

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

*In the Matter of:*

**DELHAIZE AMERICA, LLC**

Administrative Proceeding No. 22-IC-02130

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 Delhaize America, LLC (hereinafter, "Delhaize") 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 Delhaize 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 July 27, 2022 and concluded on November 4, 2022.

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

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

5. The exam discovered seven (7) areas where Delhaize failed to achieve 100% compliance with West Virginia law.

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

**Claims Standard B 1** (*six violations*) The Self-Insured Employer did not issue the initial compensability ruling timely.

**Claims Standard C 3** (*thirteen violations*) The Self-Insured Employer calculated the TTD awards incorrectly.

**Claims Standard J 1** (*one violation*) The Self-Insured Employer did not give the initial ruling within 15 working days.

**Claims Standard J 4** (*two violations*) The Self-Insured Employer did not have the appropriate protest language in the decision orders.

**Claims Standard L1** (*ten violations*) In ten claim files the Self-Insured Employer did not have adequate documentation to allow the examiner to gain knowledge of what occurred during the claim.

**Claims Standard M 1** (*eleven violations*) The Self-Insured Employer did not report the first report of injury (FROI) to the Commissioner's Electronic Data Interchange (EDI) in a timely manner.

**Claims Standard M 2** (*four violations*) The Self-Insured Employer did not

properly report subsequent reports of injury (SROI) regarding initial payment submissions.

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

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

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

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

9. Delhaize 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 21<sup>st</sup> day of December, 2022.



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

# Report of Self-Insured Market Conduct Compliance Examination

As of March 31, 2022



**Delhaize America, LLC**

P.O. Box 2527

Salisbury, NC 28145-2527

TPA

Retail Business Services, LLC

**Examination Number 22-IC-02130**

Date Prepared:

**12/01/2022**

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12/01/2022

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 April 1, 2019 through March 31, 2022 on the Workers' Compensation self-insured claims handling of:

**Delhaize America, LLC**  
P.O. Box 2527  
Salisbury, NC 28145-2527

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

## COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

Previous examination findings and recommendations for the exam period of January 1, 2009 through March 31, 2014 were as follows:

- **STANDARD: INITIAL COMPENSABILITY DECISIONS AND INVESTIGATIONS ARE CONDUCTED IN A TIMELY MANNER.** EIGHTEEN (18) CLAIMS WERE RULED ON IN EXCESS OF FIFTEEN (15) WORKING DAYS. IT WAS RECOMMENDED THAT THE SELF-INSURED EMPLOYER REVIEW W.VA. CODE R. § 85-1-10.1 AND PROVIDE TRAINING TO APPROPRIATE STAFF IN ORDER TO BECOME COMPLIANT WITH THIS STANDARD.
- **STANDARD: CLAIMS ARE PROPERLY HANDLED IN ACCORDANCE WITH POLICY PROVISIONS AND APPLICABLE STATUTES, RULES, AND REGULATIONS.** FIFTY-FOUR (54) CLAIMS REVIEWED HAD NO EVIDENCE THAT AN INITIAL RULING LETTER WAS ISSUED AND SEVEN (7) TTD CLAIMS TESTED HAD NO EVIDENCE THAT A TTD AWARD NOTIFICATION WAS ISSUED EVEN THOUGH THERE WAS EVIDENCE THE BENEFITS WERE PAID. THE RECOMMENDATION WAS MADE FOR THE SELF-INSURED EMPLOYER TO TAKE THE APPROPRIATE STEPS TO ENSURE PROPER DOCUMENTATION IS MAINTAINED AND ALL APPROPRIATE RULING LETTERS ARE SENT TIMELY AND PRESERVED IN THE CLAIMANT'S RECORDS.
- **STANDARD: DENIED AND CLOSED-WITHOUT-PAYMENT CLAIMS ARE HANDLED IN ACCORDANCE WITH SELF-INSURED EMPLOYER'S CLAIMS PROCEDURES, UNION CONTRACT PROVISIONS, AND APPLICABLE STATUTES, RULES, AND REGULATIONS.** EIGHT (8) CLAIMANTS WERE NOT PROVIDED WITH A REASONABLE BASIS FOR THE DENIAL DECISION AND TWO (2) RULINGS FAILED TO PROVIDE THE INJURED WORKER WITH THE APPROPRIATE PROTEST INFORMATION REGARDING THE OPTION TO PROTEST THE CLAIM DECISION. IT WAS RECOMMENDED THAT THE SELF-INSURED EMPLOYER TAKE APPROPRIATE STEPS TO ENSURE ALL DENIED CLAIMS PROVIDE A REASONABLE BASIS FOR THE DENIAL AND MAKE AVAILABLE TO THE CLAIMANT THE INFORMATION NECESSARY TO PROTEST THE DECISION.

