

No. 2024-8849

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

**Date:** 9/23/2024

**Subject Considered:**

Arch Indemnity Insurance Company  
300 Plaza Three  
Jersey City, New Jersey 07311-1107

Consent Order  
DWC Enforcement File No. 33729

**General remarks and official action taken:**

This is a consent order with Arch Indemnity Insurance Company (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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

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

3. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.
4. The CD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] % impairment rating.
5. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
6. Respondent paid \$ [REDACTED] in IIBs on [REDACTED], which was three days late.

Failure to Timely Initiate Payment of Accrued Impairment Income Benefits

7. On [REDACTED], Respondent issued a *Notice of Maximum Medical Improvement and Permanent Impairment* (PLN-3b) to the injured employee. The PLN-3b indicated that Respondent's claims adjuster disagreed with the doctor's impairment rating (IR) of [REDACTED] %, and instead assigned a [REDACTED] % IR.
8. Respondent assessed the [REDACTED] % IR despite having received a report of medical evaluation prior to the injured employee's date of statutory MMI.
9. Additionally, Respondent did not dispute the injured employee's IR by either requesting a benefit review conference or a designated doctor exam. The injured employee's IR of [REDACTED] % became final on [REDACTED].
10. Respondent was required to pay IIBs to the injured employee from [REDACTED], through [REDACTED]. The IIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay IIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	203
b.	[REDACTED]	[REDACTED]	[REDACTED]	196
c.	[REDACTED]	[REDACTED]	[REDACTED]	189
d.	[REDACTED]	[REDACTED]	[REDACTED]	182

e.						175
f.						168
g.						161
h.						154
i.						147
j.						140
k.						133
l.						126
m.						119
n.						112
o.						105
p.						98
q.						91
r.						84
s.						77
t.						70
u.						63
v.						56
w.						49
x.						42
y.						35
z.						28
aa.						21
bb.						14
cc.						7

11. On [REDACTED], Respondent paid \$ [REDACTED] in late IIBs.

**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. 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 penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
4. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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, 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 §§ 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.
6. Pursuant to Tex. Lab. Code §§ 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.
7. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches MMI and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.
8. Pursuant to Tex. Lab. Code § 408.123(e) an employee's first valid certification of MMI and first valid assignment of an IR is final if it is not disputed before the 91st day after the date of receipt of written notification of the certification or assignment is provided to the employee and the carrier by verifiable means.

9. Pursuant to Tex. Admin. Code § 130.1(b)(1), MMI is either (A) the earliest date after which, based on reasonable medical probability, further material recover from or lasting improvement to an injury can no longer reasonably be anticipated; (B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or (C) the date determined as provided by Tex. Lab. Code § 408.104.
10. Pursuant to Tex. Admin. Code § 130.2(e)(3), if the carrier has not received a report of medical evaluation by the date of statutory MMI, the carrier may make a reasonable assessment of what it believes the true IR should be and, if it does so, shall initiate IIBs within five days of making the assessment. The carrier shall continue to pay IIBs until the assessment is paid in full or is superceded by an IR assigned in accordance with 28 Tex. Admin. Code § 130.1.
11. Pursuant to Tex. Admin. Code § 130.12(b)(1), an insurance carrier, an injured employee, or an injured employee's attorney or employee representative may dispute a first certification of MMI or assigned IR by requesting a benefit review conference or by requesting the appointment of a designated doctor, if one has not been appointed.
12. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 each time Respondent failed to timely initiate payment of IIBs.

**Order**

It is ordered that Arch Indemnity Insurance Company must pay an administrative penalty of \$12,000 within 30 days from when the Commissioner signs the order.

After receiving an invoice, Arch Indemnity Insurance Company 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, P.O. Box 12030, Austin, Texas 78711-2030.

  
\_\_\_\_\_  
Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Connor Ambrosini  
Lead Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** New Jersey §  
§  
**COUNTY OF** Hudson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Kathleen Campbell. I hold the position of Vice President and am the authorized representative of Arch Indemnity Insurance Company. My business address is: 210 Hudson Street, Suite 300, Jersey City, Hudson, NJ, 07311.  
(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 4th, 2024.