

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

CRACKER BARREL OLD COUNTRY STORE, INC.


Administrative Proceeding No. 20-MCSI-02002

ORDER ADOPTING REPORT OF SELF-INSURED
MARKET CONDUCT COMPLIANCE EXAMINATION

On a prior day James A. Dodrill, Insurance Commissioner of the State of West Virginia, reviewed the attached *Report of Self-Insured Compliance Examination (Report)*, prepared August 7, 2020, for the period of January 1, 2017 through December 31, 2019, concerning Cracker Barrel Old Country Store, Inc., a self-insured employer. Whereupon, the Commissioner noted that the examination which resulted in the attached *Report* found no failures to comply with West Virginia law by the self-insured employer.

It is, therefore, **ORDERED** that the attached Report be, and it is, hereby, adopted by the Commissioner, incorporated herein and made a part hereof by this reference. It is further **ORDERED** that Cracker Barrel Old Country Store, Inc. shall continue to monitor its compliance with West Virginia law.

ENTERED this 29th day of September, 2020.



JAMES A. DODRILL
Insurance Commissioner
State of West Virginia

Report of Self-Insured Market Conduct Compliance Examination

As of December 31, 2019



**Cracker Barrel Old Country Store Inc.
305 Hartmann Drive
Lebanon, TN 37087**

Examination Number 20-MCSI-02002

**Date Prepared:
August 7, 2020**

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August 7, 2020

The Honorable James A. Dodrill
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner Dodrill,

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 January 1, 2017 through December 31, 2019 on the Workers' Compensation self-insured claims handling of

Cracker Barrel Old Country Store Inc.
305 Hartmann Drive
Lebanon, TN 37087

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

EXECUTIVE SUMMARY

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

Except as otherwise noted, all tests were conducted via a random sample taken from a given population. There was an initial population total of 139 claims during the examination period. Of the total 139 claim population; thirteen (13) consisted of denied and closed without payment (CWOP) claims.

The remaining 126 reported items were paid claims, consisting of 117 Med Only claims, nine (9) TTD claims and no (0) PPD claims. A maximum initial sample of twenty-five (25) paid claim files was selected and reviewed, which included the total population of nine (9) indemnity claims.

HISTORY AND PROFILE

Cracker Barrel Old Country Store Inc., headquartered in Lebanon, Tennessee, was originally founded in 1969. The company currently has approximately 73,000 employees working at over 660 store locations in 45 states. The company celebrated its 50th year of operations in 2019.

Cracker Barrel currently serves customers at 9 different locations throughout the state of West Virginia. According to the latest statistics provided under the Labor Market Information section of the Workforce West Virginia (unemployment compensation) website, the Company ranked 53rd in the top 100 private employers in 2019, in terms of total of number of employees.

The Company first gained its self-insured status for the workers compensation line of business effective July 5, 2007. Since 2012, the Company has retained the contracted services of Cannon Cochran Management Services (CCMSI) as its Third-Party Administrator (TPA) to manage its claim handling processes.

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

The last compliance exam was adopted on January 14, 2015 and covered the review period of January 1, 2009 through December 31, 2013. The previous exam findings outlined the following causes of concern, which were subsequently stated as a Summary of Recommendations:

CLAIM HANDLING:

Recommendation C 1: The TPA/Employer should rule timely and provide all claimants with rulings in writing and issue letters timely for compliance with West Virginia statutes, rules and regulations.

Recommendation C 3A: The TPA/Employer should make all TTD claim payments in compliance with W. Va. Code §23-4-1c.

Recommendation C 9: The TPA/Employer should submit claims timely to the WVOIC through EDI for compliance with W. Va. Code §23-2C-5(c)(8) and W. Va. Code R. §§85-02-4.3 and 85-02.6.3.

These prior exam findings resulted in a monetary penalty of \$7,000 being assessed against the Company as part of the signed agreed order. The Company responded by submitting the penalty amount to the WV OIC on January 15, 2015, as well as providing a written corrective action plan, which was dated January 7, 2015. During the current exam compensability letters were readily accessible and housed in the TPA's data system.

METHODOLOGY

Remote access was granted during the exam. 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.

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 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.

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 § 24-4-16 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 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	0	0	0			
B1	38	0	0	100		
B2	38	0	0	100		
C1	9	0	0	100		
C2	9	0	0	100		
C3	9	0	0	100		
C4	9	0	0	100		
D1	0	0	0			
D2	0	0	0			
D3	0	0	0			
D4	0	0	0			
E1	38	0	0	100		
F1	0	0	0			
G1	0	0	0			
H1	0	0	0	100		
I1	0	0	0			
J1	13	0	0	100		
J2	13	0	0	100		
J3	13	0	0	100		
J4	13	0	0	100		
J5	13	0	0	100		
K1	1	0	0	100		
L1	38	0	0	100		
M1	38	0	0	100		
M2	38	0	0	100		
M3	38	0	0	100		
N1	38	0	0	100		
N2	38	0	0	100		
O1	n/a	n/a	n/a			

OBSERVATIONS

A1 – This standard was N/A as there were no complaints during the examination period.

D - These standards were N/A as there were no benefits awarded for Permanent Partial Disability (PPD) during the examination period.

F1 – This standard was N/A as there were no benefits awarded for Non-Awarded Partial (NAP) during the examination period.

G1 – This standard was N/A as there were no fatal claims during the exam period.

I1 – This standard was N/A as there were no Occupational Pneumoconiosis claims during the examination period.


M – The Company provided the examiner with a total population of 139 claims for the review period. The OIC also ran a claims loss run report from its own system, with dates of injury that occurred within the same time frame. After comparing the company information to the OIC report, there was a discrepancy of 16 items between the 139 Company reported claims and the 123 claims shown on the OIC report. No formal requests for information (RFI's) were made to the Company for further explanation. It also noted that 9 of the 38 claims sampled for this exam were initially recorded on the First Report of Injury (FROI) as "Notification Only" according to the OIC claims loss run report.

RECOMMENDATIONS

M - It is recommended the TPA/Self-Insured Employer consistently monitor decisions and adopt a best practice by routinely checking EDI transmissions and updating the claim status timely to reduce the potential of mishandling pending claims from a ruling, authorization or payment standpoint. This action is being recommended for compliance as required by W. Va. Code §23-2C-5(c) (8, W. Va. Code R. §85-2-1 et. Seq. and West Virginia Offices of The Insurance Commissioner's Electronic Data Interchange ("EDI") Implementation Guide.

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

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



Barbara A. Hudson, CIE, CWCP, MCM, PAHM
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, Barbara Hudson, being duly sworn, states as follows:

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

The affiant says nothing further.

Barbara A. Hudson

Barbara A. Hudson, CIE, CWCP, MCM, PAHM
Examiner-in-Charge

Subscribed and sworn before me by Barbara A. Hudson on this 7th day of August 7, 2020

Kim F. Kappa

Notary Public

My commission expires: SEPTEMBER 6, 2021

