

No. 2019 6066

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

Date: AUG 30 2019

**Subject Considered:**

**GREAT MIDWEST INSURANCE COMPANY**

800 Gessner Road Suite 600  
Houston, Texas 77024-4538

**CONSENT ORDER**

TDI-DWC ENFORCEMENT FILE NO. 19454

**General remarks and official action taken:**

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

**WAIVER**

Great Midwest acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Great Midwest 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. Great Midwest 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, including workers' compensation/employers' liability insurance in Texas.
2. Great Midwest was classified as "average" tier in the 2012, 2014, and 2016 Performance Based Oversight (PBO) assessments. Great Midwest was classified as "poor" tier in the 2018 PBO assessment.

**FAILURE TO TIMELY PAY ATTORNEY'S FEES  
ORDERED BY DWC**

3. On [REDACTED], Great Midwest received an order for attorney fees from Texas Department of Insurance, Division of Workers' Compensation (DWC) totaling \$[REDACTED]. DWC ordered Great Midwest to pay attorney's fees in the amount of 15% of each income benefit payment to the injured employee.

4. On [REDACTED], Great Midwest issued a check to the injured employee for indemnity benefits. Great Midwest was required to issue payment to the attorney the same day but did not issue payment until [REDACTED], which was 295 days late.

#### ASSESSMENT OF SANCTION

5. Failure to timely pay attorneys' fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
6. 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.
7. 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; the history and extent of previous administrative violations; and the penalty necessary to deter future violations.
8. 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. (Great Midwest paid within days after discovering the error.)
9. Great Midwest acknowledges that it has communicated with DWC 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).

10. Great Midwest 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, and 414.003.
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 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney's fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
6. 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.
7. Great Midwest violated TEX. LAB. CODE §§ 415.002(a)(20), 415.0035(e), and 415.021(a) and 28 TEX. ADMIN. CODE § 152.1(c) when it failed to timely comply with a DWC order to pay attorney's fees.

**ORDER**

Great Midwest Insurance Company is ORDERED to pay an administrative penalty of \$2,500 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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Toya Lutz  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

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AFFIDAVIT

STATE OF Arizona §  
COUNTY OF Maricopa §

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

"My name is Michael Baker. 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 Sr VP of claims, and am the authorized representative of Great Midwest Insurance Company. I am duly authorized by said organization to execute this statement.

Great Midwest 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.

Great Midwest Insurance Company is voluntarily entering into this consent order. Great Midwest Insurance Company consents to the issuance and service of this consent order."

Michael Baker

Affiant

SWORN TO AND SUBSCRIBED before me on July 9<sup>th</sup>, 2019.

(NOTARY SEAL)



Dianne G. Rivera  
Signature of Notary Public

Dianne G. Rivera  
Printed Name of Notary Public

My Commission Expires: June 3, 2022