

No. 2024-8675

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

**Date: 5/30/2024**

**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. 33634, 33685, 33686, & 33736

**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 Pay Temporary Income Benefits in Accordance with a Designated Doctor Report

File No. 33634

3. On [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
4. The DD determined the injured employee had disability from [REDACTED], to [REDACTED] (date of the examination), because of a compensable injury.
5. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED].
6. On [REDACTED], Respondent paid \$ [REDACTED] in TIBs and interest, which was 112 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 33685

7. Between [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. The approved fees totaled \$ [REDACTED].
8. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee (IE) 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:

	<b>Benefits Paid to IE</b>	<b>Attorney Fee Owed</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	187
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	180
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	173
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	166

e.					159
f.					152
g.					145
h.					329
i.					322
j.					315
k..					225
l.					218

9. In total, Respondent paid \$ [REDACTED] in attorney fees late.

*File No. 33736*

10. 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.

11. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee (IE) 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:

	<b>Benefits Paid to IE</b>	<b>Attorney Fee Owed</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	28
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	21

12. In total, Respondent paid \$ [REDACTED] in attorney fees late.

13. 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.

14. 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:

	<b>Benefits Paid to IE</b>	<b>Attorney Fee Owed</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.					38
b.					31
c.					24
d.					17
e.					10
f.					3

15. In total, Respondent paid \$ [REDACTED] in attorney fees late.

Failure to Pay Accrued Impairment Income Benefits Based on a DD Report

*File No. 33686*

16. On [REDACTED] Respondent received a DD report of a DD examination performed on [REDACTED].
17. The DD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] % impairment rating.
18. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
19. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was 30 days late.

**Assessment of Sanction**

1. 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 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.

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 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; to the extent reasonable, the economic benefit resulting from the prohibited act; 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.
5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

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, and 414.002.
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 Pay TIBs in Accordance with a DD Report

*File No. 33634*

7. Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
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. Pursuant to 28 Tex. Admin. Code § 127.10(h), the insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
10. Respondent violated Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File Nos. 33685 and 33736*

11. 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.
12. 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.
13. 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 Accrued IIBs Based on a DD Report

*File No. 33686*

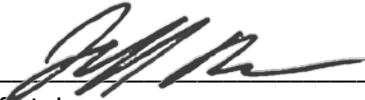
14. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
15. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
16. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.
17. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.




**Order**

It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$18,300 within 30 days from 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 Claims, Q&A and 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 May 23, 2024.