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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

DIVISION OF STATE SERVICES

**WORKERS'
COMPENSATION BOARD**

**ENSURING EMPLOYER
COVERAGE**

Report 2006-S-47

AUDIT OBJECTIVES

The primary objectives of our performance audit were to determine whether the Workers' Compensation Board (Board) (1) properly resolves cases involving employers for which the Board has no evidence of workers' compensation coverage, and (2) collects or otherwise accounts for penalties imposed against employers found not to have coverage. Our audit covered activities conducted by the Board between July 1, 2005 and August 18, 2006.

AUDIT RESULTS - SUMMARY

The Workers' Compensation Law (Law) requires most employers to provide workers' compensation coverage for their employees. The Board is responsible for ensuring that employers comply with this requirement, including identifying employers who do not have coverage and imposing penalties against them. The Board also administers the Uninsured Employers Fund (UEF), which is used to make payments to injured workers whose employers did not have coverage. The UEF is funded through penalties, restitution from responsible employers, and assessments to insurance carriers.

To identify employers without coverage, the Board's compliance tracking system matches employer information provided by the New York State Department of Labor to employers with workers compensation coverage, as reported by the insurance carriers. Enhancements to the tracking system made by the Board in July 2005 have helped enable the Board to better identify noncompliance. As a result, the Board has identified more employers without coverage and deposits to the UEF increased by nearly \$14 million in 2005 from the prior year, a 166 percent increase. (Pages 4-5)

We selected a random sample of 50 employers who had been identified by the Board's enhanced tracking system as not having coverage and 75 who had penalties imposed against them for lack of coverage. We found that all 125 cases were properly handled by the Board in accordance with the Law and Board policies and procedures. We did note, however, that the tracking system does not provide information that Board management could use to monitor the overall effectiveness of its penalty assessment and collection process. Board officials indicated that additional enhancements to the compliance tracking system would be needed to obtain such information. We recommend the Board dedicate the necessary resources to implement such enhancements. (Pages 5-7)

We also examined 33 UEF cases involving injured workers whose employers did not have coverage and where the Board established that the employer was liable and subject to penalties. We determined that all of these cases involved injuries which occurred prior to the enhancement of the compliance tracking system and would not have been identified by the Board's previous tracking process. However, due to the enhancements, the Board expects many such employers to be identified early on, resulting in the number of UEF cases to decrease over time.

Two of the above 33 UEF cases involved uninsured companies that also had not reported payroll information to DOL. We found that no procedure exists for the Board to share such information with DOL, the State Department of Taxation and Finance, or other agencies that probably should be aware of it. While we recognize the requirements for workers' compensation coverage differ from the requirements of other agencies, the fact

that an employer has neglected to obtain such coverage may indicate other obligations are being avoided. The Board should develop a process for referring these employers to other relevant State agencies for reconciliation with their own records. Once alerted, these agencies could determine whether they should be monitoring the companies' compliance in their own areas of responsibility. (Pages 7-8)

Even though UEF cases represent a valuable indicator of avoidance behavior, we found the Board does not track them to identify patterns or trends prevalent in cases resulting in claims against the UEF. This type of analysis could assist the Board in better focusing its monitoring, compliance, and outreach activities. (Page 8)

Our report contains four recommendations to improve collections of penalties and monitoring of employers. Officials generally agreed with our recommendations and have taken steps to implement changes.

This report, dated December 18, 2006 is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Services
State Audit Bureau
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The Workers' Compensation Law (Law) requires most employers to obtain workers' compensation coverage for their employees, either through self-insurance, an insurance policy purchased from a private insurance carrier, or an insurance policy purchased from the New York State Insurance Fund. This coverage provides payments to workers injured on the job to cover medical costs and lost wages.

The workers' compensation program in New York State is administered by the Workers' Compensation Board (Board), a State agency funded by assessments levied on workers' compensation insurers and self-insurers operating in the State. The Board has 13 Commissioners appointed by the Governor with the advice and consent of the Senate for seven-year terms. During the State Fiscal Year 2004-2005, the Board had about 1,400 employees and received an annual appropriation of nearly \$175 million for agency operations.

Among its duties, the Board is responsible for ensuring employers obtain and maintain the workers' compensation insurance coverage required by the Law. The primary way in which the Board identifies employers without coverage is through a match of known employers with employers who do have coverage. The employer information is provided by the New York State Department of Labor (DOL) and is based on information reported to DOL by employers. The coverage information is provided to the Board by the insurance carriers. Employers who are self-insured provide evidence of self-insurance to the Board, which verifies the evidence and then includes them in the Board's compliance tracking system.

