

No. 2020 6273

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAR 04 2020

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 16797

General remarks and official action taken:

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

WAIVER

American Zurich acknowledges that the Texas Labor Code and other applicable laws provide certain rights. American Zurich 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. American Zurich 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. American Zurich was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY COMPLY WITH A TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION ORDER**

Case 1

3. On [REDACTED], American Zurich received Medical Fee Dispute Resolution Findings & Decision No. [REDACTED], which ordered American Zurich to remit payment to the health care provider in the amount of \$ [REDACTED], plus accrued interest.

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4. American Zurich was required to issue the payment within 30 days of receipt of the order, or by [REDACTED].
5. American Zurich issued payment, with interest, on [REDACTED], which was 101 days late.

Case 2

6. On [REDACTED], American Zurich received Medical Fee Dispute Resolution Findings & Decision No. [REDACTED] which ordered American Zurich to remit payment to the health care provider in the amount of \$ [REDACTED], plus accrued interest.
7. American Zurich was required to issue the payment within 30 days of receipt of the order, or by [REDACTED].
8. American Zurich issued payment in the amount of \$ [REDACTED] on [REDACTED], but did not issue payment of interest in the amount of \$ [REDACTED] until [REDACTED], 659 days late.

Case 3

9. On [REDACTED], American Zurich received Medical Fee Dispute Resolution Findings & Decision No. [REDACTED], which ordered American Zurich to remit payment to the health care provider in the amount of [REDACTED], plus accrued interest.
10. American Zurich was required to issue the payment within 30 days of receipt of the order, or by [REDACTED].
11. American Zurich issued payment of interest on [REDACTED] in the amount of \$ [REDACTED] but did not issue payment of principal amount of \$ [REDACTED] until [REDACTED], which was 152 days late.

Case 4

12. On [REDACTED], American Zurich received Medical Fee Dispute Resolution Findings & Decision No. [REDACTED], which ordered American Zurich to remit payment to the health care provider in the amount of \$ [REDACTED], plus accrued interest.
13. American Zurich was required to issue the payment within 30 days of receipt of the order, or by [REDACTED].
14. American Zurich issued payment, with interest, on [REDACTED], which was 104 days late.

ASSESSMENT OF SANCTION

15. Failure to timely comply with a Texas Department of Insurance, Division of Workers' Compensation (DWC) order is not cost-effective and is harmful to injured employees and to the Texas workers' compensation system.

16. 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.
17. 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; the penalty necessary to deter future violations; the history and extent of previous administrative violations; and the history of compliance with electronic data interchange requirements.
18. 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; whether the administrative violation has negative impact on the delivery of benefits to the injured employee; and other matters that justice require, including the promptness and earnestness of actions to prevent future violations, American Zurich is re-evaluating its procedures to prevent future violations of this type.
19. American Zurich acknowledges that DWC and American Zurich 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).
20. American Zurich 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, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE §§ 401.021 and 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. In accordance with TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. In accordance with 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.
5. Pursuant to TEX. LAB. CODE § 415.021, an insurance carrier commits an administrative violation by failing to comply with a DWC order.
6. American Zurich violated TEX. LAB. CODE §§ 415.021 and 415.002(a)(22) when it failed to timely comply with a DWC order.

ORDER

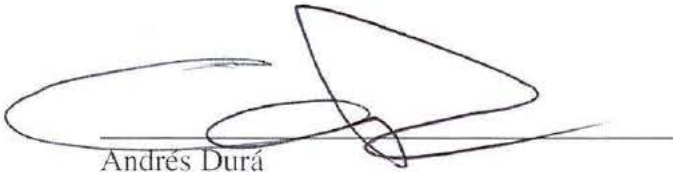
American Zurich Insurance Company is ORDERED to pay an administrative penalty of \$11,200 within 30 days from the date of this consent Order.

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.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Durá
Staff Attorney, DWC Enforcement
Texas Department of Insurance

