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

In the Matter of:

LOWE'S HOME CENTERS, LLC

Administrative Proceeding No. 24-IC-177970

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 Lowe's Home Centers, LLC (hereinafter, "Lowe's") for the audit period ending December 31, 2024, 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 Lowe's for the period ending December 31, 2024, 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 covered the period of January 1, 2022 through December 31, 2024.

2. On or about May 21, 2025, 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 Lowe's and Lowe's 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. Lowe's stated that it had no issues with the report.

4. As set forth in the *Examination Report,* the examination focused on the methods used by Lowe's to manage its operations for each of the business areas examined, including whether and how Lowe's, a self-insured employer, complies with West Virginia's statutory and regulatory law.

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

6. The Commissioner reviewed the *Examination Report* and considered the response of Lowe's to the *Examination Report* prior to issuing these findings of fact, conclusions of law and order.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter 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*, Lowe's failed to comply with three (3) claims standards which will require systemic correction.

> **Claims Standard C4** (*Seven (7) violations*) The Self-Insured Employer did not issue TTD closure letters in accordance with West Virginia law.
>
> **Claims Standard O2** (*Eleven (11) violations*) The Self-Insured Employer's TPA did not follow its own guidelines regarding WC-1 applications.
>
> **Claims Standard O3** (*Two (2) violations*) The Self-Insured Employer did not issue TTD suspension notices as required by W.Va. Code § 23-4-7a(e).

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

5. The Commissioner has determined that Lowe's should be assessed a penalty for violating the aforementioned standards.

ORDER

Pursuant to W. Va. Code § 33-2-9(j)(3)(A) and W.Va. Code R. §85-18-1, *et seq.*, as a result of his review of the *Examination Report*, the examination work papers, and Lowe's response thereto, 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. Lowe's shall endeavor to comply with the recommendations contained in the *Examination Report*;

3. Lowe's shall continue to monitor its compliance with applicable West Virginia law;

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

9. Lowe's **shall pay an administrative penalty in the amount of Two Thousand Five Hundred Dollars ($2,500.00)** 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 days

of the date this order is entered.

10. Pursuant to W.Va. Code §§ 23-2-17 and 33-2-13, the self-insured employer may contest this decision within 30 days of receipt of this Order.

Entered this 16th day of July, 2025.

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

Report of Self-Insured Market Conduct Compliance Examination

As of December 31, 2024

Lowe's Home Centers, LLC
1000 Lowe's Blvd. Mail Code: RMT
Mooresville, NC 28117

TPA
Sedgwick Claims Management Services, Inc.

Examination Number 24-IC-177970

Date Prepared:
05/21/2025

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05/21/2025

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 January 1, 2022 through December 31, 2024 on the Workers' Compensation self-insured claims handling of:

Lowe's Home Centers, LLC
1000 Lowe's Blvd. Mail Code: RMT
Mooresville, NC 28117

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

COMPLIANCE WITH PREVIOUS EXAMINATION RECOMMENDATIONS

Previous examination findings for the exam period of January 1, 2015 through March 31, 2018 were as follows:

- **B1**- Twenty- three (23) compensable claims had no initial ruling letter issued in violation of W.Va. Code §§23-4-1c (a) & (b), and W.Va. Code R. §85-1-10.1.

- **C1**- Nineteen (19) claims did not receive a proper notification of a Temporary Total Disability award in violation of W.Va. Code §23-5-1.

- **C3**- For fifteen (15) claims, the Company did not calculate and pay indemnity payments in accordance with Informational Letter 162A. The examiner found each had underpayments to the claimant, in violation of W.Va. Code §23-4-14(b)(2)

- **C4**- Nineteen (19) claims the Company did not issue Temporary Total Disability closure letters in accordance with W.Va. Code §§23-5-1.

- **J4**- The protest language was not included in the denial letter for one (1) denied claim in violation of 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]

- **M3**- In thirty (30) claims the Company did not report closure of the claim in violation of 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.

