

No. **2023-7724**

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

Date: 1/3/2023

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. 29832, 29882, 29885, 29899, 30027, 30079, 30083, 30086,
30088, 30246, 30463, and 30485

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.

Commissioner's Order

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Failure to Timely Comply with a DWC Order to Advance Payment of Income Benefits

File No. 29832

3. Respondent received a DWC Order to initiate advance payment of income benefits on [REDACTED]
4. Respondent was required to comply with the DWC Order and pay the income benefit advance within seven days of receipt of the DWC Order, which was [REDACTED]
5. Respondent paid the income benefits advance of [REDACTED] on [REDACTED] which was eight days late.

File No. 30246

6. Respondent received a DWC order to initiate advance payment of income benefits on [REDACTED]
7. Respondent was required to comply with the DWC Order and pay the income benefit advance within seven days of receipt of the DWC Order, which was [REDACTED]
8. Respondent paid income benefits advance of [REDACTED] on [REDACTED] which was 11 days late.

Failure to Timely Initiate Temporary Income Benefits (TIBs) and Failure to Timely Pay Accrued TIBs

File No. 29882

9. On [REDACTED] Respondent received notice in connection with an injury to an employee.
10. The first day of disability for the injured employee began on [REDACTED] and the eighth day of disability accrued on [REDACTED]

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- 11. Respondent was required to initiate or dispute 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]
- 12. Respondent initiated TIBs payments on [REDACTED] which was 296 days late.
- 13. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	296
2.	[REDACTED]	[REDACTED]	[REDACTED]	289
3.	[REDACTED]	[REDACTED]	[REDACTED]	268
4.	[REDACTED]	[REDACTED]	[REDACTED]	21
5.	[REDACTED]	[REDACTED]	[REDACTED]	14
6.	[REDACTED]	[REDACTED]	[REDACTED]	7
7.	[REDACTED]	[REDACTED]	[REDACTED]	21
8.	[REDACTED]	[REDACTED]	[REDACTED]	14
9.	[REDACTED]	[REDACTED]	[REDACTED]	7
10.	[REDACTED]	[REDACTED]	[REDACTED]	9
11.	[REDACTED]	[REDACTED]	[REDACTED]	3
12.	[REDACTED]	[REDACTED]	[REDACTED]	149
13.	[REDACTED]	[REDACTED]	[REDACTED]	142
15.	[REDACTED]	[REDACTED]	[REDACTED]	135
16.	[REDACTED]	[REDACTED]	[REDACTED]	128

- 14. On [REDACTED] Respondent paid interest for the late TIBs payments between 153 and 184 days late.

File No. 29885

- 15. On [REDACTED] Respondent received notice in connection with an injury to an employee.
- 16. The first day of disability for the injured employee began on [REDACTED] and the eighth day of disability accrued on [REDACTED]

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- 17. Respondent was required to initiate or dispute 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]
- 18. Respondent initiated TIBs payments in the amount of [REDACTED] on [REDACTED] [REDACTED] which was 62 days late. Respondent issued the initial TIBs to the injured employee to an incorrect address, but failed to reissue the payment after discovery.
- 19. Respondent was required to pay TIBs to an injured employee from [REDACTED] [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	62
2.	[REDACTED]	[REDACTED]	[REDACTED]	56
3.	[REDACTED]	[REDACTED]	[REDACTED]	49
4.	[REDACTED]	[REDACTED]	[REDACTED]	42
5.	[REDACTED]	[REDACTED]	[REDACTED]	35
6.	[REDACTED]	[REDACTED]	[REDACTED]	28
7.	[REDACTED]	[REDACTED]	[REDACTED]	21
8.	[REDACTED]	[REDACTED]	[REDACTED]	14
9.	[REDACTED]	[REDACTED]	[REDACTED]	7
10.	[REDACTED]	[REDACTED]	[REDACTED]	1
11.	[REDACTED]	[REDACTED]	[REDACTED]	16
12.	[REDACTED]	[REDACTED]	[REDACTED]	9
13.	[REDACTED]	[REDACTED]	[REDACTED]	2
14.	[REDACTED]	[REDACTED]	[REDACTED]	1

- 20. On [REDACTED] Respondent paid interest for the TIBs payments 22 days late.

File No. 30027

- 21. On [REDACTED] Respondent received notice in connection with an injury to an employee.