To comply with the Agreed Order issued on May 26<sup>th</sup>, 2015, adopting the previous Self-Insured Compliance Examination, a Corrective Action Plan was filed with the Insurance Commissioner outlining methods of training and instructions to be utilized to help ensure compliance in the areas mentioned above. All three (3) standards were again found to be areas of concern during the current review.

## EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination ("examination") was initiated to determine the compliance of Delhaize America, LLC with the West Virginia statutes, rules and regulations governing the self-administration of workers' compensation claims. [Statutes, rules, regulations, bulletins, and informational letters can be found on the West Virginia Offices of the Insurance Commissioner's (WVOIC) website: <https://www.wvinsurance.gov/Legal-Authority>.]

The examination work related to Delhaize America, LLC commenced July 27, 2022 and concluded November 4, 2022. Delhaize America, LLC maintains an electronic environment; the majority of the examination work was conducted by electronic virtual private network through the Self-Insured Employer's "in-house" Third-Party Administrator's ("TPA's") computer system.



A total of twenty-nine (29) standards were reviewed during the examination. Of the twenty-nine (29) standards; nine (9) standards were not applicable, thirteen (13) standards were compliant, and seven (7) standards the Self-Insured Employer/ TPA failed.

The following are areas of concern:

- **Standard B1-** Six (6) initial compensability decisions were made in excess of fifteen (15) working days.
- **Standard C3-**Thirteen (13) Indemnity benefit awards were calculated incorrectly. Twelve (12) were calculated for less than West Virginia statute requires (totaling \$3158.65.) One (1) award was over calculated (\$38.81.) *NOTE: Once the Self-Insured Employer/TPA was made aware of the calculation error, they took immediate corrective action to remedy the underpayment of benefits due the injured workers including interest.*
- **Standard J1-**One (1) denied claim reviewed did not have the initial ruling made within fifteen (15) working days.
- **Standard J4-**Two (2) denied claims did not have the appropriate protest/ grievance language on the decision order.
- **Standard L1-**Ten (10) of the claim files reviewed did not contain the adequate documentation needed to allow the examiner working knowledge of exactly what occurred during the life of the claim and the ability to recreate pertinent events and dates. Without the documentation, the examiner was unable to verify compliance with various time frames and protest language required by applicable statutes, rules, and regulations. *NOTE: One (1) claim closure notice was mailed to the injured worker after the examiner made the Self-Insured Employer/ TPA aware of the missing documentation.*
- **Standard M1-**Eleven (11) claims reviewed had delayed EDI - FROI reporting. *NOTE: The WVOIC made the Self-Insured Employer/TPA aware of late EDI - FROI reporting during the Self -Insured annual renewal process in 2021. The Employer Implemented a corrective procedure in Oct. 2021.*
- **Standard M2-** Four (4) claims reviewed did not have SROI Initial Payment submissions made timely.

## HISTORY AND PROFILE

Delhaize America is an LLC doing business as Food Lion, LLC in the state of West Virginia. Food Lion is an American grocery store chain headquartered in Salisbury, North Carolina, that operates over 1100 supermarkets in 10 states of the Mid-Atlantic and Southeastern United States, employing over 63,000 people. It was founded in 1957 as Food Town, a single grocery store in Salisbury. It later expanded to many locations across North Carolina. It was independently operated until it was acquired by the Belgium-based conglomerate Delhaize Group in 1974. In 1983, the company changed its name and branding to Food Lion to allow it to expand into regions where *Food Town* was already in use by unrelated stores. Following further mergers and acquisitions, Food Lion, LLC is currently owned by Ahold Delhaize.

## METHODOLOGY

Delhaize America, LLC's claims population during the review period consisted of seventy (70) paid claims and eight (8) denied claims.

- Paid claims population sample size - twenty-five (25): The complete population of fourteen (14) indemnity claims were selected for review. The remaining eleven (11) medical only claims were selected via random sample.
- Denied claims population size - eight (8): Due to the limited number of denied claims during the examination period the entire population was reviewed.

