

No. **2024-8511**

**Official Order  
of the  
Texas Commissioner of Workers' Compensation**

**Date: 2/1/2024**

**Subject Considered:**

Sompo America Fire & Marine Insurance Company  
13146 Ballantyne Corporate Plate, Suite 300  
Charlotte, North Carolina 28277-5041

Consent Order  
DWC Enforcement File No. 33392

**General remarks and official action taken:**

This is a consent order with Sompo America Fire & Marine Insurance Company (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

**Waiver**

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

**Findings of Fact**

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code §§ 801.051-801.053 and is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was not selected to be tiered in the 2022, 2020, or 2018 Performance Based Oversight (PBO) assessments.

Failure to Accurately Pay Temporary Income Benefits

3. Respondent was required to pay the correct amount of temporary income benefits (TIBs) to an injured employee for the period of [REDACTED], through [REDACTED].
4. Between [REDACTED], and [REDACTED], DWC ordered and Respondent paid attorney fees to counsel representing the injured employee in the workers' compensation claim in an amount up to 25 percent of the benefits owed.
5. On [REDACTED], Respondent fulfilled its obligation to pay the attorney fees by issuing a \$ [REDACTED] payment, which included an overpayment of \$ [REDACTED].
6. From [REDACTED], through [REDACTED], Respondent continued to improperly deduct and pay \$ [REDACTED] in attorney's fees when no attorney fees were due. Respondent's overpayment of attorney fees resulted in a weekly underpayment of \$ [REDACTED] to the injured employee (IE), as follows:

	Payment Period		Amount Due to IE	Amount Paid to IE	Amount Paid to Attorney	Aggregate Underpayment to IE
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
c.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
d.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
e.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
f.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
g.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
h.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
i.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
j.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
k.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

7. On [REDACTED], the injured employee's attorney reimbursed [REDACTED] to the injured employee. On [REDACTED], the attorney reimbursed an additional \$ [REDACTED] to the injured employee, resulting in a total reimbursement of \$ [REDACTED].
8. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 103 days late.

### **Assessment of Sanction**

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
  - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
  - the history and extent of previous administrative violations;
  - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - to the extent reasonable, the economic benefit resulting from the prohibited act; and
  - other matters that justice may require, including, but not limited to:
    - PBO assessments;
    - prompt and earnest actions to prevent future violations;
    - self-report of the violation;
    - the size of the company or practice;
    - the effect of a sanction on the availability of health care; and
    - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
3. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; the history and extent of previous administrative violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
4. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent did not benefit economically from the underpayment.

5. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).


### **Conclusions of Law**

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.
6. Pursuant to Tex. Lab. Code § 408.103 and Tex. Admin. Code § 129.3, the insurance carrier is required to pay the correct amount of TIBs.
7. Respondent violated Tex. Lab. Code §§ 408.103; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 129.3 each time Respondent failed to accurately pay TIBs.

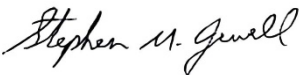
**Order**

It is ordered that Sompo America Fire & Marine Insurance Company must pay an administrative penalty of \$4,000 within 30 days from the Commissioner signs the order.

After receiving an invoice, Sompo America Fire & Marine Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, PO Box 12030, Austin, Texas 78711-2030.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Stephen Jewell  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

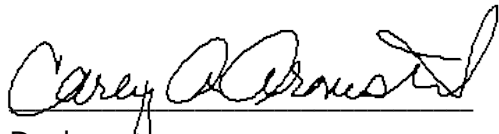
**Unsworn Declaration**

**STATE OF** North Carolina §  
§  
**COUNTY OF** Mecklenburg §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is  
Carey Armistead. I hold the position of VP WC Claims and am the authorized  
representative of Sompo America Fire & Marine Insurance Company. My business  
address is:

13146 Ballantyne Corporate PL Ste 300 Charlotte Mecklenburg NC 28277  
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare  
under penalty of perjury that the facts stated in this document are true and correct.

  
Declarant

Executed on January 18, 2024.