The Agreed Order issued on October 10th, 2018, adopting the previous Self-Insured Compliance Examination, required an administrative penalty be paid and a Corrective Action Plan to be filed with the Insurance Commissioner. During the current review, **B1**, **C1**, and **C4** of the Elements of Review were again found to be areas of concern.

EXECUTIVE SUMMARY

This Self-Insured Market Conduct Compliance Examination ("examination") was initiated to determine the compliance of Lowes's Home Centers, LLC (LHC) 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 preliminary review related to LHC commenced on February 10, 2025. Ten (10) days later the compliance examination began on February 20, 2025 and concluded on May 5, 2025. LHC maintains an electronic environment; the majority of the examination work was conducted by

electronic virtual private network through the Third-Party Administrator's ("TPA's") computer system. A total of thirty-one (31) elements were reviewed during the examination. Of the thirty-one (31) elements; six (6) elements were either not applicable or observation only, twenty-two (22) elements were either compliant or predominantly compliant, and three (3) elements reviewed resulted in failure.

The following are areas of concern:

- **B1**- One (1) initial ruling letter was issued in excess of fifteen (15) working days. [W.Va. Code R. §85-1-10.1]

- **C1**- One (1) claimant did not receive a proper notification of their Temporary Total Disability award in violation of W.Va. Code §§23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022.

- **C4**- Seven (7) indemnity claims did not have Temporary Total Disability closure letters issued in accordance with W.Va. Code §§23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022. One (1) of the seven (7) was not given proper notice of the right to a Permanent Partial Disability evaluation. [W. Va. Code §23-4-22]

- **J1**-One (1) denied claim was not ruled on in violation of W. Va. Code §23-4-1c(a).

- **L1**- Two (2) of the claim files reviewed did not contain adequate documentation. [W. Va. Code R. §§ 85-18-13.3 and 13.4]

- **O2**- Eleven (11) denial notices excluded the specific language required by the TPA's procedures.

- **O3**- Two (2) claimants were not issued Temporary Total Disability suspension notices as required by W. Va. Code §23-4-7a(e).

HISTORY AND PROFILE

LHC is a Fortune 50 home improvement retailer which became a self-insured employer in West Virginia (WV) on July 1, 1988. Since becoming self-insured, LHC has not had any changes in its status and Sedgwick CMS, Inc has been handling their claims administration since April 1, 2020.

LHC has nineteen (19) stores that primarily serve its WV customers. These locations are comprised of 2,316 active associates which mainly consist of customer service associates who assist customers within the stores. (86% of associates are customer service associates, 11% work in the lumberyards or any supply chain locations, and the remaining 3% are leadership or clerical positions which may work within the store or remotely.)

METHODOLOGY

The claims population submitted for the review period consisted of two hundred and eighteen (218) paid claims, one hundred and eight (108) denied/closed without pay claims, and twenty-five (25) claims referred to the Office of Judges/ Board of Review.

- Paid claims population sample size - twenty-five (25): The complete population of seven (7) Permanent Partial Disability claims were reviewed along with thirteen (13) Temporary Total Disability claims and five (5) Medical Only claims, both selected via random sample.
- Denied/closed without pay claims population sample size twenty-five (25): selected via systematic random sample.
- Office of Judges/Board of Review claims population sample size eleven (11): ten (10) selected via systematic random sample and one (1) observed during the paid claims review.

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

This examination report is a report by test, rather than a report by exception, and all elements tested are described and the results indicated. Typically, areas below 93% would generally require systemic corrective action. Any element scoring below 100% will detail the observations of the specific issue and include a recommendation.