Electronic access was granted to the TPA's IVOS 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, 23-4-22, and 85-1-10.4]

### **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. FILE OBSERVATION

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	1	100		
B1	6	6	13	50		X
B2	12	0	13	100		
C1	8	0	6	100		
C2	13	0	1	100		
C3	0	13	1	0		X
C4	6	0	8	100		
D1	N/A	N/A	N/A	N/A		
D2	N/A	N/A	N/A	N/A		
D3	N/A	N/A	N/A	N/A		
D4	N/A	N/A	N/A	N/A		
E1	25	0	0	100		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	15	0	18	100		
I1	N/A	N/A	N/A	N/A		
J1	5	1	2	83		X
J2	6	0	2	100		
J3	6	0	2	100		
J4	4	2	2	67		X
J5	6	0	2	100		
K1	N/A	N/A	N/A	N/A		
L1	23	10	0	70		X
M1	21	11	1	64		X
M2	10	4	19	71		X
M3	33	0	0	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** – The examiner found two (2) complaints during the review that were not recorded by the Self-Insured Employer/TPA. When asked why the complaints were not listed on the complaint log, the TPA responded they were unaware these types of complaints needed to be listed and going forward the Self-Insured Employer/TPA understands the complaints should be on the complaint log. One (1) complaint was concerning a vendor the TPA used and one (1) was N/A, complaint was withdrawn prior to the fifteen (15) working day response time.

**B**- Twenty-Five (25) paid claims were reviewed to determine if initial compensability decisions and investigations are conducted in a timely manner, and if the decisions include the appropriate protest instruction for rebuttal. Thirteen (13) Claims reviewed were marked N/A; two (2) indemnity claims had no documentation in the file for the examiner to verify compliance, and eleven (11) were medical only claims. (The medical only claims were tolled for further investigation/ receipt of a WC-1. Meanwhile the TPA paid the medical bills in good faith even though the claims were not considered perfected.)

1. Six (6) initial compensability decisions were made in excess of fifteen (15) working days.
2. All twelve (12) indemnity decisions reviewed had written notification sent to the claimant with the appropriate protest information.

**C** – Fourteen (14) paid claims reviewed had Temporary Total Disability (TTD) awarded.

1. Eight (8) Indemnity claims reviewed gave proper notice of the TTD award to the claimant. The remaining six (6) Indemnity Claims were N/A; two (2) were notified after the examination period, and four (4) did not have documentation in the file to verify compliance with proper notification of the TTD award even though benefits were paid.
2. Only thirteen (13) Indemnity Claims had TTD benefits paid during the review period. Payments were issued promptly upon determination of eligibility.
3. Thirteen (13) Indemnity benefit awards were calculated incorrectly. Twelve (12) were calculated for less than West Virginia statute requires (totaling \$3158.65.) One (1) award was over calculated (\$38.81.) One (1) claim did not pay TTD benefits during the review period. *NOTE: Once the Self-Insured Employer/TPA was made aware of the calculation error, they took immediate action to remedy the underpayment of benefits due the injured workers including interest.*
4. Six (6) Indemnity claims reviewed had TTD closure letters issued properly. Eight (8) Indemnity claims were N/A; five (5) had no documentation in the claim file to verify compliance with the TTD closure letter being issued properly, and three (3) claims were still open at the end of the review period.

**D** - This standard was N/A as there were no Permanent Partial Disability (PPD) awards made during the examination period.

**E-** Examiner did not see any evidence where the request for medical treatment, medications, appliances, devices and or supplies were denied in any of the Twenty-five (25) claims reviewed.

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

**G -** This standard was N/A, as there were no Fatalities during the examination period.

**H –** Fifteen (15) claims reviewed were closed properly and notices were issued. The remaining eighteen (18) claims were N/A; five (5) were still open at the end of the review period, eleven (11) were not considered perfected, and two (2) had no documentation in the file for the examiner to verify compliance.

**I –** The standard for Occupational Pneumoconiosis was N/A, there were no Occupational Pneumoconiosis claims during the review period.

**J –** Eight (8) denied claim were reviewed to ensure investigations were complete and thorough, initial rulings were made within fifteen (15) working days, proper denial notification was given which included a reasonable basis for denial and the appropriate protest language, and the denials were not made due to a technicality. Two (2) denied claims were N/A; one (1) was still being investigate at the end of the review period, and one (1) had no documentation in the file for the examiner to verify compliance.

1. One (1) denied claim reviewed did not have the initial ruling made within fifteen (15) working days.

4. Two (2) denied claims reviewed did not have the appropriate protest/ grievance language on the decision order.

**K –** Only one (1) denied claim was appealed to the Office of Judges. Appeal was still pending at the end of the review period.

