

No. 2023-8230

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

**Date:** 9/21/2023

**Subject Considered:**

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

Consent Order

DWC Enforcement File Nos. 32177, 32178, 32232, 32252, 32297, and 32357

**General remarks and official action taken:**

This is a consent order with Indemnity Insurance Company of North America (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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay or Dispute Temporary Income Benefits (TIBs)

File No. 32177

3. On [REDACTED] Respondent received notice of an employee workplace injury.
4. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
6. On [REDACTED] Respondent initiated TIBs, which was 280 days late.
7. Respondent was required to pay TIBs to the injured employee from [REDACTED] through [REDACTED] The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	273
b.	[REDACTED]	[REDACTED]	[REDACTED]	267
c.	[REDACTED]	[REDACTED]	[REDACTED]	258
d.	[REDACTED]	[REDACTED]	[REDACTED]	252
e.	[REDACTED]	[REDACTED]	[REDACTED]	245
f.	[REDACTED]	[REDACTED]	[REDACTED]	238
g.	[REDACTED]	[REDACTED]	[REDACTED]	231
h.	[REDACTED]	[REDACTED]	[REDACTED]	223
i.	[REDACTED]	[REDACTED]	[REDACTED]	217
j.	[REDACTED]	[REDACTED]	[REDACTED]	210

8. In total, Respondent failed to timely pay [REDACTED] in TIBs. Respondent paid after notice of the violation by DWC.

File No. 32232

9. On [REDACTED] Respondent received notice of an employee workplace injury.

10. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
11. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
12. On [REDACTED] Respondent sent a PLN-1, *Notice of Denial of Compensability/Liability and Refusal to Pay Benefits*, which was 28 days late.
13. Due to the untimely dispute, Respondent was required to pay TIBs from [REDACTED] to [REDACTED]
14. On [REDACTED] Respondent paid [REDACTED] in TIBs, which was six days late.
15. On [REDACTED] Respondent paid [REDACTED] in interest, which was 72 days late.

*File No. 32252*

16. On [REDACTED] Respondent received notice of an employee workplace injury.
17. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
18. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
19. On [REDACTED] Respondent initiated TIBs in the amount of [REDACTED] which was eight days late.
20. Respondent was required to pay TIBs to the injured employee from [REDACTED] through [REDACTED] The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	2
b.	[REDACTED]	[REDACTED]	[REDACTED]	8

21. On [REDACTED] Respondent paid [REDACTED] in interest, which was 98 and 78 days late respectively.

Failure to Timely Produce an Injured Employee's Medical Records to a Designated Doctor

*File No. 32178*

22. On [REDACTED] DWC ordered that the injured employee attend a Designated Doctor (DD) exam on [REDACTED]
23. On [REDACTED] Respondent received notice of the DD exam and a request to produce the injured employee's medical records to the DD.
24. Respondent was required to provide the injured employee's medical records to the DD no later than three working days prior to the exam, or by [REDACTED]
25. On [REDACTED] Respondent sent the DD the injured employee's medical records via email, which was 29 days late.
26. The DD exam was rescheduled to [REDACTED] due to the delay in providing the injured employee's medical records.

*File No. 32357*

27. On [REDACTED] DWC ordered that the injured employee attend a DD exam on [REDACTED]
28. On [REDACTED] Respondent received notice of the DD exam and a request to produce the injured employee's medical records to the DD.
29. Respondent was required to provide the injured employee's medical records to the DD no later than three working days prior to the exam, or by [REDACTED]
30. Respondent did not provide the medical records timely, and the DD exam was rescheduled to [REDACTED] due to the delay.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

*File No. 32297*

31. On [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED] and became final on [REDACTED].
32. Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED].
33. Respondent paid [REDACTED] in income benefits on [REDACTED] which was 60 days late. Respondent paid [REDACTED] in interest on [REDACTED] which was 92 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. Failure to timely produce medical records has a negative impact on the delivery of benefits to an injured employee and fails to minimize disputes and resolve them promptly and fairly.
3. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
4. 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.
5. 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 history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including the size of the company or practice and evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
6. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
7. 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).
8. 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; 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; 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 Pay or Dispute TIBs

*File Nos. 32177, 32232, and 32252*

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 §§ 408.081; 408.082; 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.

9. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay or dispute initial TIBs.

Failure to Timely Pay Interest for Indemnity Benefits

*File Nos. 32232 and 32252*

10. 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.
11. 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.

Failure to Timely Produce an Injured Employee's Medical Records to a DD

*File Nos. 32178 and 32357*

12. Pursuant to 28 Tex. Admin. Code § 127.10(a)(3), the insurance carrier shall ensure that the required records and analyses (if any) are received by the DD no later than three working days prior to the date of the DD examination.
13. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 127.10(a)(3) by failing to provide the injured employee's medical records to the DD no later than three working days prior to the date of the exam.

Failure to Timely Comply with a CCH D&O

*File No. 32297*

14. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
15. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final.




However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.

16. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.


**Order**

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$42,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Indemnity Insurance Company of North America 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Tyrus Housh  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** Delaware §  
§  
**COUNTY OF** New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of AVP, NA Claims Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19803.  
(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.

*Daniel S. Hawthorne*  
Declarant

Executed on September 19, 2023.