

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Cherokee Insurance Company
Engagement Date: October 1, 2018
Issue Date: June 4, 2019**

Office of Monitoring, Audit & Enforcement

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SUMMARY

Cherokee Insurance Company (Cherokee) provides a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined two (2) claim files where indemnity benefits were paid for the period under examination (January 1, 2016 through June 30, 2018) as well as sixty (60) medical payments for the period under examination (January 1, 2016 through June 30, 2018) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of Cherokee's January 1, 2016 through June 30, 2018 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Cherokee's January 1, 2016 through June 30, 2018 medical payments for those claims in the sample.

Cherokee handles its Maine workers' compensation claims solely in Sterling Heights, Michigan. As of October 1, 2018, Cherokee failed to maintain a claims agent within the state as required under Title 39-A M.R.S.A. Section 102(14). Since that time, Cherokee has designated Broadspire as its Section 102(14) claims agent.

The audit work was conducted as a desk audit.

The compliance tables found on pages 11 through 15 of this report are representative of Board findings as of October 1, 2018. 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 October 1, 2018 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Form filing**

- Title 39-A M.R.S.A. and the Board Rules and Regulations provide the requirements for reports to the Board:

<i>WCB-1, First Report of Occupational Injury or Disease</i>	<i>39-A M.R.S.A. Section 303, Rules & Regs, Ch 8 Section 13, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-2, Wage Statement</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-2B, Fringe Benefits Worksheet</i>	<i>39-A M.R.S.A. Section 303</i>
<i>WCB-3, Memorandum of Payment (MOP)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 1 Section 1.3, 39-A M.R.S.A. Section 205(7), Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4, Discontinuance or Modification of Compensation</i>	<i>Rules & Regs, Ch 8 Section 11, Rules & Regs, Ch 8 Section 12</i>
<i>WCB-4A, Consent Between Employer and Employee</i>	<i>Rules & Regs, Ch 8 Section 18</i>
<i>WCB-8, (21 Day) Certificate of Discontinuance or Reduction of Compensation</i>	<i>39-A M.R.S.A. Section 205(9)</i>
<i>WCB-9, Notice of Controversy (NOC)</i>	<i>Rules & Regs, Ch 1 Section 1.1, Rules & Regs, Ch 3 Section 4</i>
<i>WCB-11, Statement of Compensation Paid</i>	<i>Rules & Regs, Ch 8 Section 1, Rules & Regs, Ch 8 Section 12</i>

- Failure to file any Board form within established time frames is a violation of Title 39-A M.R.S.A. Section 360(1) (A) or (B).
- First Report of Occupational Injury or Disease (WCB-1):
 - Zero (0) First Report of Occupational Injury or Disease forms were filed in accordance with the above requirements.
 - Cherokee’s compliance rate for First Report of Occupational Injury or Disease filings is 0%, which is below the Board’s performance benchmark of 85%.
 - Two (2) First Report of Occupational Injury or Disease forms were filed late.
- Wage Statement (WCB-2) and Fringe Benefits Worksheet (WCB-2B):
 - One (1) Wage Statement and zero (0) Fringe Benefits Worksheets were filed in accordance with the above requirements.
 - One (1) Wage Statement and one (1) Fringe Benefits Worksheet were filed late.
 - One (1) Fringe Benefits Worksheet was required, but not filed.
 - Since October 1, 2018, Cherokee submitted that one (1) Fringe Benefits Worksheet.

- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - One (1) Memorandum of Payment form was filed in accordance with the above requirements.
 - Cherokee's compliance rate for Memorandum of Payment filings is 50%, which is below the Board's performance benchmark of 85%.
 - One (1) Memorandum of Payment form was filed late.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
 - Zero (0) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
 - Two (2) Discontinuance or Modification of Compensation forms were filed late.
 - One (1) Discontinuance or Modification of Compensation form was required, but not filed.
- Statement of Compensation Paid (WCB-11):
 - Zero (0) Statement of Compensation Paid forms were filed in accordance with the above requirements.
 - Four (4) Statement of Compensation Paid forms were required, but not filed.

◆ **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:
 - Two (2) initial indemnity payments were made timely.
 - Cherokee’s compliance rate for initial indemnity payments is 100%, which is above the Board’s performance benchmark of 87%.
- Subsequent Indemnity Payments:
 - Fifty (50) subsequent indemnity payments were made timely.
 - Three (3) 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-four (54) medical payments were made timely.
 - Six (6) medical payments were made late.

