

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and
Licensing Rights of

**ZURICH AMERICAN INSURANCE
COMPANY and ZURICH AMERICAN
INSURANCE COMPANY OF ILLINOIS,**

Respondents.

SETTLEMENT AGREEMENT

File No. DISP-2011-00811

The CALIFORNIA DEPARTMENT OF INSURANCE, Petitioner in the above-entitled matter, and ZURICH AMERICAN INSURANCE COMPANY and ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS, Respondents in the above-entitled matter, intending to be bound, do hereby enter this Settlement Agreement as follows:

1. Respondents acknowledge service and receipt of the February 27, 2012 Notice of Hearing and Order to Show Cause re Issuance of Orders (1) to Cease and Desist From Violating, and to Comply With, Insurance Code §§ 11658, 11735 and 11750.3, and Related Provisions of the California Code of Regulations; (2) Re Unenforceability of Agreements Issued in Violation of Insurance Code §§ 11658, 11735 and 11750.3, and Related Provisions of the California Code of Regulations; and (3) for Reimbursement of Costs (the "Order to Show Cause"). Respondents and the California Department of Insurance (the "Department of Insurance") acknowledge that a proceeding has commenced before the Administrative Hearing Bureau in the above-captioned matter

(the "Proceeding") and that Respondents have filed a Notice of Defense and Answer denying the allegations in the Order to Show Cause.

2. In consideration of the settlement of all matters alleged in the Order to Show Cause upon the terms and conditions set out in this Settlement Agreement (the "Settlement" or the "Settlement Agreement"), Respondents hereby agree to the undertakings set forth in this Settlement Agreement and waive any further notice of hearing, hearing, review pursuant to the provisions of Insurance Code sections 1065.1 and 1065.3 and all other rights which may be accorded to them pursuant to Chapters 3.5, 4, 4.5 and 5, Part 1, Division 3, Title 2, Sections 11400-11528 of the California Government Code and by the California Insurance Code in connection with the allegations made and relief requested in the Order to Show Cause and other matters asserted in the Proceeding.
3. In consideration of the Settlement, the Department of Insurance hereby agrees to discontinue further prosecution of the Proceeding and hereby stipulates that this Settlement Agreement resolves all of the allegations that were made or could have been made in the Proceeding regarding the non-filing of Deductible Agreements with the Workers' Compensation Insurance Rating Bureau of California ("WCIRB") and/or the Department of Insurance. The Department of Insurance hereby agrees it will not initiate or reinstate any investigation, inquiry, claim and/or proceeding (whether formal or informal) based on the acts, practices or courses of conduct that are the subject of the Proceeding, except solely with respect to enforcement by the Department of Insurance of the agreements and undertakings in this Settlement Agreement. No monetary fine or penalty or cost will be imposed in the Proceeding or required in this Settlement Agreement.
4. Respondents deny the allegations stated in the Order to Show Cause that they violated California law by, inter alia, failing to file Deductible Agreements with the WCIRB and the Department of Insurance, but have agreed, in lieu of continuing the Proceeding and without any admission of liability or wrongdoing, to make the filings and waiver and to provide the arbitration option, all as set out in this Settlement Agreement. Without limiting the foregoing, the Department of Insurance, on the one part, and Respondents,

on behalf of themselves and their various affiliates within Zurich Holding Company of America and subsidiaries (collectively "Zurich"), on the other part, agree that Zurich's undertakings in this Settlement to file Deductible Agreements do not constitute an admission or agreement by Zurich that its Deductible Agreements are policy forms or endorsements subject to filing pursuant to California Insurance Code § 11658, California Code of Regulations, Title 10, §§ 2216, 2268 or any other statute or regulation.

Scope

5. This Settlement applies to all Deductible Agreements used by Zurich in connection with California workers' compensation policies.

