

No. 2023-7901

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

**Date: 4/21/2023**

**Subject Considered:**

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

Consent Order  
DWC Enforcement File Nos. 31073, 31144, 31240, 31287, 31289, and 31292

**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 Initiate and Pay Accrued Temporary Income Benefits (TIBs)

*File No. 31073*

3. On [REDACTED] Respondent received an injured employee's notice of injury.
4. The injured employee's first day of disability began on [REDACTED], and the eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
6. Respondent initiated TIBs payments in the amount of [REDACTED] on [REDACTED] which was 79 days late.
7. Respondent was required to pay 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 [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	58
2.	[REDACTED]	[REDACTED]	[REDACTED]	51
3.	[REDACTED]	[REDACTED]	[REDACTED]	44

*File No. 31292*

8. On [REDACTED] Respondent received an injured employee's notice of injury.
9. The injured employee's first day of disability began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
10. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
11. Respondent initiated TIBs payments in the amount of [REDACTED] on [REDACTED] [REDACTED] which was 159 days late.

12. Respondent was then 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]	158
b.	[REDACTED]	[REDACTED]	[REDACTED]	151
c.	[REDACTED]	[REDACTED]	[REDACTED]	144
d.	[REDACTED]	[REDACTED]	[REDACTED]	137
e.	[REDACTED]	[REDACTED]	[REDACTED]	130
f.	[REDACTED]	[REDACTED]	[REDACTED]	123
g.	[REDACTED]	[REDACTED]	[REDACTED]	116
h.	[REDACTED]	[REDACTED]	[REDACTED]	109
i.	[REDACTED]	[REDACTED]	[REDACTED]	102
j.	[REDACTED]	[REDACTED]	[REDACTED]	95
k.	[REDACTED]	[REDACTED]	[REDACTED]	88
l.	[REDACTED]	[REDACTED]	[REDACTED]	81
m.	[REDACTED]	[REDACTED]	[REDACTED]	74
n.	[REDACTED]	[REDACTED]	[REDACTED]	67
o.	[REDACTED]	[REDACTED]	[REDACTED]	60
p.	[REDACTED]	[REDACTED]	[REDACTED]	53
q.	[REDACTED]	[REDACTED]	[REDACTED]	46
r.	[REDACTED]	[REDACTED]	[REDACTED]	39
s.	[REDACTED]	[REDACTED]	[REDACTED]	32
t.	[REDACTED]	[REDACTED]	[REDACTED]	25
u.	[REDACTED]	[REDACTED]	[REDACTED]	18
v.	[REDACTED]	[REDACTED]	[REDACTED]	11
w.	[REDACTED]	[REDACTED]	[REDACTED]	4

13. On [REDACTED] Respondent paid [REDACTED] in interest 15 days late.

Failure to Accurately Pay Accrued TIBs

File No. 31144

- 14. On [REDACTED] Respondent fulfilled its duty to pay the injured employee's attorney fees, as ordered by DWC.
- 15. However, between [REDACTED] and [REDACTED] Respondent continued to deduct 25% of the injured employee's income benefits for attorney fees in error, resulting in an underpayment of TIBs to the injured employee as follows:

	Benefit Period	Amount Deducted
a.	[REDACTED]	[REDACTED]
b.	[REDACTED]	[REDACTED]
c.	[REDACTED]	[REDACTED]
d.	[REDACTED]	[REDACTED]
	<b>TOTAL</b>	[REDACTED]

- 16. On [REDACTED] Respondent paid the injured employee the owed TIBs.
- 17. On [REDACTED] Respondent paid [REDACTED] in interest 24 days late.

Failure to Pay Accrued Income Benefits Based on a Designated Doctor (DD) Report

File No. 31240

- 18. On [REDACTED] Respondent received a DD examination report.
- 19. The DD determined that the injured employee's disability was a direct result of the compensable injury and certified that the injured employee was unable to work in any capacity from [REDACTED] through [REDACTED]. The DD also determined that the injured employee could return to work with restrictions from [REDACTED] through [REDACTED] and stated the injured employee could return to work without restrictions on [REDACTED].
- 20. Respondent was required to pay accrued TIBs no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].

- 21. Respondent paid [REDACTED] in TIBs on [REDACTED] which was 59 days late.
- 22. On [REDACTED] Respondent paid [REDACTED] in interest 24 days late.

Failure to Timely Pay Accrued TIBs

*File No. 31287*

- 23. Respondent was required to pay TIBs to an injured employee for the period between [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]	92
b.	[REDACTED]	[REDACTED]	[REDACTED]	85
c.	[REDACTED]	[REDACTED]	[REDACTED]	78
d.	[REDACTED]	[REDACTED]	[REDACTED]	71
e.	[REDACTED]	[REDACTED]	[REDACTED]	64
f.	[REDACTED]	[REDACTED]	[REDACTED]	57
g.	[REDACTED]	[REDACTED]	[REDACTED]	50
h.	[REDACTED]	[REDACTED]	[REDACTED]	43
i.	[REDACTED]	[REDACTED]	[REDACTED]	36
j.	[REDACTED]	[REDACTED]	[REDACTED]	29
k.	[REDACTED]	[REDACTED]	[REDACTED]	22
l.	[REDACTED]	[REDACTED]	[REDACTED]	15
m.	[REDACTED]	[REDACTED]	[REDACTED]	8
n.	[REDACTED]	[REDACTED]	[REDACTED]	1

- 24. On [REDACTED] Respondent paid the injured employee the owed TIBs.

Failure to Timely Initiate TIBs

*File No. 31289*

- 25. On [REDACTED] Respondent received an injured employee's notice of injury.

26. The injured employee's first day of disability began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
27. Respondent was required to initiate or dispute TIBs the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
28. Respondent initiated TIBs payments in the amount of [REDACTED] on [REDACTED] [REDACTED] which was two days late.

### **Assessment of Sanction**

1. Failure to provide income benefits and interest 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; to the extent reasonable, the economic benefit resulting from the prohibited act; 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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 § 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 Initiate Payment of TIBs

*File Nos. 31073, 31289, and 31292*

7. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate TIBs.

Failure to Timely Pay Accrued TIBs

*File Nos. 31073, 31287, and 31292*

9. 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.
10. 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.



11. Respondent violated Tex. Lab. Code §§ 409.021; 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 Pay Accrued Income Benefits Based on a DD Report

*File No. 31240*

12. 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.
13. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
14. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
15. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Timely Pay Interest for Indemnity Benefits

*File Nos. 31144, 31240, and 31292*

16. 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.
17. 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.

**Order**

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$69,000 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, PO Box 12030, Austin, Texas 78711-2030.



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 - 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, 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.

*Daniel S. Hawthorne*

Declarant

Executed on April 7, 2023.