

1 **CERTIFIED MAIL**  
2 **RETURN RECEIPT REQUESTED**

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4  
5 **STATE OF ALASKA**  
6 **DEPARTMENT OF COMMERCE, COMMUNITY, & ECONOMIC DEVELOPMENT**  
7 **DIVISION OF INSURANCE**  
8 **550 West Seventh Avenue, Suite 1560**  
9 **ANCHORAGE, ALASKA 99501-3567**

10  
11  
12  
13 **ORDER # MCE P-05-10** ) Order under the Provisions of  
14 ) AS 21.06.150(b), approving  
15 In the Matter of the Market ) the Report of Market Conduct  
16 Conduct Examination of ) Examination.  
17 **Arctic Adjusters, Inc. and** )  
18 **Barbara Kardys, President.** )  
19 \_\_\_\_\_ )  
20

21 The Director of Insurance for the State of Alaska, Linda S. Hall, issues this order adopting the  
22 Report of Market Conduct Examination of Arctic Adjusters, Inc. (Arctic), of Anchorage, Alaska,  
23 based upon the following findings:

24  
25 **FINDINGS OF FACT**

26  
27 **Finding No. 1.**

28  
29 Arctic is a licensed resident independent workers' compensation adjusting firm located in  
30 Anchorage, Alaska, license number 8986. Ms. Barbara Kardys, is Arctic's President and  
31 Compliance Officer, license number 3035. Both Ms. Kardys and Arctic are subject to  
32 examination under Alaska Statute 21.06.130.

33  
34 **Finding No. 2**

35  
36 The Notice of Examination, which outlined the scope of the examination, was hand  
37 delivered to the examinee on December 30, 2005.

1 Finding No. 3.

2  
3 A Market Conduct Examination of Arctic for the period January 1, 2005 through  
4 December 31, 2005 was conducted onsite between January 9, 2006 and March 16, 2006. Field  
5 work was completed on July 13, 2006.  
6

7  
8 Finding No. 4.

9  
10 A Report on Market Conduct Examination of Arctic on compliance with Alaska law and  
11 matters enumerated in the Notice of Examination was presented to the examinee on August 30,  
12 2006 and filed with the division in accordance with AS 21.06.150(b).  
13

14 Finding No. 5.

15  
16 Arctic was afforded the opportunity to respond within 30 days to the division concerning  
17 matters contained in the Report on Market Conduct Examination under AS 21.06.150(b). Arctic  
18 did not reply to the report.  
19

20 Finding No. 6.

21  
22 To the extent that she considered necessary, the director has fully considered and  
23 reviewed the Report on Market Conduct Examination, *in the absence of a written response from*  
24 *Arctic*, and any relevant portion of the examiner's work papers.  
25

26 Finding No. 7.

27  
28 The examination of Arctic was conducted in accordance with applicable Alaska statutes.  
29 The report is a factual account of the findings of the examiners based on tests that determine  
30 compliance with Alaska law and supported with appropriate documentation.  
31

32  
33 **CONCLUSIONS OF LAW**

34  
35 Conclusion No. 1.

36  
37 The examination report was filed with the division and transmitted to Arctic in  
38 accordance with AS 21.06.150(b).

1 Conclusion No. 2.

2  
3 After reviewing the report and considering Arctic's failure to reply, I conclude that the  
4 examination report cites sufficient evidence to proceed with administrative enforcement action  
5 for conduct described in the report that may violate Alaska insurance law.  
6

7 Conclusion No. 3.

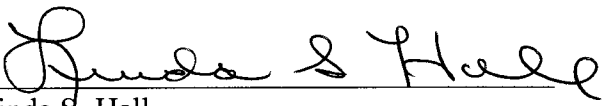
8  
9 An order should be issued in accordance with AS 21.060150(b), approving the  
10 examination report. Under AS 21.06.150(b); the director must issue an order regarding the  
11 report.  
12

13  
14 **ORDER**

15  
16 It is hereby ordered that, in accordance with AS 21.06.150(b), and with the findings and  
17 conclusions set forth above, the attached Report on the Market Conduct Examination of Arctic  
18 Adjusters, Inc. dated August 25, 2006 is approved.  
19

20 This order is effective October 9, 2006,  
21

22 Dated this 9th day of October 2006, at Anchorage, Alaska.  
23

24  
25   
26 \_\_\_\_\_  
27 Linda S. Hall  
28 Director  
29  
30

**STATE OF ALASKA  
DEPARTMENT OF COMMERCE,  
COMMUNITY AND ECONOMIC  
DEVELOPMENT**

**DIVISION OF INSURANCE**

**REPORT OF**

**MARKET CONDUCT EXAMINATION**

**OF**

**Arctic Adjusters, Inc.  
3701 East Tudor Road, Number 206  
Anchorage Alaska 99507**

**MCE P-05-10**



**Submitted by  
Donald E. Hale, CLU AIE  
Market Conduct Analyst  
August 25, 2006**

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## **Recommended Actions**

The following **examiner recommendations** aim to provide guidance to Arctic Adjusters (Arctic) in achieving compliance with Alaska Statutes and regulations. Evidence suggests that the Company invites action under AS 21.06.170 and is out of compliance (in particular) with Alaska Statutes 21.36.125, 21.27.280 and related regulations.

### **Recommendation 1**

**It is recommended that Arctic review and become thoroughly familiar with all Alaska Insurance Statutes and Regulations and in particular the following:**

**AS 21.06.170:** Arctic did not fully cooperate with the exam and in certain instances failed to promptly respond to requests by the examiners.

