

No. **2023-8098**

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

Date: 7/26/2023

Subject Considered:

American Zurich Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-1091

Consent Order
DWC Enforcement File Nos. 32112, 32113, 32114, 32115, 32128,
32130, 32131, 32197, 32229 and 32290

General remarks and official action taken:

This is a consent order with American Zurich 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 workers' compensation-employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020 and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Act on a Medical Bill

File No. 32112

3. On [REDACTED] a designated doctor (DD) performed a DD exam on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
4. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
5. On [REDACTED] Respondent paid [REDACTED] to the DD, which was eight days late.

File No. 32113

6. On [REDACTED] a health care provider (HCP) performed a DD-referred exam on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the HCP.
7. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
8. On [REDACTED] Respondent paid [REDACTED] to the HCP, which was 155 days late.
9. On [REDACTED] Respondent paid [REDACTED] in interest, which was one day late.

File No. 32114

10. On [REDACTED] a DD performed a DD exam on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
11. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
12. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 58 days late.
13. On [REDACTED] Respondent paid [REDACTED] in interest, which was two days late.

File No. 32115

14. On [REDACTED] a DD performed a DD exam on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
15. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
16. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 18 days late.
17. On [REDACTED] Respondent paid [REDACTED] in interest, which was 41 days late.

File No. 32128

18. On [REDACTED] a DD performed a DD exam on an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the DD.
19. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
20. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 24 days late.
21. On [REDACTED] Respondent paid [REDACTED] in interest, which was 29 days late.

File No. 32130

22. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the HCP.
23. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
24. On [REDACTED] Respondent paid [REDACTED] to the HCP, which was 21 days late.
25. On [REDACTED] Respondent paid [REDACTED] in interest, which was 40 days late.

File No. 32131

26. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the HCP.
27. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
28. On [REDACTED] Respondent paid [REDACTED] to the HCP, which was 141 days late.
29. On [REDACTED] Respondent paid [REDACTED] in interest, which was two days late.

File No. 32290

30. Between [REDACTED] and [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the HCP.
31. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
32. On [REDACTED] Respondent paid [REDACTED] to the HCP, which was 142 days late. Respondent states the bill was untimely processed because the bill amount was lower than the CMS standards, which required a larger amount.
33. On [REDACTED] Respondent paid [REDACTED] in interest, which was 13 days late.

Failure to Timely Pay Impairment Income Benefits (IIBs) Based on a Certifying Doctor Report and Failure to Timely Pay Accrued IIBs

File No. 32197

34. On [REDACTED] Respondent received a DWC Form-69, *Report of Medical Evaluation* (DWC Form-69) from the injured employee's certifying doctor (CD) in connection with a CD examination.

35. The CD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with an [REDACTED] impairment rating (IR).
36. Respondent was required to pay IIBs no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED]
37. Respondent paid [REDACTED] in IIBs on [REDACTED] which was 15 days late.
38. Respondent was required to pay accrued IIBs to an injured employee for the benefit period between [REDACTED] through [REDACTED]. The IIBs payment were due seven days after the first day of each pay period. Respondent failed to timely pay [REDACTED] in IIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	8
b.	[REDACTED]	[REDACTED]	[REDACTED]	1

Failure to Timely Pay Accrued Temporary Income Benefits (TIBs)

File No. 32229

39. Respondent was required to pay accrued TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period, or by [REDACTED]
40. On [REDACTED] Respondent paid [REDACTED] in TIBs, which was seven days late.
41. On [REDACTED] Respondent paid [REDACTED] in interest, which was 17 days late.

Assessment of Sanction

1. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.

2. Failure to provide income benefits and interest in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.

3. 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.

4. 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, including, but not limited to the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules. Further, the late medical bill payments were between 7 and 155 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.

5. DWC considers the following factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act; the economic benefit resulting from the prohibited act; and prompt and earnest actions to prevent future violations. Respondent paid all medical bills, with interest, when it became aware of the failure to timely pay. In July of 2023, Respondent's Director personally provided instruction to correct the misclassification of medical bills and the resulting late payments. The largest late payment of a medical bill involved underbilling by the HCP. When Respondent recalculated to comply with fee guidelines, it paid almost \$15,000 more than billed.
6. 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).
7. 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 Act on a Medical Bill

File Nos. 32112, 32113, 32114, 32115, 32128, 32130, 32131 and 32290

7. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
8. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest for Medical Benefits

File Nos. 32113, 32114, 32115, 32128, 32130, 32131 and 32290

9. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code § 134.130(a), an insurance carrier must pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
10. Respondent violated Tex. Lab. Code §§ 413.019(a); 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 134.130(a) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.

Failure to Timely Pay IIBs Based on a Certifying Doctor Report

File No. 32197

11. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
12. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying MMI.
13. Pursuant to Tex. Lab. Code § 415.002 (12) an administrative violation occurs if an insurance carrier fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier.
14. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when MMI is not disputed.
15. Respondent violated Tex. Lab. Code §§ 408.121(b); 409.023; 415.002(a)(12), (20), and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the DWC Form-69.

Failure to Timely Pay Accrued IIBs

File No. 32197

16. 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.
17. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches MMI and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs

on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.

18. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely pay accrued IIBs.

Failure to Timely Pay Accrued TIBs

File No. 32229

19. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 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.
20. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.


Failure to Timely Pay Interest on Late Income Benefits

File Nos. 32197 and 32229

21. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
22. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

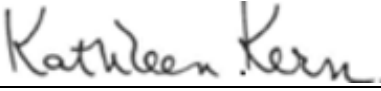
Order

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$27,000 within 30 days from the date of this order American Zurich 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, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF IL §
§
COUNTY OF Cook §

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

1299 Zurich Way, Schaumburg, Cook, IL, 60196.
(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.

Joseph Ragonese
Declarant

Executed on July 18, 2023.