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

ELEMENTS OF THE REVIEW

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

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

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

1. Did the Self-Insured Employer properly investigate then provide a written ruling on a claim within fifteen (15) working days, or if "tolled" while evidence for the claim is

gathered, rule in the appropriate time? [W. Va. Code §§ 23-4-1c (a) & (b), and 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) expired 06/30/2022, 23-5-1a(b)(1) effective 07/01/2022, W. Va. Code R. § 85-1-7.2 and Insurance Bulletin 22-07]

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 expired 06/30/2022, 23-5-1a effective 07/01/2022]

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) & (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 expired 06/30/2022, 23-5-1a effective 07/01/2022, 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. When requested, did the Self-Insured Employer/TPA refer the claimant to a physician for examination/ evaluation (formerly IME, reference Insurance Bulletin 21-03) 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 (OP)

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 (CWOP)

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) and 23-5-1(b)(1) expired 06/30/2022, 23-5-1a(a) and 23-5-1a(b)(1) effective 07/01/2022]

3. Were any claims denied inappropriately due to a technicality? [W. Va. Code §§ 23-5-13 expired 06/30/2022, 23-5-13a effective 07/01/202223, 85-1-3.1]

4. Were appropriate protest/grievance language on the decision order? [W. Va. Code §§ 23-5-1(b)(1) expired 06/30/2022, 23-5-1a(b)(1) effective 07/01/2022 and 23-4-3(f), W. Va. Code R. §§ 85-1-7.2 and 85-21-10.2b, and Insurance Bulletin 22-07]

5. Were the denied claim investigations 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) expired 06/30/2022, 23-5-9a(g) effective 07/01/2022 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?

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

1. Claim Correspondence Letters sent for review with Preliminary Request Packet (PRP).

2. Is the TPA following their own guideline when processing claims?

3. Is the Self- Insured Employer/ TPA issuing a notice to the claimant suspending the payment of TTD benefits? Does the notice allow a reasonable period of time for the claimant to submit evidence justifying the continuation of TTD benefits? [W. Va. Code §23-4-7a(e)]

COMPLIANCE TABLE

Review Section	# Pass	# Fail	N/A	Compliance %	Individual Corrective Action	Systemic Corrective Action
A1	N/A	N/A	N/A	N/A		
B1	24	1	0	96	X	
B2	25	0	0	100		
C1	19	1	0	95	X	
C2	20	0	0	100		
C3	18	0	2	100		
C4	13	7	0	65		X
D1	7	0	0	100		
D2	Pass	0	0	Pass		
D3	7	0	0	100		
D4	6	0	1	100		
E1	Pass	0	0	Pass		
F1	N/A	N/A	N/A	N/A		
G1	N/A	N/A	N/A	N/A		
H1	N/A	Observation	Only	N/A	Observation	Only
I1	N/A	N/A	N/A	N/A		
J1	24	1	0	96	X	
J2	24	0	1	100		
J3	24	0	1	100		
J4	24	0	1	100		
J5	25	0	0	100		
K1	11	0	0	100		
L1	48	2	0	96	X	
M1	Pass	0	0	Pass		
M2	Pass	0	0	Pass		
M3	Pass	0	0	Pass		
N1	Pass	0	0	Pass		
N2	Pass	0	0	Pass		
O1	N/A	Observation	Only	N/A	Observation	Only
O2	0	11	0	0		X
O3	18	2		90		X

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

OBSERVATIONS

A1 – No complaints were filed during the examination period, this element of review is N/A.

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.

B1 - One (1) paid claim was deferred awaiting receipt of a completed WC-1 (Employees or Physicians' Report of Injury Form.) The completed WC-1 was imaged in the file twice before a deferral letter was sent to the claimant. The compensability decision was issued twenty-eight (28) working days after the required information was received. W.Va. Code R. §85-1-10.1 requires decisions to be made within fifteen (15) working days.

C – Twenty (20) paid claims reviewed had TTD awarded.

C1 - One (1) Indemnity claim reviewed did not give proper notice of the TTD award to the claimant. [W.Va. Code §§23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022]

C2 - Twenty (20) Indemnity Claims had TTD benefits paid during the review period. Payments were issued promptly upon determination of eligibility.

C3 - Eighteen (18) Indemnity benefit awards appear to have been calculated correctly. Two (2) were marked N/A, due to the lack of documentation in the file needed to verify calculation.

