

**BEFORE JAMES A. DODRILL  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA**

**IN RE: DOLGENCORP LLC**

**ADMINISTRATIVE PROCEEDING  
19-AP-MCSI-02003**

**AGREED ORDER ADOPTING REPORT OF  
SELF-INSURED MARKET CONDUCT COMPLIANCE EXAMINATION, DIRECTING  
CORRECTIVE ACTION AND ASSESSING PENALTY**

NOW COMES James A. Dodrill, Insurance Commissioner of the State of West Virginia, and issues this Agreed Order which adopts the Report of Self-Insured Market Conduct Compliance Examination, directs corrective action and assesses a penalty. The Agreed Order is a result of findings in the Report of Self-Insured Market Conduct Compliance Examination of Dolgencorp, LLC for the audit period ending December 31, 2018, based upon the following, to wit:

**PARTIES**

1. James A. Dodrill is the Insurance Commissioner of the State of West Virginia (hereinafter "Insurance Commissioner") and is charged with the duty of administering and enforcing, among other duties, the provisions of Chapter 33 and 23 of the West Virginia Code, as amended, including all Code of State Rules.

2. Dolgencorp, LLC is a company authorized to transact and conduct its workers' compensation affairs in a self-insured capacity in West Virginia pursuant to the provisions of W. Va. Code §23-2-9.

**FINDINGS OF FACT**

1 A Self-Insured Compliance Audit concerning the operational affairs of Dolgencorp, LLC for the period ending December 31, 2018, 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 Insurance Commissioner. The Self-Insured Compliance Audit of the Self-Insured Employer began on April 11, 2019 and concluded on May 31, 2019.

2. On or about June 17, 2019, the examiner filed with the Insurance Commissioner, pursuant to W. Va. Code § 33-2-9(j)(2), a Report of Self-Insured Market Conduct Compliance Examination. (sometimes referred to as "Examination Report").

3. A true copy of the Examination Report was sent to Dolgencorp, LLC along with this Agreed Order.

4. Dolgencorp, LLC was notified pursuant to W. Va. Code § 33-2-9(j)(2) that it had thirty (30) days after receipt of the Examination Report to file a submission or objection with the Insurance Commissioner, or it could enter into this Agreed Order if it had no objections to the Examination Report.

5. The Examination Report focused on the methods used by the Self-Insured Employer to manage its operations for each of the business areas examined which includes how the Self-Insured Employer complies with West Virginia statutes and rules.

6. The exam discovered eight (8) areas where there was not one hundred percent compliance with five (5) identified as needing systemic corrective action.

7. Dolgencorp, LLC agreed to enter into this Order.

8. Dolgencorp, LLC hereby waives additional notice and review of the Report of Self-Insured Market Conduct Compliance Examination, notice of administrative hearing, any and all rights to an administrative hearing and to appellate review of any matters contained herein.

#### **CONCLUSIONS OF LAW**

1. The Insurance 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. Dolgencorp, LLC has incurred violations of the West Virginia Code and/or the West

Virginia Code of States Rules as detailed in the Report of Self-Insured Market Conduct Compliance Examination including but not limited to:

(A.) **Claims Standard B1** (*Five (5) violations*) The Self-Insured Employer did not properly issue ruling letters as required by West Virginia law. W.Va. Code §23-4-1c and W.Va. Code R. §85-1-10.1.

(B.) **Claims Standard B2** (*Three (3) violations*) The Self-Insured Employer did not send written notices of its decisions with the protest clause language. W.Va. Code §23-5-1(b)(1) and W.Va. Code R. §85-1-7.2.

(C.) **Claims Standard C4** (*Ten (10) violations*) The Self-Insured Employer did not issue Temporary Total Disability (TTD) closure letters and failed to properly notify employees of their right to a Permanent Partial Disability (PPD) evaluation. W.Va. Code §§23-5-1, 23-4-7a and 23-4-22.

(D.) **Claims Standard D1** (*One (1) violation*) The Self-Insured Employer did not issue a ruling letter related to a PPD evaluation. W.Va. Code R. §85-1-10.5a.

(E.) **Claims Standard J2** (*One (1) violation*) The Self-Insured Employer improperly denied a claim due to late reporting and closed it without payment. W.Va. Code §§23-5-1(a) and 23-5-1(b)(1).

(F.) **Claims Standard L1** (*Eight (8) violations*) The Self-Insured Employer did not properly document claim files pursuant to W.Va. Code R. §85-18-13.3 and §85-18-13.4.

