

Montana Workers Compensation Claim Handling Changes

On March 13, 2012, the Montana Supreme Court issued a decision in [American Zurich Insurance Company v. Montana Thirteenth Judicial District Court, et al.](#), which will have an impact on the handling of workers compensation claims in Montana. The Court held that the sharing of claim information with an employer-insured waived the attorney-client privilege and protection under the work product doctrine, and rendered the information discoverable by the claimant. The decision follows a series of Montana cases clarifying that an employer-insured may not have access to certain claim file information and may not participate or interfere in the adjustment of workers compensation claims. As a result of these recent developments, Travelers needs to make certain changes to its procedures for handling Montana workers compensation claims. These changes are required to ensure that Travelers is in compliance with Montana law and that we do not have to produce sensitive claim information to workers compensation claimants, thereby possibly increasing exposure to the employer and insurer.

Employer-Insured: With the exception of certain Montana-specific reports described below, employers insured under a workers compensation policy will not receive claim information from Travelers or any third-party administrator handling Travelers policies, beyond that which is necessary to assist an injured worker to return to work. The information will be limited to applicable work restrictions, if any, or release to return to work status. All other claim information, including claim status, defense strategy and defense counsel communications, incurred reserves, reserve analysis, medical records or independent medical exam reports, will not be provided. These restrictions will apply regardless of deductible or self-funded retention amounts.

Travelers claim professionals adjusting workers compensation claims in Montana must retain authority to adjust and settle those claims and cannot delegate that authority to employer-insureds. Employer-insureds cannot require pre-approval or consultation of reserves, settlement authority, benefit calculations or payment, or any other aspect of the claim process once the claim has been accepted by Travelers.

Travelers will not provide access to Montana workers compensation claim files to any employer-insured, broker or agent for claim file reviews or audits. This includes file reviews or inquiries to our Claim Account Executives. Any such inquiries will be directed to the Montana workers compensation claim professional.

Third-Party Administrators: Third-party administrators handling claims arising under a Travelers primary workers compensation policy (i.e., Plan II insurance policy) will be required to adhere to the claim handling procedures outlined above.

Insurers: Any reinsurer for employer-insureds under Plan II workers compensation primary policies issued by a Travelers entity will be subject to the same information limitations as employer-insureds.



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Self-Insured Employers: Travelers and its third party administrators will continue to share claim information with Self Insured Employers (Plan I).

Montana Reports: For our customers who have access to eCarma or the Loss Reports system, Travelers will develop Montana-specific reports to allow employer-insureds to review certain aggregate level account data. The information that may be provided in such reports has not been determined and is subject to further legal review.

If you have additional questions or follow-up inquiries regarding this notice, please contact your local claim office or Claim Account Executive.

