No. **2023-8336**

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 11/8/2023

Subject Considered:

Old Republic Insurance Company
445 South Moorland Road
Brookfield, Wisconsin 53005-4254

Consent Order
DWC Enforcement File Nos. 31806, 32463, & 32518

General remarks and official action taken:

This is a consent order with Old Republic Insurance Company (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.
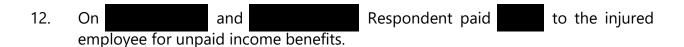
Findings of Fact

1.   Respondent 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 in Texas, including workers' compensation/employers' liability insurance.

2.   Respondent was classified as "average" tier in the Performance Based Oversight (PBO) assessments between the years of 2019 and 2022.

Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 31806

3.   On ███████ Respondent received a designated doctor (DD) report of a DD examination performed on ███████

4.   The DD determined the injured employee was unable to work in any capacity from ███████ to ███████ because of a compensable injury.

5.   Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report, which was ███████

6.   On Aug ███████ Respondent paid ███████ in TIBs and interest, which was 30 days late.

Failure to Timely Increase Lifetime Income Benefits (LIBs)

File No. 32463

7.   On ███████ the injured employee became entitled to LIBs with a 3% annual increase due each year on the anniversary date of the day LIBs began to accrue.

8.   On ███████ the adjuster made a note that a 3% increase was due. However, Respondent did not apply the 3% increase until ███████

9.   This delay in the 3% increase resulted in an underpayment of ███ over 17 weeks.

10.   On ███████ Respondent paid the outstanding LIBs with interest.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32518

11.   On ███████ DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.

12.   On ███████ and ███████ Respondent paid ███ to the injured employee for unpaid income benefits.

13.   On each date, Respondent was required to pay attorney fees in the amount of ███, or 25% of the benefits paid to the injured employee.

14.   On ███████ Respondent began paying attorney fees 15 days late.

15.   In total, Respondent paid ███ in late attorney's fees.

Assessment of Sanction

1.   Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Furthermore, failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.

2.   In assessing the sanction for this case, DWC fully considered the following factors 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 violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
   * the penalty necessary to deter future violations;
   * whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
   * the history of compliance with electronic data interchange requirements;
   * to the extent reasonable, the economic benefit resulting from the prohibited act; and
   * other matters that justice may require, including, but not limited to:
     o PBO assessments;
     o prompt and earnest actions to prevent future violations;
     o self-report of the violation;
     o the size of the company or practice;
     o the effect of a sanction on the availability of health care; and

o evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

3.   DWC found the following factors 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, specifically evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules. Specifically, Respondent has received 44 consent orders and 26 warning letters. Six of those actions involved failure to timely pay benefits pursuant to a DD report; one action involved untimely payment of LIBs, and three involved failure to timely pay attorney's fees.

4.   DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the violator's demonstration of good faith, including providing training to the third-party administrators regarding timely indemnity benefits following the receipt of a Designated Doctor's report and implementing annual increases for LIBs. Further, Respondent will provide targeted training for the responsible adjusters and supervisors.

5.   Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

6.   Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1.   The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, and 414.002.

2.   The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).

3.   Respondent has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.

4.   Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

5.   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.

6.   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.

<u>Failure to Pay Temporary Income Benefits in Accordance with a Designated Doctor Report</u>

File No. 31806

7.   Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.

8.   Pursuant to Tex. Lab. Code §§ 408.081; 409.023; and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.

9.   Pursuant to 28 Tex. Admin. Code § 127.10(i), the insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.

10.   Respondent failed to timely pay accrued benefits in accordance with a DD report within five days of receiving the report in violation of Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i).

Failure to Timely Increase Lifetime Income Benefits

File No. 32463

11.   Pursuant to Tex. Lab. Code § 408.161, LIBs are equal to 75% of the employee's average weekly wage. LIBs also receive a 3% increase each year.

12.   Pursuant to 28 Tex. Admin. Code § 131.2(b), each year, on the anniversary date of the day LIBs began to accrue, the amount of benefits being paid must be increased by 3%.

13.   Respondent failed to timely increase LIBs by 3% on the anniversary date of the day LIBs began to accrue in violation of Tex. Lab. Code §§ 408.161, 415.002(a)(20), 415.002(a)(22), and 28 Tex. Admin. Code § 131.2(b).

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32518

14.   Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

15.   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. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.

16.   Respondent failed to timely comply with a DWC order to pay attorney fees in violation of Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c).

Order

It is ordered that Old Republic Insurance Company must pay an administrative penalty of $9,250 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Old Republic Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, P.O. Box 12030, Austin, Texas 78711-2030.

_____
Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:

_____
Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Old Republic Insurance Company
DWC Enforcement File Nos. 31806, 32463, & 32518
Page 8 of 8

Unsworn Declaration

STATE OF Illinois §

§

COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is
Deborah J. Matt. I hold the position of AVP-Compliance and am the
authorized representative of Old Republic Insurance Company. My business address is:
301 N. Michigan Ave, Chicago, Cook, IL, 60601

(Street)　　　　　　　　　(City)　　　(County)　(State)　(ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare
under penalty of perjury that the facts stated in this document are true and correct.

Deborah J. Matthews

Declarant

Executed on 11/6/ , 2023.