

No. **2023-8245**

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

**Date: 9/27/2023**

**Subject Considered:**

Commerce & Industry Insurance Company  
PO Box 201329  
Austin, Texas 78720-1329

Consent Order  
DWC Enforcement File No. 32461

**General remarks and official action taken:**

This is a consent order with Commerce & Industry 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2007, 2009, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2010 PBO assessment. Respondent was not selected to be tiered in the 2020 or 2022 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

3. On [REDACTED] and [REDACTED] and [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee (IE). DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
4. On [REDACTED] Respondent paid [REDACTED] in attorney's fees, leaving a balance of [REDACTED].
5. On [REDACTED] Respondent paid the injured employee [REDACTED] in income benefits and paid [REDACTED] in attorney's fees. Respondent underpaid the attorney's fees by [REDACTED].
6. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee. Respondent received the order the same day.
7. Between [REDACTED] and [REDACTED] Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to timely pay [REDACTED] in attorney's fees as follows:

	<b>Benefits Paid to IE</b>	<b>Attorney Fee Owed</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	279
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	272
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	265
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	258
e.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	251

**Assessment of Sanction**

1. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to 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 penalty necessary to deter future violations; and to the extent reasonable, the economic benefit resulting from the prohibited act.
4. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's lack of recent disciplinary history since 2021.
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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC statute or rule.
6. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.


**Order**

It is ordered that Commerce & Industry Insurance Company must pay an administrative penalty of \$2,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Commerce & Industry 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:

  
\_\_\_\_\_  
Tyrus Housh  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF NEW YORK** §  
§  
**COUNTY OF NEW YORK** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Conor Murray. I hold the position of Senior Vice President and am the authorized representative of Commerce & Industry Insurance Company. My business address is: 1271 Avenue of the Americas, \_\_New York\_\_, \_\_New York\_, \_\_NY\_\_, \_\_10020\_\_.  
(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.

DocuSigned by:  
*Conor Murray*  
EE7D677E82F8437

Declarant

Executed on \_\_\_\_\_, 2023.