

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

UNION CARBIDE CORPORATION

Administrative Proceeding No. 22-IC-02131

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION
AND DIRECTING CORRECTIVE ACTION AND ASSESSING PENALTY

NOW COMES Allan L. McVey, Insurance Commissioner of the State of West Virginia (hereinafter, "Commissioner"), who after consideration of *the Report of Self-Insured Market Conduct Compliance Examination* (hereinafter, the "*Examination Report*") of Union Carbide Corporation (hereinafter, "Union Carbide") for the audit period ending March 31, 2022, make the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. A Self-Insured Compliance Audit concerning the operational affairs of Union Carbide for the period ending March 31, 2022, was conducted in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq.* by auditors duly appointed by the Commissioner. The Self-Insured Compliance Audit began on June 22, 2022 and concluded on July 20, 2022.

2. On or about September 1, 2022, the examiner filed with the Commissioner, pursuant to W. Va. Code § 33-2-9(j)(2), the *Examination Report*.

3. A true copy of the *Examination Report* was provided to Union Carbide and Union Carbide was notified pursuant to W. Va. Code § 33-2-9(j)(2) that it had ten (10) days after receipt of the *Examination Report* to file a submission or rebuttal with the Commissioner.

4. As set forth in the *Examination Report*, the examination focused on the methods used by Union Carbide to manage its operations for each of the business areas examined, including whether and

how Union Carbide, a self-insured employer, complies with West Virginia's statutory and regulatory law.

5. The exam discovered one (1) area where Union Carbide failed to achieve 100% compliance with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered Union Carbide's submissions, if any, prior to issuing these findings of fact, conclusions of law and order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter of, and the parties to this proceeding.

2. This proceeding is pursuant to and in accordance with W.Va. Code §33-2-9, W.Va. Code §23-2-9, W.Va. Code §23-2C-22, W.Va. Code §33-2-21 and W.Va. Code R. §85-18-1, *et seq*

3. As detailed in the *Examination Report*, Union Carbide failed to comply with provisions West Virginia law as follows:

Claims Standard M.3 (*Three (3) violations*) The Self-Insured Employer did not properly close three claims in EDI.

4. The Commissioner is charged with the responsibility of verifying Union Carbide's continued compliance with West Virginia Law.

5. The Commissioner has determined that Union Carbide should be assessed a penalty for violating the aforementioned standard.

ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), as a result of his review of the *Examination Report*, the examination work papers, and Union Carbide's response therefore, it is **ORDERED** as follows:

1. The referenced and attached *Examination Report* is hereby **ADOPTED** and **APPROVED**

and, by this reference, incorporated herein and made a part hereof;

2. Union Carbide shall endeavor to comply with the recommendation contained in the *Examination Report*;

3. Union Carbide shall continue to monitor its compliance with applicable West Virginia law;

4. Union Carbide shall specifically cure the violations and deficiencies identified in the *Examination Report* so as to bring itself into compliance and conformity with West Virginia law, as set forth hereinabove, to the extent such has not already been completed and/or accomplished;

5. Union Carbide shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Union Carbide's changes to its procedures and/or internal policies to ensure compliance with West Virginia law, and shall further incorporate all recommendations of the Commissioner's examiners and address all violations specifically cited in the *Examination Report*;

6. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;

7. Union Carbide shall make reasonable changes to the CAP if and as directed by the Commissioner within 30 days of its receipt of the Commissioner's changes to, or disapproval of the CAP;

8. Union Carbide shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and

9. Union Carbide shall pay an administrative penalty in the amount of One Thousand Five Hundred Dollars (\$1,500.00) for its non-compliance with West Virginia law as set forth hereinabove, the assessment of which penalty is in lieu of any other regulatory penalty and shall be remitted within 30 calendar days of the date this order is entered.

Entered this 17th day of October, 2022.



Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner

Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2022



Union Carbide Corporation

7501 State Highway 185 North
Seadrift, TX 77983

TPA

Smart Casualty Claims
602 Virginia Street East Suite 400
Charleston, WV 25301

Examination Number 22-IC-02131

Date Prepared:
09/01/2022

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09/01/2022

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with West Virginia Code §§ 33-2-9, 33-2-10(b), 33-2-21(a), 23-1-1, 23-2-9(b)(1) & (2), 23-2C-22 and West Virginia Code of State Rules Title 85, a Market Conduct examination has been made for the period of April 01, 2019 through March 31, 2022 on the Workers' Compensation self-insured claims handling of

Union Carbide Corporation
7501 State Highway 185 North
Seadrift, TX 77983

hereinafter referred to as the "Self-Insured Employer." The following report of the findings of this examination is herewith respectfully submitted.

