

**2019 6133**  
No. \_\_\_\_\_

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

Date: **NOV 05 2019**

**Subject Considered:**

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

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 20520

**General remarks and official action taken:**

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

**WAIVER**

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

**DWC AUDIT NO. IP-19-115**

3. On November 15, 2018, the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-19-115 to determine whether Zurich was complying with the Texas Labor Code and related 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 between July 1, 2018, and September 30, 2018. DWC identified 50 initial TIBs payments for audit. Five initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 45 payments were reviewed to determine Zurich's compliance.

5. The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI portion of the audit focused on timeliness of reporting initial TIBs payments and the accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs From Date, TIBs End Date, and Initial TIBs Payment Date).

**Failure to Timely Pay Initial TIBs**

6. Zurich failed to timely initiate TIBs for 18% of payments examined (8 out of 45).
7. Specifically, Zurich issued payments to injured employees less than six working days late in three instances, and between six and 15 working days late in five instances.

**Failure to Timely or Accurately Report EDI Data to DWC**

8. Zurich failed to timely report initial payments of TIBs for 4% of payments examined (2 out of 45).
9. Zurich failed to accurately report the First Date of Disability for 9% of payments examined (4 out of 45).
10. Zurich failed to accurately report Date of First Written Notice for 13% of payments examined (6 out of 45).
11. Zurich failed to accurately report Initial TIBs From Dates for 4% of payments examined (2 out of 45).
12. Zurich failed to accurately report Initial TIBs End Dates for 4% of payments examined (2 out of 45).
13. Zurich failed to accurately report Initial TIBs Payment Dates for 2% of payments examined (1 out of 45).

**ASSESSMENT OF SANCTION**

14. 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.
15. Timely submission of information and documentation to DWC and compliance with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
16. 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.

17. 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.
18. In assessing the sanction for this case, DWC found no factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating and the following factors to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity 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; and other matters that justice may require, including the size of the company or practice.
19. Zurich acknowledges that DWC and 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. 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, 402.00128, 409.021, 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 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. Zurich violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) 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 and the injured employee of actions taken on, or events occurring in a claim as 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. Zurich violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely or accurately notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

**ORDER**

Zurich American Insurance Company is ORDERED to pay an administrative penalty of \$15,000 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.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Glen Imes  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF IL §  
COUNTY OF COOK §


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

“My name is Douglas P. Meyers. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

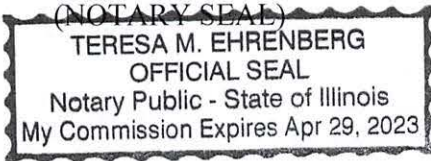
I hold the office of COO - Claims, and am the authorized representative of Zurich American Insurance Company. I am duly authorized by said organization to execute this statement.


Zurich American 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.

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

  
Affiant

SWORN TO AND SUBSCRIBED before me on Oct. 3, 2019.



  
Signature of Notary Public

Teresa M. Ehrenberg  
Printed Name of Notary Public

My Commission Expires: 4-29-2023