

No. 2020-6333

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

**Date:** 04-29-2020

**Subject Considered:**

**COMMERCE AND INDUSTRY INSURANCE COMPANY**  
175 Water Street 18th Floor  
New York City, New York 10038

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 17842

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Commerce and Industry Insurance Company (Commerce Insurance).

**WAIVER**

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

**FAILURE TO TIMELY INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS**

3. On [REDACTED], Commerce Insurance received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].

5. Commerce Insurance was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after Commerce Insurance's received written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].
6. On [REDACTED], Commerce Insurance filed a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) four days late.
7. Commerce Insurance issued the initial TIBs payment totaling \$ [REDACTED] on [REDACTED], which was 55 days late.

### ASSESSMENT OF SANCTION

8. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
9. 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.
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 aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
11. 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.

12. Commerce Insurance acknowledges that DWC and Commerce Insurance 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).
13. Commerce Insurance 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, 414.003, 415.002, and 415.021.
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 §§ 408.081, 408.082, and 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. Commerce Insurance violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 each time it failed to timely initiate payment of TIBs.

COMMISSIONER'S ORDER  
Commerce and Industry Insurance Company  
TDI-DWC Enforcement File No. 17842  
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**ORDER**

Commerce and Industry Insurance Company is ORDERED to pay an administrative penalty of \$3,500 within 30 days from the date of this Order.

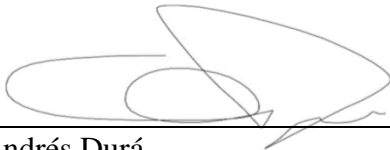
The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

COMMISSIONER'S ORDER  
Commerce and Industry Insurance Company  
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**AFFIDAVIT**

STATE OF Connecticut           §  
   §  
COUNTY OF Hartford           §

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

“My name is Peter Macdonald. 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 Vice President, and am the authorized representative of Commerce and Industry Insurance Company. I am duly authorized by said organization to execute this statement.

Commerce and Industry 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.

Commerce and Industry Insurance Company is voluntarily entering into this consent order. Commerce and Industry Insurance Company consents to the issuance and service of this consent order.”

  
\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on \_\_\_\_\_, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Expiration Date