

No. **2023-8014**

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

Date: 6/8/2023

Subject Considered:

Starr Indemnity & Liability Company
399 Park Avenue, Floor 8
New York, New York 10022-4877

Consent Order
DWC Enforcement File Nos. 31315 and 31565

General remarks and official action taken:

This is a consent order with Starr Indemnity & Liability 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, and 2012 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2014, 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 31315

3. On [REDACTED] and [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
4. Between [REDACTED] and [REDACTED] Respondent issued multiple payments to the injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent 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]	42
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	35
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	28
e.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	21
f.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	14
g.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	7

5. On [REDACTED] Respondent paid [REDACTED] in late attorney fees.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits (SIBs)

File No. 31565

6. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* for the seventh quarter. The seventh quarter of SIBs began on [REDACTED]
7. Respondent's payment for the first month of the seventh quarter was due by the 10th day after receipt of the application for SIBs or the seventh day of the seventh quarter, whichever is later. In this case, the latest date was [REDACTED]

8. Respondent had a duty to continue to pay SIBs by the 37th day and the 67th day for the second and third month of the seventh quarter, respectively.
9. Respondent untimely paid [REDACTED] in SIBs for the first, second and third months of the seventh quarter as follows:

	Month of the Quarter	Date Payment Due	Date Paid	Days Late
a.	First	[REDACTED]	[REDACTED]	77
b.	Second	[REDACTED]	[REDACTED]	50
c.	Third	[REDACTED]	[REDACTED]	20

Assessment of Sanction

1. 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. 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 provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. 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.
4. 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 evidence of heightened awareness of the legal duty to comply with the 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 mitigating: prompt and earnest actions to prevent future violations of this type. Specifically, in file number 31315, Respondent has corrected a system issue which caused the attorney's fees payment to fall off of their autopay schedule.
 6. 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).
 7. 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC statute or rule.

Failure to Timely Pay Attorney Fees Ordered by DWC

6. 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.
7. 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.
8. 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.

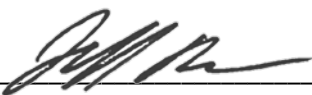
Failure to Pay Subsequent Quarters of SIBs

9. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
10. 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.

11. 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.
12. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the seventh quarter by the 10th day after receiving the Application for Supplemental Income Benefits 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.
13. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 each time Respondent failed to timely pay SIBs.

Order

It is ordered that Starr Indemnity & Liability Company must pay an administrative penalty of \$7,500 within 30 days from the date of this order. Starr Indemnity & Liability 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, PO 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

Commissioner's Order
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Unsworn Declaration

STATE OF NY §
§
COUNTY OF NY §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Dave Fitzgerald. I hold the position of Global Chief Claims Officer and am the authorized representative of Starr Indemnity & Liability Company. My business address is:

399 Park Avenue, New York, New York, NY, 10022.
(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.

DocuSigned by:
Dave Fitzgerald
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Declarant

Executed on 01 June 2023, 2023.

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