

No. **2024-8964**

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

Date: 11/21/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 35337, 35338, & 35339

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, 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate and Pay Accrued Temporary Income Benefits

File No. 35337

3. On [REDACTED], Respondent received notice of an employee’s workplace injury.
4. The injured employee’s first day of disability began on [REDACTED]. The eighth day of disability accrued on [REDACTED].
5. Respondent was required to initiate or dispute temporary income benefits (TIBs) either 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].
6. On [REDACTED], Respondent initiated \$ [REDACTED] in TIBs, which was 34 days late.
7. Respondent was required to pay TIBs to the 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 \$ [REDACTED] in TIBs, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	28
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	21
c.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	14
d.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	7

8. On [REDACTED], Respondent paid interest 15 days late.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

File No. 35339

9. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee’s certifying doctor (CD) in connection with a CD examination.
10. The CD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] % impairment rating.

- 11. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
- 12. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was 13 days late.
- 13. On [REDACTED], Respondent paid interest 11 days late

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 35338

- 14. Between [REDACTED], and [REDACTED], DWC approved \$ [REDACTED] in attorney fees in connection with an attorney's representation of an injured employee. DWC ordered Respondent to pay the attorney fees at a rate of 25% of each income benefit paid to the injured employee.
- 15. Between [REDACTED], and [REDACTED], Respondent paid income benefits to the injured employee on multiple dates. However, Respondent failed to timely pay \$ [REDACTED] in attorney fees at a rate of 25% of the income benefits paid to the injured employee (IE) as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	1
b.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	3
c.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	50
d.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	36
e.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	29
f.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	29
g.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	28
h.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	14
i.	\$ [REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]	7

Assessment of Sanction

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

2. 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.
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;
 - 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; Respondent's prior disciplinary history; 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 economic benefit resulting from the prohibited act; 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 found Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act as mitigating under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

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; 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 rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate and Pay Accrued TIBs

File No. 35337

6. 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.

7. Pursuant to Tex. Lab. Code §§ 408.081; 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.
8. 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 if failed to timely initiate and pay accrued TIBs.

Failure to Pay Accrued IIBs Based on a CD Report

File No. 35339

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 § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
11. 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 maximum medical improvement is not disputed.
12. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Timely Pay Interest

File Nos. 35337 and 35339

13. 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.

14. 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.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 35338

15. 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.
16. 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.
17. 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.

Commissioner's Order
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Order

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$12,500 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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