**Alaska Statute 21.36.125** and related regulations: The examination found many instances of violations under this statute and under 3 AAC 26.050 and 3 AAC 26.100.

**AS 21.27.350, AS 21.27.870 and 3 AAC 26.030:** Arctic has significant problems with record maintenance, form and content.

**AS 21.27.900 (5):** Arctic's compliance officer should pay close attention to the broad duties and obligations to ensure the firm's compliance with the insurance statutes and regulations of this state.

**AS 23.30.120:** While the examiners are primarily concerned with Arctic's compliance with the Alaska Insurance Code (Title 21), Arctic should also be aware of the requirements under AS 23.30.120.

### **Recommendation 2**

**It is recommended that Arctic adopt procedures and controls to ensure it completes a timely and thorough investigation of all workers' compensation claims, and verifies that it has adequate supporting medical and/or legal evidence prior to controverting any benefits being claimed.**

### **Recommendation 3**

**It is recommended that Arctic review, implement, and/or update policies, procedures and training to ensure that its files contain all notes, papers documents, and similar material, and be in sufficient detail that those relevant events; the dates of those events, and all persons participating in those events can be identified, per AS 21.27.870, and 3 AAC 26.030. In particular, it is recommend that Arctic ensure that all claim documents be timely and consistently matched and placed in the appropriate file folder.**

### **Recommendation 4**

**It is recommended that Arctic implement procedures and controls to ensure that it provides timely, complete, and clear responses to claim communication from the employee and his/her medical providers/attorney, to comply with AS 21.36.125 (a) (2), and 3 AAC 26.100 (2).**

### **Recommendation 5**

**It is recommended that Arctic implement procedures and controls to ensure that when issuing controversion notices, it provides clear communications, instructions, and all necessary assistance to the employee concerning all medical or other evidence it has secured in accordance with 3 AAC 26.100 (2). Arctic could accomplish this by providing a cover letter with the controversion form and/or accompanying medical records that explains/advises:**

- 1. the nature of the controversion (i.e. full or partial);**
- 2. the contents of the controversion notice;**
- 3. the controversion is based on the results of a medical file review report and/or physical examination report and directs the employee to those reports;**
- 4. the report(s) have been sent to the employee's physician; and**
- 5. in addition to other rights afforded the employee, the right to appeal, including the right to request a second IME within 60 days of receipt of the controversion notice, in accordance with 8 AAC 45.09.092 (g) (2).**

**Furthermore, in the event of a partially controverted claim, where the injury is determined to be compensable (based on file review or other medical examination report), but the employer's physician disagrees with the proposed treatment and recommends further testing or alternatives, it is recommended that Arctic:**

- 1. advise the employee that the injury is compensable; and**
- 2. advise the employee that he/she may wish to discuss Arctic's findings with his/her physician.**

### **Recommendation 6**

**It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it responds timely to future Division and examiner requests in compliance with AS 21.27.350 (e). Timely responses include reasonable requests for an extension of time.**

### **Recommendation 7**

**It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it completes timely and thorough investigations of all workers' compensation claims, and verifies that it has adequate supporting medical or other evidence prior to controverting any benefits being claimed. By completing timely and thorough investigations, Arctic will be able to make timely claim payments in compliance with Title 23, the Alaska Workers' Compensation Code.**

**Recommendation 8**

It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it pays penalties and interest when it fails to make timely claims payments. This includes all payments due medical providers, as well as total and partial disability payments, as a single payment is considered an installment per information obtained from the Alaska Workers' Compensation Board (AWCB).

**Recommendation 9**

Arctic does not have training or procedure manuals. Therefore, it is recommended that Arctic Adjusters create detailed written procedure and training manuals and establish written firm standards to ensure that the firm operates in a consistent manner and in compliance with state statutes and regulations. Written procedures and guidelines are needed to assist the adjusters and support staff in completing their tasks in the absence of direct supervision for each decision made. It is further recommended that in addition to reviewing claim controversions and preparing procedure/training manuals, Arctic's Compliance Officer monitor and verify adjuster and support staff compliance with established claim procedures and guidelines.

**Recommendation 10**

It is recommended that Arctic reopen those files listed as a failure by the examiners for untimely payment and/or non-payment and undertake the necessary steps to comply with applicable Alaska Statutes and Regulations.

**Recommendation 11**

It is recommended that Arctic implement, and/or update policies, procedures, and controls to ensure that the Division is notified when files are transferred and when its business location or adjuster residence address changes, to comply with AS 21.27.350 (c) and AS 21.27.025.



August 25, 2006

Linda S. Hall, CPCU, CIC  
Director, Division of Insurance  
Department of Community and Economic Development  
550 West 7<sup>th</sup> Avenue, Suite 1560  
Anchorage, AK, 99501-3567

Pursuant to Alaska Statute (AS) 21.06.120, the Alaska Division of Insurance performed a market conduct examination of the Arctic Adjusters, Inc. on January 9, through March 16, 2006, in Arctic's Anchorage Alaska Offices. The examination team consisted of Donald E. Hale, Examiner-in-Charge (EIC), Mr. Christian F. Ulmann, Senior Market Conduct Examiner, of the Alaska Division of Insurance.

**Arctic Adjusters, Inc., MCE P-05-10  
(Arctic)**

**SCOPE OF EXAMINATION**

This examination was called to review Arctic's compliance with provisions of Alaska's insurance laws: AS 21.27: Licensee Requirements, AS 21.36: Trade Practices and related regulations, as well as the Alaska Workers' Compensation Statutes AS 23.30 & related regulations. This was a focused examination involving those laws and procedures directly related to Workers' Compensation claims processing.