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

The Self-Insured Employer failed to comply with previous exam recommendations for Standard (C.10). The recommendation stated the TPA/Employer should close and file claims timely to the WVOIC through EDI for compliance. Please note that Standard C.10 is now M.3.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination (“examination”) was initiated to determine the compliance of Union Carbide Corporation with the West Virginia statutes, rules and regulations governing the self-administration of workers’ compensation claims

The examination work related to Union Carbide Corporation commenced June 22, 2022 and concluded July 20, 2022. Union Carbide Corporation maintains an electronic environment; the majority of the examination work was conducted by electronic virtual private network through the Third-Party Administrator’s (“TPA’s”) Smart Casualty Claims computer systems. Due to the limited number of claims for Union Carbide Corporation during the examination period, the entire claim population was reviewed. There were no (0) complaints or grievances filed against the Self-insured Employer during the period under examination.

The following are areas of concern:

- Element of review M. 3.

Three (3) claims were found to be administratively closed in the TPA system; however, the update to “closed” claim status was not uploaded to EDI.

HISTORY AND PROFILE

West Virginia Operations (WVO) is owned by Union Carbide Corporation, a subsidiary of The Dow Chemical Company. Union Carbide Corporation became a wholly owned subsidiary of The Dow Chemical Company in 2001. The world’s first petrochemical plant was constructed by Union Carbide Corporation in 1920 at Clendenin, West Virginia. By 1925 the manufacture of chemicals had grown to the point that another plant was leased (later purchased), and the Clendenin operation and personnel were moved to the new location at South Charleston, West Virginia. In 1959, with the addition of two large development laboratories and an engineering building, the facility became a full-scale Technical Center. Then, in 1977, a large data processing building was constructed and placed in operation. The Institute Site was originally built in 1943 as a government facility for production of synthetic rubber for the war effort. In 1947 Union

Carbide purchased the plant from the government to produce commodity-type products. Over the years, the make-up of the plant has changed from production of commodity chemicals to specialty chemicals. In December 1986, the plant was sold to a French chemical manufacturer, Rhone-Poulenc. The plant was later purchased by Aventis CropScience, under agreements that the plant would share certain facilities. In 1990, the Polyols Unit of the plant was sold to ARCO Chemical. Today, the plant is owned by Bayer Corporation.

Union Carbide Corporation has been self-insured in West Virginia since 10/01/2000 and there are approximately 300 employees.

METHODOLOGY

The examiner used the NAIC standards of 7% error ratio on claims tests (93% compliance rate) and 10% error ratio on all other tests (90% compliance rate) to determine whether an apparent pattern or practice of being compliant, predominantly compliant, or non-compliant existed for any given test. The examiner reviewed a given population of two (2) paid claims and four (4) denied/closed without payment (CWOP) claims for compliance.

Tests designed to measure the level of compliance with West Virginia statutes, rules and regulations were applied to the files. Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiner may not have discovered every unacceptable or non-compliant activity in which the Self-Insured Employer/TPA is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its' designee. A compliance table follows containing results of each area of review with the compliance percentage for the Self-Insured Employer/TPA.

ELEMENTS OF THE REVIEW

A. COMPLAINTS: THE TIME FRAME WITHIN WHICH THE EMPLOYER RESPONDS TO COMPLAINTS IS IN ACCORDANCE WITH APPLICABLE STATUTES, RULES AND REGULATIONS.

1. Did the Self-Insured Employer respond to complaints received from the WVOIC within fifteen (15) working days? [W. Va. Code R. § 85-1-16]

B. INITIAL COMPENSABILITY DECISIONS AND INVESTIGATIONS ARE CONDUCTED IN A TIMELY MANNER.

1. Did the Self-Insured Employer properly investigate then provide a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is

gathered, rule in the appropriate time? [W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1]

2. Did the Self-Insured Employer include on the written notice of the decision the protest clause? [W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2]

C. TEMPORARY TOTAL DISABILITY (TTD)

1. Did the Self-Insured Employer/TPA properly notify the claimant of the TTD award? [W. Va. Code § 23-5-1]
2. Did the Self-Insured Employer/TPA immediately pay amounts due the claimant for benefits upon determination of eligibility? [W. Va. §§ 23-4-1c(b) and (g)]
3. Did the Self-Insured Employer/TPA calculate and pay indemnity payments correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]
4. Did the Self-Insured Employer/TPA issue temporary total disability closure letters properly? [W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22]