Definitions

6. "California Employer" has the meaning set forth in California Insurance Code section 11658.5(d), namely, "an employer whose principal place of business is in California and whose California payroll constitutes the majority of the employer's payroll for purposes of determining premium under the policy." Whether an insured meets the requirements for a "California Employer" will be determined as of the effective date of the policy to which a Deductible Agreement relates. Application of this definition to this Settlement is non-precedential relative to enforcement activities by the Department of Insurance as to entities other than Zurich or as to the right of the Department to seek enactment of laws or regulations as described in paragraph 22.
7. "Cutoff Date" means May 1, 2013.
8. "Deductible Agreements" means those agreements, however denominated and in whatever form, between Zurich and its insureds that set out their respective obligations in connection with the terms of the funding, deposit, payment, repayment, and/or reimbursement obligations for deductible amounts that the policyholder is required to make under the terms of a Large Deductible Endorsement. The inclusion of additional contractual terms in a Deductible Agreement does not affect this definition, *provided*, "Deductible Agreements" do not include any agreements that implement a security and

collateralization obligation under a Deductible Agreement, such as a letter of credit, surety bond, trust or other collateral agreements, and do not include third party administrator agreements.

9. "Effective Date" means the date the Settlement becomes effective pursuant to the Insurance Commissioner's order approving and adopting this Settlement Agreement.
10. "Large Deductible Endorsement" means a large deductible endorsement that modifies a standard workers' compensation insurance policy within the meaning of Insurance Code §11735(e), as from time-to-time amended, and that is used at all times relevant to this Settlement Agreement in connection with an approved California workers' compensation rating plan.
11. "Start Date" means the later of (1) the date that is sixty (60) days after the Effective Date and (2) the date the Deductible Agreement and Large Deductible Endorsement forms described in paragraph 16 are deemed approved for use in California after filing with the Department of Insurance as described in paragraph 16.

Undertakings by Zurich

12. Commencing on the Start Date, Zurich agrees that, subject to paragraph 22, it will not enter into or amend (including as to expiration date) a Deductible Agreement with a California Employer unless the Deductible Agreement form has been submitted to the WCIRB and the Department of Insurance for review and such form has not been disapproved by the Department of Insurance. This undertaking applies solely on a prospective basis from and after the Start Date. The Department of Insurance agrees that it will not require Zurich to file and obtain approval of Deductible Agreements that were entered into or amended (including as to expiration date) prior to the Start Date unless Zurich uses the same forms for Deductible Agreements with California Employers that are newly entered into or amended from and after the Start Date. The Department of Insurance further agrees that its rules and requirements regarding Deductible Agreements will be applied evenly to Zurich and its competitors on a level

playing field basis and, consistent with this Settlement Agreement, the Department of Insurance will approve terms and conditions in Zurich's proposed Deductible Agreements and Large Deductible Endorsements that it has approved for use by Zurich's competitors.

13. Zurich agrees that it will waive enforcement of its contractual rights under Deductible Agreements used prior to the Start Date with California Employers that require: (i) that arbitration of disputes take place in Schaumburg, Illinois, and (ii) the application of New York law to such disputes. Arbitration will take place in California and California law and venue will apply in the arbitration of such disputes (without giving effect to California conflicts of laws principles) unless the parties agree to the application of another law or venue. The foregoing waiver does not apply to any dispute involving a California Employer which (i) has been resolved by a settlement agreement signed as of the Start Date, (ii) a trier of fact in a trial or evidentiary hearing (in the case of arbitration) has rendered his or her finding as of the Start Date, or (iii) was in litigation or arbitration that is final as of the Start Date.
14. Zurich agrees that, for matters involving a Current Dispute (as defined in this paragraph 14), it will grant California Employers the one-time option either to adhere to the binding arbitration provisions in their Deductible Agreements (in addition to the waivers set forth in paragraph 13) or to litigate disputes otherwise falling within the scope of such binding arbitration provisions in a California civil proceeding, without prejudice to any party's right to commence or remove such proceeding in or to Federal court in California. As used in this paragraph 14, a Current Dispute includes any dispute or claim for which no final decision has been issued or settlement agreement signed by the parties prior to the Cutoff Date and to which one of the following applies:
 - (1) Any dispute or claim for which Zurich has been put on notice prior to the Cutoff Date, and for which no written arbitration demand has been made. Notice requires a California Employer to have taken sufficient steps to place Zurich reasonably on notice prior to the Cutoff Date of the existence of a

dispute or claim under the provisions of a Deductible Agreement (analogous to the steps sufficient to notify an insurer of a claim under an insurance policy and trigger statutory obligations);

- (2) Any dispute or claim for which a written arbitration demand has been made prior to the Cutoff Date, and no arbitration has been commenced; or
- (3) Any dispute or claim which is the subject of a pending arbitration as of the Cutoff Date.

