

No. **2024-8728**

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

Date: 7/9/2024

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 33527 & 33645

General remarks and official action taken:

This is a consent order with Zurich American 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 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate or Dispute Death Benefits

File No. 33527

3. On [REDACTED], Respondent received notification of a death resulting from a workplace injury. Respondent had 60 days to conduct an investigation into the compensability or liability for the workplace death, including attempting to identify all potential beneficiaries.
4. On [REDACTED], Respondent received a DWC Form-042, *Claim for Workers' Compensation Death Benefits*, from DWC.
5. Respondent was required to initiate or dispute payment of death benefits within 15 days of the expiration of the carrier's right to deny compensability/liability for the workplace death, or by [REDACTED].
6. On [REDACTED], Respondent initiated payment of death benefits totaling [REDACTED], which was 20 days late.

Failure to Timely Act on a Request for Reconsideration of a Medical Bill

File No. 33645

7. On [REDACTED], Respondent received a complete request for reconsideration of two medical bills from a health care provider for medical services rendered to the injured employee between [REDACTED], and [REDACTED].
8. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED].
9. On [REDACTED], Respondent received a complete request for reconsideration of three medical bills from a health care provider for medical services rendered to the injured employee between [REDACTED], and [REDACTED].
10. Respondent was required to take action on the request for reconsideration not later than the 30th day of receipt of the request, or by [REDACTED].

11. On [REDACTED], Respondent took action on all of the requests for reconsideration late as follows:

	Date(s) of Service	Received	Action Due	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	219
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	168

12. Respondent paid \$ [REDACTED] based on the late reconsideration of medical bills.
13. On [REDACTED], Respondent paid \$ [REDACTED] in interest on the late medical bill payments, which was 20 days late.

Assessment of Sanction

1. Failure to provide timely and accurate death benefits in a timely and cost-effective manner is harmful to the beneficiaries of injured employees and to the Texas workers' compensation system.
2. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process, and hinders the division's goal of ensuring timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity.
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; 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 evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 5. DWC is aware of no mitigating factors pursuant to 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, and 414.002.
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 Initiate or Dispute Death Benefits

File No. 33527

7. 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.
8. Pursuant to Tex. Lab. Code § 409.021 an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
9. Pursuant to 28 Tex. Admin Code § 132.17(a), an insurance carrier has 60 days from the notification of a death or from written notice of injury that resulted in death (whichever is greater) to conduct an investigation into the compensability of the death.
10. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must begin the payment of death benefits to eligible beneficiaries or file a notice of dispute not later than the 15th day after the latest of: (A) receiving the claim for death benefits,

(B) final adjudication of the carrier's denial of compensability or liability under § 124.2 and § 132.17(b), or (C) the expiration of the carrier's right to deny compensability/liability under § 132.17(a).

11. Respondent violated Tex. Lab. Code §§ 408.081; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 132.17(f) by failing to timely initiate or dispute death benefits.

Failure to Timely Act on a Request for Reconsideration of a Medical Bill

File No. 33645

12. Pursuant to 28 Tex. Admin. Code § 133.250(g), an insurance carrier shall take final action after receipt of a request for reconsideration of a medical bill not later than the 30th day after the date the insurance carrier received the request.
13. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 133.250(g) when Respondent failed to act on the request for consideration within 30 days of receipt of the request.

Failure to Timely Pay Interest on a Late Medical Bill Payment

File No. 33645

14. Pursuant to 28 Tex. Admin. Code § 133.240(l) all payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with § 134.130 of this title without any action taken by the division. The interest payment shall be paid at the same time as the medical bill payment.
15. Respondent violated Tex. Lab. Code § 415.002(a)(22), and 28 Tex. Admin. Code § 133.240(l) by failing to timely pay interest on a late medical bill payment.

Order

It is ordered that Zurich American Insurance Company must pay an administrative penalty of \$13,500 within 30 days from the date the Commissioner signs this order.

After receiving an invoice, Zurich American 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:



Austin Southerland
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 Zurich American 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 _____, 2024.

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