

No. **2023-7736**

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

**Date: 1/13/2023**

**Subject Considered:**

Wesco Insurance Company  
59 Maiden Lane, 6<sup>th</sup> Floor  
New York, New York 10038

Consent Order  
DWC Enforcement File Nos. 30451 & 30492

**General remarks and official action taken:**

This is a consent order with Wesco 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 "average" tier in the 2020 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 PBO assessments.

DWC Audit No. IP-22-110

*File No. 30451*

3. On [REDACTED] initiated DWC Audit No. IP-22-110 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial temporary income benefits (TIBs) and timely and accurate submission of initial payment information to DWC.
4. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED]. DWC identified 12 initial TIBs payments for audit. A total of three initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining nine payments were reviewed to determine Respondent's compliance.
5. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial TIBs

6. Respondent failed to timely initiate TIBs for 33.33% of examined payments (3 out of 9).
7. Specifically, Respondent issued payments to injured employees less than six days late in two instances, and over 30 days late in one instance.

Failure to Timely or Accurately Report EDI Data to DWC

8. Respondent failed to timely report initial TIBs payments for 33.33% of examined payments (3 out of 9).
9. Respondent failed to accurately report the First Date of Disability for 33.33% of examined payments (3 out of 9).

10. Respondent failed to accurately report the Date of First Written Notice for 22.22% of examined payments (2 out of 9).
11. Respondent failed to accurately report the initial TIBs from Date for 11.11% of examined payments (1 out of 9).
12. Respondent failed to accurately report the initial TIBs End Date for 11.11% of examined payments (1 out of 9).
13. Respondent failed to accurately report the Initial TIBs Payment Date for 77.78% of examined payments (7 out of 9).

DWC Audit No. MBP-22-109

*File No. 30492*

14. On [REDACTED] DWC initiated DWC Audit No. MBP-22-109 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely processing of initial medical bills and the timely and accurate reporting of electronic data interchange (EDI) medical bill payment data to DWC.
15. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED] DWC identified 100 bills for audit. A total of one bill failed to meet selection criteria and was dropped from the audit sample. The remaining 99 bills were reviewed to determine Respondent's compliance.
16. The audit focused on the timely and accurate processing of initial medical bills and EDI reporting. The EDI portion of the audit focused on the timely and accurate reporting of medical bill payment data and seven data elements reported to DWC (Rendering Line Provider National Provider Identifier Number (NPI), Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider Federal Employer Identification Number, Date Bill Received, and Date Bill Paid or Denied).

Failure to Timely Pay Medical Bills

17. Respondent failed to timely process 7.07% of the initial medical bills within 45 days of receiving the bill (7 out of 99).

18. Specifically, Respondent issued payments to health care providers less than six days late in two instances, between six and 15 days late in three instances, and between 16 and 30 days late in two instances.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

19. Respondent failed to accurately report the Rendering Line Provider State License Number for 8.08% of the examined bills (8 out of 99).
20. Respondent failed to accurately report the Referring Provider Last/Group Name for 17.17% of the examined bills (17 out of 99).
21. Respondent failed to accurately report the Referring Provider State License Number for 19.19% of the examined bills (19 out of 99).
22. Respondent failed to accurately report the Date Bill Received for 3.03% of the examined bills (3 out of 99).

**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. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims
4. Prompt processing and payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
5. DWC relies on medical bill payment information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports

to the Legislature; ensuring that health care providers and insurance carriers comply with DWC's medical policies and fee guidelines; creating medical fee guidelines; adopting treatment and return-to-work guidelines; and detecting patterns and practices in medical charges, payments, and protocols.

6. 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 EDI 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.
7. 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 the history of compliance with EDI requirements.
8. DWC found the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations.

9. 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).
10. 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, 409.021, 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 Pay Initial TIBs


7. 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 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)(20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time it failed to timely initiate payment of TIBs.
9. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a) and (b) each time it failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Failure to Timely Pay Medical Bills


11. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, insurance carriers are required to timely process and take final action on a properly completed medical bill within 45 days of receiving the bill.
12. Respondent violated Tex. Lab. Code §§ 408.027, 415.002(a)(20) and 415.002(a)(22), and 28 Tex. Admin. Code § 133.240 each time it failed to timely process a properly completed medical bill within 45 days of receiving the bill.
13. Pursuant to 28 Tex. Admin. Code § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.804(d) each time it failed to submit timely and accurate medical EDI records to DWC.

**Order**

It is ordered that Wesco Insurance Company must pay an administrative penalty of \$31,500 within 30 days from the date of this order. Wesco 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Connor Ambrosini  
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 Wesco Insurance Company. My business address is:

800 Superior Ave., E., 21st Floor, Cleveland, Cuyahoga, Ohio, 44114.  
(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 January 5, 2023.