

**ADVISORY NO. 309**  
**###**

**TOPIC: POTENTIAL CLASS ACTION RE: NON PAYMENT OF INTEREST**

As anticipated in our FO&L Advisory No. 306, Plaintiffs have filed a Fourth Amended Petition seeking certification of a class action in behalf of all “medical providers” for failure to pay interest on medical bills paid on or after sixty days. As presently plead, this claim is general. It is not limited to a specific timeframe. It identifies eighteen different carriers/TPAs. We anticipate that other carriers will be added. There has been no class certification hearing as of the date of this Memorandum.

The case is styled: *Alexander Riley, D.C. and Mark Beaty, D.C., Plaintiffs v. Liberty Mutual Insurance Company and Texas Mutual Insurance Company (formerly known as Texas Workers’ Compensation Insurance Fund), Defendants*; Cause Number B-165,335, Pending in the 60<sup>th</sup> Judicial District Court of Jefferson County, Texas. If you want a full copy of the Fourth Amended Petition, dated November 21, 2001, please email jem@fol.com with your fax number and we will fax a copy to your attention.

Under the provisions of the Workers’ Compensation Act, interest is owed on the portion of any medical fee that is consistent with the Fee Guidelines and remaining unpaid beginning on the 60<sup>th</sup> day after the date the healthcare provider submits the bill to the insurance carrier until the date the bill is paid. §413.019 TEX.LAB.CODE. Rule 133.304(q) requires that the interest obligation be paid “without order of the Commission.” This rule was adopted by TWCC on July 15, 2000. It was preceded by rule 133.300 (i), which contained the same requirement to pay interest without order of the Commission. Rule 133.300 became effective on January 20, 1992. It was amended on July 15, 2000 to delete the interest requirement, which was then consolidated to Rule 133.304. Thus, the obligation to pay interest without order of the Commission has existed under two separate rules since 1992. The change in 2000 was not a substantive change – it simply recodified the requirement under a different rule number.

In the event that a class is certified, the exposure to each company defendant in the case will be determined by the following variables:

1. The period of time for which the court will consider unpaid interest claims;
2. The number of medical bills paid late by your company during the time frame;
3. The individual amounts of the bills consistent with the Fee Guidelines remaining

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- unpaid after 60 days;
4. The interest rate in effect on the date of payment (it changed quarterly);
  5. The extent to which those payments may be identifiable, or if not identifiable, the means by which the court will determine the damages of the class and apportion those damages to insurers;
  6. Whether punitive damages are considered, and if so the amount awarded by the court (§410.208 provides for a 12% penalty for failure to pay *a final decision or order* of TWCC); and
  7. Attorney's fees awarded by the court, if any.

Our firm would be available as a resource with respect to any questions specific to the Workers' Compensation Act, the rules, or the interpretation of the Act and rules by the Commission. For questions regarding class action issues, we strongly recommend consultation with class action counsel.