(G.) **Claims Standard M2** (*Eight (8) violations*) The Self-Insured Employer did not timely submit subsequent reports of injury (SROI) as required by W.Va. Code §23-2C-5(c)(8) and W.Va. Code R. §85-2-1, *et seq.*, and the West Virginia Offices of the Insurance Commissioner's Electronic Data Interchange (EDI).

(H.) **Claims Standard M3** (*Twenty-four (24) violations*) The Self-Insured Employer did not properly update claim closures in the EDI system as required by W.Va. Code §23-2C-5(c)(8) and W.Va. Code R. §85-2-1, *et seq.*, and the West Virginia Offices of the

Insurance Commissioner's Electronic Data Interchange (EDI).

4. The Insurance Commissioner is charged with the responsibility of verifying continued compliance with West Virginia Code and the West Virginia Code of State Rules by Dolgencorp, LLC

5. The Insurance Commissioner has determined that Dolgencorp, LLC should be assessed a penalty for violating the aforementioned standards.

### **ORDER**

Pursuant to W. Va. Code § 33-2-9(j)(3)(A), following the review of the Report of Self-Insured Market Conduct Compliance Examination, the examination work papers, and Dolgencorp, LLC's response thereto, if any, the Insurance Commissioner and Dolgencorp, LLC have agreed to enter into this Agreed Order adopting the Report of Self-Insured Market Conduct Compliance Examination. The Parties have further agreed to the imposition of corrective action and an administrative penalty against Dolgencorp, LLC as set forth below.

It is accordingly **ORDERED** as follows:

(A) The Report of Self-Insured Market Conduct Compliance Examination of Dolgencorp, LLC for the period ending December 31, 2018, is hereby **ADOPTED** and **APPROVED** by the Insurance Commissioner.

(B) It is **ORDERED** that Dolgencorp, LLC will endeavor to comply with the recommendations in the Report of Self-Insured Market Conduct Compliance Examination adopted herein.

(C) It is further **ORDERED** that Dolgencorp, LLC shall continue to monitor its compliance with the West Virginia Code, the West Virginia Code of State Rules and all laws it is subject thereto.

(D) It is further **ORDERED** that Dolgencorp, LLC shall specifically cure those violations and deficiencies identified in the Examination Report including providing appropriate

restitution (where applicable) or other immediate handling of the issue so as to bring the violations into compliance and conformity with the Commissioner's findings, recommendations and any applicable law(s) to the extent the same has not already been completed and/or accomplished

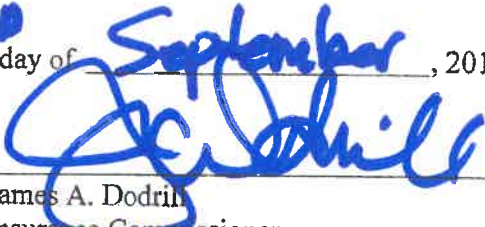
(E) It is further **ORDERED** that Dolgencorp, LLC shall file a Corrective Action Plan which will be subject to the approval of the Insurance Commissioner. The Corrective Action Plan shall detail Dolgencorp, LLC's changes to its procedures and/or internal policies to ensure compliance with the West Virginia Code and West Virginia Code of State Rules. It shall further incorporate all recommendations of the Insurance Commissioner's examiners and address all violations specifically cited in the Examination Report. The Corrective Action Plan outlined in this Order must be submitted to the Insurance Commissioner for approval within thirty (30) days of the entry date of this Agreed Order. Dolgencorp, LLC shall implement reasonable changes to the Corrective Action Plan if requested by the Insurance Commissioner within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan. The Insurance Commissioner shall provide notice to Dolgencorp, LLC if the Corrective Action Plan is disapproved and the reasons for such disapproval within thirty (30) days of the Insurance Commissioner's receipt of the Corrective Action Plan. The Corrective Action Plan shall be implemented within 90 days of the entry date of this Agreed Order.

(F) The Insurance Commissioner has determined and it has been agreed by Dolgencorp, LLC and therefore, it is hereby **ORDERED** that Dolgencorp, LLC shall pay an administrative penalty in the amount of Fifteen Thousand Dollars (\$15,000.00) to the State of West Virginia for non-compliance with the West Virginia law as described herein. The payment of this administrative penalty is in lieu of any other regulatory penalty and is due within **THIRTY (30) calendar days** of the entry of this Order.

