

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: FEB 12 2020

**Subject Considered:**

**ZURICH AMERICAN INSURANCE COMPANY**  
1299 Zurich Way  
Schaumburg, Illinois 60196-5870

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 17108

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Zurich American Insurance Company (Zurich American).

**WAIVER**

Zurich American acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Zurich American waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Zurich American 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 in the state of Texas to write multiple lines of insurance, including workers' compensation/employers' liability insurance.
2. Zurich American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS**

**Case 1**

3. On [REDACTED], Zurich American received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
5. Zurich American was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after Zurich American's written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].

- Zurich American did not file a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) and issued the initial TIBs payment totaling \$ [REDACTED] on [REDACTED], which was six working days late.

**Case 2**

- On [REDACTED], Zurich American received notice of an injury to an injured employee.
- The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
- Zurich American was required to initiate or dispute TIBs the later of 15 days after Zurich American's written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].
- Zurich American did not file a timely dispute of disability with DWC and issued the initial TIBs payment on [REDACTED], in the amount of \$ [REDACTED], which was 29 working days late.

**FAILURE TO TIMELY PAY TIBS IN ACCORDANCE WITH A DESIGNATED DOCTOR REPORT**

- On [REDACTED], the injured employee's attorney requested that the designated doctor (DD) determine whether the injured employee's inability to obtain and retain employment at wages equivalent to the pre-injury wage was a direct result of the compensable injury and whether the injured employee could return to work in any capacity and, if so, under what restrictions.
- On [REDACTED], the DD only addressed maximum medical improvement and extent of injury.
- On [REDACTED], Zurich American received an amended DD report from the DD.
- The amended report was made pursuant to a letter of clarification ordered by DWC asking the DD to determine whether the injured employee's inability to obtain and retain employment at wages equivalent to the pre-injury wage was a direct result of the compensable injury and whether the injured employee could return to work in any capacity and, if so, under what restrictions.
- The DD determined, in part, that the injured employee was unable to return to work in any capacity from [REDACTED], through [REDACTED], and determined that the disability was the direct result of the workplace injury and existed from [REDACTED], through to the day of the DD examination.

16. Zurich American was required to pay the full amount of accrued income benefits no later than five days after receipt of the amended DD report, which in this case was by [REDACTED].
17. Zurich American issued a lump sum payment of \$ [REDACTED] on [REDACTED], which was 36 days late.

### ASSESSMENT OF SANCTION

18. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
19. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
20. In assessing the sanction for this case, DWC found the following factors set forth 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 history and extent of previous administrative violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company or practice.
21. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.

22. Zurich American acknowledges that DWC and Zurich American have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
23. Zurich American acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:


1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. Zurich American violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 each time it failed to timely initiate payment of TIBs.
8. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute.
9. Zurich American violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the DD during the pendency of a dispute.

10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
11. Zurich American violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.

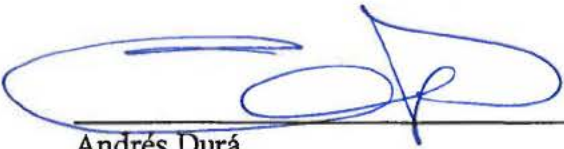
**ORDER**

Zurich American Insurance Company is ORDERED to pay an administrative penalty of \$8,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

  
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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:

  
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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF IL §  
COUNTY OF Cook §

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

“My name is Douglas Meyers. 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 Chief Operations officer, and am the authorized representative of Zurich American Insurance Company. I am duly authorized by said organization to execute this statement.

Zurich American Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Zurich American Insurance Company is voluntarily entering into this consent order. Zurich American Insurance Company consents to the issuance and service of this consent order.”

  
Affiant

SWORN TO AND SUBSCRIBED before me on January 6<sup>th</sup>, 2019, 2020

(NOTARY SEAL)



Jill M Smith  
Signature of Notary Public  
Jill M Smith  
Printed Name of Notary Public  
August 23, 2022  
Commission Expiration Date

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092