

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

In the Matter of:

SWVA, INC

Administrative Proceeding No. 21-IC-02241

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ADOPTING
REPORT OF SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION
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 SWVA, Inc. (hereinafter, "SWVA") 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 SWVA 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. The exam commenced on April 13, 2022 and concluded on June 10, 2022.

2. On or about July 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 SWVA and SWVA 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 SWVA to manage its operations for each of the business areas examined, including whether and how

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

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

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

Claims Standard M.1 (*Eight (8) violations*) The Self-Insured Employer did not properly report data to EDI (FROI reporting). The Commissioner made SWVA aware of this issue during its annual renewal process in 2021 and SWVA entered into a Corrective Action Plan with the Commissioner to address the issue.

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

5. The Commissioner has determined that SWVA 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 SWVA'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. SWVA shall endeavor to comply with the recommendation contained in the *Examination Report*;

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

4. SWVA 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. SWVA shall continue to comply with the Corrective Action Plan (CAP) it filed with the Commissioner addressing the EDI issue;

6. SWVA shall pay an administrative penalty in the amount of Five-Hundred Dollars (\$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 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



SWVA, Inc.
P.O. Box 2547
Huntington, WV 25726

TPA
Sedgwick Claims Management Services, Inc.

Examination Number 21-IC-02241

Date Prepared:
07/01/2022

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07/01/2022

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, 23-1-1, 23-2-9(b)(1) & (2), 23-2C-22, 33-2-10(b), 33-2-21(a), and West Virginia Code of State Rules Title 85, a Market Conduct Examination has been made for the period of November 1, 2018 through October 31, 2021 on the Workers' Compensation self-insured claims handling of:

SWVA, Inc.
P.O. Box 2547
Huntington, WV 25726

The following report of the findings of this examination is herewith respectfully submitted.

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

There were no previous examination recommendations. (Previous exam period January 1, 2010 through December 31, 2014)

EXECUTIVE SUMMARY

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

The examination work related to SWVA, Inc. commenced April 13, 2022 and concluded June 10, 2022. SWVA, Inc. 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”) computer system.

The following is an area of concern:

- Element of review M. 1.

Eight (8) claims were found to have late / delayed EDI - FROI filings. SWVA, INC. agreed with examiner’s findings. *Note: The West Virginia Offices of the Insurance Commissioner (WVOIC) made the Employer aware of an EDI - FROI reporting issue during the Self - Insured annual renewal process in 2021. The Employer then entered into a Corrective Action Plan with the WVOIC to address the EDI reporting issue (data errors resulting in EDI reporting failures/delays.) The Corrective Action Plan was implemented in late September of 2021.*

HISTORY AND PROFILE

SWVA, Inc. is a wholly owned subsidiary of Steel of West Virginia, Inc., which is in turn a wholly owned subsidiary of Steel Dynamics, Inc. SWVA, Inc. operates a steel mill in Huntington, West Virginia, where approximately 440 employees work to recycle scrap metal into new rolled steel products for a diverse set of industries, from transportation to energy sectors. The Huntington mill operations include a melt shop with two electric arc furnaces, two rolling mills, fabrication operations, and industrial support personnel in maintenance and machining.

Approximately 100 administrations personnel provide professional and technical support to the operation in Huntington, West Virginia, as well as sister operations in Coalton, KY, Wurtland, KY and Memphis, TN. Employees whose primary work site is at one of the out of state facilities are not covered by SWVA, Inc.’s self- insured West Virginia Workers’ Compensation policy. Instead, they are covered by a multistate insurance policy obtained and administered by SWVA’s corporate parent, Steel Dynamics, Inc.

SWVA, Inc has been self-insured since its inception in 1982. In 2019, Sedgwick acquired SWVA, Inc.'s existing third-party administrator, York Risk Services. In August 2020, Sedgwick migrated SWVA, Inc.'s workers' compensation data from the legacy York system to Sedgwick's platform. Sedgwick continues to provide third- party administration services to SWVA, Inc. at present.

