

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

In the Matter of:

AMERICAN CONSOLIDATED NATURAL RESOURCES, INC.

Administrative Proceeding No. 22-IC-02128

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION

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 American Consolidated Natural Resources, Inc. (hereinafter, "ACNR") 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 ACNR 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 August 15, 2022 and concluded on February 28, 2023.

2. On or about March 31, 2023, 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 ACNR and ACNR 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 ACNR to manage its operations for each of the business areas examined, including whether and how

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

5. The exam found ACNR was 100% compliant in the areas examined.

6. The Commissioner reviewed the *Examination Report* and considered ACNR'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 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*, ACNR was compliant in all areas examined.

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


ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), as a result of the Commissioner's review of the *Examination Report*, the examination work papers, and ACNR's response thereto, 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. ACNR shall continue to monitor its compliance with applicable West Virginia law;

Entered this 21ST day of April, 2023.



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

Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2022



American Consolidated Natural Resources, Inc.
46226 National Road
St. Clairsville, OH 43950

TPA
HealthSmart Casualty Claims Solutions

Examination Number: 22-IC-02128

Date Prepared:
March 31, 2023

Table of Contents

[COMPLIANCE WITH PREVIOUS EXAMINATION](#) 4

[EXECUTIVE SUMMARY](#) 4

[HISTORY AND PROFILE](#) 4

[METHODOLOGY](#) 4

[ELEMENTS OF THE REVIEW](#)..... 5

[COMPLIANCE TABLE](#)..... 10

[OBSERVATIONS](#) 11

[RECOMMENDATIONS](#) 11

[EXAMINER’S SIGNATURE AND ACKNOWLEDGEMENT](#) 12

[EXAMINER’S AFFIDAVIT](#) 13

March 31, 2023

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 September 16, 2020 through March 31, 2022 on the Workers' Compensation self-insured claims handling of

American Consolidated Natural Resources, Inc.
46226 National Road
St. Clairsville, OH 43950

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

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

There are no previous recommendations for comparison as this is the first Self-Insured Market Conduct compliance examination (“examination”) of ACNR.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct compliance examination was initiated to determine the compliance of ACNR with the West Virginia statutes, rules and regulations governing the self-administration of workers’ compensation claims.

The examination work related to Self-Insured Employer commenced August 15, 2022, and concluded February 28, 2023. The Self-Insured Employer 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”), HealthSmart Casualty Claims Solutions, computer systems.

HISTORY AND PROFILE

On September 16, 2020, Murray Energy Holdings Co., and its subsidiaries (collectively, “Murray”) announced their completed sale of assets to a privately held company owned by a group of its former creditors. Through the restructuring process, Murray effectuated the sale of substantially all their assets to American Consolidated Natural Resources, Inc. (“ACNR”), a new entity formed at the direction of an ad hoc group of Murray’s super priority term loan lenders. ACNR continues conducting Murray’s business in the normal course, owning and operating nine (9) mines throughout six (6) states.

ACNR has been self-insured in West Virginia since September 16, 2020. ACNR has over 4,000 employees insured as of the date of this report.

METHODOLOGY

The examiner conducted file reviews and was familiar with the Self-Insured Employer/TPA claim process in as much as prior examinations had been performed. This examination report is a report by test, rather than a report by exception, and all elements tested are described and the results indicated.

Typically, areas below 93% would generally require systemic corrective action. Any element scoring below 100% will detail the observations of the specific issue and include a recommendation.

Except as otherwise noted, all tests were conducted via a random sample taken from a given population. The total denied claims population provided was sixty-seven (67). The paid claim population provided was 477. A maximum initial sample of fifty (50) claims files was selected

randomly using the following parameters. Denied Claims: A maximum initial sample of twenty-five (25) denied claims files was selected. Paid Claims: A maximum initial sample of twenty-five (25) paid claims files was selected; A weighted sampling methodology of "80% Indemnity" (20 Claims) and 20% "Medical Only" (5 Claims) was utilized. Additionally, total populations were reviewed for one (1) fatal claim was reviewed as well as eleven (11) pneumoconiosis (OP) claims.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiners 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	1	0	0	100		
B1	25	0	0	100		
B2	25	0	0	100		
C1	5	0	0	100		
C2	5	0	0	100		
C3	5	0	0	100		
C4	5	0	0	100		
D1	20	0	0	100		
D2	20	0	0	100		
D3	20	0	0	100		
D4	20	0	0	100		
E1	25	0	0	100		
F1	N/A	N/A	N/A	N/A		
G1	1	0	0	100		
H1	25	0	0	100		
I1	11	0	0	100		
J1	25	0	0	100		
J2	25	0	0	100		
J3	25	0	0	100		
J4	25	0	0	100		
J5	25	0	0	100		
K1	N/A	N/A	N/A	N/A		
L1	62	0	0	100		
M1	62	0	0	100		
M2	62	0	0	100		
M3	62	0	0	100		
N1	Pass	0	0	Pass		
N2	Pass	0	0	Pass		
O	N/A	N/A	N/A	N/A		

*See "Observations and Recommendations" below.

OBSERVATIONS

F1 – This standard is not applicable as there were no non-awarded partial benefits (NAP) claims reviewed for the examination period.

K1 – This standard is not applicable as Office of Judges and Board of Review orders were not reviewed for the examination period.

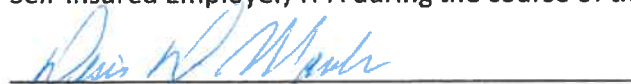
O1 – This standard is not applicable as there were no other issues discerned.

RECOMMENDATIONS

The Self-Insured Employer/TPA should continue handling the self-administration of workers' compensation claims to ensure compliance with West Virginia statutes, rules and regulations.

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.



Desiree D. Mauller, CIE, CWCP, MCM
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, Desiree D. Mauller, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of American Consolidated Natural Resources, Inc.
2. I have reviewed the examination work papers and examination report, and the examination of American Consolidated Natural Resources, Inc. was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

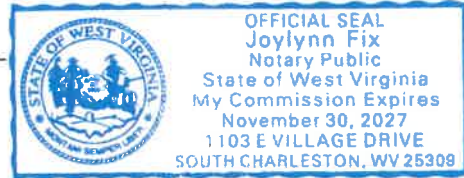


Desiree D. Mauller, CIE, CWCP, MCM

Subscribed and sworn before me by Desiree D. Mauller on this March 31, 2023.



Notary Public



My commission expires: 3/30/27