

No. **2022-7478**

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

**Date: 9/2/2022**

**Subject Considered:**

Indemnity Insurance Company of North America  
115 Wild Basin Road, Suite 207  
West Lake Hills, Texas 78746-3347

Consent Order  
DWC Enforcement File Nos. 29550 and 29627

**General remarks and official action taken:**

This is a consent order with Indemnity Insurance Company of North America (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, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

Enforcement File No. 29550

3. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs) (DWC-52), for the fifth quarter. The fifth quarter of SIBs began on [REDACTED]
4. Respondent's payment for the second month of the fifth quarter was due by the 37th day of the fifth quarter. In this case, the latest date was [REDACTED]
5. Respondent paid SIBs for the second month of the fifth quarter on [REDACTED] which was 37 days late.
6. Respondent paid interest on [REDACTED] which was 91 days late.
7. Respondent's payment for the third month of the fifth quarter was due by the 67th day of the fifth quarter. In this case, the latest date was [REDACTED]
8. Respondent paid SIBs for the third month of the fifth quarter on [REDACTED] which was seven days late.
9. Respondent paid interest on [REDACTED] which was 91 days late.
10. On [REDACTED] Respondent received a DWC-052 for the sixth quarter. The sixth quarter of SIBs began on [REDACTED]
11. Respondent's payment for the first month of the sixth quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the sixth quarter, whichever is later. In this case, the latest date was [REDACTED]
12. Respondent paid SIBs for the first month of the sixth quarter on [REDACTED] which was 67 days late.

13. Respondent's payment for the second month of the sixth quarter was due by the 37th day of the sixth quarter. In this case, the latest date was [REDACTED]
14. Respondent paid SIBs for the second month of the sixth quarter on [REDACTED] which was 36 days late.
15. Respondent's payment for the third month of the sixth quarter was due by the 67th day of the sixth quarter. In this case, the latest date was [REDACTED]
16. Respondent paid SIBs for the third month of the sixth quarter on [REDACTED] which was six days late.

Failure to Timely Initiate Payment of Temporary Income Benefits

Enforcement File No. 29627

17. On [REDACTED] Respondent received notice of an injury to an employee.
18. The first day of disability for the injured employee began on [REDACTED]  
The eighth day of disability accrued on [REDACTED]
19. Respondent was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after it received written notice of the injury or seven days after the accrual date. In this case, the later date was on [REDACTED]
20. Respondent disputed TIBs 27 days late on [REDACTED]
21. Due to the untimely dispute, Respondent was required to pay TIBs for [REDACTED] through [REDACTED]
22. Respondent paid TIBs 70 days late on [REDACTED]

**Assessment of Sanction**

1. Failure to provide income benefits and interest 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, but not limited to the size of the company or practice 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 factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
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, 414.003, and 415.021.
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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.

### Failure to Pay Subsequent Quarters of Supplemental Income Benefits

7. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.

8. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
10. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for a subsequent quarter by the 10th day after receiving an application for SIBs or the seventh day of the subsequent quarter. An insurance carrier must make the second payment by the 37th day of the subsequent quarter and the third payment by the 67th day of the quarter.
11. Respondent violated Tex. Lab. Code § 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 each time Respondent failed to timely issue payment of SIBs.

Failure to Timely Initiate Payment of Temporary Income Benefits

11. Pursuant to Tex. Lab. Code § 409.021(e) and 28 Tex. Admin. Code § 124.3, an insurance carrier or its representative commits an administrative violation if it fails to pay benefits or act within 15 days after it receives written notice of the injury.
12. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 124.3 each time it failed to timely initiate payment of TIBs.

Failure to Timely Pay Interest

13. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
14. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time Respondent failed to pay interest with accrued but unpaid income benefits.

**Order**

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$24,000 within 30 days from the date of this order. Indemnity Insurance Company of North America 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:



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

**Unsworn Declaration**

**STATE OF** Delaware §  
§  
**COUNTY OF** New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Dan Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, DE, 19803  
(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.



Declarant

Executed on September 1, 2022.

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092