D. PERMANENT PARTIAL DISABILITY (PPD)

1. Did the Self-Insured Employer/TPA act on PPD evaluations timely? [W.Va. Code R. § 85-1-10.5 a. The responsible party shall act on a permanent disability evaluation report received from a physician to whom the responsible party referred a claimant in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days of receipt by the responsible party of the report.]
2. Did the Self-Insured Employer/TPA make timely IME referrals? [W.Va. Code R. § 85-1-10.5 b. The responsible party shall make a referral of a claimant to a physician for examination and evaluation in response to a request by or on behalf of the claimant for consideration of a permanent disability award in a claim for injuries and occupational diseases other than occupational pneumoconiosis within thirty (30) working days from the date the request was received by the responsible party.]
3. Did the Self-Insured Employer/TPA commence PPD award payments timely? [W.Va. Code R. § 85-1-10.5 c. Permanent partial disability awards may be paid, at the discretion of the responsible party, either by lump sum or in installments consistent with applicable law. Payment of permanent partial awards shall commence within fifteen (15) working days of the decision granting the award.]

4. Did the Self-Insured Employer/TPA calculate and pay the payment correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]

E. MEDICAL AUTHORIZATIONS

1. Did the Self-Insured Employer/TPA comply with W. Va. Code R. § 85-1-10.3? “Medical treatment, medications, appliances, devices and supplies. – The responsible party shall act upon an injured worker’s request for authorization of medical treatment, medications, appliances, devices and supplies within fifteen (15) working days from the date the request was received by the responsible party.”

F. NON-AWARDED PARTIAL BENEFITS (NAP)

1. Were non-awarded partial disability benefits paid at the same rate as the permanent partial disability rate per W. Va. Code R. § 85-1-9.7?

G. DEATH CLAIMS (FATAL)

1. Were the death benefits in the proper amounts and to the proper person(s) per W. Va. Code §§ 23-4-1 and 23-4-10.

H. CLOSURE

1. Were the claims properly closed and a notice issued? [W. Va. Code § 23-4-16 and Supreme Court of Appeals of West Virginia decision May 23, 2008, LOVAS v. CONSOLIDATION COAL COMPANY]

I. OCCUPATIONAL PNEUMOCONIOSIS

1. Did the Self-Insured Employer enter non-medical decisions in occupational pneumoconiosis claims within ninety (90) days from the date the responsible party receives properly executed, prescribed forms? (can be “tolled” for no more than thirty (30) additional days during the evidence gathering process) [W. Va. Code § 23-4-15b and W.Va. Code R. § 85-1-10.2] (If necessary, this should reflect in the report as N/A with explanation as none were in the samples.)

J. DENIED AND CLOSED WITHOUT PAYMENT

1. Did the Self-Insured Employer properly investigate then give a written ruling on a claim within fifteen (15) working days, or if “tolled” while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code § 23-4-1c (a) and W. Va. Code R. § 85-1-10.1]
2. Were claims handling practices meeting West Virginia statutes, rules and regulations of “denied” and “closed without payment” claims including proper notifications, reasonable basis for denial, and whether or not claimants are provided adequate instructions for rebuttals? [W. Va. Code §§ 23-5-1(a) 23-5-1(b)(1)]
3. Were claims denied inappropriately due to a technicality? [W. Va. Code § 23-5-13]
4. Were appropriate protest/grievance language on the decision order? [W. Va. Code §§ 23-5-1(b)(1) and 23-4-3(f) and W. Va. Code R. §§ 85-1-7.2 and 85-21-10.2b]
5. Were denied claim investigations by the Self-Insured Employer/TPA complete and thorough?

K. OFFICE OF JUDGES (OOJ) AND BOARD OF REVIEW (BOR) ORDERS

1. Did the Self-Insured Employer comply with all orders of the Office of Judges (“OOJ”) and the Board of Review (“BOR”) and all mandates of the West Virginia Supreme Court of Appeals within thirty (30) days from the date of receipt, unless the responsible party is required to act sooner under the terms of the order or mandate or the order or mandate is subject to a lawfully ordered stay? [W. Va. Code § 23-5-9(f) and W. Va. Code R. § 85-1-10.7]

L. DOCUMENTATION

1. Did the Self-Insured Employer follow state statutes, rules and regulations which require that claim files contain adequate documentation and to be maintained in a manner so that pertinent events and dates of such events can be reconstructed if necessary? [W. Va. Code R. §§ 85-18-13.3 and 13.4]