This is the first Market Conduct Examination (MCE) of Arctic, conducted by the Alaska Division of Insurance.

**Subject Matters Examined**

This MCE involves a review of Arctic's workers' compensation claim procedures and payment practices. The examination was called in response to various complaints including Alaska Division of Insurance (the Division) complaint inquiries, directed to Arctic, over the last two years. Arctic was slow to address complaints and in some cases did not address them at all. Additionally, the firm recently failed to appear before the Alaska Workers' Compensation Board (AWCB) for a pre-hearing as required, and has missed at least two other pre-hearings during the time period being examined. Arctic also failed to appear for a pre-hearing while the examiners were onsite.

Among the Division's concerns are that Arctic does not communicate timely and/or adequately with claimants concerning their claim's status and/or claim controversions. The initial period reviewed

was from January 1, 2005 through December 31, 2005. However, the Division may go back further and/or consider more recent actions if deemed necessary. Files for which complaints were received by the Division were included in the files reviewed. The examiners reviewed Arctic's workers' compensation claim procedures and payment practices. The examiners tested Arctic's files for compliance with the Insurance Code's Unfair Trade Practices Act, (AS 21.36) with respect to issues such as: unsupported claim controversions, inconsistent practices, undue delay, lack of response/communication, incomplete documentation, nonpayment or late payment of compensable claims, as well as certain workers' compensation code requirements, and (AS 21.27) records maintenance & licensing.

### **Time Frame**

The examination review covered Arctic's operations from January 1, 2005 through December 31, 2005.

## **FIRM HISTORY & PROFILE**

### **Arctic**

Arctic Adjusters, Inc. is an independent workers' compensation adjusting firm located in Anchorage Alaska. Arctic was established in 1951 as an independent claims administrator for insurance carriers and third party administrators for insured and self-insured employers. Ms. Barbara Kardys, President and Compliance Officer, acquired Arctic in 1998 as the firm's third owner. At that time the business offices were moved from the old L Street location to their current location on East Tudor Road.

Ms. Kardys has been an Alaska Licensed Workers' Compensation Adjuster since August 26, 1987. In addition to Ms. Kardys, Arctic employs four workers' compensation adjusters and two support staff. Arctic with its affiliated adjusters continues to be licensed and operate as an independent claims adjusting firm.

## **METHODOLOGY**

The Market Conduct Section prepared and directed the call letter and all initial data requests to Ms. Barbara E. Kardys, Arctic's President and Compliance Officer, at the firm's offices located at 3701 E Tudor Rd #206, Anchorage AK 99507. The examiners requested a list of all claim files, with a separate listing of fully and partially controverted claims, from January 1, 2005 through December 31, 2005. The requested claim files were to include all files handled during the aforementioned period, independent of when they were originally opened. The examiners randomly drew a sample from both lists for testing. This sample consisted of 54 files. In addition to the sample, the examiners reviewed claim handling for three additional complaint files referred to the Market Conduct Section by the Division's Consumer Services Section. In all, 57 files were reviewed.

### **Pre-examination Interview:**

A pre-examination interview with Arctic President and Compliance Officer, Barbara Kardys, was conducted by H. Theodore Lehrbach, Chief of Market Conduct, Donald E. Hale, Examiner-In-Charge (EIC) and Christian F. Ulmann, Senior Market Conduct Examiner, on January 9, 2006, to obtain an overview of Company operations and management to discuss the purpose and scope of the

examination. After which Mr. Lehrbach directed the examiners to begin their work under EIC Donald Hale.

**The Examination:**

Management provided the examiners with access to the requested files, of which 57 were reviewed. The examination required two separate "onsite" visits and a review of all 57 files (as presented) was completed by the end of business, Thursday, March 16, 2006.

The examiners provided Management with Exception Reports identifying issues that required additional information and/or clarification. Management was afforded the opportunity to agree with or dispute the findings contained in the Exception Reports. The last Exception Report was submitted on March 16, 2006. The compliance officer responded to all Exception Report interrogatories on behalf of Arctic. The collected data and completed Exception Reports support all statements made in this report.

On July 13, 2006, Arctic provided the last requested documentation in the fieldwork process. Analysis of the data collected from the file review and subsequent correspondence warranted closure of the fieldwork phase of the examination on July 13, 2006.

**THE SAMPLE**

In consideration of the short time between the examination call date and the beginning of the field work, a statistical sampling was not taken. The examiners randomly selected 54 files from the universe of files requested, in addition to the three files that were pre-selected.

**FIRM OPERATIONS, MANAGEMENT, & FILE DOCUMENTATION**

*Comments:* The evaluation of standards in this business area is based on a review of Firm responses to information requests, questions, interviews, and presentations made to the examiners. This portion of the examination is designed to provide a view of what Arctic is and how it operates. It is not based on sampling techniques. It is more concerned with structure. Many troubled companies have become so because management has not been structured to adequately recognize and address the problems that can arise.

The management of well-run firms generally has some processes that are similar in structure. While these processes vary in detail and effectiveness from firm to firm, the absence of them or the ineffective application of them is often reflected in failure of the various standards outlined in this report. The process usually includes:

- A planning function where direction, policy, objectives and goals are formulated;
- An execution or implementation of the planning function elements;
- A measurement function that considers the results of the planning and execution; and
- A reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of its operation.

The following tests were applied with the above referenced processes in mind.

