

No. 2020-6322

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: 4-20-2020

Subject Considered:

ARCH INDEMNITY INSURANCE COMPANY

300 Plaza 3 3rd Floor
Jersey City, New Jersey 07311-1107

CONSENT ORDER

TDI-DWC ENFORCEMENT FILE NOS. 23218 and 23367

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Arch Indemnity Insurance Company (Arch Indemnity).

WAIVER

Arch Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Arch Indemnity 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. Arch Indemnity 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, including workers' compensation/employers' liability.
2. Arch Indemnity was classified as "average" tier in the 2018 Performance Based Oversight (PBO) assessment. Arch Indemnity was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 PBO assessments.

FAILURE TO TIMELY INITIATE PAYMENT OF [REDACTED]

3. On [REDACTED], Arch Indemnity received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
5. Arch Indemnity was required to initiate or dispute [REDACTED] the later of 15 days after Arch Indemnity's written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].

6. Arch Indemnity issued the [REDACTED] payment for [REDACTED], through [REDACTED], on [REDACTED], which was 21 days late.

FAILURE TO TIMELY INITIATE PAYMENT OF ACCRUED [REDACTED]

7. Arch Indemnity was required to pay [REDACTED] to an injured employee for the period of [REDACTED], through [REDACTED]. The [REDACTED] payments were due seven days after the first day of the pay period, which in this case was [REDACTED]. Arch Indemnity issued payment of [REDACTED] for the period of [REDACTED] through [REDACTED], on [REDACTED], which was 21 days late.
8. Payment of [REDACTED] for the benefit week of [REDACTED], through [REDACTED], was due on [REDACTED]. Arch Indemnity issued payment of [REDACTED] 14 days late on [REDACTED].
9. Payment of [REDACTED] for the benefit week of [REDACTED], through [REDACTED], was due on [REDACTED]. Arch Indemnity issued payment of [REDACTED] seven days late on [REDACTED].

ASSESSMENT OF SANCTION

10. Adherence to DWC approved agreements is imperative to minimizing disputes and resolving them promptly and fairly.
11. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
12. 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.
13. 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; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matter that justice may require, including the size of the company.
 14. 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, the substantial actions taken to rectify the consequences of the act, and the promptness and earnestness of actions to prevent future violations.
 15. Arch Indemnity acknowledges that DWC and Arch Indemnity have communicated 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).
 16. Arch Indemnity 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, 402.00128, 409.021, 414.002, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth 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 DWC 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.

COMMISSIONER'S ORDER

Arch Indemnity Insurance Company

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6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 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.
7. Arch Indemnity violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 when it failed to timely initiate payment of TIBs.
8. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
9. Pursuant to 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.
10. Arch Indemnity violated TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), (20), and (22) each time it failed to timely initiate payment of accrued TIBs.

ORDER

Arch Indemnity Insurance Company is ORDERED to pay an administrative penalty of \$2,500 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.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Tyrus Housh
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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AFFIDAVIT

STATE OF N. J. §
 §
COUNTY OF HUDSON §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is EDWARD SCHENK . I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of A.V.P. , and am the authorized representative of Arch Indemnity Insurance Company. I am duly authorized by said organization to execute this statement.

Arch Indemnity Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Arch Indemnity Insurance Company is voluntarily entering into this consent order. Arch Indemnity Insurance Company consents to the issuance and service of this consent order.”

Edward Schenk
Affiant

SWORN TO AND SUBSCRIBED before me on March 12 , 2020.

(NOTARY SEAL)

Barbara Lee
Signature of Notary Public
Barbara Lee
Printed Name of Notary Public

My Commission Expires: June 27, 2024

