

No. 2023-7894

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

**Date:** 4/18/2023

**Subject Considered:**

AIU Insurance Company  
PO Box 201329  
Austin, Texas 78720-1329

Consent Order  
DWC Enforcement File Nos. 30459, 30804, 30870, 31139, 31170, 31276, 31338, and  
31340

**General remarks and official action taken:**

This is a consent order with AIU 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 2022 Performance Based Oversight (PBO) assessments. Respondent was not chosen to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

*Enforcement Case No. 30804*

3. On [REDACTED] DWC ordered Respondent to pay [REDACTED] in attorney fees in connection with legal services provided to an injured employee, with payment not to exceed 25% of each income benefit payment to the injured employee.
4. Respondent issued four payments of [REDACTED] to the injured employee for temporary income benefit (TIBs) on the following dates: [REDACTED] and [REDACTED]
5. On each date, Respondent was required to pay attorney fees in the amount of 25% of the TIBs paid to the injured employee.
6. Respondent did not pay the injured employee's attorney for the [REDACTED] payment until [REDACTED] which was 28 days late.

Failure to Timely Initiate Temporary Income Benefits

*Enforcement Case No. 30459*

7. On [REDACTED] Respondent received an injured employee's notice of injury. The date of injury for the employee was [REDACTED]
8. The injured employee's first date of disability was [REDACTED] with an accrual date of [REDACTED]
9. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
10. Respondent was required to pay initial TIBs to the injured employee by [REDACTED]
11. Respondent failed to timely initiate TIBs, as follows:

	Payment Period	Date Due	Date Paid	Amount Paid	Days Late
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	247
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	118
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	195
<b>TOTAL</b>					

*Enforcement Case No. 30870*

12. On [REDACTED] Respondent received an injured employee's notice of injury. The date of injury for the employee was [REDACTED]
13. The injured employee's first date of disability was [REDACTED] with an accrual date of [REDACTED]
14. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
15. Respondent failed to timely initiate TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	34
b.	[REDACTED]	[REDACTED]	[REDACTED]	34
c.	[REDACTED]	[REDACTED]	[REDACTED]	34
d.	[REDACTED]	[REDACTED]	[REDACTED]	34
e.	[REDACTED]	[REDACTED]	[REDACTED]	34
f.	[REDACTED]	[REDACTED]	[REDACTED]	28
g.	[REDACTED]	[REDACTED]	[REDACTED]	21
h.	[REDACTED]	[REDACTED]	[REDACTED]	18
i.	[REDACTED]	[REDACTED]	[REDACTED]	11
j.	[REDACTED]	[REDACTED]	[REDACTED]	4

Failure to Timely Pay Accrued Temporary Income Benefits

*Enforcement Case No. 31338*

16. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. failed to timely pay [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	21
b.	[REDACTED]	[REDACTED]	[REDACTED]	14
c.	[REDACTED]	[REDACTED]	[REDACTED]	7

Failure to Take Timely Action on a Preauthorization Request

*Enforcement Case No. 31139*

17. On [REDACTED] Respondent received a request for preauthorization from a health care provider for 12 sessions of occupational therapy.
18. Respondent was required to act on the preauthorization request and send written notice of the decision to the requestor or the injured employee within three working days of the receipt of the request, which was [REDACTED].
19. Respondent sent written notice of approval of the request on [REDACTED] which was 12 days late.

Failure to Comply with a Medical Fee Dispute Resolution Findings and Decision Order

*Enforcement Case No. 31170*

20. On [REDACTED] Respondent received Medical Fee Dispute Resolution Findings and Decision Order (MFDR Order) No. M4-22-2121-01.
21. This order required Respondent to pay [REDACTED] plus accrued interest by [REDACTED].

22. Respondent paid [REDACTED] prior to the MFDR Order.
23. On [REDACTED] Respondent issued the remaining balance with interest, in compliance with the MFDR Order, which was 29 days late.

*Enforcement Case No. 31276*

24. On [REDACTED] Respondent received MFDR Order No. M4-22-1852-01.
25. This order required Respondent to pay [REDACTED] plus accrued interest by [REDACTED]
26. Respondent issued a payment of [REDACTED] prior to the MFDR Order.
27. On [REDACTED] Respondent paid the remaining [REDACTED]
28. On [REDACTED] Respondent paid interest in compliance with the MFDR Order, which was 111 days late.

Failure to Timely Act on a Reconsideration Request

*Enforcement Case No. 31340*

29. On [REDACTED] Respondent received a complete request for reconsideration of a medical bill from a health care provider for medical services rendered to the injured employee on [REDACTED]
30. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED]
31. Respondent acted on the medical bill on [REDACTED] which was 11 days late.

**Assessment of Sanction**

1. 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. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. Failure to promptly act on a preauthorization request has the potential to delay timely, appropriate, and high-quality medical care to injured employees. This in turn may delay improvements in the injured employees' physical condition and earning capacity and is harmful to injured employees and to the Texas workers' compensation system.
4. Failure to timely comply with DWC orders for payment of medical bills is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
5. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process, and hinders the division's goal of ensuring timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity.
6. 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:
    - PBO assessments;
    - prompt and earnest 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.
7. 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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited acts; the history and extent of previous administrative violations; the penalty necessary to deter future violations; other matters that justice may require, including, evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
  8. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
  9. 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).
  10. 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, 414.002, and 414.003.
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.

Failure to Timely Pay Attorney Fees Ordered by DWC

*Enforcement Case No. 30804*

7. 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.
8. 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.
9. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Initiate and Pay Accrued Temporary Income Benefits

*Enforcement Case Nos. 30459, 30870 & 31338*

10. 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.
11. Pursuant to Tex. Lab. Code §§ 408.082; 409.021; and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than



the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.

12. Respondent violated Tex. Lab. Code §§ 408.081; 409.021(e); 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay TIBs.

#### Failure to Take Timely Action on a Preauthorization Request

##### *Enforcement Case No. 31139*

13. Pursuant to 28 Tex. Admin. Code § 134.600(i), an insurance carrier is required to contact the requestor or the injured employee by telephone, facsimile, or electronic transmission to report the insurance carrier's decision regarding preauthorization or concurrent review. The insurance carrier is required to make the contact within three working days of receipt of the request.
14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.600(i) by failing to act on a request for preauthorization within three working days.

#### Failure to Comply with a MFDR Order

##### *Enforcement Case Nos. 31170 & 31276*

15. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
16. 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.
17. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) and (22); 415.021(a); and 415.0035(e) each time Respondent failed to comply with a DWC order.


Failure to Timely Act on a Reconsideration Request

*Enforcement Case No. 31340*


18. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.
19. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) when Respondent failed to act on the request for consideration within 30 days of receipt of the request.

**Order**

It is ordered that AIU Insurance Company must pay an administrative penalty of \$15,000 within 30 days from the date of this order. AIU Insurance Company must pay the administrative penalty by 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, PO 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

**Unsworn Declaration**

**STATE OF NEW JERSEY\_** §  
§  
**COUNTY OF HUDSON** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of AIU Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, New Jersey, 07302.  
(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.

| *Peter Macdonald*

\_\_\_\_\_  
Declarant

Executed on March 24, 2023.