**L-** Ten (10) of the claim files reviewed did not contain the adequate documentation needed to allow the examiner working knowledge of what specifically occurred during the life of the claim and the ability to recreate pertinent events and dates. Without the documentation, the examiner was unable to verify compliance with various time frames and protest language required by applicable statutes, rules, and regulations. The examiner also observed multiple files that did not contain actual scanned copies of decision notifications and letters sent to the injured worker. These decisions and letters were copied and pasted to the notepad, which allowed the examiner to verify compliance. *NOTE: One (1) claim closure notice was mailed to the injured worker after the examiner made the Self-Insured Employer/ TPA aware of the missing documentation.*

**M-** Thirty-three (33) Claims were reviewed for compliance with EDI.

1. Eleven (11) had delayed EDI - FROI reporting. *NOTE: The WVOIC made the Self-Insured Employer/TPA aware of late EDI - FROI reporting during the Self -Insured annual*



renewal process in 2021. The Employer Implemented a corrective procedure in Oct. 2021. One (1) denied claim was N/A, FROI was reported outside the review period.

2. Only fourteen (14) indemnity claims required SROI updates. Four (4) claims reviewed did not have SROI Initial Payment submissions made timely.

3. Ten (10) claims reviewed were still showing open after SROI submission of no further payments anticipated.

*NOTE: Examiner believed this to be a submission error and brought to the Claims Manager's attention. Claims were resubmitted to EDI, to ensure proper closure, prior to the end of the examination.*

*The examiner also advised the Claims Manager, that per the EDI implementation Guide: A notification that an Incident 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/TPA's representatives were cooperative during the examination and responded to all RFI's timely and accurately.

**O** –During the file review, the examiner observed the Self-Insured Employer/TPA using TTD award notifications as the initial compensability decision. Also viewed were TTD award letters, TTD termination letters, and claim closure notices all sent to the Injured worker on the same day.

## **RECOMMENDATIONS**

**A-** All Complaints, whether referred from the WVOIC or made directly to the Self-Insured Employer/ TPA, should be listed on the complaint log, and disclosed to the WVOIC when an inquiry is made.

**B-** Initial compensability rulings need to be made within fifteen (15) working days. WV Code allows for tolling if additional evidence is needed to make an initial decision; however, the claim shouldn't be tolled indefinitely. Claims need to be properly investigated and decisions made timely. Also, a WC-1 does not have to be received in order for a claim to be considered perfected. Claim perfection should be determined on a case-by-case basis, particularly if the Self- Insured Employer/TPA has all the information equivalent to the WC-1.

**C-** TTD benefits should be calculated as prescribed by W. Va. Code § 23-4-14(b)(2) and Informational Letter # 162A- Procedures for Calculating Workers' Compensation Benefits Based on Average Weekly Wage. Also, any TTD benefits calculated and paid after the review period should be recalculated to ensure compliance with the above-mentioned Code and Informational Letter.

**J-** It is recommended that the Self-Insured Employer/ TPA properly investigate all claims and give a written ruling on the claim within fifteen (15) working days that gives a reasonable basis for denial and includes the appropriate protest information for rebuttal. WV Code allows for tolling if additional evidence is needed to make an initial decision. The TPA's adjusters have a template Tolling Letter available and should begin using it more consistently when additional investigation/ information is needed. The adjuster should also be noting the activity log/ notepad as such.

**L-** Claim files should be preserved in such a manner that anyone can review the file and be able to ascertain what occurred during the life of the claim. This includes but is not limited to being able to reconstruct pertinent events and dates, and providing evidence of a complete and thorough investigation. The Self-Insured Employer/ TPA should also be consistent with file documentation, a scanned or hard copy of all correspondence sent to the injured worker should be maintained in the claim file.

**M** – It is recommended that the Self-Insured Employer/TPA promptly and accurately provide the WVOIC with all necessary claim information needed to maintain the Worker's Compensation Claims Index. This includes but not limited to: FROI reporting within ten (10) business days of the Employer notification, SROI Periodic Events reported monthly or quarterly, SROI Initial Payment Submissions made timely, and SROI Claim Closure submitted properly. As a measure of quality assurance, existing open and closed claims should be review for correct status and updates. Additionally, the Self-Insured Employer/TPA should periodically monitor future claims to ensure that procedures are being followed and claims are being properly and consistently handled according to West Virginia statutes, rules, and regulations.

**O-** When applicable, the Self-Insured Employer/ TPA should send the initial ruling decision, TTD award notification, TTD suspension letter, TTD termination, and claim closure notification to the injured worker separately and within the specified timeframe required by West Virginia statutes, rules, and regulations. *NOTE: The TPA has Template Letters for each decision, notification, suspension, termination, and closure letter as required by West Virginia statutes, rules, and regulations in addition to procedures/guidelines in place for the adjusters to follow regarding the use of these templates.*

### 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.



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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 Delhaize America, LLC.
2. I have reviewed the examination work papers and examination report, and the examination of Delhaize America, LLC 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 December, 2022.

  
\_\_\_\_\_  
Notary Public

My commission expires: NOV 30, 2027