(G) It is finally **ORDERED** that all such review periods, statutory notices, administrative hearings and appellate rights are herein waived concerning this Report of Self-Insured Claims Compliance Examination and Agreed Order. All such rights are

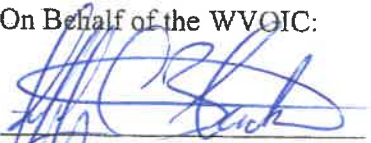
reserved by the Parties regarding any future action taken, if any, on such Agreed Order by the Insurance Commissioner against Dolgencorp, LLC.

Entered this 23<sup>RD</sup> day of September, 2019.

  
\_\_\_\_\_  
James A. Dodrill  
Insurance Commissioner  
State of West Virginia

REVIEWED AND AGREED TO BY:

On Behalf of the WVOIC:

  
\_\_\_\_\_  
Jeffrey C. Black  
Attorney Supervisor  
Regulatory Compliance

On behalf of Dolgencorp, LLC:

By: Jane Stutsman  
(Print Name)

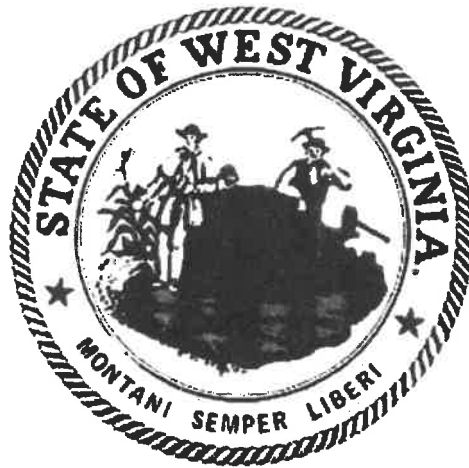
Its: VP Risk Management

Signature: 

Date: 9-11-19

# Report of Self-Insured Market Conduct Compliance Examination

As of December 31, 2018



**DolgenCorp LLC**  
P.O. Box 1728  
Goodlettsville, TN 37070

**Examination Number 19-MCSI-02003**

**Date Prepared:**  
**June 17, 2019**

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**June 17, 2019**

**The Honorable James A. Dodrill  
West Virginia Insurance Commissioner  
900 Pennsylvania Avenue  
Charleston, West Virginia 25302**

**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, 2016 through December 31, 2018 on the Workers' Compensation self-insured claims handling of**

**Dolgencorp, LLC  
P. O. Box 1728  
Goodlettsville, TN 37071**

**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**

The prior report dated as of December 31, 2013 found compensability letters were not issued in twenty-six (26) paid claims and nine (9) denied claims; of the twenty-six (26) paid claims, four (4) had compensability letters issued, but the ruling letters were not issued timely. Although an improvement, this examination found one (1) claim where the initial compensability letter was not issued and four (4) claims the compensability ruling was issued late. Additionally, the prior report found sixty-three (63) paid claims and twenty-six (26) denied claims were either not submitted or had timeliness issues when submitted to the WVOIC Electronic Data Interchange (EDI) System. Although an improvement, this report found thirty-one (31) instances of untimely reporting to the EDI system. Details specific to the issues found in this examination can be found in the observations section below.

## **EXECUTIVE SUMMARY**

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

The examination work related to Dolgencorp, LLC commenced April 11, 2019 and concluded May 31, 2019. The Self-Insured Employer maintains an electronic environment; the majority of the examination work was conducted by electronic virtual private network through their Ivos claims computer system. The Self-Insured Employer handles its own workers’ compensation administrative services and utilizes a bill review company that processes medical bills within state requirements.

The following are areas of concern:

- Element of review B. 1.

Four (4) indemnity claims had late rulings and on one (1) claim no ruling letter was sent which are violations of W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1.

- Element of review B. 2.

Three (3) claim ruling letters did not contain the required W. Va. protest clause in violation of W. Va. Code §23-5-1(b)(1) & W. Va. Code R. §85-1-7.2.

- Element of review C. 4.

Ten (10) indemnity claims did not issue Temporary Total Disability (TTD) closure letters and failed to properly notify the employee of their right to a Permanent Partial Disability (PPD) evaluation in violation of W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22.

- Element of review D. 1.

One (1) claim did not issue the Permanent Partial Disability PPD award letter in violation of W.Va. Code R. § 85-1-10.5 a.

- Element of review J. 2.

One (1) closed without payment claim was improperly denied on the sole basis of late reporting of the injury to the employer in violation of W. Va. Code §§23-5-1(a) 23-5-1(b) (1).

- Element of review L. 1.

