

No. **2023-7877**

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

Date: 03/31/2023

Subject Considered:

Trumbull Insurance Company
One Hartford Plaza
Hartford, Connecticut 06155

Consent Order
DWC Enforcement File No. 29619

General remarks and official action taken:

This is a consent order with Trumbull 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 not selected to be tiered in the 2007, 2009, 2010, 2012, or 2014 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Pay Impairment Income Benefits Weekly As and When They Accrue

3. On [REDACTED] Respondent received a report from a designated doctor (DD) placing the injured employee at maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR). Respondent began paying impairment income benefits (IIBs) using this IR to calculate the benefits.
4. However, on [REDACTED] Respondent received a second DD report establishing the same date of MMI, but increasing the IR to [REDACTED]. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving this DD report, which was [REDACTED].
5. On [REDACTED] Respondent sent a *Notification of Suspension of Indemnity Benefit Payment* to the injured employee indicating that IIBs were suspended due to having been paid in full as of that date based on the [REDACTED] IR.
6. Respondent was required to pay an additional 18 weeks of IIBs based on the DD report received on [REDACTED]. Respondent underpaid IIBs in the amount of [REDACTED].
7. Respondent failed to dispute the [REDACTED] IR until [REDACTED]. While the dispute of the [REDACTED] IR was pending, Respondent was required to pay any accrued IIBs due based on that IR.
8. On [REDACTED] Respondent accepted in a *Benefit Dispute Agreement* the injured employee's impairment rating of [REDACTED].
9. On [REDACTED] Respondent paid the 18 weeks of outstanding IIBs to the injured employee in the amount of [REDACTED] which was 303 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. 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 evidence of heightened awareness of the legal duty to comply with the Act and DWC rules. Respondent has significant disciplinary history, including Consent Order Nos. 5107, 6874, and 6947, all of which involve violations related to the delivery of benefits to an injured employee. Respondent has received notice of the law and has a heightened awareness of their legal obligations under the Act and DWC rules.
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, 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 § 408.0041(f) and 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
6. 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.
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 maximum medical improvement (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 § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with the DWC rules or a provision of the Texas Workers' Compensation Act.
9. Respondent violated Tex. Lab. Code §§ 408.0041(f); 408.081, 408.121; 409.023; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code §§ 127.10(h) and 130.8 each time Respondent failed to timely and accurately pay IIBs.

Order

It is ordered that Trumbull Insurance Company must pay an administrative penalty of \$7,500 within 30 days from the date of this order. Trumbull Insurance Company 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:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF CALIFORNIA §
COUNTY OF SACRAMENTO §
§

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Julie Riddle. I hold the position of Assistant Director, Claim Compliance and am the authorized representative of Trumbull Insurance Company. My business address is:
4245 Meridian Parkway, Suite 200, Aurora, DuPage, IL, 60504.
(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.

Julie Riddle

Declarant

Executed on March 27, 2023.