

No. 2022-7632

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

Date: 11/22/2022

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. 29738 & 29844

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 all years between the 2007 and 2021 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Accrued Temporary Income Benefits

Case No. 29738

3. Respondent was required to pay temporary income benefits (TIBs) to an 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 accrued TIBs as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	52
b.	[REDACTED]	[REDACTED]	[REDACTED]	48
c.	[REDACTED]	[REDACTED]	[REDACTED]	41

Failure to Timely Pay Accrued Impairment Income Benefits

Case No. 29844

4. Respondent was required to pay accrued impairment income benefits (IIBs) to an injured employee for the period between [REDACTED] through [REDACTED]. Respondent failed to timely pay accrued IIBs as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	49
b.	[REDACTED]	[REDACTED]	[REDACTED]	42
c.	[REDACTED]	[REDACTED]	[REDACTED]	35
d.	[REDACTED]	[REDACTED]	[REDACTED]	28
e.	[REDACTED]	[REDACTED]	[REDACTED]	21
f.	[REDACTED]	[REDACTED]	[REDACTED]	14
g.	[REDACTED]	[REDACTED]	[REDACTED]	7

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 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; and other matters that justice may require, including, but not limited to 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.

4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: other matters that justice may require, specifically Respondent incorporated an internal process to review similar claims to prevent similar violations in the future.
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, 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 §§ 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.
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 § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

Failure to Timely Pay Accrued Temporary Income Benefits


8. 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.
9. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Timely Pay Accrued Impairment Income Benefits

10. 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 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.
11. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely pay accrued IIBs.


Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$17,500.00 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:



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Indemnity Insurance Company of North America
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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 November 8, 2022.