The Board also administers a special fund - the Uninsured Employers Fund (UEF) - which makes payments to injured workers whose employers do not have coverage. A Board administrative law judge determines whether the employer is liable for making payments to the injured worker. If the employer fails to make payment, the initial payment is made from the UEF and then the Board seeks restitution from the employer. Payments are also made from the UEF to injured workers whose employers are no longer in business. The Board imposes penalties for lack of coverage, as well as for having a claim paid by the UEF, as required by the Law. The Law also requires penalties to be paid by employers who fail to obtain the required coverage, even if no worker is injured, and directs those penalties to be deposited into the UEF.

AUDIT FINDINGS AND RECOMMENDATIONS

Enhanced Process Has Resulted in Increased Coverage and UEF Revenues

Payments made by the UEF in excess of penalties and restitution collected are paid by an assessment imposed on the insurance carriers. The following table shows the annual activity for the UEF from 2001 through 2005, including: revenues from penalties and employers' restitution; disbursements to injured workers; and the fund balance. A negative balance indicates an assessment had to be paid by the insurance carriers to cover the net expenses of the UEF for that year. The table also shows the number of new UEF cases in each year.

	2001	2002	2003	2004	2005
Revenues	\$9,988,368	\$10,133,962	\$6,142,093	\$8,269,220	\$22,032,942
Disbursements	\$16,742,397	\$15,150,611	\$16,722,925	\$16,379,070	\$17,406,189
Balance	(\$6,754,029)	(\$5,016,649)	(\$10,580,832)	(\$8,109,850)	\$4,626,753
New Cases	503	408	403	497	544

Prior to July 2005, the Board manually matched the DOL-provided employers to employers with insurance coverage, as reported by the insurance carriers. Under that process, employers were only checked once a year, and then only for those with five or more employees. In July 2005, the Board automated much of this process. The enhanced compliance tracking system allows the Board to now make daily matches of all employers known to DOL, including those with fewer than five employees, to the insurance carrier-provided information. Thus, the Board is now better able to identify noncompliance. As a result, and shown in the above table, revenues to the UEF increased significantly in 2005, and no UEF assessment was imposed on the insurance carriers for that year.

Employers Identified as Not Having Insurance

When an employer is identified as not having workers' compensation insurance, the Board sends an initial inquiry letter. This letter provides the details of the period of non-compliance and asks for evidence that the employer had coverage, obtained coverage in response to the letter, or was not required to have coverage under the Law. The initial inquiry letter is generated by the compliance tracking system, though Board employees may also manually create such a letter.

The compliance tracking system is designed to track information by individual employer.

Therefore, Board employees can determine whether a specific employer received an initial inquiry letter, responded to that letter, and what action was taken by the Board. However, the compliance tracking system cannot provide an overall accounting of how initial inquiry letters are handled. Thus, Board management does not know how many initial inquiry letters were resolved and how many remain outstanding at any given point in time.

To determine whether the Board is handling the initial inquiry letters appropriately, we reviewed a random sample of 50 initial inquiry letters from the 8,377 such letters issued in September 2005. Of these 50 letters:

- 13 resulted in the employer providing proof of coverage, so no further action was taken;
- 12 resulted in the employer providing evidence that coverage was not required by the Law, so no further action was taken; and
- 25 resulted in no response from the employer within the time frame specified in the letter, so a penalty was imposed against each of these 25 employers.

Based on our sample review, it appears inquiry letters are being handled in accordance with the Law and Board policies and procedures.

Collection of Penalties Imposed

When the initial inquiry letter is sent, the compliance tracking system sets a date by which the employer must respond. If the employer fails to respond within the appropriate timeframe, the compliance tracking system will automatically calculate a penalty and generate a penalty letter to the employer.

As previously stated, the compliance tracking system captures information related to individual employers. Thus, the Board can determine the amount of penalties owed by a specific employer, as well as the status of specific penalties (rescinded, collected, or outstanding). However, the compliance tracking system does not provide information that Board management could use to monitor the overall effectiveness of its penalty assessment and collection process. For example, Board management does not know the total amount of penalties imposed, collected, or outstanding, nor does it know how many penalties imposed were rescinded. Further, this information cannot be obtained from the Board's financial management system.

In October 2004, Board officials identified several performance measures related to penalty collections, such as the number and percentage of penalties rescinded, reduced, or upheld and the amount of collections. To implement these performance measures, however, requires additional enhancements to the compliance tracking system. As of September 2006, the Board had not dedicated the resources required to implement these enhancements.

To determine whether penalties imposed are being handled properly, we reviewed the case

history files for a sample of 75 penalties imposed by the Board. Our sample included the 25 employers who received an initial inquiry letter in September 2005, but failed to respond, and a randomly-drawn sample of 50 employers who had received a penalty letter in September 2005 out of the 5,534 such letters sent during that month.

