No. **2021-7104**

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

Date: 11/23/2021

Subject Considered:

Midwest Employers Casualty Company
14755 North Outer Forty Drive, Suite 300
Chesterfield, Missouri 63017

Consent Order
DWC Enforcement File No. 25066

General remarks and official action taken:

This is a consent order with Midwest Employers Casualty Company (Midwest Employers). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Midwest Employers.

Waiver

Midwest Employers acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Midwest Employers 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.   Midwest Employers 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 to write workers' compensation/employers' liability insurance in Texas.

2.   Midwest Employers was classified as "average" tier in the 2007, 2009, and 2012 Performance Based Oversight (PBO) assessments. Midwest Employers was not selected to be tiered in the 2010, 2014, 2016, 2018, or 2020 PBO assessments.

<u>Failure to Timely Comply with a Final or Binding Contested Case Hearing Decision and Order</u>

3.   On ▇▇▇▇▇▇ DWC issued a contested case hearing decision and order (CCH D&O) requiring Midwest Employers to pay benefits in accordance with the decision. Midwest Employers received the CCH D&O on ▇▇▇▇▇▇

4.   The CCH D&O became final on ▇▇▇▇▇▇ Midwest Employers was required to comply with the CCH D&O within 20 days. The deadline to comply was ▇▇▇▇ ▇▇

5.   Midwest Employers failed to pay benefits in accordance with the CCH D&O. Midwest Employers paid benefits on ▇▇▇▇▇▇ Midwest Employers did not fully comply with the CCH D&O until it issued payment for interest on ▇▇▇ ▇▇ which was 20 days late.

Assessment of Sanction

1.   Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

2.   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:
    - o PBO assessments;
    - o prompt and earnest actions to prevent future violations;
    - o self-report of the violation;
    - o the size of the company or practice;
    - o the effect of a sanction on the availability of health care; and
    - o evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

3. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

4. DWC found the following factor in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: Midwest Employers' demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.

5. Midwest Employers acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).

6. Midwest Employers 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, and 402.00128.

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).

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

3. Midwest Employers 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.

7. Pursuant to TEX. LAB. CODE §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

8. Pursuant to TEX. LAB. CODE § 410.169 and 28 TEX. ADMIN. CODE § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.

9. Midwest Employers violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), 415.0035(e), and 415.021 when it failed to timely comply with a DWC order for benefits.

Order

It is ordered that Midwest Employers Casualty Company must pay an administrative penalty of $6,200 within 30 days from the date of this order. Midwest Employers Casualty 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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Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
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

Unsworn Declaration

STATE OF _Missouri_   §

                                                          §

COUNTY OF _St. Louis_   §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is _Thomas E Lentz_. I hold the position of _Assistant Secretary_ and am the authorized representative of Midwest Employers Casualty Company. My business address is:

14755 N. Outer Forty Dr, _Chesterfield_ _St. Lois_ _MO_, _63017_.

(Street)   (City)   (County)   (State)   (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

TLE/ty

Declarant

Executed on _November 4_ 2021