

No. **2022-7567**

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

**Date: 10/21/2022**

**Subject Considered:**

Sompo America Insurance Company  
11405 North Community House Road, Suite 600  
Charlotte, North Carolina 28277-4364

Consent Order  
DWC Enforcement File Nos. 29940, 29961, and 29962

**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 licensed to write workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in 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 Accurately Pay Accrued Temporary Income Benefits

*File No. 29962*

3. This is the same claim mentioned in Enforcement File Nos. 29940 and 29961.
4. Respondent was required to pay temporary income benefits (TIBs) to an injured employee for the periods between [REDACTED] and [REDACTED]
5. Respondent miscalculated the TIBs benefit rate and underpaid every TIBs payment for 105 weeks.
6. On [REDACTED] Respondent self-reported the underpayment of TIBs.
7. By [REDACTED] Respondent paid the deficiency in TIBs payments, with interest, in the amount of [REDACTED]

Failure to Accurately Pay Accrued Impairment Income Benefits

*File No. 29940*

8. On [REDACTED] Respondent received a designated doctor (DD) report in connection with a DD examination. The DD report gave four scenarios for maximum medical improvement (MMI) and impairment rating (IR).
9. Respondent accepted the scenario which said the injured employee reached MMI on [REDACTED] with an IR of [REDACTED]
10. Respondent was required to pay impairment income benefits (IIBs) to the injured employee for the periods between [REDACTED] and [REDACTED]
11. Respondent underpaid each IIBs payment for 51 weeks from [REDACTED] through [REDACTED]
12. On [REDACTED] Respondent paid the deficiency in IIBs payments, with interest, in the amount of [REDACTED]
13. On [REDACTED] Respondent self-reported the underpayment of IIBs.

### Failure to Timely Pay Accrued Impairment Income Benefits

#### *File No. 29961*

14. Respondent was required to pay IIBs to the injured employee for the benefit period between [REDACTED] through [REDACTED]. The IIBs payment was due [REDACTED]. Respondent paid IIBs on [REDACTED] which was 634 days late.
15. Respondent was required to pay IIBs to the injured employee for the period between [REDACTED] through [REDACTED]. The IIBs payment was due [REDACTED]. Respondent paid IIBs on [REDACTED] which was 627 days late.
16. Respondent was required to pay IIBs to the injured employee for the period between [REDACTED] through [REDACTED]. The IIBs payment was due [REDACTED]. Respondent paid IIBs for [REDACTED] through [REDACTED] on [REDACTED] which was 620 days late.
17. On [REDACTED] Respondent self-reported the failure to timely pay accrued IIBs.

### **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. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
3. 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.
4. 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and to the extent reasonable, the economic benefit resulting from the prohibited act.
5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and other matters that justice may require, including, but not limited to Respondent's self-report of the underpayment of benefits.
6. 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).
7. 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), 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.

#### Failure to Accurately Pay Temporary Income Benefits

7. Tex. Lab. Code § 408.081(a) an injured employee is entitled to timely and accurate income benefits.
8. Pursuant to Tex. Lab. Code § 408.103(a)(1) and 28 Tex. Admin. Code § 129.3(f)(2), TIBs is equal to 70% of the injured employee's average weekly wage.
9. 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.

#### Failure to Accurately Pay Impairment Income Benefits

10. Tex. Lab. Code § 408.081(a) an injured employee is entitled to timely and accurate income benefits.

11. Pursuant to Tex. Lab. Code § 408.126, IIBs are equal to 70% of the injured employee's average weekly wage.
12. Respondent violated Tex. Lab. Code §§ 408.103 and 415.002(a)(22) each time Respondent failed to accurately pay IIBs.


Failure to Timely Pay Accrued Impairment Income Benefits

13. Pursuant to Tex. Lab. Code §§ 408.081(b), 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.
14. Pursuant to Tex. Lab. Code § 408.121(a)(1), an injured employee's entitlement to IIBs begins on the day after the date the employee reaches maximum medical improvement and ends on the expiration of a period computed at the rate of three weeks for each percentage point of impairment.
15. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate accurate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
16. Respondent violated Tex. Lab. Code §§ 408.103; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely pay accrued IIBs.

Commissioner's Order  
Sampo America Insurance Company  
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**Order**


It is ordered that Sampo America Insurance Company must pay an administrative penalty of \$6,000 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.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:



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Tyrus Housh  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

