

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

In the Matter of:

MARRIOTT INTERNATIONAL, INC.

Administrative Proceeding No. 20-MCSI-02003

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND 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 (hereinafter, "Commissioner"), who after consideration of *the Report of Self-Insured Market Conduct Compliance Examination* (hereinafter, the "*Examination Report*") of Marriott, LLC (hereinafter, "Marriott") for the audit period ending December 31, 2019, 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 Marriott for the period ending December 31, 2019, 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 March 30, 2020 and concluded on April 24, 2020.

2. On or about July 9, 2020, 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 Marriott and Marriott 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 Marriott to manage its operations for each of the business areas examined, including whether and how Marriott, a self-insured employer, complies with West Virginia's statutory and regulatory law.

5. The exam discovered three (3) areas where Marriott failed to achieve 100% compliance with West Virginia law.

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

Claims Standard C1 (*One (1) violation*) The Self-Insured Employer did not properly issue the employee's temporary total disability award letter as required by *W.Va. Code §23-5-1*.

Claims Standard D1 (*One (1) violation*) The Self-Insured Employer did not issue the permanent partial disability award letter as required by *W.Va. Code §23-5-1(b)(1)* and *W.Va. Code R. §85-1-7.2*.

Claims Standard M3 (*One (1) violation*) The Self-Insured Employer did not properly update a claim closure 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 Commissioner is charged with the responsibility of verifying Marriott's continued compliance with West Virginia Law.

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

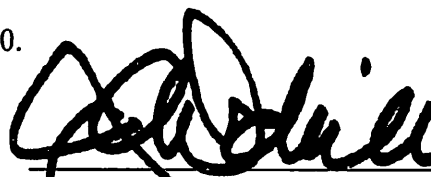
ORDER

Pursuant to *W. Va. Code § 33-2-9(j)(3)(A)*, as a result of the Commissioner's review of the

Examination Report, the examination work papers, and Marriott's response, 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. Marriott shall endeavor to comply with the recommendation contained in the *Examination Report* and shall continue to monitor its compliance with applicable West Virginia law;
3. Marriott 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;
4. Marriott shall file a Corrective Action Plan (CAP), subject to the approval of the Commissioner, which said CAP shall detail Marriott'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*;
5. The CAP shall be submitted to the Commissioner for his approval within 30 days of the date this order is entered;
6. Marriott 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;
7. Marriott shall within 90 days of its receipt of notice from the Commissioner of his final approval thereof, implement the CAP; and
8. Marriott shall pay an administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750.00) 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 6th day of November, 2020.



JAMES A. DODRILL
Insurance Commissioner

Report of Self-Insured Market Conduct Compliance Examination

As of December 31, 2019



Marriott International, Inc.
1 Marriott Drive, Dept 52/924.37
Washington, DC 20058

Examination Number 20-MCSI-02003

Date Prepared:
July 9, 2020

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July 9, 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

**Marriott International, Inc.
1 Marriott Drive, Dept 52/924.37
Washington, DC 20058**

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

All previous recommendations for the Self-Insured Employer completed for the examination period January 1, 2010 through December 31, 2013 have been addressed by the Self-Insured Employer and we found no subsequent violations of those standards.

EXECUTIVE SUMMARY

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

The examination work related to Marriott International, Inc. commenced March 30, 2020 and concluded April 24, 2020. The Self-Insured Employer handles its own workers’ compensation administrative services and utilizes a bill review company that processes medical bills within state requirements. Due to the limited number of claims for Marriott International, Inc. during the examination period, the entire claim population was reviewed. The total claim population consisted of eighteen (18) claims. Of the total 18 claim population; fourteen (14) were medical only. The remaining claims consisted of three (3) total temporary disability and one (1) fatality/denied claim. Of the three (3) total temporary disability claims, one (1) was identified as a permanent partial disability claim.

The following are areas of concern:

- Element of review C. 1.

One (1) paid claim did not issue the employee’s Total Temporary Disability (TTD) award letter in violation of W. Va. Code § 23-5-1.