## **Claims Investigation & Support for all Controversions**

***Does Arctic issue controversions only after a complete and proper investigation that garners sufficient evidence to support denying a claim?***

**AS 21.36.125 (3) (4), 3 AAC 26.050 (a)**

***Comment:*** Review methodology for this standard and test is specific. This standard has direct insurance code requirements in addition to applicable workers' compensation code requirements. Under AS 23.30.120, an employee's workers' compensation claim is presumed compensable, in the absence of substantial evidence to the contrary. Thus, the adjuster must perform a thorough investigation, which garners sufficient supporting evidence prior to denying any claimed benefits. Additionally, AS 21.36.125 and related regulations require adequate investigation prior to denying a claim.

The primary regulating entity for the Alaska Workers' Compensation System is the Alaska Workers' Compensation Board (AWCB). The AWCB operates under Title 23 (Alaska Workers' Compensation Code). However, the Division of Insurance has jurisdiction with respect to independent insurance adjusters handling workers' compensation claims, like Arctic, since they are insurance licensees. As licensees, they must comply with Title 21 (Alaska Insurance Code) & associated regulations adopted by the Director of Insurance, in addition to Title 23 and related regulations.

The terms controvert,<sup>1</sup> controverted, and controversion(s) are terms of art in the workers' compensation context. As noted above, an employee's workers' compensation claim is presumed to be compensable (AS 23.30.120) and these terms are derived from that presumption, they mean that a claim has been fully or partially denied.

Finally, when reviewing Arctic's actions relating to claim denials, examiner comments should only be interpreted to mean that Arctic did or did not have sufficient supporting evidence for any denials. Other examiner observations concern related issues such as conducting a proper investigation, proper file documentation, communications (providing clear explanation, forms, and instructions), and timeliness.

### **Acceptable Error Rate:**

The acceptable error rate for all standards and tests must be less than 10%.

**Result: Fail, (15 of 57 Files Failed for a 26% Error Rate)  
Fifteen files contained unsupported controversions.**

***Observations:*** The examiners observed that Arctic's claims investigations are conducted in an inconsistent manner. Files consistently lacked documentation that a proper and timely investigation had occurred. Actions and decisions were imprecise and at times the actions appeared to be arbitrary.

<sup>1</sup> Marion-Webster Defines Controvert: to dispute or oppose by reasoning.  
ALASKA DIVISION OF INSURANCE

Arctic appears to have significant difficulty in tracking documents and other pending claim requirements. This problem alone will cause a file to fail most, if not all of the remaining examination tests (communications, file documentation, and timely claim payments).

The examiners observed that Arctic often failed to appropriately follow up on pending claim requirements. On one occasion, in response to questions concerning an apparently incomplete investigation, the examiners were told that “they would expect that the claimant would respond to a controversion”. This comment, along with a thorough review of the files demonstrates that Arctic has controverted claims and closed files without completing an adequate investigation, only reopening them upon receiving claimant objections to the controversions.

In another example, while onsite, the examiners observed that Arctic was unaware that it had received an Employer Independent Medical Examination Report (EIME) (ordered by Arctic) critical to its claim investigation. This is substantiated by the compliance officer’s email response and a signed response to examiner interrogatories that said EIME report had not been received. It appears that Arctic only realized it had the EIME report after the claimant inquired about the results of his physical examination. Similar failures were noted in numerous other files, some of which will be highlighted in the section, “**File Review Scores and Examples.**”

**Recommendation 2**

**It is recommended that Arctic adopt procedures and controls to ensure it completes a timely and thorough investigation of all workers’ compensation claims, and verifies that it has adequate supporting medical and/or legal evidence prior to controverting any benefits being claimed.**

**Documentation Standards**

- 1) Does Arctic Adjusters document all files according to statutes and regulations?*
- 2) Are Arctic’s records adequate, accessible, consistent, and orderly?*

**AS 21.27.350, AS 21.27.870, 3 AAC 26.030**

**Comments:** Review methodology for these standards and tests are specific. These standards have direct insurance statutory and regulatory requirements. Appropriate safeguards for protecting the integrity of the firm’s file records are a public protection issue. Appropriate controls, safeguards and procedures for protecting the integrity of the firm’s file records is an indicator of competency of management that the Director may consider in the review of an independent adjuster. These standards and tests are intended to assure that an adequate and accessible record exists for all of Arctic’s transactions. The focus is on the records and actions considered in a market conduct examination such as but not limited to, trade/claim practices and complaint handling. Inadequate, disorderly, inconsistent, and inaccessible records can lead to inappropriate handling of claims and other issues which can cause harm to the public.

**Result: Fail, (56 Documentation Errors Found in 57 Files)**

**Observations:** While Arctic contracts with various insurers and self insured businesses that have computer systems with which Arctic must interface, the examiners noted that Arctic relies primarily on paper files in the normal course of its operations to document its actions. The computer records appear to be well maintained, safeguarded, and kept in good order by the companies with whom

Arctic contracts. However, the examiners have serious concerns about the condition of Arctic's paper files.

