2010

Brenda Cadwallader, Notary Public
My commission expires: 10/21/2014