C4 - Seven (7) Indemnity claims reviewed did not have TTD closure letters issued [W.Va. Code §§23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022] and one (1) of the seven (7) was also not given a notice of the right to a PPD evaluation. [W. Va. Code §23-4-22]

D – Seven (7) indemnity claims had PPD awards issued during the examination period. The wage information used to calculate the PPD award was missing from one (1) claim file thus the Examiner was unable to confirm the payment was calculated correctly for this claim. [Marked as N/A on the Compliance Table for **D4**.] The PPD awards for the remaining six (6) claims appear to have been calculated correctly.

E1- When applicable, the Examiner did not see any evidence where a request for medical treatment, medications, appliances, devices and or supplies was not acted upon within fifteen (15) working days. The Examiner observed three (3) instances where authorizations were not given in writing and two (2) instances where pertinent information was missing from the written authorizations. Examiner's note, it appears the medical bills were paid in the above-mentioned instances.

F1 - The element of review for Non-Awarded Partial (NAP) disability was N/A, there were no NAP benefits awarded during the examination period.

G1 - There were no fatalities during the examination period, this element of review was N/A.

H1 – The majority of the claims reviewed were closed with notices issued. However, the Examiner observed two (2) Indemnity claims that were closed without a notice issued to the claimant. By not issuing a notice, the claimant was not made aware of the continued eligibility of medical services related to the compensable injury.

I1 – The element of review for Occupational Pneumoconiosis was N/A, there were no Occupational Pneumoconiosis claims during the review period.

J – Twenty-five (25) 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.

J1 - A written decision was never issued for one (1) denied claim in violation of W.Va. Code § 23-4-1c (a) therefore the Examiner was unable to determine compliance with some WV statutes, rules, and regulations. [Marked as N/A on the Compliance Table for **J2**, **J3**, and **J4**.]

Additional denied claims observation:

- Thirteen (13) claims were denied for no receipt of a WC-1, of those claims, five (5) had medical records attached to the file. One could argue that a written notice of occurrence was given, in lieu of a completed WC-1, when the First Report of Injury (FROI) was made, and the medical records were received. [W.Va. Code § 23-4-1a]

- One (1) claim decision appeared to have been made untimely due to a note attached to a medical bill received stating *"Special Instructions: Denied Claim...."* The note was dated 12/21/2022, the decision notice was not issued until 02/24/2023. When asked about the note in a Request for Information (RFI), the TPA advised that the claim was not denied on 12/21/2022, rather a notice was sent to the provider advising a WC-1 was required for processing of the medical bill. A deferral letter was also sent to the claimant on 12/22/2022 advising a WC-1 was needed to file a claim. A second deferral letter was sent on 01/18/2023 followed up with the denial notice on 02/24/2023.

K1 – A total of eleven (11) claims protested to the OOJ/ BOR were reviewed. Four (4) were dismissed, five (5) were affirmed [one (1) affirmed order required the original decision to be updated], and two (2) were reversed. All OOJ/BOR orders reviewed were complied with timely.

L1 - Two (2) of the claim files reviewed did not contain the adequate documentation necessary to allow the examiner to have complete working knowledge of what occurred during the life of the claim and the ability to recreate relevant events and dates. The specific documentation missing from the files was the wage information used to determine indemnity payments, please refer to **C3** and **D** for additional information. Without this documentation, the examiner was

unable to verify compliance with various applicable statutes, rules, and regulations. [W. Va. Code R. §§ 85-18-13.3 and 13.4]

M - It appears the Self-Insured Employer/ TPA is promptly and accurately providing the WVOIC with all necessary claim information to maintain the Workers' Compensation claim index.

N - The Self-Insured Employer/TPA's representatives were cooperative during the examination and responded to all RFI's timely and accurately.

O – Other

O1 - During the preliminary review of the PRP information submitted, the examiner observed a ***TTD and PPD Closure Notice Template Letter*** advising the claimant of incorrect information to file a protest regarding the decision. Once brought to the attention of the Self-Insured Employer/TPA the template letter was immediately amended to show the proper protest information. The Examiner did not observe the outdated template letter being used during the review.