◆ **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 two (2) claims.
- Average Weekly Wage:
 - One (1) AWW was correct.
 - One (1) AWW was incorrect.
- Weekly Compensation Rate:
 - One (1) WCR was correct.
 - One (1) WCR was incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for zero (0) claims.
 - The method used to calculate partial benefits was incorrect for two (2) claims.
- Amount Paid:
 - Zero (0) claims were compensated correctly.
 - Two (2) claims were underpaid (\$1,509.65 aggregately).
 - Since October 1, 2018, Cherokee paid the amounts due.

◆ **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 two (2) claims.
- Amount Paid:
 - Medical payments sampled for zero (0) claims were correct.
 - Medical payments sampled for two (2) claims 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.

- An incorrect date was reported in Box 22 of the MOP filed for one (1) claim.

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

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Edgard Borki vs. Central Transport Intl. Date of Injury: 7/22/16 Date ER Notified of Incapacity: 7/23/16 Claim #WC42738 Board # 16015967	Payment for the 7-day waiting period was made 5/20/19 which was 1,017 days after compensation became due and payable (8/6/16).	\$1,500.00
Total Penalties to Injured Employees for Delays of “Other” Indemnity Payments		\$1,500.00

◆ 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 359(2) and/or 360(2), Cherokee must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

Title 39-A M.R.S.A. Section 360(1)(A)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(A) were found on the following claims:

Employee	Date of Injury	Forms Not Filed	Penalty Exposure
Borki, Edgard	7/22/16	WCB-11, Statement of Compensation Paid, Interim	\$100.00
		WCB-11, Statement of Compensation Paid, Annual (2)	\$200.00
Gile, James	12/15/17	WCB-11, Statement of Compensation Paid, Interim	\$100.00
TOTAL			\$400.00

Title 39-A M.R.S.A. Section 360(1)(B)

“The Board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Violations subject to penalty under Section 360(1)(B) were found on the following claims:

Employee	Date of Injury	Forms Filed Late	Penalty Exposure
Borki, Edgard	7/22/16	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2, Wage Statement	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
Gile, James	12/15/17	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-2B, Fringe Benefits Worksheet	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
TOTAL			\$800.00

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), Cherokee must take corrective measures to address the following inadequacies:

- Failure to file or timely file forms with the Board
- Failure to pay or timely pay benefits
- Failure to pay benefits accurately

COMPLIANCE TABLES

◆ Form Filing

A. First Report of Occupational Injury or Disease (WCB-1)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		2	100%
Total		2	100%

B. Wage Statement (WCB-2)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Late		1	50%
Total		2	100%

C. Fringe Benefits Worksheet (WCB-2B)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		1	50%
Not Filed		1	50%
Total		2	100%

D. Memorandum of Payment (WCB-3 or WCB-4A)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Late		1	50%
Total		2	100%

E. Discontinuance or Modification of Compensation (WCB-4 or WCB-4A)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		2	67%
Not Filed		1	33%
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Total		3	100%

F. Statement of Compensation Paid (WCB-11)

		1/1/16 – 6/30/18	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Not Filed		4	100%
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Total		4	100%

◆ **Timeliness of Benefit Payments**

G. Initial Payment of Indemnity Benefits

			1/1/16 – 6/30/18	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	2	100%
15-44	Days		0	0%
Total			2	100%

H. Subsequent Payment of Indemnity Benefits

			1/1/16 – 6/30/18	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	50	94%
8-37	Days		3	6%
Total			53	100%

I. Medical Payments

			1/1/16 – 6/30/18	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	54	90%
31+	Days		6	10%
Total			60	100%

◆ Accuracy of Indemnity Payments

J. Average Weekly Wage

		1/1/16 – 6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	1	50%
Incorrect		1	50%
Total		2	100%

K. Weekly Compensation Rate

		1/1/16 – 6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	1	50%
Incorrect		1	50%
Total		2	100%

L. Partial Benefits

		1/1/16 – 6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	0	0%
Incorrect		2	100%
Total		2	100%

M. Amount Paid

		1/1/16 – 6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	0	0%
Underpaid		2	100%
Total		2	100%

◆ Accuracy of Medical Payments

N. Amount Paid

		1/1/16 – 6/30/18	
		Number	Percent
Calculated:			
Correct	Compliant	0	0%
Incorrect		2	100%
Total		2	100%