

No. 2023-7973

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

Date: 5/17/2023

Subject Considered:

American Zurich Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-1091

Consent Order

DWC Enforcement File Nos. 30848, 30916, 31017, 31277, 31279, 31343 and 31344

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 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020 and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Supplemental Income Benefits

File No. 30848

- 3. On [REDACTED] Respondent received a *Notice of Entitlement for Supplemental Income Benefits* (SIBs) for the first quarter. The first quarter of SIBs began on [REDACTED]
- 4. Respondent’s payment for the first month of the first quarter was due by the 10th day after Respondent received the notice or the seventh day of the first quarter, whichever is later. In this case, the latest date was [REDACTED]
- 5. Respondent issued a payment for SIBs in the amount of [REDACTED], for the first month of the first quarter on [REDACTED] which was 11 days late.

File No. 31017

- 6. On [REDACTED] Respondent received *DWC-52, Application for Supplemental Income Benefits* (SIBs) for the second quarter. The second quarter of SIBs began on [REDACTED]
- 7. Respondent’s payment for the first month of the second quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the second quarter, whichever is later. In this case, the latest date was [REDACTED]
- 8. Respondent’s payment for the second month of the second quarter was due by the 37th day of the second quarter, by [REDACTED] Respondent’s payment for the third month of the second quarter was due by the 67th day of the second quarter, by [REDACTED]
- 9. Respondent paid SIBs late, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	83
b.	[REDACTED]	[REDACTED]	[REDACTED]	52
c.	[REDACTED]	[REDACTED]	[REDACTED]	22

10. On [REDACTED] Respondent paid a lump sum of [REDACTED] (including interest), which was 83 days late.

File No. 31279

11. On [REDACTED] Respondent received a DWC-52, *Application for Supplemental Income Benefits* (SIBs) for the 13th quarter. The 13th quarter of SIBs began on [REDACTED]

12. Respondent's payment for the second month of the 13th quarter was due by the 37th day of the second quarter, by [REDACTED] Respondent's payment for the third month of the 13th quarter was due by the 67th day of the second quarter, by [REDACTED]

13. Respondent paid SIBs late, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	2
b.	[REDACTED]	[REDACTED]	[REDACTED]	4

14. Respondent paid \$3,089.72 in late SIBs.

File No. 31343

15. On [REDACTED] Respondent received a DWC-52, *Application for Supplemental Income Benefits* (SIBs) for the 14th quarter. The 14th quarter of SIBs began on [REDACTED]

16. Respondent's payment for the first month of the 14th quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the second quarter, whichever is later. In this case, the latest date was [REDACTED]

17. Respondent's payment for the second month of the 14th quarter was due by the 37th day of the second quarter, by [REDACTED]

18. Respondent paid SIBs late, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	34
b.	[REDACTED]	[REDACTED]	[REDACTED]	3

19. On [REDACTED] Respondent issued two checks totaling [REDACTED], which was 34 days late.

Failure to Timely Pay Accrued Impairment Income (IIBs)

File No. 30916

20. Respondent was required to pay accrued impairment income benefits (IIBs) to an injured employee for the benefit period between [REDACTED], through [REDACTED]. The IIBs payment were due seven days after the first day of each pay period. Respondent failed to timely pay IIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	17
b.	[REDACTED]	[REDACTED]	[REDACTED]	10
c.	[REDACTED]	[REDACTED]	[REDACTED]	3

21. Respondent paid [REDACTED] in late IIBs.

22. Respondent paid interest in the amount of [REDACTED] on [REDACTED] which was 52 days late.

Failure to Timely Initiate Temporary Income Benefits (TIBs)

File No. 31277

23. On [REDACTED] Respondent received the first notice of an employee's injury that occurred on [REDACTED]

24. The injured employee's first day of disability began on [REDACTED] and the eighth day of disability accrued on [REDACTED]

- 25. Respondent was required to initiate or dispute TIBs the later 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]
- 26. 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]	94
b.	[REDACTED]	[REDACTED]	[REDACTED]	94
c.	[REDACTED]	[REDACTED]	[REDACTED]	94
d.	[REDACTED]	[REDACTED]	[REDACTED]	91
e.	[REDACTED]	[REDACTED]	[REDACTED]	84

- 27. On [REDACTED] Respondent paid [REDACTED] in TIBs.
- 28. On [REDACTED] Respondent paid [REDACTED] in interest, which was 105 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 31344

- 29. On [REDACTED] DWC ordered Respondent to pay [REDACTED] in attorney fees in connection with legal services provided to an injured employee. On [REDACTED] Respondent received the order to pay attorney’s fees in the amount of 25% of each income benefit payment to the injured employee.
- 30. Respondent was required to pay attorney fees from [REDACTED] through [REDACTED]. The attorney fees were due each time Respondent paid accrued income benefits to the injured employee. Respondent failed to timely pay the attorney fees, as follows:

	Date Paid Employee	Benefits Paid Employee	Attorney Fees Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	101
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	94
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	87
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	80
e.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	73
f.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	66

31. On [REDACTED] Respondent complied by paying attorney's fees in a lump sum of [REDACTED]

Assessment of Sanction

1. Failure to provide income benefits and interest 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 makes it more difficult for attorneys to provide adequate legal services to injured employees 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;
 - to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:

**Confidential Information Redacted Texas
 Labor Code §§402.083 and 402.092**

- 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 found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and other matters that justice may require, including, but not limited to prompt and earnest actions to prevent future violations. Specifically, Respondent experienced challenges with staffing leave and holidays. Respondent paid promptly after discovery of errors, including two overpayments.
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 Pay SIBs

7. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
8. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.

10. Pursuant to 28 Tex. Admin. Code § 130.107(a), an insurance carrier must make the first payment of SIBs for the first quarter by the 10th day after receiving a DWC determination of entitlement, or by the seventh day of the quarter. The second payment must be on or before the 37th day of the first quarter, and the third payment on or before the 67th day of the first quarter.
11. Pursuant to 28 Tex. Admin. Code § 130.107(b), for subsequent SIBs quarters, an insurance carrier must make the first payment on or before the tenth day after the day on which the insurance carrier received the application for SIBs, or the seventh day of the quarter. The second payment must be on or before the 37th day of the quarter, and the third payment on or before the 67th day of the quarter.
12. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 by failing to timely initiate SIBs, or to continue to pay SIBs benefits promptly as and when benefits accrued.

Failure to Timely Pay Accrued IIBs

13. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
14. 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.
15. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely initiate IIBs.

Failure to Timely Initiate and Pay Accrued TIBs

16. 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.

17. 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.
18. 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 initiate TIBs or pay accrued TIBs.

Failure to Timely Pay Attorney Fees Ordered by DWC

19. 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.
20. 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.
21. 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 Pay Interest

22. 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.
23. 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.

Commissioner's Order
American Zurich Insurance Company
DWC Enforcement File Nos. 30848, 30916, 31017, 31277, 31279, 31343 and 31344
Page 11 of 12

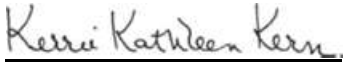
Order

It is ordered that American Zurich Insurance Company must pay an administrative penalty of \$21,500 within 30 days from the date of this order American Zurich 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

Commissioner’s Order
American Zurich Insurance Company
DWC Enforcement File Nos. 30848, 30916, 31017, 31277, 31279, 31343 and 31344
Page 12 of 12

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 May 12, 2023.