Although a statistical failure, due to the nominal population systemic corrective action is not concluded.

- Element of review D. 1.

One (1) paid claim did not issue the Permanent Partial Disability PPD award letter in violation of W.Va. Code § 23-5-1(b)(1) and W.Va. St. R. § 85-1-7.2 & 85-1-10.5(a).

Although a statistical failure, due to the nominal population systemic corrective action is not concluded.

- Element of review M. 3.

One (1) denied claim was found to be 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

Founded by John Willard Marriott in 1927, Marriott International, Inc. is the third largest hotel chain in the world that manages and franchises a broad portfolio of hotels and related lodging facilities. Charleston Marriott, LLC has been self-insured in West Virginia since July 1, 1983. As of 12/31/2019, Charleston Marriott, LLC employed approximately 128 employees.

METHODOLOGY

The examiners conducted file reviews and interviews of company representatives. The Self-Insured Employer did not have the capability to grant the examiner remote secured access to the claim files. As an alternative, and with the relatively small number of claims involved, company representatives agreed to provide scanned copies of the audit period claim files which were then uploaded to the WVOIC File Transfer Protocol (FTP) secure network. 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 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

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	18	0	0	100		
B2	18	0	0	100		
C1	2	1	0	67		*
C2	3	0	0	100		
C3	3	0	0	100		
C4	3	0	0	100		
D1	0	1	0	0		*
D2	1	0	0	100		
D3	N/A	N/A	N/A	N/A		
D4	N/A	N/A	N/A	N/A		
E1	18	0	0	100		
F1	N/A	N/A	N/A	N/A		
G1	1	0	N/A	100		
H1	18	0	0	100		
I1	N/A	N/A	N/A	N/A		
J1	1	0	0	100		
J2	1	0	0	100		
J3	1	0	0	100		
J4	1	0	0	100		
J5	1	0	0	100		
K1	N/A	N/A	N/A	N/A		
L1	18	0	0	100		
M1	18	0	0	100		
M2	18	0	0	100		
M3	17	1	0	94	*	
N1	18	18	N/A	100		
N2	18	18	N/A	100		
O	1	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 – One (1) paid claim did not receive a proper notification of a TTD award as required by W.Va. Code §23-5-1. The Self-Insured Employer agreed they failed to issue the TTD award letter and took corrective action to ensure an award letter was sent to the employee. It should also be noted that the injured employee's benefits and medical bills were paid timely by the Self-Insured Employer. *Although a statistical failure, due to the nominal population, systemic corrective action is not concluded.*

D1 – One (1) Permanent Partial Disability (PPD) claim was not ruled on as required by W.Va. Code R. § 85-1-7.2 & 10.5.a. Although it was determined that the employee had 0% impairment; the ruling letter should have been issued to the employee advising her of her right to protest the decision. 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, systemic corrective action is not concluded.*

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

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

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

M3 – One (1) denied claim was not updated to closed status from the original FROI submission in the EDI system when proper to do so and no further payments or claim activity were expected. 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.

N – Although not necessarily considered a violation; the examiner observed that the Self-Insured Employer includes the employee's social security number on their claim ruling and/or award letter mailings. This practice would appear to create the potential for a security breach of the employee's personal information.

Note: Prior to the conclusion of the examination, and without examiner prompting, the Self-Insured Employer advised that corrective action had begun immediately to remove claimant social security numbers from all claims correspondence.

RECOMMENDATIONS

C1 – 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.

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. § 85-1-7.2 & 10.5a.

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.

N - It is recommended the Self-Insured Employer discontinue the practice of documenting the employee’s social security number on claim ruling and/or award letters to ensure the privacy and security of employee personal information.

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.

Letha G. Tate, ALMI, MCM

Letha G. Tate, 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 Marriott International, LLC.
2. I have reviewed the examination work papers and examination report, and the examination of Marriott International, LLC. was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.

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

Subscribed and sworn before me by Letha G. Tate on this 9th day of July 2020.

Janice L Hemmelgarn
Notary Public

My commission expires: March 23, 2024

