

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Great American Insurance Group
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Office of Monitoring, Audit & Enforcement

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SUMMARY

The Great American Insurance group of affiliated companies (collectively GAIG, which includes independently-operated business units Alternative Markets and Strategic Comp) provide a wide variety of business insurance products including workers' compensation.

The Audit Division of the Maine Workers' Compensation Board (Board) examined three (3) claim files where indemnity benefits were paid for the period under examination (2015-2017) as well as sixteen (16) medical payments for the period under examination (2015-2017) 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 GAIG's 2015-2017 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of GAIG's 2015-2017 medical payments for those claims in the sample.

Alternative Markets handles its Maine workers' compensation claims primarily in Parsippany, New Jersey. It also employs American Equity Underwriters (AEU), located in Metairie, Louisiana and Philadelphia, Pennsylvania, as a third-party administrator (TPA). In addition, Alternative Markets utilizes the services of Jeff Lee of Custard Insurance Adjusters located in Portland, Maine as its claims agent within the State; although none of the claims under review were adjusted by Mr. Lee. Strategic Comp handles its Maine workers' compensation claims primarily in Albany, New York and Alpharetta, Georgia. Strategic Comp also utilizes the services of Thomas, Quartararo, Esq. of Robinson Kriger & McCallum located in Portland, Maine as its claims agent within the State; although none of the claims under review were adjusted by Attorney Quartararo.

The audit work was conducted as a desk audit.

The compliance tables found on pages 12 through 16 of this report are representative of Board findings as of June 25, 2018. Since that time, the Audit Division has received additional information, missing form filings, form corrections, an indemnity payment and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since June 25, 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):
 - One (1) First Report of Occupational Injury or Disease form was filed in accordance with the above requirements.
 - GAIG’s compliance rate for First Report of Occupational Injury or Disease filings is 34%, 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):
 - Two (2) Wage Statements and (2) Fringe Benefits Worksheets were filed in accordance with the above requirements.
 - One (1) Wage Statement and one (1) Fringe Benefits Worksheet were required, but not filed.
 - Since June 25, 2018, GAIG submitted that one (1) Wage Statement and that one (1) Fringe Benefits Worksheet.

- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - Zero (0) Memorandum of Payment forms were filed in accordance with the above requirements.
 - GAIG's compliance rate for Memorandum of Payment filings is 0%, which is below the Board's performance benchmark of 85%.
 - Two (2) Memorandum of Payment forms were filed late.
 - One (1) Memorandum of Payment form was required, but not filed.
 - Since June 25, 2018, GAIG submitted that one (1) Memorandum of Payment form.
- Discontinuance or Modification of Compensation (WCB-4 or WCB-4A):
 - Two (2) Discontinuance or Modification of Compensation forms were filed in accordance with the above requirements.
 - One (1) Discontinuance or Modification of Compensation form was required, but not filed.
 - Since June 25, 2018, GAIG submitted that one (1) Discontinuance or Modification of Compensation form.
- 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:
 - One (1) initial indemnity payment was made timely.
 - GAIG’s compliance rate for initial indemnity payments is 34%, which is below the Board’s performance benchmark of 87%.
 - Two (2) initial indemnity payments were made late.
 - One (1) late initial indemnity payments was made later than 30 days after it became due and payable, in violation of Section 205(2) and subject to penalty under Section 205(3).
- Subsequent Indemnity Payments:
 - Three (3) subsequent indemnity payments were made timely.
 - Two (2) 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.”
 - Fifteen (15) medical payments were made timely.
 - One (1) medical payment was 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 three (3) claims.
- Average Weekly Wage:
 - One (1) AWW was correct.
 - Two (2) AWWs were incorrect.
- Weekly Compensation Rate:
 - One (1) WCR was correct.
 - Two (2) WCRs were incorrect.
- Amount Paid:
 - One (1) claim was compensated correctly.
 - One (1) claim was underpaid (\$126.61).
 - Since June 25, 2018, GAIG paid the amount due.
 - One (1) claim was overpaid (\$141.48).
 - Collectively, the aforementioned errors resulted in a net overpayment of \$14.87 to injured workers.

