

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

In the Matter of:

US SILICA COMPANY

Administrative Proceeding No. 21-IC-02243

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 US Silica Company (hereinafter, “US Silica”) 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 US Silica 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 Self-Insured Compliance Audit began on April 7, 2022 and concluded on May 3, 2022.

2. On or about May 16, 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 US Silica and US Silica 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 US Silica to manage its operations for each of the business areas examined, including whether and how

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

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

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

Claims Standard LI (*One (1) violation*) The Self-Insured Employer did not properly document the claim file as required by W.Va. Code R. §§ 85-18-13.3 and 85-18-13.4.

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

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

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

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

9. US Silica 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 of this order is entered.

Entered this 1ST day of June, 2022.



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

Report of Self-Insured Market Conduct Compliance Examination

As of October 31, 2021



US Silica Company
24275 Katy Freeway, Suite 600
Katy, TX 77494

TPA
Smart Casualty Claims

Examination Number: 21-IC-02243

Date Prepared:
May 16, 2022

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May 16, 2022

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner McVey:

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

US Silica Company
24275 Katy Freeway, Suite 600
Katy, TX 77494

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 previous exam report which covered the exam period January 1, 2009 through June 30, 2013, found no violations.

EXECUTIVE SUMMARY

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

The examination work related to US Silica commenced April 7, 2022 and concluded May 3, 2022. US Silica 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”) InfoAccess Claims computer systems.

The following is identified as an area of concern:

- Element of review L.1.

One (1) claim was inadvertently reported to the incorrect TPA. The company failed to retain the documents pertaining to the claim. Therefore, the examiner was unable to determine if the claim was compliant with the West Virginia statutes, rules and regulations.

HISTORY AND PROFILE

Founded in the late 1800’s near Berkeley Springs, West Virginia, a small plant was built to mine sand to produce silica sand for glass manufacturing. The company as it exists today has undergone many developments, including the 1987 merging of the Pennsylvania Glass Sand Corporation and Ottawa Silica Company to form what is now known as U.S. Silica Company with more than 27 production facilities across the country. Surface mines at the Berkeley Springs facility use hard rock mining methods to produce high-purity sandstone. The plant uses propane, fuel oil and electricity to make whole grain, ground, and fine ground silica as well as producing a synthetic magnesium-silica product called Floredil.

In accordance with W. Va. Code §23-2-9, US Silica has been self-insured in West Virginia since July 1, 1981, and currently employs approximately 75 employees in the state of West Virginia.

METHODOLOGY

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.

Due to the limited number of claims for US Silica during the examination period, the entire claim population was reviewed. The population consisted of four (4) medical only claims.

Note: As noted in the compliance table below, one (1) claim the company inadvertently reported the claim to the incorrect TPA. The company however, failed to retain the claim file documentation. As a result, the examiner was unable to substantiate compliance of the claim handling and was therefore marked N/A under standards B1, B2 & H1.

Each area of the examination has specific elements that were tested, and the areas and elements are listed below. The examiners may not have discovered every unacceptable or non-compliant activity in which the Self-Insured Employer/TPA is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its' designee. A compliance table follows containing results of each area of review with the compliance percentage for the Self-Insured Employer/TPA.

ELEMENTS OF THE REVIEW

A. COMPLAINTS: THE TIME FRAME WITHIN WHICH THE EMPLOYER RESPONDS TO COMPLAINTS IS IN ACCORDANCE WITH APPLICABLE STATUTES, RULES AND REGULATIONS.

1. Did the Self-Insured Employer respond to complaints received from the WVOIC within fifteen (15) working days? [W. Va. Code R. § 85-1-16]

B. INITIAL COMPENSABILITY DECISIONS AND INVESTIGATIONS ARE CONDUCTED IN A TIMELY MANNER.

1. Did the Self-Insured Employer properly investigate then provide a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is gathered, rule in the appropriate time? [W. Va. Code §§ 23-4-1c (a) and (b) & W. Va. Code R. § 85-1-10.1]
2. Did the Self-Insured Employer include on the written notice of the decision the protest clause? [W. Va. Code § 23-5-1(b)(1) & W. Va. Code R. § 85-1-7.2]

C. TEMPORARY TOTAL DISABILITY (TTD)

1. Did the Self-Insured Employer/TPA properly notify the claimant of the TTD award? [W. Va. Code § 23-5-1]
2. Did the Self-Insured Employer/TPA immediately pay amounts due the claimant for benefits upon determination of eligibility? [W. Va. §§ 23-4-1c(b) and (g)]
3. Did the Self-Insured Employer/TPA calculate and pay indemnity payments correctly? [W. Va. Code § 23-4-14(b)(2) and Informational Letter 162A]
4. Did the Self-Insured Employer/TPA issue temporary total disability closure letters properly? [W. Va. Code §§ 23-5-1, 23-4-7a and 23-4-22]

D. PERMANENT PARTIAL DISABILITY (PPD)

1. Did the Self-Insured Employer/TPA act on PPD evaluations timely? [W.Va. Code R. § 85-1-10.5 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 §§ 23-5-1(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

None noted at this time.

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	3	0	1	100		
B2	3	0	1	100		
C1	N/A	N/A	N/A	N/A		
C2	N/A	N/A	N/A	N/A		
C3	N/A	N/A	N/A	N/A		
C4	N/A	N/A	N/A	N/A		
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	N/A	N/A	N/A	N/A		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	3	0	1	100		
I1	N/A	N/A	N/A	N/A		
J1	N/A	N/A	N/A	N/A		
J2	N/A	N/A	N/A	N/A		
J3	N/A	N/A	N/A	N/A		
J4	N/A	N/A	N/A	N/A		
J5	N/A	N/A	N/A	N/A		
K1	1	0	0	100		
L1	3	1	0	75		*
M1	4	0	0	100		
M2	4	0	0	100		
M3	4	0	0	100		
N1	N/A	N/A	N/A	100		
N2	N/A	N/A	N/A	100		
O	N/A	N/A	N/A	N/A		

*See "Observations and Recommendations" below.

OBSERVATIONS

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

C1, C2, C3, C4 – These standards marked N/A as there were no Temporary Total Disability (TTD) claims during the exam period.

D1, D2, D3, D4 – These standards marked N/A as there were no Permanent Partial Disability claims 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 Fatalities during the examination period.

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

J1 - This standard was N/A as there were no denied claims during the examination period.

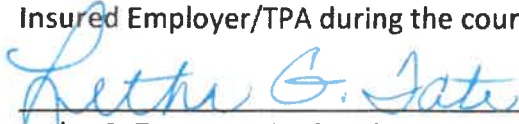
L1 - On one (1) medical only claim the file was not properly documented as required by W. Va. Code R. §§ 85-18-13.3 and 13.4. In this claim, the company inadvertently reported the claim to the incorrect TPA. Therefore, the only documentation pertaining to the claim that the company retained were emails outlining the nature of the injury and the medical treatment sought.

RECOMMENDATIONS

L1 – It is recommended the Self-Insured Employer/TPA have procedures in place to ensure they retain essential documents associated with claim files as required by W. Va. Code R. §§ 85-18-13.3 and 13.4.

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.



Letha G. Tate, AIE, AIRC, ALMI, 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 US Silica Company.
2. I have reviewed the examination work papers and examination report, and the examination of US Silica was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

Letha G. Tate

Letha G. Tate, AIE, AIRC, ALMI, MCM

Subscribed and sworn before me by Letha G. Tate, on this 17th day of May, 2022.

Georgia Lea Cisco

Notary Public

My commission expires: 10-11-2024

