

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-20-2020

Subject Considered:

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY
1299 Zurich Way
Schaumburg, Illinois 60196-5870

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 23579

General remarks and official action taken:

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

WAIVER

American Guarantee acknowledges that the Texas Labor Code and other applicable laws provide certain rights. American Guarantee 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 Guarantee 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. American Guarantee was classified as "average" tier in the 2007, 2010, 2012, and 2014 Performance Based Oversight (PBO) assessments. American Guarantee was classified as "poor" tier in the 2009 PBO assessment. American Guarantee was not selected to be tiered in the 2016 or 2018 PBO assessments.

FAILURE TO TIMELY PAY ATTORNEY FEES

**ORDERED BY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF
WORKERS' COMPENSATION**

3. On [REDACTED], American Guarantee received an order for attorney fees from the Texas Department of Insurance, Division of Workers' Compensation (DWC), totaling \$ [REDACTED]
4. DWC ordered American Guarantee to pay attorney fees in the amount of [REDACTED] % of each income benefit payment issued to the injured employee.
5. On [REDACTED], American Guarantee issued a check to the injured employee for indemnity benefits. American Guarantee was required to issue payment to the attorney the same day.
6. American Guarantee issued the required payment of attorney fees on [REDACTED], which was 62 days late.

ASSESSMENT OF SANCTION

7. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful 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 no mitigating factors and 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.

10. American Guarantee acknowledges that it has communicated with DWC 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).
11. American Guarantee 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 §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits 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.
8. American Guarantee violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), and 415.021(a) and 28 TEX. ADMIN. CODE § 152.1(c) when it failed to timely comply with a DWC order to pay attorney fees.

COMMISSIONER'S ORDER
American Guarantee and Liability Insurance Company
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ORDER

American Guarantee and Liability Insurance Company is ORDERED to pay an administrative penalty of \$2,500 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

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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 BOUCE. 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 CLAIMS and am the authorized representative of American Guarantee and Liability Insurance Company. I am duly authorized by said organization to execute this statement.

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

[Signature]
Affiant

SWORN TO AND SUBSCRIBED before me on March 2, 2020.

(NOTARY SEAL)



[Signature]
Signature of Notary Public
Jill M Smith
Printed Name of Notary Public
08/23/2022
Commission Expiration Date