*It should be noted that, upon request, Arctic has produced certain supporting documentation not found in the file upon initial review. The fact that Arctic has certain documentation in its possession might change a "Fail" to a "Pass" for a particular test. However, if the required documentation was not in the file upon initial review, it is a documentation failure and will remain so.*

During the field work, the examiners noted on numerous occasions that incomplete file documentation led to delayed and incomplete responses to claimants, and to the Division. The examiners prepared "exception reports" which frequently centered on a lack of file documentation supporting Arctic's actions. At times, when Arctic responded to the exception reports, it provided documentation that was not found to be in the files upon initial review. *Notably, the documentation was often not sufficient to have changed a Fail to a Pass, even if it had been properly filed to begin with.*

Based on the file review and onsite observation, it appears that Arctic's incoming correspondence is not consistently date stamped. Additionally, it seems that pending claim documents/requirements are not consistently matched to the appropriate claim file in a timely manner. In one situation involving a complaint file, Arctic claimed not to have received claim documents until approximately four months past their actual receipt, as substantiated by a signed USPS return receipt. Documentation failures such as this can and do lead to inappropriate claims handling. Arctic's observed actions create concerns that all pertinent file documents are not in the appropriate file. This could pose problems for other firms who have recently assumed files transferred from Arctic.

### **Recommendation 3**

**It is recommended that Arctic review, implement, and/or update policies, procedures and training to ensure that its files contain all notes, papers documents, and similar material, and be in sufficient detail that those relevant events; the dates of those events, and all persons participating in those events can be identified, per AS 21.27.870, and 3 AAC 26.030. In particular, it is recommend that Arctic ensure that all claim documents be timely and consistently matched and placed in the appropriate file folder.**

### **Communications**

- 1) Does Arctic clearly communicate on a timely basis with employee/claimants?***
- 2) Does Arctic respond timely & appropriately to Division of Insurance inquiries?***

**AS 21.36.125 (a) (2), 3 AAC 26.100 (2), AS 21.27.350 (e)**

***Comment:*** Review methodology for this standard is specific. This standard has direct insurance statutory and regulatory requirements. Thorough, clear, and timely communication with the claimant and the claimant's medical providers is essential to proper claims processing.

Additionally, it is essential that insurance licensees cooperate with routine Division inquiries and with Division Examiners. Cooperation with examiners in the conduct of an examination is not only

required by statute, it is conducive to completing the examination in a timely fashion and thus minimizing cost.

**Result (Communication with Employee/Claimant): Fail**  
11 of 57 Files failed for an error rate of 19.29%

**Observations:** Arctic appears to be in compliance with 3 AAC 26.040, which requires that it provide a notification of its receipt of claim to the employee within 10 days of receipt. However, Arctic Fails the overall test, as the examiners noted other significant communication failures during the file review, and from onsite observations. In some cases these failures give the impression that the employee and/or the employee's provider are ignored. Certain complainants have contended that Arctic does not pay adequate attention to their inquires. The Division's Consumer Services Section has experienced similar untimely responses from Arctic during its investigation of consumer complaints lodged against Arctic. The examiners conclude that several of the complaints filed with the Division were filed as a result of Arctic's failure to properly and timely communicate the complainant's claim status.

Additionally, the examiners found that Arctic routinely fails to provide clearly *written instructions, and assistance that is reasonable so that any claimant not represented by an attorney is able to comply with the law and reasonable claims handling requirements* as required by 3 AAC 26.100 (2). For example the examiners observed that Arctic routinely provided the controversion forms and EIME reports without clearly explaining the current status of the employee's claim. In several cases an EIME report was used to fully or partially deny the employee's claim, although the report confirmed that the injury was compensable and/or recommended further testing. The examiners never found that the employees were advised of these recommendations in writing, nor where they advised that they may wish to discuss them with their doctor. Arctic's compliance officer suggested that the "notice of employee rights" on the back of the controversion notice complies with 3 AAC 26.100 (2). However the examiners never found a cover letter or note directing the employee to this "notice of rights," especially the employee's right to request a second independent medical examination (IME), when the initial EIME was used to deny a claim. The examiners conclude that Arctic's established trade practices are not in compliance with 3 AAC 26.100 (2) and are a significant source of employee complaints.

The examiners found that Arctic's communication failures are in large part the consequence of poor document tracking and its poor file maintenance. The examiners observed on more than one occasion that Arctic failed to timely communicate, because its staff did not know that certain documentation was in its possession.

**Recommendation 4**

**It is recommended that Arctic implement procedures and controls to ensure that it provides timely, complete, and clear responses to claim communication from the employee and his/her medical providers/attorney, to comply with AS 21.36.125 (a) (2), and 3 AAC 26.100 (2).**

**Recommendation 5**

**It is recommended that Arctic implement procedures and controls to ensure that when issuing controversion notices, it provides clear communications, instructions, and all necessary assistance to the employee concerning all**

medical or other evidence it has secured with in accordance with 3 AAC 26.100 (2). Arctic could accomplish this by providing a cover letter with the controversion form and/or accompanying medical records that explains/advises...

1. the nature of the controversion (i.e. full or partial);
2. the contents of the controversion notice;
3. the controversion is based on the results of a medical file review report and/or physical examination report and directs the employee to said reports;
4. the report(s) have been sent to the employee's physician; and finally,
5. in addition to other rights afforded the employee, the right to appeal, including the right to request a second IME within 60 days of receipt of the controversion notice, in accordance with 8 AAC 45.09.092 (g) (2).

Furthermore, in the event of a partially controverted claim, where the injury is determined to be compensable (based on file review or other medical examination report), but the employer's physician disagrees with the proposed treatment and recommends further testing or alternatives, it is recommended that Arctic...

1. advise the employee that the injury is compensable; and
2. advise the employee that he/she may wish to discuss Arctic's findings with his/her physician.

