

No. **2023-7936**

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

Date: 5/4/2023

Subject Considered:

Zurich American Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-5870

Consent Order
DWC Enforcement File Nos. 31318, 31319 and 31374

General remarks and official action taken:

This is a consent order with Zurich American 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 Initiate and Pay Accrued Temporary Income Benefits (TIBs)

File No. 31318

3. On [REDACTED] Respondent received notice of an employee's workplace injury.
4. The injured employee's first day of disability began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute TIBs the latter of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
6. 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. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	86
b.	[REDACTED]	[REDACTED]	[REDACTED]	86
c.	[REDACTED]	[REDACTED]	[REDACTED]	82
d.	[REDACTED]	[REDACTED]	[REDACTED]	75

7. On [REDACTED] Respondent paid [REDACTED] (including interest), which was 86 days late.

Failure to Timely Act on a Medical Bill

File No. 31319

8. On [REDACTED] a health care provider (HCP) performed medical services for the injured employee.
9. On [REDACTED] Respondent received a properly completed medical bill from the HCP in the amount of [REDACTED]. Respondent was required to act on the bill not later than the 45th day after receipt of the request, or by [REDACTED]

10. On [REDACTED] Respondent issued an explanation of benefits to the HCP denying payment, which was 56 days late.
11. On [REDACTED] Respondent paid [REDACTED] to the HCP.
12. On [REDACTED] Respondent paid [REDACTED] in interest.

Failure to Timely Pay Death Benefits

File No. 31374

13. Respondent was required to pay weekly death benefits to an injured employee's beneficiary for the period of [REDACTED] through [REDACTED]. Respondent failed to timely pay death benefits, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	45
b.	[REDACTED]	[REDACTED]	[REDACTED]	41
c.	[REDACTED]	[REDACTED]	[REDACTED]	34
d.	[REDACTED]	[REDACTED]	[REDACTED]	53
e.	[REDACTED]	[REDACTED]	[REDACTED]	46
f.	[REDACTED]	[REDACTED]	[REDACTED]	19
g.	[REDACTED]	[REDACTED]	[REDACTED]	12
h.	[REDACTED]	[REDACTED]	[REDACTED]	5
i.	[REDACTED]	[REDACTED]	[REDACTED]	4

14. Respondent paid late benefits in the amount of [REDACTED] plus interest.

Assessment of Sanction

1. Failure to provide income benefits and interest in a timely and cost-effective manner is harmful to injured employees, beneficiaries, and the Texas workers' compensation system.
2. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.

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.
5. DWC considers the follow factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act, and prompt and earnest actions to prevent future violations. Specifically, Respondent paid promptly when discovered, in all three cases, prior to DWC

investigation. Respondent addressed the errors by creating a Compliance Supervisor position and providing additional training for adjusters.

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 Initiate Payment of TIBs

7. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate TIBs.

Failure to Timely Pay Accrued TIBs

9. 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.
10. 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.
11. 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 Act on a Medical Bill

12. 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.
13. 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 Death Benefits

14. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date.
15. Pursuant to 28 Tex. Admin. Code § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
16. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3, 124.7, and 132.17 each time Respondent failed to timely pay accurate death benefits.

Order

It is ordered that Zurich American Insurance Company must pay an administrative penalty of \$12,500 within 30 days from the date of this order Zurich American 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, P.O. 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 Zurich American 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 _____, 2023.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092