

No. 2024-8837

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

**Date: 9/18/2024**

**Subject Considered:**

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

Consent Order  
DWC Enforcement File Nos. 34635, 34644, 34695, & 34696

**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 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Pay Initial Supplemental Income Benefits

File No. 34644

3. On [REDACTED], Respondent received a *Notice of Entitlement to Supplemental Income Benefits* (SIBs), for the first quarter. The first quarter of SIBs began on [REDACTED].
4. Respondent's payment for the first month of the first quarter was due by the 10th day after Respondent received DWC's determination of entitlement or the seventh day of the first quarter, whichever is later. In this case, the latest date was [REDACTED].
5. Respondent's payment for the second month of the first quarter was due on [REDACTED] because date to pay the first month was after the 37th day of the quarter.
6. Respondent's payment for the third month of the first quarter was due by the 67th day of the quarter [REDACTED].
7. On [REDACTED], Respondent paid [REDACTED] in SIBs for the first month of the first quarter, which was 11 days late.
8. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs for the second month of the first quarter, which was 25 days late.
9. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs for the third month of the first quarter, which was 24 days late.
10. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 23, nine, and six days late, respectively.

**Confidential Information Redacted Texas  
Labor Code §§402.083 and 402.092**

Failure to Accurately Deduct Attorney Fees from Accrued Income Benefits

File No. 34635

11. On [REDACTED], Respondent improperly deducted \$ [REDACTED] for attorney fees from an injured employee's accrued income benefits. The improper deduction created an underpayment of \$ [REDACTED] at that time.

**Confidential Information Redacted Texas  
Labor Code §§402.083 and 402.092**

- 12. On [REDACTED], Respondent again improperly deducted \$ [REDACTED] for attorney fees from the injured employee's accrued income benefits. The improper deduction created an underpayment of \$ [REDACTED] at that time.
- 13. On [REDACTED], a contested case hearing decision and order (CCH D&O) held the injured employee reached maximum medical improvement on [REDACTED], with an impairment rating of [REDACTED] %.
- 14. The CCH D&O negated the underpayment created by the improper deductions.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 34695

- 15. On [REDACTED], and [REDACTED], DWC ordered Respondent to pay attorney fees for legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees at a rate of 25% of each income benefit paid to the injured employee.
- 16. Between [REDACTED], through [REDACTED], Respondent paid benefits to the injured employee (IE) on multiple dates. However, Respondent failed to timely pay attorney fees at a rate of 25% of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	49
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	40
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	34
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	29
e.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	22

- 17. In total, Respondent paid \$ [REDACTED] in attorney fees late.

Failure to Timely Act on a Medical Bill

*File No. 34696*

18. On [REDACTED], a health care provider provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the health care provider.
19. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
20. On [REDACTED], Respondent partially paid \$ [REDACTED], which was 34 days late.
21. On [REDACTED], Respondent paid \$ [REDACTED] in interest which was six days late.

**Assessment of Sanction**

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. 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.
3. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.
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; 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; to the extent reasonable, the economic benefit resulting from the prohibited act; 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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 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, 402.00111, 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 Pay Initial Supplemental Income Benefits

*File No. 34644*

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 the first quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the 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 it failed to timely pay SIBs for the first quarter.

Failure to Timely Pay Interest with Income Benefits

*File No. 34644*

12. 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.
13. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time it failed to pay interest with accrued but unpaid income benefits.

Failure to Accurately Deduct Attorney Fees from Accrued Income Benefits

*File No. 34635*

14. Pursuant to Tex. Lab. Code §§ 408.081, an insurance carrier must pay accurate benefits weekly, as and when the benefits accrue, without order from the commissioner.
15. Pursuant to Tex. Lab. Code § 408.103 and 28 Tex. Admin. Code § 129.3, the amount of a temporary income benefit is equal to 70% of the injured employee's average weekly wage.
16. Respondent violated Tex. Lab. Code § 408.081, 408.103, 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 129.3 by failing to accurately pay accrued income benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 34695*

17. 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.
18. 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.
19. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Act on a Medical Bill

*File No. 34696*

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; 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.

Failure to Timely Pay Interest on a Late Medical Bill Payment

*File No. 34696*

22. Pursuant to 28 Tex. Admin. Code § 133.240(l) all payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in

accordance with § 134.130 of this title without any action taken by the division. The interest payment shall be paid at the same time as the medical bill payment.

23. Respondent violated Tex. Lab. Code § 415.002(a)(22), and 28 Tex. Admin. Code § 133.240(l) by failing to timely pay interest on a late medical bill payment.

**Order**

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$9,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Indemnity Insurance Company of North America must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:

  
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 Daniel S. Hawthorne. I hold the position of VP Claims, Q&A and Compliance and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19382.  
(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.

*Daniel S. Hawthorne*  
Declarant

Executed on August 30, 2024.