***Result (Communication with the Division): Fail***

*Observations:* While Management and Arctic's staff displayed a cooperative, helpful spirit and attitude during the examiners' onsite visits, the examiners experienced significant delays in receiving responses to exception reports and documentation requests. Arctic consistently failed to provide complete answers, (numerous answers were not relevant to the question) and documentation in support of its answers. All examiner requests included clear instructions for Arctic to provide complete supporting documentation (as needed) for all answers, especially those that disagreed with examiner findings. However, the examiners were often required to follow up to obtain complete supporting documentation for Arctic's answers.

Arctic's failure to respond timely to inquiries from the Division's Consumer Services Section, was one of the main reasons for calling this examination.

During the examination, Arctic was informed not to place Division requests ahead of its claimants needs, and that if additional time was required to comply with examiner requests, to seek an extension. Additional time was requested only once. On another occasion Management simply informed via email that it would be late. By the end of the exam, only one response out of five exception reports was completed timely.

### **Recommendation 6**



It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it responds timely to future Division and examiner requests in compliance with AS 21.27.350 (e). Timely responses include reasonable requests for an extension of time.

### **Timely Claim Payments**

Does Arctic pay claims timely and appropriately according to statutory guidelines and timeframes?

AS 21.36.125 (a) (5) (6), 3 AAC 21.100 (3)

**Comment:** Review methodology for this test is specific. This test has direct insurance statutory and regulatory requirements pertaining to Workers' Compensation Claims.

**Result: Fail (22 of 57 Files Failed for an Error Rate of 38.60%)**

**Observations:** The examiners have found that in many cases claims are not paid timely. In some cases penalties and interests are paid with the late payments, but in other cases Arctic did not add any penalties or interest to the late payments when they appeared to be due. Additionally, as noted elsewhere, numerous claims were controverted without sufficient supporting medical or other evidence. In some instances, no payment was ever made even though Arctic had no evidence to contradict that the claim was work related and compensable. In one case in particular the EIME report clearly supported that the claim was compensable. Arctic denied this claim and based on the file records and it remains unpaid.

Arctic's Compliance Officer responded on several occasions that no penalties and interest were due on some of the aforementioned files, when it appeared to the examiners that penalties and interest were due, pursuant to AS 23.30.155 (e).

On one file the examiners asked the compliance officer to explain the circumstances concerning a late benefit payment. Arctic was asked if it paid penalties and interest. The compliance officer responded that "*the report of injury and disability verification received on 4/7/05. The Waiting period of three days was 3/30, 3/31 & 4/1/05. Payment is not due until the 29th day of disability and payable within 21 days, so due by 5/18/05. Payment was not late and no penalty or interest was owed or paid.*"(sic)

The examiners disagreed with this interpretation of the applicable workers' compensation statutes and consulted with AWCB Staff. AWCB staff confirmed that the "*Compliance Officer's statement above was incorrect.*" AWCB staff further responded that "*the Compliance Officer is correct in that the 3 day waiting period is not due until 28 days of disability have been achieved, i.e. the 29th day, but she is incorrect on when the 3 day waiting period should be paid. It is due on the 3rd 2-week installment payment.*" Therefore, the examiners conclude that penalties and interest were due and remain unpaid. AWCB staff directed the examiners to **Bulletin 86-03** for more details concerning the payment of penalties and interest. After a thorough review of the records, it appears that Arctic has paid substantial penalties and interest, despite not having paid all penalties and interest due.

### **Recommendation 7**

**It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it completes timely and thorough investigations of all workers' compensation claims, and verifies that it has adequate supporting medical or other evidence prior to controverting any benefits being claimed. By completing timely and thorough investigations, Arctic will be able to make timely claim payments in compliance with Title 23, the Alaska Workers' Compensation Code.**

**Recommendation 8**

**It is recommended that Arctic implement, and/or update policies, procedures, controls, and training to ensure it pays penalties and interest when it fails to make timely claims payments. This includes all payments due medical providers, as well as total and partial disability payments, as a single payment is considered an installment per information obtained from the Alaska Workers' Compensation Board (AWCB).**

**Recommendation 9**

**Arctic does not have training or procedure manuals. Therefore, it is recommended that Arctic Adjusters create detailed written procedure and training manuals and establish written firm standards to ensure that the firm operates in a consistent manner and in compliance with state statutes and regulations. Written procedures and guidelines are needed to assist the adjusters and support staff in completing their tasks in the absence of direct supervision for each decision made. It is further recommended that in addition to reviewing claim controversions and preparing procedure/training manuals, Arctic's Compliance Officer monitor and verify adjuster and support staff compliance with established claim procedures and guidelines.**

## File Review Scores & Examples

### Score Results

Arctic Adjusters, Inc.

Violation Report Summary

Files Reviewed: 57

Applicable Statutes:	21.36.125	21.36.125	21.36.125	21.27.870	21.36.125	21.36.125	Total Violations
Associated Regulations:	3 AAC 26.050	3 AAC 26.100 (2)	3 AAC 26.030	21.27.870	3 AAC 26.040	3 AAC 26.100 (3)	All Files
Total Violations by Statute/Regulation:	15	11	28	28	12	22	116

### Example Claim File Reviews

Details from four files are representative of the problems the examiners encountered. All of these files contain violations concerning controversions without proper investigation and/or support, documentation, communication, and timely claim payments.

#### Example Number One

The handling of this claim resulted in an employee complaint being filed with the Division. The initial claims, submitted in 2004, involved repetitive motion injuries to a joint in the employee's right thumb and a tendon in the right wrist. In 2004, Arctic paid claims for fusing the thumb joint and for "decompressing" the tendon. In 2005, the employee's right wrist pain persisted and his doctor recommended excising the tendon, and additional surgical benefits were requested. At this time, the employee's doctor commented that the thumb joint fusion was completely healed and required no further treatment. As a result of the surgical benefits requested (fall 2005), Arctic ordered an "employer review" of the employee's medical file and an employer independent medical examination (EIME).