METHODOLOGY

SWVA, Inc.'s claims population during the review period consisted of fifty-six (56) paid claims and six (6) denied claims.

- Paid claims population sample size - twenty-five (25): The complete population of three (3) indemnity claims were selected for review. The remaining twenty-two (22) medical only claims were selected for review via random sample.
- Denied claims population size - six (6): Due to the limited number of denied claims during the examination period the entire population was reviewed. One (1) denied claim was for Occupational Pneumoconiosis.

Electronic access was granted to the TPA's ViaOne computer system, allowing the examiner to conduct file reviews electronically.

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.

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 WVOIC 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]

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		
B1	25	0	0	100		
B2	25	0	0	100		
C1	2	0	23	100		
C2	2	0	23	100		
C3	2	0	23	100		
C4	2	0	23	100		
D1	2	0	23	100		
D2	2	0	23	100		
D3	2	0	23	100		
D4	2	0	23	100		
E1	25	0	0	100		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	25	0	6	100		
I1	1	0	30	100		
J1	4	0	1	100		
J2	4	0	1	100		
J3	4	0	1	100		
J4	4	0	1	100		
J5	4	0	1	100		
K1	2	0	3	100		
L1	31	0	0	100		
M1	23	8	0	74		X
M2	3	0	28	100		
M3	24	0	7	100		
N1	X			100		
N2	X			100		
O	N/A	N/A	N/A	N/A		

*See "Observations and Recommendations" provided on the following page.

OBSERVATIONS

- A** - This standard was N/A as there were no complaints during the examination period.
- C** – Only two (2) paid claims reviewed had Temporary Total Disability (TTD) awarded.
- D** - Only two (2) paid claims reviewed had Permanent Partial Disability (PPD) awarded.
- F** - This standard was N/A as there were no benefits awarded for Non-Awarded Partial (NAP) disability during the examination period.
- G** - This standard was N/A as there were no Fatalities during the examination period.
- H** – Twenty - Five (25) Claims reviewed were closed properly and notices were issued. The remaining six (6) claims were still open at the end of the review period or never perfected.
- I** - SWVA, Inc. had one (1) Occupational Pneumoconiosis claim during the review period.
- J** – One (1) denied claim reviewed was never perfected.
- K** – Only two (2) denied claims were appealed to the Office of Judges.
- M**- Eight (8) Claims reviewed had delayed EDI - FROI reporting.
NOTE: The WVOIC made the Employer aware of an EDI - FROI reporting issue during the Self - Insured annual renewal process in 2021. The Employer then entered into a Corrective Action Plan with the WVOIC to address the EDI reporting issue (data errors resulting in EDI reporting failures / delays) and with the implementation of the Corrective Action Plan in late September of 2021, the Employer's EDI - FROI reporting issue has been satisfactorily identified and acknowledged.
- O** –This standard was N/A as there were no other issues noted.

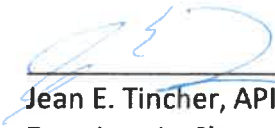
RECOMMENDATIONS

M – SWVA, Inc. should continue to adhere to the Corrective Action Plan that was filed with the WVOIC and as a measure of quality assurance, should review both existing open and closed claims for correct status and updates. Additionally, SWVA, Inc. should periodically monitor future claims to ensure that procedures are being followed and claims are being properly and consistently handled according to West Virginia statute, 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.

In addition to the undersigned, Desiree D. Mauller, CIE, CWCP, MCM also participated in the examination.



Jean E. Tincher, APIR, 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, Jean E. Tincher, being duly sworn, states as follows:

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

The affiant says nothing further.

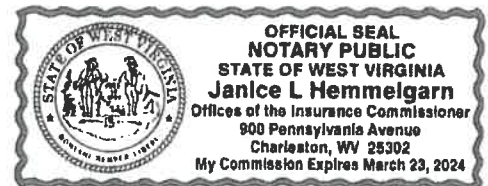


Jean E. Tincher, APIR, MCM

Subscribed and sworn before me by Jean E. Tincher on 1 day of July, 2022.



Notary Public



My commission expires: March 23, 2024