

No. 2023-8388

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

Date: 12/8/2023

Subject Considered:

AmTrust Insurance Company
PO Box 89404
Cleveland, Ohio 44101-6404

Consent Order
DWC Enforcement File Nos. 31953, 32132, 32379, and 32425

General remarks and official action taken:

This is a consent order with AmTrust 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 "poor" tier in the 2022 Performance Based Oversight (PBO) assessment. Respondent was classified as "average" tier in the 2020 PBO assessment. Respondent was not selected to be tiered in the 2018 PBO assessment.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 31953

3. On [REDACTED], [REDACTED], and [REDACTED], 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.
4. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	Benefits paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	31
b.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	23
c.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	11
d.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	4

5. On [REDACTED], Respondent paid \$ [REDACTED] in late attorney fees.

Failure to Timely Act on a Medical Bill

File No. 32132

6. On [REDACTED], a Designated Doctor (DD) provided medical services to an injured employee. On June 1, 2022, Respondent received a completed medical bill for [REDACTED] from the DD.
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 DD, which was 177 days late.
9. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 34 days late.

File No. 32425

10. On [REDACTED], a DD provided medical services to 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 73 days late.
13. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 32 days late.

Failure to Timely Pay Accrued Impairment Income Benefits

File No. 32379

14. Respondent was required to pay impairment income benefits (IIBs) to an injured employee for the period of [REDACTED], through [REDACTED]. The IIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in IIBs, as follows:

Payment Period	Date Due	Date Paid	Days Late
a. [REDACTED]	[REDACTED]	[REDACTED]	1
b. [REDACTED]	[REDACTED]	[REDACTED]	1 ⁵
c. [REDACTED]	[REDACTED]	[REDACTED]	8
d. [REDACTED]	[REDACTED]	[REDACTED]	1

15. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 140 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. 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. It is a serious violation to fail to timely act on a medical bill involving designated doctor services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a designated doctors' participation in the system.

3. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
4. 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.
5. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that

justice may require such as Respondent's "poor" PBO assessment in 2022. Further, the late medical bill payments were 177 and 73 days late, respectively, and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.

6. DWC considered the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's good faith mistake in ecase 32132.
7. 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).
8. 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC statute or rule.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 31953

6. 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.
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. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
8. 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 Act on a Medical Bill

File Nos. 32132 and 32425

9. 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.
10. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest

File Nos. 32132 and 32425

11. 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.
12. Respondent violated Tex. Lab. Code § 413.019(a); 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 134.130(a) when Respondent failed 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 Accrued Impairment Income Benefits

File No. 32379

13. 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.
14. Respondent violated Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), (20) and (22) each time Respondent failed to pay IIBs promptly as and when the benefits accrued.

Failure to Timely Pay Interest


File No. 32379

15. 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.
16. Respondent violated Tex. Lab. Code §§ 408.064 and 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 AmTrust Insurance Company must pay an administrative penalty of \$8,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, AmTrust 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:



Stephen M. Jewell
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF OHIO §
§
COUNTY OF CUYAHOGA §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Barry W. Moses. I hold the position of Vice President, Senior Regulatory Counsel and am the authorized representative of AmTrust Insurance Company. My business address is: 800 Superior Ave. E., 21st Flr., Cleveland Cuyahoga OH 44122
(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.

Barry W. Moses
Declarant

Executed on_November 20, 2023.