In the employer's file review report (11/2005), the physician opined that the right wrist pain was industrial related, but disagreed with the proposed tendon surgery and recommended further testing (MRI). Upon the employee's physical examination, the same doctor stated the wrist pain's cause was unknown, the wrist was medically unstable, and recommended further testing (Nerve Conduction Tests). Arctic's adjuster never advised the employee in writing that the wrist condition was compensable, and the employee seemed to be confused as to how he should, or if he could, proceed. No benefits claimed in 2005 had been paid as of the close of field work. Arctic never had sufficient evidence for effectively controverting all benefits claimed in 2005 for right wrist pain.

On three separate occasions in January and February 2006, Arctic informed that it had not received the aforementioned EIME report. Subsequently, in February 2006, it was discovered that Arctic had received this report back in December 2005, and had possessed it for approximately seven weeks, during which time it was not acted upon. It appears that it was discovered after the employee inquired about his examination results. Arctic hastily prepared a new controversion the day after the inquiry. A total of **three** controversions were issued for the benefits originally claimed in 2005. It should also be noted that Arctic Adjusters missed at least two AWC B pre-hearings during 2005, including a pre-hearing concerning this case.

In summary, the examiners determined that Arctic improperly controverted this employee's benefits claimed in November of 2005, based on the aforementioned employer file review report. In two subsequent controversions Arctic obfuscates its position concerning the status of benefits claimed in 2005 for right wrist pain. The adjuster took a physician comment, for the compensable condition, (wrist) out of context and then used it incorrectly in the initial controversion notice (11/2005). This then (as opposed to the thumb condition) became part of Arctic's rationale for denying the benefits being claimed for right wrist pain in the initial controversion (11/2005). In the file review, Arctic's

doctor disagreed with the proposed treatment, but the adjuster failed to recognize that the doctor believed the wrist pain to be industrial related. Additionally, the adjuster failed to pass on (in writing) the recommendations for further testing, in the initial and two subsequent controversions.

### **Example Number Two**

This claim resulted in an employee complaint being filed with the Division. On June 29, 2005, the attending physician determined this employee had a 26% Partial Permanent Injury (PPI). The records show that this evaluation and rating was "hand delivered" to Arctic that same day. Subsequently, Arctic requested a records review of this PPI rating from their EIME physician. The EIME physician did not see the claimant and expressed his opinion based on the methodology of the rating. On August 16, 2005, **untimely and outside of the allowed timeframe**, the claim was partially controverted for 21% of the PPI rating and a 5% partial PPI payment made, based the EIME Physician's statement that the employee could not be medically stable. The attending physician made his PPI calculation based on the fact that the employee has a "two level spinal injury." Neither of the two levels equaled five percent alone. Arctic provided no adequate explanation as to how it determined the five percent PPI payment in light of the attending physician's 26% PPI calculation. Based on the documents obtained, the investigation was insufficient, and the controversion (with 5% payment) appears to be arbitrary & unsupported. The employee's doctor, who had actually seen and treated the employee, determined he was medically stable. This claim was settled shortly thereafter for a 25% PPI rating, after the employee sought and obtained legal representation.

### **Example Number Three**

The September 9, 2004 controversion is not supported by an investigation that obtained adequate medical and/or legal documentation. It appears that the employee had an injury prior to the current incident. The October 14, 2004 report from the employer's physician stated that the injury of August 24, 2004 is "exacerbated (made temporarily or symptomatically worse) by the work related incident." Subsequently, and despite that the EIME report clearly supports the employee's injury as compensable, Arctic's attorney asked the EIME doctor for an additional review of the records and for reconsideration of the diagnosis. The EIME Physician did not change his position, further confirming the original diagnosis. The October 14, 2004 EIME report supports this claim as a compensable injury. Nonetheless, Arctic controverted, without supporting evidence, did not pay the claim, and closed the file. Arctic performed an inadequate investigation and had no support for the controversion.

### **Example Number Four**

The August 20, 2004 controversion of temporary total disability (TTD) and total partial disability (TPD) benefits after July 31, 2004 is not supported by an investigation that obtained medical or other documentation, confirming the employee's medical stability. A physician's report indicating the employee was medically stable was obtained and date stamped by Arctic on July 23, 2003, a year prior to the 2004 controversion, which referenced said report. The TTD benefits were controverted without further evaluation or follow-up to verify that the employee had reached medical stability. Additionally, Arctic did not attempt to establish a PPI rating, which would have been prudent based on the file records. Only after the examiners brought this matter to Arctic's attention, did the compliance officer inquire with the physician. The examiners were not advised as

to the results of Arctic's latest efforts concerning this file.

## **SUMMARY AND SUBSEQUENT EVENTS**

### **Summary**

After a thorough review of the sampled files, numerous problems were found.

