

No. 2023-7855

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

Date: 3/22/2023

Subject Considered:

AmTrust Insurance Company
800 Superior Ave. East 21st Floor
Cleveland, Ohio 44114

Consent Order
DWC Enforcement File No. 30458

General remarks and official action taken:

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

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent 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. Respondent 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2020 Performance Based Oversight (PBO) assessment. Respondent was classified as "poor" tier in the 2022 PBO assessment. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 PBO assessments.

DWC Audit No. IP-22-202

3. On [REDACTED] DWC initiated DWC Audit No. IP-22-202 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) as well as timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED]. DWC identified 24 initial TIBs payments for audit. A total of four initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 20 payments were reviewed to determine Respondent's compliance.
5. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

6. Respondent failed to timely initiate TIBs for 15% of examined payments (3 out of 20).
7. Specifically, Respondent issued payments to injured employees fewer than six days late in one instance and over 30 days late in two instances.

Failure to Timely or Accurately Report EDI Data to DWC

8. Respondent failed to timely report initial TIBs payments for 25% of examined payments (5 out of 20).
9. Respondent failed to accurately report the First Date of Disability for 40% of examined payments (8 out of 20).
10. Respondent failed to accurately report the Date of First Written Notice for 20% of examined payments (4 out of 20).

11. Respondent failed to accurately report the initial TIBs from Date for 5% of examined payments (1 out of 20).
12. Respondent failed to accurately report the initial TIBs End Date for 5% of examined payments (1 out of 20).
13. Respondent failed to accurately report the Initial TIBs Payment Date for 60% of examined payments (12 out of 20).

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
4. 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 EDI 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:
 - PBO assessments;

- prompt and earnest 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.
5. 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a 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 and recent PBO assessment.
 6. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, specifically the implementation of new systems including a daily report sent to managers.
 7. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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).
 8. Respondent 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, 402.00128, 409.021, 414.002, and 414.003.
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).

3. Respondent 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 § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.
9. Pursuant to 28 Tex. Admin. Code §§ 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code §§ 124.2(a) and (b) each time Respondent failed to timely or accurately notify DWC and the injured employee of actions Respondent took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.


Order

It is ordered that AmTrust Insurance Company must pay an administrative penalty of \$8,500 within 30 days from the date of this order. AmTrust Insurance 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Dan Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF OHIO §
§
COUNTY OF CUYAHOGA §

Pursuant to the Texas Labor Code § 12.00 (a), (b), and (d), my name is
Barry W. Moses. I hold the position of Vice President & Assistant Secretary and am
the authorized representative of AmTrust Insurance Company. My business address is:
80 Superior Ave., Cleveland, Cuyahoga OH 44
(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.

Barry W. Moses

Declarant

Executed on March 9, _____, 2023.