

No. **2024-8758**

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date: 8/5/2024**

**Subject Considered:**

Upstream Life Insurance Company  
P.O. Box 2940  
Oxford, Mississippi 38655-2925

Consent Order  
TDI Enforcement File No. 31608

**General remarks and official action taken:**

This is a consent order for Upstream Life Insurance Company (ULIC). The Texas Department of Insurance (TDI) conducted a financial examination and discovered that ULIC misrepresented and filed false and misleading account statements and false quarterly and annual financial statements with TDI. ULIC was also operating in a hazardous financial condition. ULIC agrees to pay an administrative penalty of \$25,000 and ensure the individuals named within this order do not serve as an officer, director, or person with the power to direct or cause the direction of the management and policies of ULIC in the future.

**Waiver**

ULIC acknowledges that the Texas Insurance Code and other applicable law provide certain rights. ULIC waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

**Findings of Fact**

1. ULIC is a domestic life, accident, or health company holding a certificate of authority to transact business in the state of Texas.

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2. TDI requested documentation that certain assets were transferred to ULIC from Financial Shield of America (FSOA) as part of a 2021 reorganization, designed to transition FSOA from a subsidiary of ULIC to an affiliate of ULIC, where both FSOA and ULIC would be wholly owned by the same parent company, Upstream Holdings, Inc.
3. On October 19, 2021, and October 20, 2021, Joseph Emerson (Emerson), then Chief Accounting Officer of ULIC, delivered to TDI bank statements for various accounts held at Raymond James & Associates, Inc. (Raymond James), a financial institution. The bank statements showed ULIC as the account holder.
4. ULIC represented that the bank statements verified the transfer of the account from FSOA to ULIC as of September 30, 2021, and that the transfer of assets was accomplished by changing the name of the accountholder to ULIC and indicated ULIC had adequate assets and capital.
5. On November 15, 2021, ULIC filed with TDI its quarterly financial statement as of September 30, 2021. Derek Hebert (Hebert), President and CEO; Colby Arceneaux (Arceneaux), Chairman, Executive Director and Secretary; and Emerson (collectively "executive officers") individually signed an attestation swearing "that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of said reporting entity..." The quarterly statement indicated that FSOA's assets were in the name of ULIC, which TDI later discovered was false. Without the false claim of ownership of FSOA's assets, ULIC had inadequate assets and capital.
6. On March 4, 2022, ULIC filed its annual statement for the year ending on December 31, 2021. ULIC's executive officers individually signed an identical attestation as in 2021, swearing again that the assets listed were the property of ULIC. The annual statement represented that FSOA's assets were in the name of ULIC. Without the false claim of ownership of FSOA's assets, ULIC had inadequate assets and capital.
7. Beginning on August 28, 2022, TDI conducted a comprehensive financial examination of the company covering the period of January 1, 2017, through December 31, 2021.

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8. As part of the examination, TDI examiners reviewed the report from ULIC's independent auditor, Postlethwaite & Netterville (P&N), which showed the Raymond James bank accounts in the name of FSOA and not ULIC.
9. Due to the discrepancy in P&N's audit report and the statements submitted by ULIC executive officers, TDI requested confirmation from ULIC on the accounts in question. On November 10, 2022, ULIC re-submitted the same bank statements for the Raymond James accounts through TDI's share file site which again showed the account holder as ULIC and not FSOA.
10. On November 18, 2022, TDI requested bank account confirmations for the two accounts directly from Raymond James for the periods of September 2021 through January 2022. The statements provided by Raymond James showed the account was held in the name of FSOA.
11. The bank statements that came directly from Raymond James did not match the statements provided by ULIC. TDI confirmed that the bank statements provided by ULIC were not authentic Raymond James bank statements.
12. ULIC represents that despite the assets being in the name of FSOA, the assets remained under the control of ULIC and subject to ULIC's investment guidelines.
13. The executive officers resigned from their respective positions within ULIC and the board of directors, with an effective date no later than the date of this order.

## Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 401.061, and 801.052-801.053.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. ULIC 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 intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.

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4. ULIC violated TEX. INS. CODE Chapter 401 and 28 TEX. ADMIN. CODE § 7.68 by failing to comply with the requirements of filing financial statements and submitting false or misleading financial information.
5. ULIC violated TEX. INS. CODE Subchapter A, Chapter 404, and 28 TEX. ADMIN. CODE § 8.3 by operating in a hazardous financial condition.

## Order

It is ordered that Upstream Life Insurance Company pay an administrative penalty of \$25,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which TDI will send after entry of this order.

It is ordered that Derek Hebert, Colby Arceneaux, and Joseph Emerson nor their immediate family members, including those currently on the board of directors or in an officer position, as defined in Texas Insurance Code Section 823.151(e), will serve as an officer, director, or person with the power to direct or cause the direction of the management and policies of Upstream Life Insurance Company after the date of this order.

This consent order fully and finally resolves the allegations and exam findings in Ecase No. 31608. Nothing in this order will prevent the commissioner or TDI from initiating any proceeding, taking any action, seeking any remedy, or pursuing any right, examination, investigation, or other action authorized by law at any time for conduct arising outside of that addressed in Ecase No. 31608.

Signed by:  
  
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Cassie Brown  
Commissioner of Insurance

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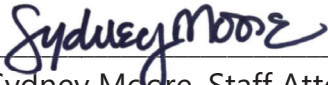
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Recommended and reviewed by:



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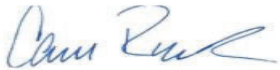
Leah Gillum, Deputy Commissioner  
Fraud and Enforcement Division



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Sydney Moore, Staff Attorney  
Enforcement

Approved as to form and content:



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Carrie Rupprath  
Attorney for Upstream Life Insurance Company

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Affidavit

STATE OF California §

COUNTY OF Los ANGELES §

Before me, the undersigned authority, personally appeared Derek Hebert who being by me duly sworn, deposed as follows:

"My name is DEREK HEBERT. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of PRESIDENT and am the authorized representative of Upstream Life Insurance Company. I am duly authorized by said organization to execute this statement.

Upstream Life Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."

[Signature]

Affiant

SWORN TO AND SUBSCRIBED before me on July 24, 2024.

(NOTARY SEAL)



[Signature]  
Signature of Notary Public

Nathan Schields  
Printed Name of Notary Public