Eight (8) indemnity claim files were not properly documented due to not retaining the employees WC1 or wage information in violation of W. Va. Code R. §§ 85-18-13.3 and 13.4.

- Element of review M. 2.

Eight (8) paid claim files were not updated from medical only to indemnity. Of these eight; six (6) were administratively closed but never updated to closed status in the WVOIC Electronic Data Interchange (EDI) System in violation of W. Va. Code § 23-2C-5(C)(8) and W. Va. R. § 85-2-1 et seq. and West Virginia Offices of the Insurance Commissioner's Electronic Data Interchange ("EDI") Implementation Guide.

- Element of review M. 3.

One (1) paid claim, thirteen (13) closed without payment claims and one (1) denied claim were administratively closed but never updated to closed status in the WVOIC Electronic Data Interchange (EDI) System in violation of W. Va. Code § 23-2C-5(C)(8) and W. Va. R. § 85-2-1 et seq. and West Virginia Offices of the Insurance Commissioner's Electronic Data Interchange ("EDI") Implementation Guide.

## **HISTORY AND PROFILE**

Dollar General began with one store in 1955 in Springfield Kentucky. In 1968 the Company went public as Dollar General Corporation posting annual sales of more than \$40 million and

a net income in excess of \$1.5 million. Today the Company has 15,300 stores in 44 states employing 135,000 employees.

In accordance with W. Va. Code § 23-2-9, Dolgencorp, LLC commenced its self-insured operations in West Virginia beginning January 1, 2007. As of the date of this report, the Self-Insured Employer employs 1,889 active employees in the state of West Virginia.

## **METHODOLOGY**

The examiners conducted file reviews and interviews of company management. 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 was an initial population total of 195 claims during the examination period. Of the total 195 claim population; thirty-eight (38) consisted of denied and closed without payment (CWOP) claims. The remaining 157 were paid claims, consisting of 127 medical only and 30 indemnity claims. A maximum initial sample of fifty-five (55) claim files were selected randomly using the following parameters; Denied/CWOP claims: A maximum initial sample of thirty (30) claim files were selected. Of the Denied/CWOP sample; nine (9) were marked N/A and not reviewed as they became paid claims after the examination period. Paid Claims: A maximum initial sample of twenty-five (25) paid claim files were selected. A weighted sampling methodology of "80% Indemnity" (20 Claims) and 20% "Medical Only" (5 Claims) were utilized. During the review however, two (2) indemnity claims were determined to be medical only. Of the indemnity claims sample; eighteen (18) were total temporary disability (TTD). Of these eighteen TTD claims, four (4) were identified as permanent partial disability claims.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiners may not have discovered every unacceptable or non-compliant activity in which the Self-Insured Employer 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 or not claimants are provided adequate instructions for rebuttals? [W. Va. Code §23-4-15(a) and W. Va. Code R. §85-1-3.1]
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 on 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	2	0	0	100		
B1	20	5	0	80		*
B2	22	3	0	88		*
C1	18	0	0	100		
C2	18	0	0	100		
C3	18	0	0	100		
C4	8	10	0	44	*	
D1	3	1	0	75	*	
D2	4	0	0	100		
D3	4	0	0	100		
D4	4	0	0	100		
E1	25	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	N/A	N/A	N/A	N/A	N/A	N/A
I1	N/A	N/A	N/A	N/A	N/A	N/A
J1	21	0	9	100		
J2	20	1	9	95		
J3	21	0	9	100		
J4	21	0	9	100		
J5	21	0	9	100		
K1	N/A	N/A	N/A	N/A	N/A	N/A
L1	38	8	9	83		*
M1	46	0	9	100		
M2	38	8	9	83		*
M3	22	24	9	48		*
N1	46	0	9	100		
N2	46	0	9	100		
O	N/A	N/A	N/A	N/A	N/A	N/A

\*See "Observations and Recommendations" below.

## OBSERVATIONS

**B1** – Five (5) Total Temporary Disability claims were not ruled upon timely and of these; one (1) in which the ruling letter was never sent. The Self-Insured Employer agreed they failed to send the ruling letter, and in response to the examiner's inquiry, sent a ruling letter to the employee. Although untimely rulings were found to be a repeated failure from the previous examination, this review determined there was substantial improvement on behalf of the Self-Insured Employer. It should also be noted that in each instance, the injured employee's benefits and medical bills were consistently paid timely by the Self-Insured Employer. The Self-Insured Employer 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.