Our review of these 75 penalties found that, as of July 28, 2006:

- 39 had been rescinded, because the employer had demonstrated either proof of coverage or that coverage was not required by the Law and so no penalty was owed;
- 8 had been reduced according to the Board's established criteria;
- 12 had been increased, because the employer had failed to obtain coverage (the penalty for non-coverage is based on the total days without coverage, so the penalty continues to increase until the employer obtains coverage); and
- 16 remained unchanged, because the Board was not provided with information that would result in a rescission, reduction, or increase in the penalty amount.

Based on our review of the information in the compliance tracking system, it appears that penalty amounts are being correctly calculated and that penalties are rescinded or adjusted consistently and in accordance with the Law and Board policies and procedures.

We also reviewed the information in the compliance tracking system and documentation maintained by the Board's

Bureau of Finance for the 36 penalties detailed above that were not rescinded as of July 28, 2006. Of these 36 penalties:

- 1 had been deemed uncollectible;
- 8 had been paid in full;
- 1 had been paid in part with the balance sent to a collection agency to collect;
- 4 had been appealed by the employer and were being reviewed by the Board; and
- 22 remained outstanding.

Based on the information available in the compliance tracking system, all 36 penalties were processed in accordance with Board policies and procedures and the Law. However, the four penalties which were appealed had been under review for between 144 and 212 days. According to Board officials, the enhancements to the compliance tracking system have resulted in more penalties imposed against employers who do not have coverage, and more appeals being filed by those employers. There is currently a backlog of appeals, resulting in processing delays. Board officials indicated to us that they are currently using overtime and other Board resources to address the backlog. They further specified that a business process improvement workgroup has made recommendations to streamline the appeal review process, which the Board is in the process of implementing.

Based on the documentation maintained by the Board's Bureau of Finance, the money for the nine paid penalties (eight paid in full and one paid in part) had been collected and deposited into the UEF, as required by the Law.

Further review of the 22 penalties still outstanding as of July 28, 2006, indicated 19 had been referred to a collection agency by the middle of July 2006. The other three cases appropriately remained with the Board for additional processing. For 14 of the 19 penalties referred to a collection agency, the collection agencies provided us with information on the penalty amounts which matched the information in the Board's compliance tracking system. However, one of the collection agencies was still carrying five penalties at their original amount when they were referred, not the most current amount as reflected on the Board's compliance tracking system. We brought this issue to the Board's attention, and Board officials are working with this collection agency to update its system to reflect the most current amounts of penalties referred to it. The Board should ensure collection agencies are using the most up-to-date penalty information.

Uninsured Employers Fund

During January 2006, there were 33 cases in which an UEF administrative law judge had determined the employer had failed to obtain the necessary coverage and was subject to penalties. All of these cases involved injuries which occurred prior to July 2005, when the enhancements to the compliance tracking system were implemented.

For 32 of these cases, the Board imposed a penalty for not having coverage and a penalty for having a claim heard by the Board. Some of these employers have subsequently obtained coverage; others are appealing the Board's decision. The remaining case involved a worker who developed an occupational disease. The employer had coverage at the time of the initial exposure,

but was no longer in business by the time symptoms developed.

Of the 32 cases involving existing employers without coverage:

- 26 involved employers with less than five employees. These employers were not included in the Board's match of employer information with coverage information since the claims were filed prior to July 2005;
- 4 involved employers with five or more employees who were in the compliance tracking system at the time of injury and had coverage at the time of the annual check, but did not have coverage at the time of injury; and
- 2 involved employers who were not in the compliance tracking system at the time of injury.

Thirty of these 32 cases involved employers whose lack of coverage would not have been identified by the previous process. Due to the process enhancements, the Board expects the number of UEF cases to decrease over time.

Two of the cases involved employers who had not been entered into the Board's tracking system, which currently relies on data bases maintained by DOL and insurance carriers. These data bases are the only resources the Board draws on to identify employers. If an employer does not report payroll information to DOL, or purchase insurance, the employer would not be identified by the Board, unless an injury is reported and a claim is filed with the Board. We found no procedure exists for sharing the unreported employer's identity with DOL, the State Department of Taxation and Finance, or other relevant agencies.

While we recognize the requirements for workers' compensation coverage differ from the requirements of other agencies, the fact that an employer has neglected to obtain such coverage may indicate other obligations are being avoided. The Board should develop a process for referring these employers to other relevant State agencies for reconciliation with their own records. Once alerted, these agencies could determine whether they should be monitoring the companies' compliance in their own areas of responsibility.

