

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Protective Insurance Company
Engagement Date: May 16, 2019
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Office of Monitoring, Audit & Enforcement

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SUMMARY

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

In January 2014, Protective entered into an agreement with the Superintendent of the Maine Bureau of Insurance and the Office of the Maine Attorney General for the purpose of bringing to a halt, without resorting to an adjudicatory proceeding, violations of Title 39-A M.R.S.A. certified to the Superintendent by the Board pursuant to Title 39-A M.R.S.A. Section 359(2). Protective was released from that agreement on August 22, 2016.

The Audit Division of the Maine Workers' Compensation Board (Board) examined four (4) claim files where indemnity benefits were paid for the period under examination April 1, 2016 through March 31, 2019 as well as sixty (60) medical payments for the period under examination April 1, 2016 through March 31, 2019 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 Protective's April 1, 2016 through March 31, 2019 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of Protective's April 1, 2016 through March 31, 2019 medical payments for those claims in the sample.

Third-party Administrator, York Risk Services, handled Protective's Maine workers' compensation claims primarily in their Cross Lanes, West Virginia and Albany, New York offices. Protective also utilizes the services of Robert W. Bower, Jr., Esq. of Norman, Hanson & DeTroy, LLC as its claims agent within the State, although none of the claims under review were adjusted by Attorney Bower.

The audit work was conducted as a desk audit.

The compliance tables found on pages 13 through 17 of this report are representative of Board findings as of March 31, 2019. 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 March 31, 2019 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.
 - Protective’s compliance rate for First Report of Occupational Injury or Disease filings is 25%, which is below the Board’s performance benchmark of 85%.
 - Three (3) 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 two (2) Fringe Benefits Worksheets were filed in accordance with the above requirements.
 - Two (2) Wage Statements and two (2) Fringe Benefits Worksheets were filed late.
- Memorandum of Payment (WCB-3 or WCB-4A) and Notice of Controversy (WCB-9):
 - Zero (0) Memorandum of Payment forms and zero (0) Notice of Controversy (“lost time”) forms were filed in accordance with the above requirements.

- Protective’s compliance rate for Memorandum of Payment filings is 0%, which is below the Board’s performance benchmark of 85%.
- Protective’s compliance rate for Notice of Controversy filings is 0%, which is below the Board’s performance benchmark of 90%.
- Four (4) Memorandum of Payment forms and one (1) Notice of Controversy (“lost time”) form were filed late.
- 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 March 31, 2019, Protective submitted that one (1) Discontinuance or Modification of Compensation form.
- (21 Day) Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A):
 - One (1) (21 Day) Certificate of Discontinuance or Reduction of Compensation form was filed in accordance with the above requirements.
- Statement of Compensation Paid (WCB-11):
 - Three (3) Statement of Compensation Paid forms were filed in accordance with the above requirements.
 - Three (3) Statement of Compensation Paid forms were filed late.

In response to notice of this problem area, Protective has taken steps to improve future compliance by providing additional staff training and requiring supervisory review of forms to be 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:
 - Zero (0) initial indemnity payments were made timely.
 - Protective’s compliance rate for initial indemnity payments is 0%, which is below the Board’s performance benchmark of 87%.
 - Four (4) initial indemnity payments were made late.
 - One (1) late initial indemnity payment 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:
 - One hundred fifty-three (153) subsequent indemnity payments were made timely.
 - Ten (10) 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-eight (58) medical payments were made timely.
 - Two (2) 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).
 - One (1) provisional order was paid timely.

In response to notice of these problem areas, Protective has taken steps to improve future compliance by providing additional staff training regarding those actions necessary to ensure timely payments.

◆ **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 four (4) claims.
- Average Weekly Wage:
 - Four (4) AWWs were correct.
- Weekly Compensation Rate:
 - Four (4) WCRs were correct.
- Amount Paid:
 - Two (2) claims were compensated correctly.
 - Two (2) claims were overpaid (\$1,429.65 aggregately).
 - Collectively, the aforementioned errors resulted in a net overpayment of \$1,429.65 to injured workers.

In response to notice of these problem areas, Protective has taken steps to improve future compliance by providing additional staff training regarding those actions necessary 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 four (4) claims.
- Amount Paid:
 - Medical payments sampled for four (4) 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.
 - 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 (First Report). 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 three (3) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 24 of the MOPs that were filed for two (2) 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.”

