

No. **2023-7846**

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

**Date: 3/15/2023**

**Subject Considered:**

Starr Indemnity & Liability Company  
399 Park Avenue, Floor 8  
New York, New York 1022-4877

Consent Order  
DWC Enforcement File Nos. 29848 & 30319

**General remarks and official action taken:**

This is a consent order with Starr Indemnity & Liability 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, and 2012 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2014, 2016, 2018, and 2020 PBO assessments.

Failure to Continue to Timely Pay Accrued Death Benefits Promptly

*File No. 29848*

3. Respondent was required to make weekly death benefits payments to an injured employee's beneficiaries from [REDACTED] through [REDACTED]. Respondent failed to timely pay death benefits to the beneficiaries as follows:

	Weekly Period	Due Date	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	21
b.	[REDACTED]	[REDACTED]	[REDACTED]	15
c.	[REDACTED]	[REDACTED]	[REDACTED]	8
d.	[REDACTED]	[REDACTED]	[REDACTED]	1

4. On [REDACTED] Respondent paid the beneficiaries [REDACTED] late accrued death benefits and interest.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 30319*

5. On [REDACTED] and [REDACTED] Respondent received DWC orders directing 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.
6. Between [REDACTED] and [REDACTED] payments were due to an injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in amount equal to 25% of the income benefit payments due to the injured employee as follows:

	Benefits Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	35
b.	[REDACTED]	[REDACTED]	[REDACTED]	28
c.	[REDACTED]	[REDACTED]	[REDACTED]	21
d.	[REDACTED]	[REDACTED]	[REDACTED]	14
e.	[REDACTED]	[REDACTED]	[REDACTED]	7

7. On [REDACTED] Respondent paid [REDACTED] in late attorney's fees.

### **Assessment of Sanction**

1. Failure to provide accurate death benefits in a timely and cost-effective manner increases the likelihood of disputes and is harmful to injured employee's beneficiaries and the Texas workers' compensation system.
2. 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.
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; 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 evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
6. 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).
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, and 414.002.
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 § 415.002(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.
5. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

Failure to Continue to Timely Pay Accrued Death Benefits

6. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Under Tex. Lab. Code § 408.061, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
7. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code § 132.17, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives a claim for death benefits. The insurance carrier must also notify DWC in writing of its initiation of death benefit payments in the form and manner prescribed by DWC.
8. Pursuant to Tex. Lab. Code §§ 409.023 and 408.181, and 28 Tex. Admin. Code § 132.16, an insurance carrier is required to pay DBs weekly, as and when benefits accrue, unless the legal beneficiary and the insurance carrier have entered into an agreement for the benefits to be paid monthly.
9. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits an administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
10. Pursuant to Tex. Lab. Code § 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
11. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(5), (16), (20), and (22) and 28 Tex. Admin. Code § 132.16 each time Respondent failed to timely pay death benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC


12. 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.
13. 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.

14. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), 415.021(a), and 415.0035(e) and 28 Tex. Admin. Code § 152.1(c) when Respondent failed to timely comply with a DWC order to pay attorney fees.

**Order**

It is ordered that Starr Indemnity & Liability Company must pay an administrative penalty of \$3,500 within 30 days from the date of this order. Starr Indemnity & Liability Company 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.

  
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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  
Starr Indemnity & Liability Company  
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**Unsworn Declaration**

**STATE OF: NY**

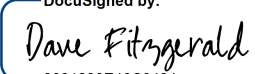
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**COUNTY OF: NY**

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Dave Fitzgerald. I hold the position of Global Chief Claims Officer and am the authorized representative of Starr Indemnity & Liability Company. My business address is: 399 Park Avenue, New York, NY, 10022. 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:  
  
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Declarant

Executed on 03 March 2023