

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

In the Matter of:

PEPSI-COLA METROPOLITAN BOTTLING COMPANY, INC

Administrative Proceeding No. 21-IC-02240

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 Pepsi-Cola Metropolitan Bottling Company, Inc. (hereinafter, "Pepsi-Cola") for the audit period ending October 31, 2021, 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 Pepsi-Cola for the period ending October 31, 2021, 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.
2. On or about June 22, 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 Pepsi-Cola and Pepsi-Cola 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

Pepsi-Cola to manage its operations for each of the business areas examined, including whether and how Pepsi-Cola, a self-insured employer, complies with West Virginia's statutory and regulatory law.

5. The exam discovered four (4) areas where Pepsi-Cola failed to achieve 100% compliance with West Virginia law.

6. The Commissioner reviewed the *Examination Report* and considered Pepsi-Cola'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*, Pepsi-Cola failed to comply with provisions of West Virginia law as follows:

Claims Standard B.1 (*Eleven (11) violations*) The Self-Insured Employer did not issue initial compensability rulings as required by W.Va. Code R. § 85-1-10.

Claims Standard D.3 (*One (1) violation*) The Self-Insured Employer did not commence PPD award payment timely as required by W.Va. Code R. § 85-1-10.5.c.

Claims Standard J.4 (*Three (3) violations*) The Self-Insured Employer did not include the protest language in denial letters as required by law.

Claims Standard M.3 (*Seventeen (17) violations*) The Self-Insured Employer did not close claims in EDI when no further payments were anticipated.

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

5. The Commissioner has determined that Pepsi-Cola should be assessed a penalty for violating the aforementioned standards.

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 Pepsi-Cola'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. Pepsi-Cola shall endeavor to comply with the recommendation contained in the *Examination Report*;

3. Pepsi-Cola shall continue to monitor its compliance with applicable West Virginia law;

4. Pepsi-Cola 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. Pepsi-Cola shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Pepsi-Cola'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. Pepsi-Cola 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. Pepsi-Cola shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and

9. Pepsi-Cola shall pay an administrative penalty in the amount of Ten Thousand Dollars

(\$10,000.00) 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 12th day of August, 2022.



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

Report of Self-Insured Market Conduct Compliance Examination

As of October 31, 2021



Pepsi-Cola Metropolitan Bottling Company, Inc

700 Anderson Hill Rd.
Purchase, NY 10577

TPA

Sedgwick Claim Management Services
700 Washington St.
Charleston, WV. 25301

Examination Number 21-IC-02240

Date Prepared:
06/22/2022

Table of Contents

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS	4
EXECUTIVE SUMMARY	4
HISTORY AND PROFILE	5
METHODOLOGY	5
ELEMENTS OF THE REVIEW	6
COMPLIANCE TABLE.....	10
OBSERVATIONS.....	11
RECOMMENDATIONS	12
EXAMINER’S SIGNATURE AND ACKNOWLEDGEMENT	13
EXAMINER’S AFFIDAVIT.....	14

06/22/2022

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 November 1st, 2018 through October 31, 2021 on the Workers' Compensation self-insured claims handling of

Pepsi-Cola Metropolitan Bottling Company, Inc
700 Anderson Hill Rd.
Purchase, NY 10577

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

All previous recommendations appear to have been addressed by the Self-Insured Employer as no subsequent failure of those standards were noted.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination (“examination”) was initiated to determine the compliance of Pepsi-Cola Metropolitan Bottling Company, Inc with the West Virginia statutes, rules and regulations governing the self-administration of workers’ compensation claims.

The following are areas of concern:

- **Element of review B. 1**

Eleven (11) claims did not receive an initial compensability ruling as required by [W.Va. Code R. §85-1-10.]

- **Element of review D.3**

One (1) claim the TPA did not commence PPD award payment timely as required by [W.Va. Code R. §85-1-10.5 c. Payment of permanent partial awards shall commence within fifteen (15) working days of the decision granting the award.]

- **Element of review J.4**

Three (3) claims did not contain the protest clause on the denial letters as required by [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].

- **Element of review M.3**

Seventeen (17) claims were not closed in EDI when no further payments were expected.

HISTORY AND PROFILE

Pepsi-Cola Metropolitan Bottling Company, Inc. bottles and distributes carbonated and noncarbonated beverages. It distributes both to retail outlets and to businesses servicing canteens and vending machines. The company was incorporated in 1934 and is based in Purchase, New York. Pepsi-Cola Metropolitan Bottling Company, Inc. operates as a subsidiary of PepsiCo, Inc.

Pepsi-Cola Metropolitan Bottling Company, Inc. has been self-insured in West Virginia since 7/1/2017 and Sedgwick Claims Management Services Inc. has always been their TPA. Currently, 603 employees are covered in West Virginia's locations in Fairmont, Huntington, Logan, Moundsville, Elkins, Parkesburg, Nitro, Flatwood, Oak Hill, Petersburg, and Princeton. 350 of the employees are in a Union.