Additional Findings and Agreements of the Department of Insurance

15. Respondents and the Department of Insurance acknowledge that Zurich has previously provided the Department of Insurance for review, Deductible Agreement and Large Deductible Endorsement forms that Zurich plans to use with respect to California Employers from and after the Start Date. With specific reference to the allegations in the Order to Show Cause, the forms submitted to the Department of Insurance for review have addressed (i) language stating that the Deductible Agreement “supersedes” the terms of a Zurich workers’ compensation insurance policy, which language has been eliminated, (ii) the termination provisions in the Deductible Agreement, which have been conformed to the policy and California law, (iii) the Deductible Agreement definition of Allocated Loss Adjustment Expense (“ALAE”), which has been conformed to mirror the definition of ALAE in the Large Deductible Endorsement and (iv) the choice of law and venue provisions, which have been made variable terms subject to negotiation by California Employers in compliance with Insurance Code section 11658.5. Additionally, the Large Deductible Endorsement forms submitted for review include a provision expressly stating that the specific terms governing the insured’s repayment obligations shall be provided for in a Deductible Agreement to be executed by Zurich and the insured. Respondents and the Department of Insurance acknowledge and agree that the Deductible Agreements continue to require binding arbitration for resolution of disputes.

16. The Department of Insurance hereby finds and agrees that (i) the Deductible Agreement and Large Deductible Endorsement forms submitted for review as referenced in paragraph 15 conform as of the Effective Date to California law; (ii) these Deductible Agreement and Large Deductible Endorsement forms meet all requirements for approval, and such forms will not be disapproved by the Department of Insurance (filings shall be made not more than 30 days after the Effective Date); and (iii) by including a provision in the Large Deductible Endorsement submitted for approval to the Department of Insurance expressly stating that the specific terms governing the insured's repayment obligations shall be provided for in a Deductible Agreement to be executed by Zurich and the insured, no other action shall be required of Zurich to make the Deductible Agreement a part of the policy.
17. Respondents and the Department of Insurance acknowledge that Zurich has provided the Department of Insurance for review information describing the procedures and notices Zurich will use to comply with the requirements of California Insurance Code section 11658.5.
18. The Department of Insurance hereby finds that the procedures and notices Zurich will use, as referred to in paragraph 17, comply with the requirements of CIC 11658.5 as of the Effective Date.
19. The Department of Insurance will not require Zurich to file any Deductible Agreement entered into by Zurich with an insured prior to the Start Date and, subject to paragraphs 13 and 14, the Department of Insurance will not require Zurich to waive any Deductible Agreement terms.
20. Commencing on the Effective Date, (a) the Department of Insurance will take no further voluntary action, including but not limited to the submission of declarations or *amicus* briefs, in any existing or newly commenced arbitration or litigation in which Zurich is a party, taking the position that Zurich's Deductible Agreements used prior to the Start Date are void, voidable or in any manner unenforceable because they were not filed under any provision of the California Insurance Code or the California Code of

Regulations; and (b) Zurich will not in any such arbitration or litigation, offensively use the existence of this Settlement as grounds for asserting that Zurich's Deductible Agreements used prior to the Start Date are not void, voidable or in any manner unenforceable because they were not filed or attached under any provision of the California Insurance Code or the California Code of Regulations.

21. The Department of Insurance agrees that Zurich's Deductible Agreement forms are comprehended within the existing rating procedures filed by Zurich under California Insurance Code section 11735.

