

No. **2023-8110**

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

Date: 8/1/2023

Subject Considered:

Arch Indemnity Insurance Company
300 Plaza Three
Jersey City, New Jersey 07311-1107

Consent Order
DWC Enforcement File Nos. 31672, 31742 & 31743

General remarks and official action taken:

This is a consent order with Arch Indemnity 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, or 2016 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2018, 2020, and 2022 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

File No. 31672

3. On [REDACTED] Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
4. The CD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
6. Respondent paid [REDACTED] in IIBs on [REDACTED] which was 108 days late.

Failure to Timely Pay Interest

7. On [REDACTED] Respondent paid [REDACTED] in interest on the late IIBs payment, which was 147 days late.

Failure to Timely Act on a Medical Bill

File No. 31742

8. On [REDACTED] a health care provider provided (HCP) medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill for \$ [REDACTED] from the HCP.
9. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
10. On [REDACTED] Respondent paid [REDACTED] which was 59 days late.

Failure to Timely Pay Interest

11. On [REDACTED] Respondent paid [REDACTED] in interest on the late medical bill payment, which was 11 days late.

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

File No. 31743

12. On [REDACTED] Respondent received an employee's notice of a workplace injury.
13. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
14. 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]
15. On [REDACTED] Respondent initiated TIBs in the amount of [REDACTED] which was eight days late.

Failure to Timely Pay Interest

16. On [REDACTED] Respondent paid [REDACTED] in interest on the late TIBs payment, which was 39 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. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.

3. 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.
4. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's prompt and earnest actions to prevent future violations of these types. Specifically, in ECase 31742, Respondent has implemented a procedure whereby the specific type of error which caused the late payment is monitored in a report by its branch managers in an effort to oversee and promote the timely payment of medical bills. Additionally, in ECase 31743, Respondent implemented a process in which a "Time Sensitive Log" has been put in place and is monitored by a Compliance Supervisor to ensure timely initiation

of TIBs payments. Further, Respondent has conducted ongoing training for staff to ensure compliance with deadlines and the law.

6. Respondent 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).
7. 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 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)(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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Pay Accrued IIBs Based on a Certifying Doctor Report

6. 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.

7. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
8. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when maximum medical improvement is not disputed.
10. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Timely Pay Interest

11. 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.
12. Respondent violated Tex. Lab. Code §§ 408.064, 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 Act on a Medical Bill

13. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
14. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay or Dispute Initial TIBs

15. 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.

16. 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.

Order


It is ordered that Arch Indemnity Insurance Company must pay an administrative penalty of \$11,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Arch Indemnity Insurance Company 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



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF New Jersey §
§
COUNTY OF Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell . I hold the position of Vice President and am the authorized representative of Arch Indemnity Insurance Company. My business address is: 210 Hudson Street, Suite 300 , Jersey City , Hudson , NJ , 07311 .
(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.

Kathleen Campbell
Declarant

Executed on July 7th , 2023.