

No. 2020 6274

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAR 04 2020

Subject Considered:

ARCH INDEMNITY INSURANCE COMPANY
300 Plaza 3 3rd Floor
Jersey City, New Jersey 07311-1107

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 22779

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Arch Indemnity Insurance Company (Arch Indemnity).

WAIVER

Arch Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Arch Indemnity waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Arch Indemnity 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, including workers' compensation/employers' liability insurance in the state of Texas.
2. Arch Indemnity was classified as "average" tier in the 2018 Performance Based Oversight (PBO) assessment. Arch Indemnity was not selected to be tiered in the PBO assessments between 2007 and 2014 because Arch Indemnity did not begin writing Texas workers' compensation coverage until 2015. Arch Indemnity was not selected to be in the 2016 PBO assessment.

FAILURE TO TIMELY PAY IMPAIRMENT INCOME BENEFITS

3. Arch Indemnity was required to pay impairment income benefits (IIBs) to an injured employee for the period of [REDACTED], through [REDACTED]. The IIBs payments were due seven days after the first day of the pay period, which in this case was [REDACTED].
4. Arch Indemnity issued payment of IIBs for the period of [REDACTED], through [REDACTED], on [REDACTED], which was 99 days late.

ASSESSMENT OF SANCTION

5. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
6. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
7. In assessing the sanction for this case, DWC found the following factors set forth 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; and whether the administrative violation has a negative impact on the delivery of benefits to an injured employee.

8. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as error occurred due to computer issues, the insurance carrier issued payment for IIBs promptly as soon as the error was brought to its attention, and has instituted additional training intended to address the issue.
9. Arch Indemnity acknowledges that DWC and Arch Indemnity communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
10. Arch Indemnity acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 415.002(a)(16), 409.023, and 408.081, insurance carriers are required to pay benefits weekly, as and when the benefits accrue, and without order from the commissioner unless the employee and the insurance carrier have entered into an agreement under 28 TEX. ADMIN. CODE § 130.11, in which case IIBs are to be paid monthly.
7. Arch Indemnity violated TEX. LAB. CODE §§ 415.002(a)(16) and (22) and 409.023 when it failed to timely pay IIBs for the week of April 1, 2019, through April 7, 2019.

ORDER

Arch Indemnity Insurance Company is ORDERED to pay an administrative penalty of \$10,000 within 30 days from the date of this consent Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

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Commission Expires February 7, 2024
New Jersey
Commissioner of the State of New Jersey
FRANCINE PETROSINO