O2 - The Examiner observed what seemed like a pattern of claims being denied thirty (30) to sixty (60) days after the Date of Injury (DOI) when a WC-1 was not received. Specific information concerning the WC-1 was not located in the claims manual and/or the claims handling process provided with the PRP responses. A RFI was sent, asking for the procedures being used when claims are denied for not receiving a completed WC-1. The TPA's original response consisted of W. Va. Code §§ 23-4-1a (report of injuries by employee) and 23-4-15 (application for benefits), not any written policies and/or procedures being utilized by the TPA when denying claims due to the lack of a completed WC-1. The Examiner in turn emailed the TPA and asked for additional information. The email responses received helped outline the handling of claims when a WC-1 has not been received and stated that if the claim is denied prior to the six (6) months deadline the denial must include the following language: *"If we receive your claim (WC-1) within the six-month filing deadline, we will reconsider our decision based on the information submitted."* Eleven (11) claims reviewed were denied for not receiving a completed WC-1 from the claimant. All eleven (11) denial notices excluded the specific language mentioned above. This appears to be an issue of not following the TPA's procedures. Please note, it looks as if the adjustor is issuing denials as requested by the Self-Insured Employer. One email response from the TPA advised that LHC asked that denials be made forty-five (45) days after the DOI if no WC-1 has been received.

O3 - Two (2) claimants were not issued TTD suspension notices as required by W. Va. Code §23-4-7a(e).

RECOMMENDATIONS

B1 - W. Va. Code R. §85-1-10.1 requires Initial compensability rulings be made within fifteen (15) working days. WV Code allows for tolling if additional evidence is needed to make a decision; however, when the TPA has received the required information, the ruling should be issued timely.

C1, C4, and O3 - The Self-Insured Employer/ TPA shall notify claimants of TTD awards [W. Va. Code §§ 23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022], TTD suspensions [W. Va. Code §23-4-7a(e)], and TTD closures [W. Va. Code §§ 23-5-1 expired 06/30/2022, 23-5-1a effective 07/01/2022, and 23-4-7a]. Also, it is imperative that a notice of the right to a PPD evaluation be given to claimants as required by W. Va. Code §23-4-22.

E1 - Written decisions should be made for all medical authorizations and/or denials. Decisions are to be made timely and include the pertinent information needed to protest the decision. [W. Va. Code R. § 85-1-7.2 and Insurance Bulletin 22-07]

H1 - When a claim is closed it is necessary for the Self-Insured Employer/ TPA to provide a proper closure notice. [W. Va. Code § 23-4-16 and Supreme Court of Appeals of West Virginia decision May 23, 2008, LOVAS v. CONSOLIDATION COAL COMPANY]

J1 - It is recommended that the Self-Insured Employer/ TPA thoroughly investigate all claims and issue a written ruling on the claim within fifteen (15) working days. Decisions are to include a reasonable basis for denial and the appropriate protest information for rebuttal. [W.Va. Code § 23-4-1c (a) and W.Va. Code R. § 85-1-10.1.]

L1 - 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 comprehensive investigation. [W. Va. Code R. §§ 85-18-13.3 and 13.4]

O2 - It is recommended that all claims handling policies and procedures being utilized by the TPA be put in writing and followed when administering claims.

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.

Jean E. Tincher, CPCU, AIE, 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 Lowes's Home Centers, LLC. I have reviewed the examination work papers and examination report, and the examination of Lowes's Home Centers, LLC was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

Jean E. Tincher, CPCU AIE, APIR, MCM

Subscribed and sworn before me by Jean E. Tincher on 21 day of May, 2025.

Tamra Richardson Jones
Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Tamra Richardson Jones
Offices of the Insurance Commissioner
900 Pennsylvania Ave, Charleston, WV 25302
My Commission Expires May 24, 2026

My commission expires: May 24, 2026