- Arctic does not have procedure or training manuals. The examiners believe this is a major contributing factor to the problems encountered/observed. The examiners noted a lack of consistency in actions taken by Arctic's adjusters. Established standard operating procedures are needed in the absence of direct supervision for all actions taken by Arctic's adjusters and support staff. Arctic has provided the examiners with a rudimentary "Standard Operating Procedures" manual with document templates. The examiners conclude that this is more of a checklist that may be useful to an experienced adjuster, but it lacks the detail that is needed for consistency and training purposes.
- As is noted throughout this report, incomplete documentation was a persistent problem. A file that might otherwise pass concerning actions taken will fail if the examinee cannot provide proof that all required actions have been completed. On several occasions Arctic, in response to a Division Exception Report, provided documentation not found in the files on initial review. At the same time this additional documentation was often not complete, lacked sufficient explanation, and therefore, did not change the initial examiner conclusions.
- The examiners have more than adequate proof that Arctic does not consistently and/or adequately track all pending (requested) claim requirements. The examiners observed on more than one occasion that Arctic's adjusters failed to act on or follow up on pending items until inquiries were made by the employee/claimant.
- Arctic has a history of failing to attend AWCB pre-hearings. This is due to a failure to calendar these meetings and relying on memory. Arctic claims to have addressed this, but the examiners feel further testing is needed to verify this problem has been resolved consistently.

Arctic often fails to complete thorough investigations to obtain sufficient evidence in its claim controversies. It appears that Arctic often expects the employee/claimant to undertake investigatory steps/actions that are Arctic's responsibility. Additionally, Arctic indicated to the examiners that it will controvert rather than completing a thorough investigation and then wait for the employee to question or complain about the controversy. Arctic's position is completely contrary to the presumption of compensability.

- **Employee/Claimant/Provider/Arctic Physician Communications:** The examiners conclude that many of the aforementioned problems primarily revolve around Arctic's communication failures. These failures include, but are not limited to the following items:
  - When questioned about what Arctic sends with the controversy notice and/or medical records, (in way of explanation) Arctic responded that all employee rights are explained on the back side of the controversy notice. Alaska's insurance laws

- require that licensed independent insurance adjusters provide clear instructions and information to the employee/claimant so that she/he can file/pursue his/her claim without legal representation; the adjuster is supposed to assist the claimant.
- Pending claim requirements are not properly calendared for timely follow up to see why they have not been received. This leads to untimely/incomplete **communication**, incomplete and untimely investigations, and incomplete and untimely claim payments.
  - Pending claim requirements are not timely matched to the proper file when received. On occasion they appear to have been lost and not found until the employee inquires. This leads to untimely/incomplete **communication**, incomplete & untimely investigations, and incomplete & untimely claim payments.
  - As previously mentioned, another communication issue, is controverting the claim without providing clear instructions to the employee concerning the decision and documents being sent to the employee. Documentation (EIME medical records) has been sent to employees that suggest further testing. Arctic's cover letters make no mention of the recommended testing, nor are there suggestions that the employee may wish to discuss these recommendations with the treating physician
  - On one occasion failure to timely act on employee and EIME communications may have lead to improper payment of TTD payments and the failure to conduct a PPD assessment.
  - Finally, the examiners found several instances where the initial controversion was not support by the EIME report findings. Despite this Arctic has not paid the claimed benefits or continued its investigation to be certain that they should not be paid.

### **Subsequent Events**

The examiners recently learned that files are being transferred to other adjusting firms. The EIC has contacted Arctic's Compliance Officer and informed her that Arctic is required to provide a list of all files transferred, along with the assuming firm's name & its address, in accordance with AS 21.27.350 (c). Arctic provided the list by the stipulated deadline. Additionally, the compliance officer recently notified the examiners that Arctic Adjusters had to lay off its office staff and relocated its operations to the owner's home address. The Compliance Officer explained this action was taken due to the loss of a significant portion of Arctic's clientele. As of this writing Arctic has not notified the Division of her new business address as required by AS 21.27.025.

### **Recommendation 12**

**It is recommended that Arctic implement, and/or update policies, procedures, and controls to ensure that the Division is notified when files are transferred and when its business location or adjuster residence address changes, to comply with AS 21.27.350 (c) and AS 21.27.025.**

### **Closing Remarks:**

In closing, the examiners found Arctic's numerous operational problems to be "systemic." Further, the examiners conclude that employees and their employers have encountered significant problems due to Arctic's trade practices. Employees have encountered claim delays and employers have paid significant penalties and interest.

The examiners conclude that the communication, documentation, and investigation failures result

from Arctic's failure to have established standard operating procedures in writing for the benefit of its staff. Furthermore, without written procedures it is difficult for the Compliance Officer to verify that procedures are implemented and consistently followed. Finally, the examiners also conclude that there is a general lack of attention to detail required for a firm processing workers' compensation claims. The examiners acknowledge that Arctic has attempted to act on certain recommendations. However, the examiners have observed that Arctic has not fully embraced the recommendations, as evidenced by Arctic's actions following completion of the "on-site" work.

Respectfully Submitted by:

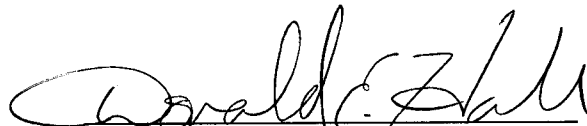
A handwritten signature in black ink, appearing to read "Donald E. Hale". The signature is fluid and cursive, with a large initial "D" and "H".

Donald E. Hale, CLU AIE  
Examiner-in-Charge

**REPORT ON MARKET CONDUCT EXAMINATION CERTIFICATION**


State of Alaska            )  
  ) ss.  
Third Judicial District )

Donald E. Hale, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

  
Donald E. Hale, CLU  
Examiner-in-Charge

SUBSCRIBED and SWORN to before me this 28<sup>th</sup> day of August, 2006



  
Notary Public in and for Alaska  
My Commission Expires 1/24/2009