

No. **2022-7560**

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

**Date: 10/14/2022**

**Subject Considered:**

Arch Insurance Company  
210 Hudson Street, Suite 300  
Jersey City, New Jersey 07311-1206

Consent Order  
DWC Enforcement File No. 30020

**General remarks and official action taken:**

This is a consent order with Arch 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "high" tier in the 2007 Performance Based Oversight (PBO) assessment. Respondent was not selected to be tiered in the 2009, 2010, 2012, 2014, 2016, 2018, or 2020 PBO assessments.

Failure to Timely File a Notice of Denial on the Compensability of a Claim

3. On [REDACTED] Respondent received notice in connection with an injury to an employee.
4. The first day of disability for the injured employee began on [REDACTED] and the-eighth day of disability accrued on [REDACTED]
5. 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]
6. Respondent filed a PLN Form-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits* (PLN-11) on [REDACTED] with the injured employee. Respondent did not file the PLN-11 with DWC.
7. On [REDACTED] Respondent filed the PLN-11 with DWC 25 days late.

Failure to Timely Pay Accrued Temporary Income Benefits

8. Because Respondent filed the PLN-11 late, Respondent was required to pay TIBs from the date of disability on [REDACTED] through [REDACTED] the date of Respondent’s denial. The TIBs payments were due on [REDACTED] when Respondent filed the PLN-11 with DWC. Respondent failed to timely issue the TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
1.	[REDACTED]	[REDACTED]	[REDACTED]	65
2.	[REDACTED]	[REDACTED]	[REDACTED]	65
3.	[REDACTED]	[REDACTED]	[REDACTED]	65
4.	[REDACTED]	[REDACTED]	[REDACTED]	65
5.	[REDACTED]	[REDACTED]	[REDACTED]	65
6.	[REDACTED]	[REDACTED]	[REDACTED]	65
7.	[REDACTED]	[REDACTED]	[REDACTED]	65
8.	[REDACTED]	[REDACTED]	[REDACTED]	65
9.	[REDACTED]	[REDACTED]	[REDACTED]	65
10.	[REDACTED]	[REDACTED]	[REDACTED]	65
11.	[REDACTED]	[REDACTED]	[REDACTED]	65

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12.	[REDACTED]	[REDACTED]	[REDACTED]	65
13.	[REDACTED]	[REDACTED]	[REDACTED]	65
14.	[REDACTED]	[REDACTED]	[REDACTED]	65
15.	[REDACTED]	[REDACTED]	[REDACTED]	65
16.	[REDACTED]	[REDACTED]	[REDACTED]	65
17.	[REDACTED]	[REDACTED]	[REDACTED]	65
18.	[REDACTED]	[REDACTED]	[REDACTED]	65
19.	[REDACTED]	[REDACTED]	[REDACTED]	65
20.	[REDACTED]	[REDACTED]	[REDACTED]	65
21.	[REDACTED]	[REDACTED]	[REDACTED]	65
22.	[REDACTED]	[REDACTED]	[REDACTED]	65

9. On [REDACTED], Respondent paid TIBs in the amount of [REDACTED]
10. On [REDACTED] Respondent paid [REDACTED] in interest on the TIBs payments three days late.

**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;

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- 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; the history of compliance with electronic data interchange requirements; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; other matters that justice may require, including, but not limited to 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, 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 File a Notice of Denial on the Compensability of a Claim

7. Pursuant to Tex. Lab. Code § 409.021(a)(2), an insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier must notify DWC and the employee in writing of its refusal to pay.
8. 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.
9. Respondent violated Tex. Lab. Code §§ 409.021 and 415.002(a)(20) and (22) when it failed to timely file a notice of denial on the compensability of a claim.

#### Failure to Timely Pay Accrued Temporary Income Benefits

10. 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.


11. 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.
12. Pursuant to 28 Tex. Admin. Code § 124.3(a)(2)(A), if the insurance carrier files a Notice of Denial after the 15th day but on or before the 60th day after receipt of written notice of the injury, the insurance carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the insurance carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits.
13. 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 when Respondent failed to timely pay accrued TIBs.

Failure to Timely Pay Interest

14. 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.
15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) each time it failed to timely pay interest with accrued but unpaid income benefits.

**Order**


It is ordered that Arch Insurance Company must pay an administrative penalty of \$11,000 within 30 days from the date of this order Arch 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.



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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** New Jersey

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**COUNTY OF** Hudson

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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 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.

  
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Declarant

Executed on September 27th, 2022.

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