No. 2021-7111

Official Order of the Texas Commissioner of Workers' Compensation

Date: 11/24/2021

Subject Considered:

Indemnity Insurance Company of North America 115 Wild Basin Road, Suite 207 West Lake Hills, Texas 78746

Consent Order
DWC Enforcement File No. 24980

General remarks and official action taken:

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

Waiver

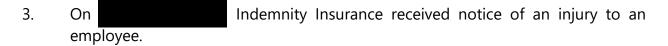
Indemnity Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Indemnity Insurance waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

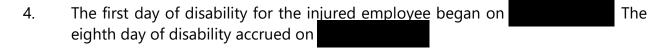
Findings of Fact

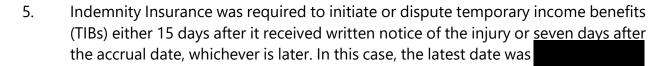
1. Indemnity Insurance holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. INS. Code §§ 801.051-801.053 and is licensed to write workers' compensation/employers' liability insurance in Texas.

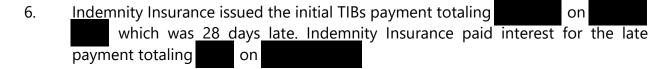
2. Indemnity Insurance was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Temporary Income Benefits









Assessment of Sanction

- 1. Failure to provide appropriate 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

Confidential Information Redacted Texas Labor Code §§402.083 and 402.092

- other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - o prompt and earnest actions to prevent future violations;
 - o self-report of the violation;
 - o the size of the company or practice;
 - o 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; 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, but not limited to 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.
- 4. DWC found the following factor in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
- 5. Indemnity Insurance 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).
- 6. Indemnity Insurance 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, 415.002, and 415.021.

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

- 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. Indemnity Insurance 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 § 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.
- 7. Indemnity Insurance violated Tex. LAB. CODE §§ 409.021 and 415.002(a)(20) each time it failed to timely initiate payment of TIBs.

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Order

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$4,800 within 30 days from the date of this order. Indemnity Insurance Company of North America 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:

Tyrus Housh

Staff Attorney, Enforcement Compliance and Investigations

TDI, Division of Workers' Compensation

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Unsworn Declaration

STATE OF Pensylvania	5
	5
COUNTY OF _ Chester	5

Pursuant to the Tex. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is

DAN HAWTHORNE... I hold the position of NAC. Lorons Complete My. and am the authorized representative of Indemnity Insurance Company of North America. My business address is:

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.

Declarant

Executed on 10 22 2021.