Finally, even though UEF cases represent a valuable indicator of avoidance behavior, the Board does not track them to identify patterns or trends prevalent in cases resulting in claims against the UEF. This type of analysis could assist the Board in better focusing its monitoring, compliance, and outreach activities.

Recommendations

1. Dedicate resources to developing the performance measures identified by the Board to help monitor penalty assessments and the collection process.
2. Ensure that the collection agencies are receiving any adjustments to penalties which occur subsequent to the penalty being referred.
3. Develop a formal mechanism for providing the names of employers involved in UEF cases to other relevant State agencies (e.g., Department of Labor, Taxation and Finance).
4. Monitor UEF cases by industry or other appropriate fact pattern to assist the Board in ensuring that employers provide coverage.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the Board's practices related to resolving cases involving employers for which the Board has no evidence of workers' compensation coverage, and collection of, or accounting for penalties imposed against employers found not to have coverage. Our audit covered activities conducted by the Board between July 1, 2005 and August 18, 2006.

To accomplish our objectives we selected a random sample of 50 letters to employers who had been identified by the Board's tracking system as not having coverage, as well as 75 penalties imposed on employers lacking coverage. We also reviewed related information maintained in the Board's compliance tracking system and confirmed with independent collection agencies, the accuracy of amount and collection status, of penalties referred to them for collection. We also reviewed 33 cases involving workers whose employers did not have coverage and where an administrative law judge had determined the employer was liable and subject to penalties. We also met with Board officials, and reviewed relevant provisions of the Workers' Compensation Law, and Board policies and procedures.

We did not audit the data the Board receives from the New York State Department of Labor or from the insurance carriers, nor the processes by which the data is received. Therefore, we cannot attest to the completeness and accuracy of that data.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated

duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to Board officials for their review and comment. Their comments were considered in preparing this report and are included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Workers' Compensation Board shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, Cindi Frieder, Christine Rush,

Jennifer Paperman, Jessica Turner, Kelly Evers, Sarah Purcell, Keith Bernard, and Thierry Demoly.

APPENDIX A - AUDITEE RESPONSE



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GLENN WARREN
EXECUTIVE DIRECTOR

November 27, 2006

Mr. Frank J. Houston
Audit Director
NYS Office of the Comptroller
Division of State Services
State Audit Bureau
123 William Street - 21st Floor
New York, New York 10038

Re: NYS Workers' Compensation Draft Audit Report 2006-S-47
Findings & Recommendations

Dear Mr. Houston:

This is in response to the Office of the State Comptroller draft audit report 2006-S-47 - Findings and Recommendations, regarding the NYS Workers' Compensation Board's "*practices related to resolving cases involving employers for which the Board has no evidence of workers' compensation coverage, and collection of, or accounting for penalties imposed against employers found not to have coverage.*"

Attached is the Board's response to your recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Glenn Warren".

Glenn Warren
Executive Director

Attachment

THIS AGENCY EMPLOYS AND SERVES PEOPLE WITH DISABILITIES WITHOUT DISCRIMINATION

**Office of the State Comptroller Draft Report 2006-S-47
New York State Workers' Compensation Board Response**

AUDIT FINDINGS AND RECOMMENDATIONS

The Board makes the following clarification:

Payments made by the Uninsured Employers Fund (UEF) are for wage replacement benefits and medical-related expenses. The penalties collected under §52 and §26-a of the NYS Workers' Compensation Law are used to pay these benefits in the event that the uninsured employer does not pay the benefits to the claimant or fails to reimburse the Fund for benefits paid. If it is estimated that the benefit disbursements from the UEF will exceed estimated revenue from penalties collected, the Board will impose an assessment on insurance carriers.

OSC RECOMMENDATION:

1. Dedicate resources to developing the performance measures identified by the Board to help monitor penalty assessments and the collection process.

BOARD RESPONSE:

The Board agrees. A project manager for the system design of compliance performance measures has been identified.

OSC RECOMMENDATION:

2. Ensure that the collection agencies are receiving any adjustments to penalties which occur subsequent to the penalty being referred.

BOARD RESPONSE:

The Board has taken measures to ensure that penalty updates are received and recorded by the collection agencies.

OSC RECOMMENDATION:

3. Develop a formal mechanism for providing the names of employers involved in UEF cases to other relevant State agencies (e.g., Department of Labor, Department of Taxation & Finance).

BOARD RESPONSE:

The Board will take this recommendation under review.

OSC RECOMMENDATION:

4. Monitor UEF cases by industry or other appropriate fact pattern to assist the Board in ensuring that employers provide coverage.

BOARD RESPONSE:

The Board agrees.