Delay of initial indemnity payments, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Paul McGloin vs. RJ Tingler Inc. Date of Injury: 5/5/18 Date ER Notified of Incapacity: 5/25/18 Claim # IW-00014223 Board # 18026839	No NOC was filed, and the initial indemnity payment was made 11/13/18, which was 61 days after compensation became due and payable (9/13/18).	\$1,500.00
Total Penalties to Injured Employees for Delays of Initial Indemnity Payments		\$1,500.00

Delay of “other” indemnity payments, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Paul McGloin vs. RJ Tingler Inc. Date of Injury: 5/5/18 Date ER Notified of Incapacity: 5/25/18 Claim # IW-00014223 Board # 18026839	Payment for the 7-day waiting period has not yet been made. The claimant’s benefits were improperly discontinued on 2/5/19. Payment of accrued benefits was made 4/24/2020, which was 430 days after it became due and payable (2/19/2019).	\$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 referrals under Section 359(2) and/or 360(2), Protective 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)(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
	1/8/18	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-11, Statement of Compensation Paid, Interim	\$100.00
	1/31/19	WCB-3, Memorandum of Payment	\$100.00
	10/5/17	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00
		WCB-3, Memorandum of Payment	\$100.00
		WCB-11, Statement of Compensation Paid, Interim	\$100.00
	5/5/18	WCB-1, Employer's First Report of Occupational Injury or Disease	\$100.00*
		WCB-3, Memorandum of Payment	\$100.00
		WCB-4, Discontinuance or Modification of Compensation	\$100.00
		WCB-11, Statement of Compensation Paid, Interim	\$100.00
Total:			\$1,300.00

*paid

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 referrals under Section 360(2) and/or 359(2), Protective 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)

		4/1/2016-3/31/2019	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		4	100%
Total		4	100%

B. Wage Statement (WCB-2)

		4/1/2016-3/31/2019	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	50%
Late		2	50%
Total		4	100%

C. Fringe Benefits Worksheet (WCB-2B)

		4/1/2016-3/31/2019	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	50%
Late		2	50%
Total		4	100%

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

		4/1/2016-3/31/2019	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Late		4	100%
Total			100%

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

4/1/2016-3/31/2019			
		Number	Percent
Received at the Board:			
Filed	Compliant	2	67%
Not Filed		1	33%
Total		<u>3</u>	<u>100%</u>

F. Certificate of Discontinuance or Reduction of Compensation (WCB-8 or WCB-4A)

4/1/2016-3/31/2019			
		Number	Percent
Received at the Board:			
Filed	Compliant	1	100%
Total		<u>1</u>	<u>100%</u>

G. Notice of Controversy (WCB-9)

4/1/2016-3/31/2019			
		Number	Percent
Received at the Board:			
Filed	Compliant		0%
Late		1	100%
Total		<u>1</u>	<u>100%</u>

H. Statement of Compensation Paid (WCB-11)

4/1/2016-3/31/2019			
		Number	Percent
Received at the Board:			
Filed	Compliant	3	50%
Late		3	50%
Total		<u>6</u>	<u>100%</u>

◆ **Timeliness of Benefit Payments**

I. Initial Payment of Indemnity Benefits

			4/1/2016-3/31/2019	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	0	0%
15-44	Days		3	75%
45+	Days		1	25%
Total			4	100%

J. Subsequent Payment of Indemnity Benefits

			4/1/2016-3/31/2019	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	153	94%
8-37	Days		10	6%
Total			163	100%

K. Medical Payments

			4/1/2016-3/31/2019	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	58	97%
31+	Days		2	3%
Total			60	100%

L. Payment of Approved Agreements, Orders, Decisions

			4/1/2016-3/31/2019	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	1	100%
Total			1	100%

◆ **Accuracy of Indemnity Payments**

M. Average Weekly Wage

		4/1/2016-3/31/2019	
		Number	Percent
Calculated:			
Correct	Compliant	4	100%
Total		4	100%

N. Weekly Compensation Rate

		4/1/2016-3/31/2019	
		Number	Percent
Calculated:			
Correct	Compliant	4	100%
Total		4	100%

O. Amount Paid

		4/1/2016-3/31/2019	
		Number	Percent
Calculated:			
Correct	Compliant	2	50%
Underpaid		1	25%
Overpaid		1	25%
Total		4	100%

◆ Accuracy of Medical Payments

P. Amount Paid

		4/1/2016-3/31/2019	
		Number	Percent
Calculated:			
Correct	Compliant	4	100%
Total		<u>4</u>	<u>100%</u>