

No. **2022-7445**

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

Date: 8/18/2022

Subject Considered:

Sompo America Insurance Company
11405 N. Community House Rd., Ste. 600
Charlotte, North Carolina 28277-4364

Consent Order
DWC Enforcement File No. 29240

General remarks and official action taken:

This is a consent order with Sompo America 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 classified as "average" tier in the 2020 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 PBO assessments.

Failure to Timely Pay Accrued Temporary Income Benefits

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent did not issue payment for this period until [REDACTED] 25 days late.
4. Respondent was re [REDACTED] Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092 employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent did not issue payment for this period until [REDACTED] 18 days late.

Failure to Timely Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

5. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination.
6. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
7. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
8. Respondent issued payment of IIBs on [REDACTED] which was 11 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
4. DWC found the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations by adopting a corrective action plan.
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, 414.003, and 415.021.
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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.
7. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.

Failure to Timely Pay Accrued Temporary Income Benefits

8. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.023 and 28 Tex. Admin. Code § 124.7, an insurance carrier is required to pay TIBs no later than the seventh day after the accrual date.

9. Respondent violated Tex. Lab. Code §§ 409.023, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code § 124.7 each time Respondent failed to timely pay of TIBs.

Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

10. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
11. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
12. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Order

It is ordered that Sampo America Insurance Company must pay an administrative penalty of \$5,800.00 within 30 days from the date of this order. Sampo America Insurance Company must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Connor Ambrosini
Staff Attorney, Enforcement
Compliance and Investigation
TDI, Division of Workers' Compensation

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

Unsworn Declaration

STATE OF California §
§
COUNTY OF Los Angeles §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is J. Scot Corrigan. I hold the position of Senior Vice President- WC and am the authorized representative of Sampo America Insurance Company. My business address is:

725 South Figueroa Street, 2100, Los Angeles, Los Angeles CA, 900017.
(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 August 8, _____, 2022.