Other Matters

22. Respondents acknowledge the Department of Insurance at its discretion may pursue legislation and/or rulemaking proceedings under the California Administrative Procedure Act (or as may otherwise be permissible) addressing Deductible Agreements, Large Deductible Endorsements and/or other matters relating to large deductible workers' compensation insurance. Nothing in this Settlement precludes Zurich's participation in any such endeavor in support of or in opposition to such legislation or rulemaking. In the event legislation or regulations governing the matters set forth in paragraph 12 become effective in accordance with applicable law, Zurich will be relieved of its obligations under paragraph 12 on a prospective basis as of the effective date of such legislation or regulations. Zurich will thereafter be governed by the legislation or regulations on an equal basis with all other affected insurers. In no event will Zurich be subject to more restrictive obligations than those set forth in the legislation or regulations. No other part of this Settlement will terminate except to the extent the terms of this Settlement Agreement are modified by enacted legislation or regulation. Additionally, whether or not legislation is enacted or regulations are adopted, Zurich will be released from its filing and waiver obligations under this Settlement if, as a general matter, the Department of Insurance subsequently determines that Deductible Agreements are not required to be filed (whether by general notice to all authorized workers' compensation insurers or in a settlement with one or more

individual insurers) or if there is a change in California law due to legislative enactment or court ruling with binding effect on the Department of Insurance. For purposes of this paragraph 22, the term "Deductible Agreements" includes agreements between insureds and other insurers in addition to those between insureds and Zurich.

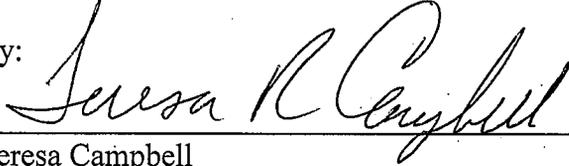
23. Except for the express waiver by Zurich set forth in paragraph 13 and one-time option granted by Zurich in paragraph 14, nothing in this Settlement Agreement or any of its terms and conditions shall alter the contractual terms of any Zurich insurance policy, Deductible Agreement or other agreement.
24. This Settlement Agreement is limited to resolving and settling the matters alleged in the Order to Show Cause or which could have been alleged regarding the non-filing of Deductible Agreements with the WCIRB and/or the Department of Insurance and it is not a general release of any other known or unknown claims. This Settlement Agreement does not limit the right of the Department of Insurance to initiate or make any investigation, inquiry, claims and/or proceeding relative to acts, practices or courses of conduct other than those that are the subject of the Proceeding.
25. This Settlement Agreement may be executed in counterparts, each of which shall constitute a duplicate original. Execution by facsimile or by an electronically transmitted signature shall be fully and legally binding on the parties. This Settlement Agreement is made solely for the purpose of resolving the Insurance Commissioner's investigation and the matters raised in the Order to Show Cause and is not to be used for any other purpose. This Settlement Agreement is not intended to and shall not confer any rights upon any persons or entities besides the Department of Insurance and Zurich.
26. Respondents acknowledge that this Settlement Agreement is a public record and that it and any order issued pursuant thereto is accessible to the public pursuant to the California Public Records Act, Government Code §§6250 *et seq.* Pursuant to Insurance Code §12968, this Settlement will be posted on the Department of Insurance's internet website.

27. This Settlement Agreement shall be interpreted and construed in accordance with California law, without regard to choice of law considerations.
28. Respondents acknowledge that California Insurance Code section 12921(b)(1) requires the Insurance Commissioner to approve the final settlement of this matter. Both the Settlement terms and conditions contained herein and the acceptance of those terms and conditions are contingent upon the Insurance Commissioner's approval, which shall be evidenced and memorialized by the issuance of an ORDER OF INSURANCE COMMISSIONER UPON SETTLEMENT in substantially the same form and content as the order attached as Exhibit A to this Settlement Agreement.

[SIGNATURE PAGE FOLLOWS]

Respondents and the Department of Insurance execute this Settlement Agreement as follows:

DEPARTMENT OF INSURANCE

By: 

Teresa Campbell
Assistant Chief Counsel

Dated: July 11, 2013

Dated: _____, 2013

ZURICH AMERICAN INSURANCE COMPANY

By:

Name

Title

Dated: _____, 2013

ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS

By:

Name

Title

Respondents and the Department of Insurance execute this Settlement Agreement as follows:

DEPARTMENT OF INSURANCE

By:

Dated: _____, 2013

Adam M. Cole
General Counsel

Dated: July 9, 2013

ZURICH AMERICAN INSURANCE COMPANY

By:

Mary Merkel
Mary Merkel
Executive Vice President

Dated: July 9, 2013

ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS

By:

Mary Merkel
Mary Merkel
Executive Vice President