

No. **2021-7069**

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

Date: 11/9/2021

Subject Considered:

Pacific Indemnity Company
202 Halls Mill Road, Studio B
Whitehouse Station, New Jersey 08889-3435

Consent Order
DWC Enforcement File No. 27158

General remarks and official action taken:

This is a consent order with Pacific Indemnity Company (Pacific Indemnity). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Pacific Indemnity.

Waiver

Pacific Indemnity acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Pacific Indemnity 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. Pacific Indemnity 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. Pacific Indemnity was classified as "average" tier in the 2009 Performance Based Oversight (PBO) assessment. Pacific Indemnity was not selected to be tiered in the 2007, 2010, 2012, 2014, 2016, or 2018 PBO assessments.

DWC Audit No. IBA-21-114

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-114 to determine whether Pacific Indemnity complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that Pacific Indemnity reported issuing between [REDACTED] and [REDACTED] DWC identified four initial DB claims for audit. A total of one initial DB claim failed to meet selection criteria and was dropped from the audit sample. The remaining three claims were reviewed to determine Pacific Indemnity's compliance.
5. The audit focused on the accuracy of Pacific Indemnity's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Pay Accurate DBs

6. Pacific Indemnity failed to pay accurate DBs for 33% of examined payments (one out of three).
7. Specifically, Pacific Indemnity underpaid beneficiaries' DBs by [REDACTED] per week over the course of 484 weeks. The total underpayment was [REDACTED]

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.

2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
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 or their beneficiaries;
 - the history of compliance with EDI 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 or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.

5. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: promptness and earnestness in responding to DWC; Pacific Indemnity has provided elaboration on the action plan submitted at audit with documentary evidence; Pacific Indemnity is now in compliance with benefit payments and interest has been issued on the claim; and Pacific Indemnity has no previous violation history.
6. Pacific Indemnity acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. Pacific Indemnity 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, 409.021, 414.002, 414.003, 415.002, 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. Pacific Indemnity 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.
7. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of DBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or DB payments in the manner DWC rules prescribe.
8. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
9. Pacific Indemnity violated TEX. LAB. CODE § 415.002(a)(20) and (22) each time it failed to pay accurate DBs.

Order

It is ordered that Pacific Indemnity Company must pay an administrative penalty of \$45,000 within 30 days from the date of this order. Pacific Indemnity 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Mackenzie Arthur
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Affidavit

STATE OF New Jersey §
§
COUNTY OF Somerset §

Before me, the undersigned authority, personally appeared Sara Kendall, who being by me duly sworn, deposed as follows:

"My name is Sara Kendall. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Vice President, Claims Compliance Manager and am the authorized representative of Pacific Indemnity Company. I am duly authorized by the organization to execute this statement.

Pacific Indemnity Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."



Affiant

SWORN TO AND SUBSCRIBED before me on September 15, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092