◆ **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 three (3) claims.
- Amount Paid:
 - Medical payments sampled for three (3) claims were correct.

◆ **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 that was filed for one (1) claim.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in box 43 of the WCB-1, Employer's First Report of Occupational Injury or Disease (FROI). See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs and/or Boxes 43a and/or 43b of the FROIs that were filed for two (2) claims.
- Box 19b (To(Return Date)) of the WCB-4, Discontinuance or Modification of Compensation must accurately reflect the date the incapacity ended. See the Board's Forms and Petitions Manual.
 - An incorrect date was reported in Box 19b of the WCB-4, Discontinuance or Modification of Compensation form that was 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.”

A delay of an initial indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Shane Keene vs. Auburn Associates, LLC Date of Injury: 10/25/15 Date ER Notified of Incapacity: 10/26/15 Claim #803502257 Board #15028280	No NOC was filed and the initial indemnity payment was made 12/10/15, which was 31 days after compensation became due and payable (11/9/15).	\$ 50.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$ 50.00

◆ **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), GAIG 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
- Documented failure to comply with auditor requests regarding weekly payroll information

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
	11/3/16	WCB-11, Statement of Compensation Paid	\$100.00
	1/29/17	WCB-11, Statement of Compensation Paid	\$100.00
	10/25/15	WCB-11, Statement of Compensation Paid (2)	\$200.00
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
	11/3/16	WCB-3, Memorandum of Payment	\$100.00
	1/29/17	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
	10/25/15	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
TOTAL			\$800.00

* Paid AIU.

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), GAIG 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
- Documented failure to comply with auditor requests regarding weekly payroll information

COMPLIANCE TABLES

◆ Form Filing

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

		2015-2017	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	34%
Late		2	66%
Total		3	100%

B. Wage Statement (WCB-2)

		2015-2017	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	67%
Not Filed		1	33%
Total		3	100%

C. Fringe Benefits Worksheet (WCB-2B)

		2015-2017	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	67%
Not Filed		1	33%
Total		3	100%

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

		2015-2017	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		2	67%
Not Filed		1	33%
Total		3	100%

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

2015-2017			
		Number	Percent
Received at the Board:			
Filed	Compliant	2	67%
Not Filed		1	33%
Total		3	100%

F. Statement of Compensation Paid (WCB-11)

2015-2017			
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Not Filed		4	100%
Total		4	100%

◆ **Timeliness of Benefit Payments**

G. Initial Payment of Indemnity Benefits

			2015-2017	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	1	34%
15-44	Days		1	33%
45+	Days		1	33%
Total				100%

H. Subsequent Payment of Indemnity Benefits

			2005-2017	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	3	60%
8-37	Days		2	40%
Total			5	100%

I. Medical Payments

			2015-2017	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	15	94%
31+	Days		1	6%
Total			16	100%

◆ Accuracy of Indemnity Payments

J. Average Weekly Wage

		2015-2017	
		Number	Percent
Calculated:			
Correct	Compliant	1	34%
Incorrect		2	66%
<hr/>			
Total		3	100%
		<hr/> <hr/>	

K. Weekly Compensation Rate

		2015-2017	
		Number	Percent
Calculated:			
Correct	Compliant	1	34%
Incorrect		2	66%
<hr/>			
Total		3	100%
		<hr/> <hr/>	

L. Amount Paid

		2015-2017	
		Number	Percent
Calculated:			
Correct	Compliant	1	34%
Underpaid		1	33%
Overpaid		1	33%
<hr/>			
Total		3	100%
		<hr/> <hr/>	

◆ **Accuracy of Medical Payments**

M. Amount Paid

		2015-2017	
		Number	Percent
Calculated:			
Correct	Compliant	3	100%
Total		<u>3</u>	<u>100%</u>