M. EDI - DOES THE SELF-INSURED EMPLOYER PROMPTLY AND ACCURATELY PROVIDE THE WVOIC WITH ALL NECESSARY CLAIM INFORMATION TO MAINTAIN THE WORKERS’ COMPENSATION CLAIM INDEX? [W. VA. CODE §23-2C-5(C)(8) AND W. VA. CODE R. §85-2-1 ET SEQ. AND WEST VIRGINIA OFFICES OF THE INSURANCE COMMISSIONER’S ELECTRONIC DATA INTERCHANGE (“EDI”) IMPLEMENTATION GUIDE]

1. FROI – Did the Self-Insured Employer/TPA submit the First Report of Injury report timely within ten (10) business days?
2. SROI - Did the Self-Insured Employer/TPA submit the Subsequent Reports of Injury report(s) updates on each claim either monthly or quarterly?
3. Closing - Did the Self-Insured Employer/TPA properly report closure of the claim when no additional transactions are expected on the claim? (For example: A notification that an accident has occurred is not a request for a compensability decision and therefore should not be denied (FROI 04) or administratively closed (SROI FN) and should be canceled as a FROI 01.)

N. THE SELF-INSURED EMPLOYER COOPERATES ON A TIMELY BASIS WITH EXAMINERS PERFORMING THE EXAMINATION.

1. Did the Self-Insured Employer respond to RFI's in a timely manner?
2. Did the Self-Insured Employer provide records in a timely basis and cooperate with the examination? [W. Va. Code R. § 85-18-13.6]

O. OTHER ISSUES

COMPLIANCE TABLE

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>N/A</u>	<u>Compliance %</u>	<u>Individual Corrective Action</u>	<u>Systemic Corrective Action</u>
A1	N/A	N/A	N/A	N/A	N/A	N/A
B1	2	0	0	100%		
B2	2	0	0	100%		
C1	1	0	0	100%		
C2	1	0	0	100%		
C3	1	0	0	100%		
C4	1	0	0	100%		
D1	1	0	0	100%		
D2	1	0	0	100%		
D3	1	0	0	100%		
D4	1	0	0	100%		
E1	1	0	0	100%		
F1	N/A	N/A	N/A	N/A	N/A	N/A
G1	N/A	N/A	N/A	N/A	N/A	N/A
H1	2	0	0	100%		
I1	1	0	0	100%		
J1	4	0	0	100%		
J2	4	0	0	100%		
J3	4	0	0	100%		
J4	4	0	0	100%		
J5	4	0	0	100%		
K1	1	0	0	100%		
L1	6	0	0	100%		
M1	6	0	0	100%		
M2	6	0	0	100%		
M3	3	3	0	50%	*	
N1	6	0	0	100%		
N2	6	0	0	100%		
O	N/A	N/A	N/A	N/A	N/A	N/A

*See "Observations and Recommendations" below.

OBSERVATIONS

M.3. – Three (3) claims were still open in EDI but were closed on TPA’s claims system and appear closed for future transactions. TPA agreed that the three (3) claims were not closed properly on EDI and have made these corrections during the examination.

F.1. – This standard was N/A as there were no benefits awarded for Non-Awarded Partial (NAP) during the examination period.

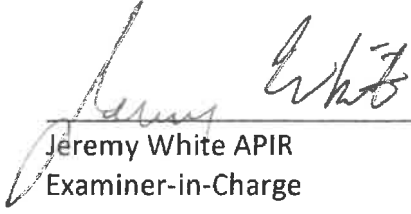
G.1. – This standard was N/A as there were no Fatalities during the examination period.

RECOMMENDATIONS

M.3. – It is suggested that the TPA file an *EDI SROI FN* as part of their claim closure process.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Self-Insured Employer/TPA during the course of the examination.



Jeremy White APIR
Examiner-in-Charge

EXAMINER'S AFFIDAVIT

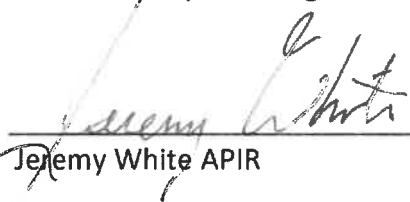
State of West Virginia
County of Kanawha

EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN AN EXAMINATION

I, Jeremy White, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of Union Carbide Corporation.
2. I have reviewed the examination work papers and examination report, and the examination of Union Carbide Corporation was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



 Jeremy White APIR

Subscribed and sworn before me by Jeremy White on this 1st day of

September, 2022



 Notary Public

My commission expires: 10-11-2024

