

No. _____

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

2019

5889

Date: **MAR 11 2019**

Subject Considered:

SENTRY INSURANCE A MUTUAL COMPANY

1800 Northpoint Drive
Stevens Point, Wisconsin 54481-1253

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 16788

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Sentry Insurance A Mutual Company (Sentry).

WAIVER

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

3. On [REDACTED] the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-18-110 to determine whether Sentry was complying with the Texas Labor Code and DWC rules regarding the timely payment of initial temporary income benefits (TIBs), and the timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments reported to have been issued from [REDACTED] through [REDACTED] DWC identified 37 payments for audit. The 37 payments were reviewed to determine Sentry's compliance.
5. The audit focused on timeliness of payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial TIBs payments and the accuracy of five data elements (first date of disability, date of first written notice, TIBs from date, TIBs end date, and initial TIBs payment date).

FAILURE TO TIMELY PAY TIBs

6. Sentry failed to timely initiate TIBs for 30% of payments reviewed (11 out of 37).
7. Specifically, Sentry issued payments to injured employees less than six working days late in six instances; between six and 15 working days late in four instances; and between 16 and 30 working days late in one instance.

FAILURE TO SUBMIT TIMELY AND ACCURATE INFORMATION REGARDING THE INITIATION OF TIBs TO DWC

8. Sentry failed to accurately report the first date of disability for 27% of payments examined (10 out of 37).
9. Sentry failed to accurately report the date of first written notice for 14% of payments examined (5 out of 37).
10. Sentry failed to accurately report the date of initial payment for 3% of payments examined (1 out of 37).

ASSESSMENT OF SANCTION

11. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state of Texas.

12. DWC relies on claims information submitted by the insurance carriers for a variety of 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 taken on claims.
13. 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 EDI 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.
14. In assessing the penalty 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 (late initial payments of TIBs to injured employees); and the history of compliance with EDI requirements.
15. In assessing the penalty 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: whether the administrative violation has negative impact on the delivery of benefits to an injured employee (EDI does not affect injured employees); and other matters that justice may require (Sentry developed a compliance plan).

16. Sentry acknowledges that DWC and Sentry 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).
17. Sentry 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 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 § 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. Sentry violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), 415.002(a)(22) and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7 each time it failed to timely initiate payment of TIBs.
8. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC of actions taken on, or events occurring in a claim as

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specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.

9. Sentry violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 124.2(a) and (b) each time it failed to accurately notify DWC of actions taken on or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.
10. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e), insurance carriers are required to notify DWC of initial payment of benefits within ten days of making the first payment.
11. Sentry violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 124.2(e) each time it failed to timely notify DWC of the initial payments of benefits.

ORDER

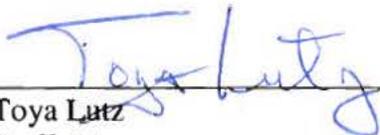
Sentry Insurance A Mutual Company is ORDERED to pay an administrative penalty of \$9,000 within 30 days from the date of this Order.

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.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney
DWC Enforcement
Compliance and Investigations
Texas Department of Insurance

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