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- 22. The first day of disability for the injured employee began on [REDACTED] and the-eighth day of disability accrued on [REDACTED]
- 23. Respondent was required to initiate or dispute 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]
- 24. Respondent initiated TIBs payments on [REDACTED] which was 97 days late.
- 25. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	9
2.	[REDACTED]	[REDACTED]	[REDACTED]	2

File No. 30083

- 26. On [REDACTED] Respondent received notice in connection with an injury to an employee.
- 27. The first day of disability for the injured employee began on [REDACTED] and the eighth day of disability accrued on [REDACTED]
- 28. Respondent was required to initiate or dispute 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]
- 29. Respondent initiated TIBs payments on [REDACTED] which was 10 days late.
- 30. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
2.	[REDACTED]	[REDACTED]	[REDACTED]	6

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3.	[REDACTED]	[REDACTED]	[REDACTED]	9
4.	[REDACTED]	[REDACTED]	[REDACTED]	2

Failure to Timely Pay Accrued TIBs

File No. 29899

31. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	55
2.	[REDACTED]	[REDACTED]	[REDACTED]	48
3.	[REDACTED]	[REDACTED]	[REDACTED]	41
4.	[REDACTED]	[REDACTED]	[REDACTED]	34
5.	[REDACTED]	[REDACTED]	[REDACTED]	27
6.	[REDACTED]	[REDACTED]	[REDACTED]	20
7.	[REDACTED]	[REDACTED]	[REDACTED]	13
8.	[REDACTED]	[REDACTED]	[REDACTED]	6

File No. 30086

32. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	13
2.	[REDACTED]	[REDACTED]	[REDACTED]	6

33. Respondent paid interest on [REDACTED] which was 21 days late.

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File No. 30088

34. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	23
2.	[REDACTED]	[REDACTED]	[REDACTED]	16
3.	[REDACTED]	[REDACTED]	[REDACTED]	9
4.	[REDACTED]	[REDACTED]	[REDACTED]	2

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

File No. 30079

35. On [REDACTED] Respondent received a report from a certifying doctor (CD) in connection with a CD examination.

36. The CD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR).

37. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD's report. The deadline to pay benefits was [REDACTED]

38. Respondent paid IIBs on [REDACTED] which was 44 days late.

Failure to Timely Act on a Medical Bill

File No. 30463

39. On [REDACTED], a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.

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40. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
41. On [REDACTED] Respondent issued payment in the amount of [REDACTED] which was 42 days late.

File No. 30485

42. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.
43. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
44. On [REDACTED] Respondent issued payment in the amount of [REDACTED] which was 378 days late.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly.
2. 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.
3. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
4. 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.
5. 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.
6. 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 demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and other matters that justice may require, including, but not limited to prompt and earnest actions to prevent future violations.
7. 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

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factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

8. 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), 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 Timely Comply with a DWC Order to Advance Payment of Income Benefits

7. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

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8. Pursuant to Tex. Lab. Code § 408.085 and 28 Tex. Admin. Code § 126.4, DWC shall notify the insurance carrier and the injured employee in writing when an advance is ordered. The insurance carrier must pay an advance ordered by DWC within seven days of the receipt of notice from DWC by the insurance carrier's Austin representative.
9. Respondent violated Tex. Lab. Code §§ 410.085, 415.002(a)(20) and (22), 415.0035(e), and 415.021 and 28 Tex. Admin. Code § 126.4 each time it failed to timely comply with a DWC order for advance of benefits.

Failure to Timely Initiate Payment of TIBs

10. 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, file a Notice of Denial on the compensability of a claim, or file a Notice of Continuing Investigation within 15 days after it receives written notice of the injury.
11. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 124.3 each time Respondent failed to timely initiate TIBs.

Failure to Timely Pay Accrued TIBs

12. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
13. 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.
14. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay accrued TIBs.

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Failure to Pay Accrued IIBs Based on a CD Report

15. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
16. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying MMI.
17. Pursuant to 28 Tex. Admin. Code § 130.3(a), a doctor, other than a treating doctor, who is authorized to certify that an employee has reached MMI, must do so in accordance with § 130.1. In addition to complying with the filing requirements of § 130.1, the CD shall file a copy of the Report of Medical Evaluation and the narrative with the treating doctor within the same timeframes for filing with the other persons that § 130.1 requires.
18. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the doctor's medical evaluation report no later than five days after receiving the doctor's medical evaluation report when MMI is not disputed.
19. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023, and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code §§ 130.1, 130.3, and 130.8 by failing to timely pay accrued income benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the report.

Failure to Timely Act on a Medical Bill

20. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
21. Respondent violated Tex. Lab. Code §§ 408.027 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

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Failure to Timely Pay Interest

22. 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.
23. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

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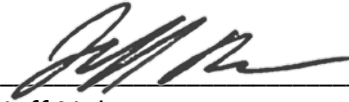
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Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$97,200 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.



Jeff Nelson

Commissioner

TDI, Division of Workers' Compensation

Approved Form and Content:



Tyrus Housh

Staff Attorney, Enforcement

Compliance and Investigations

TDI, Division of Workers' Compensation

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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
Daniel S. 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, Delaware, 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 December 29, 2022.