

No. 2019 6076

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: SEP 06 2019

**Subject Considered:**

**TECHNOLOGY INSURANCE COMPANY, INC.**  
59 Maiden Lane Floor 43  
New York, New York 10038-4639

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NOS. 19332, 19474, & 19764

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Technology Insurance Company, Inc. (Technology).

**WAIVER**

Technology acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Technology waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Technology 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Technology was not selected to be tiered in the 2007, 2009, 2010, or 2012 Performance Based Oversight (PBO) assessments. Technology was classified as "average" tier in the 2014 and 2018 PBO assessments. Technology was classified as "poor" tier in the 2016 PBO assessment.

**FAILURE TO PAY ACCRUED INCOME BENEFITS BASED  
ON A DESIGNATED DOCTOR REPORT**

3. On [REDACTED], Technology received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement and that the injured employee could return to work light duty from [REDACTED].

5. Technology was required to pay accrued income benefits no later than five days after receiving the DD report, or by [REDACTED].
6. Technology issued a lump sum payment on [REDACTED], five days late.

#### **FAILURE TO TIMELY PAY SUPPLEMENTAL INCOME BENEFITS**

7. Technology received the Notice of Entitlement to Supplemental Income Benefits (SIBs) on [REDACTED]. The second quarter of SIBs began on [REDACTED].
8. Technology's payment for the first month of the second quarter was due by the later of the 10th day after the date Technology received DWC's determination of entitlement, or the seventh day of the quarter, which in this case was [REDACTED].
9. Technology issued payment for the first month of the second quarter of SIBs 81 days late on [REDACTED].

#### **DWC AUDIT NO. IP-19-113**

10. On [REDACTED], the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated DWC Audit No. IP-19-113 to determine whether Technology was complying with the Texas Labor Code and related rules regarding the timely payment of initial temporary income benefits (TIBs) and the timely and accurate submission of initial payment information to DWC.
11. The audit examined TIBs payments reported to have been issued between [REDACTED], and [REDACTED]. DWC identified 50 initial TIBs payments for audit. Eight initial TIB payments failed to meet selection criteria and were dropped from the audit sample. The remaining 42 payments were reviewed to determine Technology's compliance.
12. The audit focused on timeliness of payment of initial TIBs and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting initial TIBs payments and the accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs From Date, TIBs End Date, and Initial TIBs Payment Date).

#### **FAILURE TO TIMELY PAY INITIAL TIBS**

13. Technology failed to timely initiate TIBs for 12% of payments examined (5 out of 42).
14. Specifically, Technology issued payments to injured employees less than six working days late in two instances, and between 10 and 15 working days late in three instances.



**FAILURE TO SUBMIT ACCURATE INFORMATION  
REGARDING THE INITIATION OF TIBS TO DWC**

15. Technology failed to accurately report the First Date of Disability for 48% of payments examined (20 out of 42).
16. Technology failed to accurately report the First Written Notice Date for 14% of payments examined (6 out of 42).
17. Technology failed to accurately report the Initial TIBs From Dates for 10% of payments examined (4 out of 42).
18. Technology failed to accurately report the Initial TIBs End Dates for 10% of payments examined (4 out of 42).
19. Technology failed to accurately report the Initial TIBs Payment Dates for 36% of payments examined (15 out of 42).

**FAILURE TO SUBMIT ACCURATE INFORMATION  
REGARDING THE TYPE OF BENEFIT PAID**

20. Technology failed to accurately report the type of indemnity benefit being paid which resulted in eight initial TIBs payments not meeting the selection criteria for the audit.

**ASSESSMENT OF SANCTION**

21. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
22. Timely submission of information and documentation to DWC and compliance with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
23. DWC relies on claims information submitted by the insurance carriers for a variety of purposes including, but not limited to, providing required information and reports to the legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
24. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

- the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
25. In assessing the sanction for this case, DWC found the following factors set forth 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 has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.
26. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act. Technology developed an action plan to timely and accurately pay income benefits.
27. Technology acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
28. Technology acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth herein under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).



3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a commissioner rule.
5. 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.
6. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.
7. Technology violated TEX. LAB. CODE §§ 415.002(a)(22) and 415.002(a)(20), and 28 TEX. ADMIN. CODE § 127.10(h) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
8. Pursuant to TEX. LAB. CODE §§ 408.081 and 409.023, an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. Pursuant to TEX. LAB. CODE § 408.144, SIBs are calculated quarterly and paid monthly.
10. Pursuant to TEX. LAB. CODE § 408.145, an insurance carrier shall pay SIBs beginning not later than the seventh day after the expiration date of the employee's impairment income benefit period and shall continue to pay the benefits in a timely manner.
11. Pursuant to 28 TEX. ADMIN. CODE § 130.107, an insurance carrier is required to make the first payment of SIBs for the second quarter by the later of the 10th day after the date the insurance carrier receives an application for SIBs, or the seventh day of the quarter, and make the second payment by the 37th day, and the third payment by the 67th day.
12. Technology violated TEX. LAB. CODE §§ 408.081, 408.144, 408.145, and 409.023, and 28 TEX. ADMIN. CODE § 130.107 when it issued late payment for the first month of the second quarter of SIBs.
13. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
14. Technology violated TEX. LAB. CODE §§ 409.021, 415.002(a)(20), and 415.002(a)(22) and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7 each time it failed to timely initiate payment of TIBs.

15. Pursuant to 28 TEX. ADMIN. CODE § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC. Inherent in this duty is the requirement that insurance carriers report this information accurately.
16. Technology violated TEX. LAB. CODE § 415.002(a)(20) and 28 TEX. ADMIN. CODE § 124.2(a) and (b) each time it failed to accurately notify DWC of actions taken on, or events occurring in a claim as specified by rule in the form and manner prescribed by DWC.

**ORDER**

Technology Insurance Company, Inc. is ORDERED to pay an administrative penalty of \$9,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown *WCTP*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Toya Lutz  
Staff Attorney, DWC Enforcement  
Compliance & Investigations  
Division of Workers' Compensation  
Texas Department of Insurance



