

No. **2024-8778**

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

Date: 8/12/2024

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. 33948, 33949, 34010, & 34218

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 Timely Pay or Dispute Initial Temporary Income Benefits (TIBs)

Enforcement File No. 33948

3. On [REDACTED] Respondent received notice of an employee's workplace injury.
4. The injured employee's first day of disability began on [REDACTED] The eighth day of disability accrued on [REDACTED]
5. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
6. On [REDACTED], Respondent sent a PLN-11, *Notice of Disputed Issue(s) and Refusal to Pay Benefits*, disputing TIBs, which was 51 days late.
7. Due to the untimely denial, Respondent was required to pay TIBs from [REDACTED] [REDACTED], to [REDACTED] on [REDACTED].
8. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs, which was 19 days late.
9. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was eight days late

Failure to Timely Pay or Deny a Request for Reimbursement of Travel Expenses

Enforcement File No. 33949

10. On [REDACTED], Respondent received a request for reimbursement of travel expenses for expenses incurred between [REDACTED], to [REDACTED].
11. Respondent was required to respond by the 45th day from receipt, or by [REDACTED] [REDACTED]
12. On [REDACTED], Respondent reimbursed \$ [REDACTED] to the requestor 107 days late.

Failure to Timely Pay Supplemental Income Benefits (SIBs)

Enforcement File No. 34010

13. On [REDACTED], Respondent received a Notice of Entitlement to SIBs, for the first quarter. Respondent was notified that the injured employee was entitled to \$ [REDACTED] per month. The first quarter of SIBs began on [REDACTED].
14. 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].
15. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs.
16. Between [REDACTED], and [REDACTED], Respondent paid \$ [REDACTED] in SIBs. Respondent underpaid the first month of the first quarter by [REDACTED].
17. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs, which was 98 days late.
18. Respondent's payment for the second month of the first quarter was due by the 37th day of the first quarter, or by [REDACTED]. Respondent's payment for the third month of the first quarter was due by the 67th day of the first quarter, or by [REDACTED]. Respondent paid \$ [REDACTED] in SIBs late, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	72
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	42

19. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 43 days late.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

Enforcement File No. 34218

20. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED].

21. The CCH D&O became final on [REDACTED]. On [REDACTED], Respondent timely filed an appeal of the CCH D&O. Respondent was required to comply with the CCH D&O within five days of filing the appeal. The deadline to comply was [REDACTED].
22. On [REDACTED], Respondent paid \$ [REDACTED] in benefits and interest, which was nine days late.

Assessment of Sanction

1. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, 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. Failing to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers' compensation system and the roles of its system participants.
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, 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; to the extent reasonable, the economic benefit resulting from the prohibited act; and other matters that justice may require, including 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; 402.00114; 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; 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 Pay or Dispute Initial TIBs

Enforcement File No. 33948

7. Pursuant to Tex. Lab. Code §§ 408.081; 408.082; 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.
8. 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.
9. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay or dispute initial TIBs.

Failure to Timely Pay or Deny a Request for Reimbursement of Travel Expenses

Enforcement File No. 33949

10. Pursuant to 28 Tex. Admin. Code § 134.110, an insurance carrier shall pay or deny an injured employee's properly completed request for reimbursement within 45 days of receipt. If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason for the reduction or denial.
11. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.110 by failing to timely act on a request for reimbursement.

Failure to Timely Pay SIBs

Enforcement File No. 34010

12. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
13. 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.
14. 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.
15. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the 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.
16. Respondent violated Tex. Lab. Code §§ 408.145, 409.023, and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 130.107 each time it paid SIBs late.

Failure to Timely Pay Interest

File Nos. 33948 & 34010

17. 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.
18. 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 Timely Comply with a CCH D&O

Enforcement File No. 34218

19. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
20. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
21. Respondent violated Tex. Lab. Code §§ 410.169, 415.002(a)(20) and (22), 415.0035(e), and 415.021 and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$23,200 within 30 days from when 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.



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, Quality Assurance & 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, 19803.
(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 July 18, 2024.