

No. 2023-7879

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

Date: 03/31/2023

Subject Considered:

Intrepid Insurance Company
5400 West 110 Street, Suite 400
Overland Park, Kansas 66211

Consent Order
DWC Enforcement File No. 30748

General remarks and official action taken:

This is a consent order with Intrepid 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 not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, or 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Death Benefits to the Subsequent Injury Fund

3. On [REDACTED] an employee died due to a workplace injury. Respondent's investigation determined that the injured employee had no legal beneficiaries.
4. When a deceased employee has no beneficiaries, Respondent is required to pay death benefits to the Subsequent Injury Fund (SIF) no later than the seventh day after the one-year anniversary of the employee's death. The payment to SIF was due by [REDACTED]
5. Respondent paid [REDACTED] to the SIF on [REDACTED] which was 219 days late.

Assessment of Sanction

1. Failure to provide appropriate death 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 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.

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 other matters that justice may require, including the size of the company or practice.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent paid the SIF promptly upon receipt of an invoice. The late payment did not result in a negative impact on the delivery of benefits. Respondent has no prior disciplinary history.
5. 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).
6. 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).

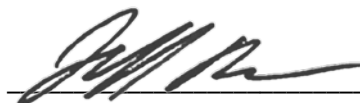
Conclusions of Law

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 § 408.182(e), if an injured employee is not survived by legal beneficiaries, the insurance carrier must pay death benefits to the SIF.
6. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits.
7. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.
8. Pursuant to 28 Tex. Admin. Code § 132.10(a), if a compensable death occurs and the deceased employee has no legal beneficiaries, the insurance carrier shall, without order from the Commission, pay to the administrator of the SIF an amount equal to 364 weeks of death benefits.
9. Pursuant to 28 Tex. Admin. Code § 132.10(c), payments to the SIF shall be made no later than the seventh day after the one-year anniversary of the employee's death.
10. Respondent violated Tex. Lab. Code §§ 408.182(e); 415.002(a)(5), (20), and (22); and 28 Tex. Admin. Code § 132.10(c) by failing to timely pay death benefits to the SIF.

Order

It is ordered that Intrepid Insurance Company must pay an administrative penalty of \$7,500 within 30 days from the date of this order. Intrepid Insurance Company must pay the administrative penalty by 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:



Kathleen Kern
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Virginia §
§
COUNTY OF Prince William §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kevin Reap. I hold the position of AVP, Claims and am the authorized representative of Intrepid Insurance Company. My business address is: 9301 Innovation Suite Suite 200, Manassas, Prince William, VA, 20110.
(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.



Declarant

Executed on March 13, 2023.