

No. 2020-6611

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

**Date:** 12-11-2020

**Subject Considered:**

Indemnity Insurance Company of North America  
115 Wild Basin Road, Suite 207  
Westlake Hills, Texas 78746-3347

Consent Order  
DWC Enforcement File No. 23849

**General remarks and official action taken:**

This is a consent order with Indemnity Insurance Company of North America (Indemnity Insurance). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Indemnity Insurance.

**Waiver**

Indemnity Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Indemnity Insurance 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. Indemnity Insurance 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. Indemnity Insurance Indemnity Insurance was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

### Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

3. Indemnity Insurance was required to pay temporary income benefits (TIBs) to an injured employee for the period of [REDACTED], through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period.
4. Indemnity Insurance did not correctly calculate the payment it made on [REDACTED] [REDACTED], for the period of [REDACTED], through [REDACTED]. Indemnity Insurance took credit for short-term disability payments from the TIBs rate, not from the pre-injury average weekly wage, which would have determined the correct weekly TIBs rate.
5. On [REDACTED], Indemnity Insurance issued the correct payment, but the amount Indemnity Insurance took credit for included [REDACTED] in interest previously paid.
6. Indemnity Insurance did not come into full compliance until it issued the deficit payment of [REDACTED] on [REDACTED], which was 128 days late.

### **Assessment of Sanction**

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. 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.
3. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
  4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act. In this instance, the insurance carrier adjuster miscalculated the lost wages due to post-injury earnings in the form of short-term disability benefits. When the miscalculation was corrected, the insurance carrier took credit for interest on a prior payment when it should not have. The insurance carrier made a payment of \$3,605.67 which included taking credit of \$26.10 in interest, resulting in an underpayment of \$26.10 on October 23, 2019, 48 days late. The insurance carrier only came into full compliance when the miscalculated interest of \$26.10 was paid 80 days later, on January 10, 2020. The insurance carrier has also instituted additional training for adjusters regarding short-term disability benefits to ensure the error does not reoccur.
  5. Indemnity Insurance acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).
  6. Indemnity Insurance 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).

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

### 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, 414.003, 415.002, and 415.021.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Indemnity Insurance 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.
7. 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.
8. Indemnity Insurance violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), and 415.002(a)(22) each time it failed to timely initiate payment of TIBs.

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

### Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$15,000 within 30 days from the date of this order. Indemnity Insurance Company of North America must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Amy Norman  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

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

**STATE OF NEW JERSEY** §  
§  
**COUNTY OF SOMERSET** §

Before me, the undersigned authority, personally appeared Sara Kendall, who being by me duly sworn, deposed as follows:

“My name is Sara Kendall. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President, Claims Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. I am duly authorized by the organization to execute this statement.

Indemnity Insurance Company of North America has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order.”



\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on November 13, 2020.

(NOTARY SEAL)

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Commission Expiration

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Texas Labor Code §§402.083 and 402.092