METHODOLOGY

The examiners conducted file reviews and e-mail exchanges with the Self-Insured Employer's TPA's coordinator. 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. There were 199 claims with dates of injury initiated during the experience period. A maximum initial sample of thirty-nine (39) claims files was selected randomly using the following parameters: **Denied Claims:** the population of denied claims was less than twenty-five (25), the entire population of fourteen (14) denied claims was reviewed. **Paid Claims:** A sample of twenty-five (25) paid claim files was selected and reviewed

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. § 85-1-10.5a. 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. § 85-1-10.5b. 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. § 85-1-10.5c. 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 (under **FROI 04**) or administratively closed (under **SROI FN**). Instead, the claim should be canceled (under **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

See table below, along with observations and recommendations.

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	14	11	0	56%		*
B2	25	0	0	100%		
C1	20	0	0	100%		
C2	20	0	0	100%		
C3	20	0	0	100%		
C4	20	0	0	100%		
D1	2	0	0	100%		
D2	2	0	0	100%		
D3	1	1	0	50%		*
D4	2	0	0	100%		
E1	20	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	25	0	0	100%		
I1	N/A	N/A	N/A	N/A	N/A	N/A
J1	14	0	0	100%		
J2	14	0	0	100%		
J3	14	0	0	100%		
J4	11	3	0	79%		*
J5	14	0	0	100%		
K1	1	1	0	100%		
L1	25	0	0	100%		
M1	25	14	0	100%		
M2	25	14	0	100%		
M3	21	17	0	55%		*
N1	39	0	0	100%		
N2	39	0	0	100%		
O	0	1	N/A	N/A	N/A	N/A

*See "Observations and Recommendations" on the following pages.

OBSERVATIONS

- *Element of review B.1*

Eleven (11) claims did not receive an initial compensability ruling in violation of W.Va. Code R. §85-1-10. The TPA agreed these claims were accepted, but initial compensability ruling letters were not issued. The TPA issued initial compensability ruling letters on the eleven (11) claims prior to completion of the exam and have indicated they will take action to ensure timely issue going forward.

- *Element of review D.3*

On one (1) claim the TPA did not commence the PPD award payment timely which is in violation of W.Va. Code R. §85-1-10.5c. The TPA agreed the payment was not issued timely and advised they will take action to ensure PPD payments will be issued within fifteen (15) working days if not formally disputed.

- *Element of review J.4*

Three (3) claims did not contain the protestable clause on denial letters as required by 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. The TPA responded that denial letters were issued but agreed the appropriate protest language was not included. The TPA issued letters with the appropriate language for these three (3) claims prior to the end of the exam and indicated new controls will be initiated to ensure compliance going forward.

- *Element of review M.3*

Seventeen (17) claims were not properly closed in EDI when no further payments were anticipated. The TPA advised that going forward they will file an EDI SROI FN as part of their claim closure process.

- *Element of review O*

During the initial reconciliation between requested claim data from the Self-Insured Employer and EDI, it was determined that two (2) claims were not uploaded in EDI. The TPA advised that these claims had FROI's submitted but were rejected. As there were only two (2) claims with this specific issue, it does not appear to be a systemic problem. The TPA has resolved these two (2) claims in EDI prior to the exam conclusion and advised rejections will be reviewed timely going forward.

RECOMMENDATIONS

B1 – *The Self-Insured Employer/TPA should have procedures in place to ensure that rulings on all claims are within the required fifteen (15) working day timeframe as required by W.Va. Code §23-4-1c(a) and W.Va. Code R. §85-1-10.1 Note: The TPA agreed to implement measures to ensure timely compensability rulings would be issued going forward.*

D3 – *The Self-Insured Employer/TPA should ensure PPD payments are issued within (15) working days of payment eligibility as required by W.Va. Code R. §85-1-10.5c. Note: The TPA agreed future payments will be issued within fifteen (15) working days from receipt of PPD exam if not formally disputed.*

J4 – *The Self-Insured Employer/TPA should ensure all denial letters contain the specific language as required by 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. Note: The TPA advised they would initiate further monitoring controls to ensure compliance going forward.*


M3 – *It is recommended the Self-Insured Employer ensure timely FN reporting to EDI when a file is administratively closed, or no further payments are expected as required by 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. Note: As part of their claim closure process, the TPA has advised they will file EDI SROI FN on a go forward basis.*

O – *It is recommended that the TPA follow up on filed FROI's to see if they have been rejected. Note: The TPA has advised future filings for EDI rejected submissions will be monitored and corrected as necessary.*

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.

In addition to the undersigned, Desiree D. Mauller CIE, CWCP, MCM also participated in 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 Pepsi-Cola Metropolitan Bottling Company, Inc.
2. I have reviewed the examination work papers and examination report, and the examination of Pepsi-Cola Metropolitan Bottling Company, Inc 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 22nd day of

June, 2012



Notary Public

My commission expires: 10-11-2014

