

No. **2024-8983**

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

Date: 11/25/2024

Subject Considered:

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

Consent Order
DWC Enforcement File No. 34889

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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

DWC Audit No. IBA-24-105

3. On [REDACTED], DWC initiated DWC Audit No. IBA-24-105 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits as well as timely submitting claim data to DWC.
4. The audit examined death benefit and LIB payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified 25 initial death benefit and LIBs claims for audit. One claim failed to meet selection criteria and was dropped from the audit sample. The remaining 24 claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits and LIBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.

Failure to Timely Pay Accurate Death Benefits

6. Respondent failed to timely pay accurate death benefits for 48% of examined death benefit claims (11 out of 23).
7. Specifically, Respondent underpaid 687 weeks and \$ [REDACTED] in death benefits. On at least one claim, Respondent did not pay interest.

Failure to Timely Report Claim Data to DWC

8. Respondent failed to timely report the total number of death benefit terminations for 100% of examined claims with death benefit terminations (2 out of 2).
9. Respondent failed to timely report the total number of annual LIB increases for 100% of examined claims (1 out of 1). Specifically, Respondent failed to report three separate annual LIB increases.

Assessment of Sanction

1. Failure to provide death benefits or lifetime income benefits in a timely and cost-effective manner is harmful to injured employees or beneficiaries under particularly stressful circumstances and increases the likelihood of disputes in the Texas workers' compensation system.
2. DWC relies on the claims information insurance carriers submit for many purposes, including protecting beneficiaries, providing required information and reports to the Legislature, ensuring compliance with the Texas Labor Code and DWC rules, and detecting patterns and practices in claim handling that provoke improvements in 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 or their beneficiaries;
 - 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.
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 and amount of untimely death benefits; the penalty necessary to deter

future violations; the negative impact on the delivery of benefits to injured employees or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company.

5. As a matter of justice, DWC considered as mitigating the fact that this matter results from a DWC audit and not a system participant complaint pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e). DWC also considered Respondent's lack of disciplinary history on death benefits; and its training plan for improving calculations of average weekly wage.
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, 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) 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 Pay Accurate Death Benefits

6. Pursuant to Tex. Lab. Code § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
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 § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. 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 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.
10. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
11. Respondent violated Tex. Lab. Code §§ 408.181; 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3; 124.7; and 132.17 each time Respondent failed to timely pay accurate death benefits.

Failure to Timely Report Claim Data to DWC

12. 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.

13. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2 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 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 § 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.

Order

It is ordered that American Zurich Insurance Company must pay a \$2,500 administrative penalty 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:



Stephen Jewell
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 _____, 2024.

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