

No. 2024-8507

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

**Date:** 1/30/2024

**Subject Considered:**

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

Consent Order  
DWC Enforcement File Nos. 33189, 33190 and 33258

**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 2018, 2020 and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Act on a Medical Bill

*File No. 33189*

3. On [REDACTED], a designated doctor (DD) performed a DD examination for an injured employee.
4. On [REDACTED], Respondent received a properly completed \$ [REDACTED] medical bill from the DD. Respondent was required to act on the bill not later than the 45th day after receipt of the request, or by [REDACTED].
5. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 159 days late.
6. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was three days late.

*File No. 33190*

7. On [REDACTED], a DD performed a DD examination for an injured employee.
8. On [REDACTED], Respondent received a properly completed \$ [REDACTED] medical bill from the DD. Respondent was required to act on the bill not later than the 45th day after receipt of the request, or by [REDACTED].
9. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 82 days late.
10. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was two days late.

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

*File No. 33258*

11. On [REDACTED], Respondent received a report from a DD in connection with a DD examination.
12. The DD determined that the injured employee experienced disability related to the compensable injury from [REDACTED], to [REDACTED].

13. Respondent was required to pay accrued IIBs no later than five days after receiving the DD report, or by [REDACTED].
14. On [REDACTED], Respondent paid a lump sum of \$ [REDACTED], which was 346 days late.
15. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 36 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. 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.
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. 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; to the extent reasonable, the economic benefit resulting from the prohibited act; and the penalty necessary to deter future violations; Further, payments for the late medical bills in file nos. 33189 and 33190 were issued 82 and 159 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; and prompt and earnest actions to prevent future violations. Specifically, Respondent found the error in benefits payment, and corrected payment prior to contact by DWC. Additionally, Respondent has implemented a manual process to correct the mislabeling errors that led to the late medical bills.
  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

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 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 for Medical Benefits

9. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code §§ 133.240(l) and 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. The interest payment shall be paid at the same time as the medical bill payment.

10. Respondent violated Tex. Lab. Code §§ 413.019(a), 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 133.240(l) and 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 Accrued Impairment Income Benefits Based on a DD Report

11. 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.
12. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
13. Pursuant to 28 Tex. Admin. Code § 127.10(i)(3), an 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.
14. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.


Failure to Timely Pay Interest

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, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 126.12(b), by failing to timely pay interest on late income benefits.

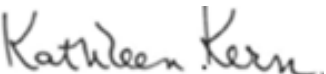
**Order**

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$17,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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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 January 2, 2023.