

No. **2022-7557**

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

Date: 10/13/2022

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. 29123, 29501 and 29517

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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.

2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

File No. 29123

Failure to Timely Initiate Payment of Accrued Impairment Income Benefits

3. Respondent was required to pay impairment income benefits (IIBs) to an injured employee for the period between [REDACTED] through [REDACTED]. The IIBs payment was due on [REDACTED]. Respondent issued payment on [REDACTED] which was one day late.
4. Respondent was required to pay IIBs to an injured employee for the period between [REDACTED], through [REDACTED]. The IIBs payment was due on [REDACTED]. Respondent issued payment on [REDACTED] which was seven days late.

File No. 29501

Failure to Timely Pay Supplemental Income Benefits

5. On [REDACTED] a Notice of Entitlement to Supplemental Income Benefits (SIBs). The first quarter of SIBs began on [REDACTED].
6. Respondent's payment for the first month of the first quarter was due by the 10th day after Respondent received DWC's determination of entitlement or the seventh day of the first quarter, whichever is later. In this case, the latest date was [REDACTED].
7. Respondent issued payment for SIBs for the first month of the first quarter on [REDACTED], which was 38 days late.
8. Respondent's payment for the second month of the first quarter was due by the 37th day of the first quarter, which was [REDACTED]. Respondent issued payment for SIBs for the second month of the first quarter on [REDACTED] which was 10 days late.

File No. 29517

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

9. Respondent was required to pay temporary income benefits (TIBs) to an injured employee weekly from [REDACTED], through [REDACTED]. Each TIBs payment was due seven days after the first day of the pay period. Respondent issued complete and full payment of TIBs late as follows:

	Weekly Period	Due Date	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	29
b.	[REDACTED]	[REDACTED]	[REDACTED]	22
c.	[REDACTED]	[REDACTED]	[REDACTED]	15
d.	[REDACTED]	[REDACTED]	[REDACTED]	8

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;

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

- 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: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act; and Respondent's prompt and earnest actions to prevent future violations of this type. In File No. 29123, Respondent has committed to additional training of new hires in the future. In File Nos. 29123 and 29501, Respondent held conferences with all TPAs in June of 2022 to discuss and reiterate the importance of timely issuance of income benefits. In File No. 29517, Respondent initially issued partial payments for all benefit periods in question, as it had not received post-injury earnings. Respondent issued TIBs deficit payments upon its receipt of post-injury earnings.
 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

10. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, 414.002, 414.003, and 415.021.
11. 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).

12. 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.
13. 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.
14. 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 the DWC rules or a provision of the Texas Workers' Compensation Act.
15. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

Failure to Timely Initiate Payment of Accrued Impairment Income Benefits

16. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
17. Respondent violated Tex. Lab. Code §§ 408.021; and 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code § 130.8 each time it failed to timely initiate payment of IIBs.

Failure to Timely Pay Initial Supplemental Income Benefits

18. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
19. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.


20. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the first quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
21. Respondent violated Tex. Lab. Code §§ 408.144; 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 by failing to issue timely payment of SIBs for the first and second months of the first quarter.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

22. 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.
23. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time it failed to timely initiate payment of TIBs.


Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$4,000 within 30 days from the date of this order. Indemnity Insurance Company of North America 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, P.O. 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

Commissioner's Order
Indemnity Insurance Company of North America
DWC Enforcement File Nos. 29123, 29501 and 29517
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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 North American 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, DE, 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.


Declarant

Executed on September 20, 2022.