

No. 2019 6112

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

Date: OCT 16 2019

**Subject Considered:**

**OLD REPUBLIC INSURANCE COMPANY**  
P.O. BOX 789  
Greensburg, Pennsylvania 15601-0789

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 16593

**General remarks and official action taken:**

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

**WAIVER**

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

**FAILURE TO TAKE FINAL ACTION ON A REQUEST FOR RECONSIDERATION**

3. On [REDACTED], Old Republic, through its third party administrator Broadspire, received a complete request for reconsideration of a medical bill from a health care provider for the dates of service [REDACTED] through [REDACTED].

4. Old Republic was required to take action regarding payment or denial of the reconsideration request no later than the 30th day after receipt of the request, which in this case was on [REDACTED]
5. Old Republic, through its third party administrator Broadspire, took action and issued payment to the health care provider on [REDACTED] which was 46 days late.

#### **FAILURE TO ATTEND A BENEFIT REVIEW CONFERENCE**

6. On [REDACTED] Old Republic, through its third party administrator Sedgwick CMS, received notice of a Benefit Review Conference (BRC) to be held on [REDACTED] at [REDACTED]
7. Old Republic failed to attend the BRC.
8. The Benefit Review Officer did not determine that Old Republic, through its third party administrator Sedgwick CMS, presented good cause for its failure to attend the BRC.

#### **FAILURE TO TIMELY PAY ATTORNEY FEES**

9. On [REDACTED] Old Republic, through its third party administrator Sedgwick CMS, received an order for attorney fees totaling [REDACTED] from the Texas Department of Insurance, Division of Workers' Compensation (DWC). The fees were related to the insurance carrier's contest of the injured employee's entitlement to Supplemental Income Benefits, and were therefore required to be paid by [REDACTED] within seven days of the insurance carrier's receipt of the order.
10. Pursuant to 28 TEX. ADMIN. CODE § 152.3(f), the DWC order approving, partially approving, or denying an application for attorney fees is binding during the pendency of a contest or an appeal of the order. Notice of a contest or an appeal does not relieve the insurance carrier of the obligation to pay attorney fees according to the DWC order.
11. On [REDACTED] Old Republic, through its third party administrator Sedgwick CMS, issued a check to the attorney which was 30 days late.

#### **ASSESSMENT OF SANCTION**

12. Prompt payment or denial of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
13. Attendance of BRCs by all required participants is necessary to DWC's goal of ensuring that system participants resolve their disputes efficiently with undue delay.
14. Timely payment of attorney fees to injured employees' attorneys is imperative to DWC's goal of ensuring that injured employees have access to a fair and accessible dispute resolution process.

15. 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.
16. 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; and the history and extent of previous administrative violations.
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 mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; and the penalty necessary to deter future violations.
18. Old Republic acknowledges that DWC and Old Republic 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).
19. Old Republic 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 of workers' compensation 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, 414.003, 415.002, and 415.021.
2. The commissioner of workers' compensation 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 of workers' compensation 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 commissioner's 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 this subtitle.
6. Pursuant to 28 TEX. ADMIN. CODE § 133.250, an insurance carrier is required to take final action on a complete request for reconsideration of the insurance carrier's action on a medical bill within 30 days of receipt of the request for reconsideration. The insurance carrier shall provide an explanation of benefits for all items included in a reconsideration request in the form and format prescribed by DWC.
7. Old Republic violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely take final action on a request for reconsideration of a medical bill action within 30 days of receipt.
8. Pursuant to TEX. LAB. CODE § 410.028 and 28 TEX. ADMIN. CODE § 141.3(b)(8), a party who fails to attend a BRC without good cause commits an administrative violation.
9. Old Republic violated TEX. LAB. CODE § 410.028 and 28 TEX. ADMIN. CODE § 141.3(b)(8) by failing to attend a BRC without good cause.
10. Pursuant to TEX. LAB. CODE § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of the commissioner.
11. Pursuant to 28 TEX. ADMIN. CODE §§ 152.1 and 152.3, insurance carriers are required to pay attorney fees ordered by DWC and the order is binding until the insurance carrier is relieved of that obligation. The insurance carrier must begin payment 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.

12. Old Republic violated TEX. LAB. CODE §§ 415.002(a)(22), 415.021(a), and 415.002(a)(20) when it failed to timely comply with a DWC order to pay attorney fees.

**ORDER**

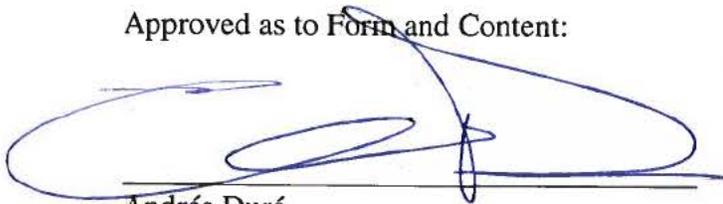
Old Republic Insurance Company is ORDERED to pay an administrative penalty of \$5,850 within 30 days from the date of this consent Order.

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.



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Cassie Brown *NCW*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF Illinois  
COUNTY OF Cook

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

"My name is Deborah J. Matthews 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 AVP - Compliance and am the authorized representative of Old Republic Insurance Company. I am duly authorized by said organization to execute this statement.

Old Republic 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.

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

Deborah J. Matthews  
Affiant

SWORN TO AND SUBSCRIBED before me on Sept. 5, 2019.

(NOTARY SEAL)



Eileen M. Loechel  
Signature of Notary Public

Eileen M. Loechel  
Printed Name of Notary Public

My Commission Expires: 03.06.2021