**B2** – Three (3) paid claims ruling letters did not contain the WVOIC protest clause as required by W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2. The Self-Insured Employer agreed they failed to include the protest clause in the ruling letters and prior to the examination conclusion, implemented procedures to include the protest clause on all West Virginia ruling letters.

**C4** – In ten (10) claims the Self-Insured Employer failed to issue TTD closure letters and to properly notify the employee of their right to a Permanent Partial Disability (PPD) evaluation. The Self-Insured Employer agreed they failed to issue TTD closure letters and PPD evaluation notices and in response to the examiner's inquiry; implemented internal procedures that will flag applicable claims alerting the adjuster to issue the letters as required by W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22.

*Although a statistical failure, due to the nominal population, determination of whether a systemic correction is not concluded.*

**D1** – One (1) Permanent Partial Disability (PPD) claim was not ruled on. Although it was determined by the physician that the employee had 0% impairment; the ruling letter should have been issued to the employee as required by W.Va. Code R. § 85-1-10.5a. In response to the examiner's inquiry, the Self-Insured Employer agreed they failed to issue the PPD award ruling letter and issued the ruling letter to include the WVOIC protest language.

*Although a statistical failure, due to the nominal population, determination of whether a systemic correction is not concluded.*

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

**G1** – This standard was N/A as there were no Fatalities during the examination period.

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

**J1** – One (1) denied claim was improperly denied. The Self-Insured Employer received the employee's application for benefits (WC-1) five weeks following the date of the injury. The claim denial letter stated the claim was denied solely due to "Late Report". It was noted in the file that the employee stated she never intended to file a worker's compensation claim and had utilized her private health insurance nor did the employee protest the claim denial. The Self-Insured Employer agreed that the claim was improperly denied.

**K1** – This standard was N/A as there were no Office of Judges ("OOJ") or Board of Review ("BOR") claims during the examination period.

**L1** – Eight (8) indemnity claims were not adequately documented. For five (5) files, the claim file was missing the employee's wage earnings and for three (3) files, the claim file was missing the WC1. The Self-Insured Employer agreed that the claim files were not properly documented as required by W. Va. Code R. §§ 85-18-13.3 and 13.4. In response to the examiner's inquiry, the Self-Insured Employer located and imaged electronic copies of all missing documents into the claim files.

**M2** - The Company did not timely submit subsequent reports of injury (SROI) on eight (8) paid claims from medical only to indemnity and of these; six (6) were administratively closed therefore, an additional SROI should have been submitted updating the claim status to closed 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.

**M3** – A total of twenty-four (24) claims were found to have violations updating claim closures in the EDI system when proper to do so and no further payments were expected. Of these twenty-four (24) claims; six (6) paid claims continued to show the claim status as "open" from the original FROI submission, one (1) denied claim status of "medical only" from the original FROI submission and eight (8) denied claims needed updated to FROI 01 (CANCEL) due to a WC1 was never received. The Self-Insured Employer should have procedures in place to ensure that all claim status is updated and submitted 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.

## **RECOMMENDATIONS**

**B1** – The Self-Insured Employer 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.

**B2** – The Self-Insured Employer should have procedures in place to ensure that all ruling letters contain the WVOIC protest clause as required by W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2.

**C4** – The Self-Insured Employer should have procedures in place to timely issue TTD closure letters and PPD evaluation notices as required by W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22.

**D1** - The Self-Insured Employer should have procedures in place to ensure that rulings are issued on all Permanent Partial Disability claims as required by W.Va. Code R. § 85-1-10.5a.

**J1** - The Self-Insured Employer should have procedures in place to ensure that all claim denials properly state and use a legal basis for the reason for denial as required by W. Va. Code §23-4-15(a) and & W. Va. Code R. §85-1-3.

**L1** - The Self-Insured Employer should ensure all documents associated with claims handling are included in the claim file as required by W. Va. Code R. §§ 85-18-13.3 and 13.4.

**M2** - The Self-Insured Employer should have procedures in place to ensure updated reporting to EDI upon determination of claim compensability 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.

**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.

**EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT**

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

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

A handwritten signature in cursive script, reading "Letha G. Tate", is written over a horizontal line.

Letha G. Tate, 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, Letha G. Tate, being duly sworn, states as follows:

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

The affiant says nothing further.

Letha G. Tate, MCM  
Letha G. Tate, MCM

Subscribed and sworn before me by Letha G. Tate on this 17<sup>th</sup> June, 2019

Georgia Lee Cisco  
Notary Public

My commission expires: 10-11-2019

