

2019 6060
No. _____

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **AUG 26 2019**

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 18942

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 to write multiple lines of insurance, including workers' compensation/employers' liability.
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 DWC ORDER

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.
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 in the amount of \$ [REDACTED] on [REDACTED], which was 229 days late.
6. American Zurich issued payment for interest, in the amount of \$ [REDACTED], on [REDACTED], which was 579 days late.

ASSESSMENT OF SANCTION

7. Failure to timely comply with a DWC order is not cost-effective and is harmful to injured employees and to the Texas workers' compensation system.
8. 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.
9. 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.

10. 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 and other matters that justice require, and the promptness and earnestness of actions to prevent future violations (American Zurich is re-evaluating its procedures to prevent future violations of this type).
11. 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).
12. 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 an order of DWC.
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

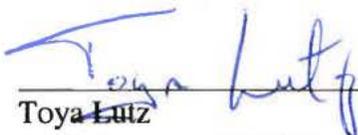
American Zurich Insurance Company is ORDERED to pay an administrative penalty of \$17,000 within 30 days from the date of this consent order.

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 *ACTD*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Texas Department of Insurance

AFFIDAVIT

STATE OF Illinois §
COUNTY OF Cook §

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

"My name is DAVID BEYER. 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. VICE PRESIDENT OF CLAIMS and am the authorized representative of American Zurich Insurance Company. I am duly authorized by said organization to execute this statement.

American Zurich 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.

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

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on July 8th, 2019.



[Signature]
Signature of Notary Public
Jill M Smith
Printed Name of Notary Public
My Commission expires: 8/23/2022