

No. **2023-8011**

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

**Date: 6/8/2023**

**Subject Considered:**

Arch Indemnity Insurance Company  
300 Plaza Three  
Jersey City, New Jersey 07311-1107

Consent Order  
DWC Enforcement File Nos. 31084, 31281 and 31284

**General remarks and official action taken:**

This is a consent order with Arch Indemnity 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in any other year.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 31084*

3. On [REDACTED] and [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.
4. Between [REDACTED] and [REDACTED] Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee 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]	27
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	149
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	149

*File No. 31284*

5. 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.
6. Between [REDACTED] and [REDACTED] Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee 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]	23
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	20
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	13

Failure to Timely Pay or Dispute the Initial Temporary Income Benefits (TIBs) Payment

*File No. 31281*

7. On [REDACTED] Respondent received notice of injury to an injured employee.
8. On [REDACTED] a DWC-073, *Texas Workers' Compensation Work Status Report*, was issued which placed work restrictions on the injured employee from [REDACTED] to [REDACTED].
9. On [REDACTED] Respondent noted that the injured employee reported reduced work hours beginning [REDACTED] as a result of the work restrictions imposed on [REDACTED]. The eighth day of disability accrued on [REDACTED].
9. Respondent was required to initiate or dispute TIBs the later of 15 days after receiving the written notice of injury, or the seventh day after the accrual date, which in this case was [REDACTED].
9. On [REDACTED] Respondent issued the initial payment of TIBs, including interest, in the amount of [REDACTED] which was 10 days late.

**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. 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 evidence of Respondent's heightened awareness of the legal duty to comply with the 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: Respondent's delay in paying attorney's fees did not have a negative impact on the delivery of benefits associated with those attorney's fees payments to the injured employee in file numbers 31084 and 31284.
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.

#### Failure to Timely Pay Attorney Fees Ordered by DWC

##### *File Nos. 31084 & 31284*

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), and 415.0035(e), and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with DWC orders to pay attorney fees.

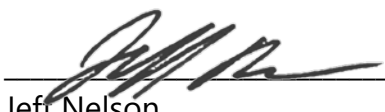
Failure to Timely Pay or Dispute the Initial TIBs Payment

*File No. 31281*

9. 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.
10. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely initiate TIBs.

**Order**

It is ordered that Arch Indemnity Insurance Company must pay an administrative penalty of \$2,700 within 30 days from the date of this order. Arch Indemnity Insurance 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, PO 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

**Unsworn Declaration**

**STATE OF** New Jersey §  
§  
**COUNTY OF** Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell. I hold the position of Vice President and am the authorized representative of Arch Indemnity Insurance Company. My business address is: 210 Hudson Street, Suite 300, Jersey City, Hudson, NJ, 07311.  
(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.



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Declarant

Executed on May 30th, 2023, 2023.