

No. 2021-6677

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

Date: 02-05-2021

Subject Considered:

Arch Insurance Company
300 Plaza 3, Third Floor
Jersey City, New Jersey 07311-1107

Consent Order
DWC Enforcement File No. 22830

General remarks and official action taken:

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

Waiver

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

Failure to Pay Accurate Death Benefits

3. Between [REDACTED], through [REDACTED], Arch underpaid death benefits in the amount of [REDACTED] per week.
4. Arch paid [REDACTED] in weekly death benefits instead of the required amount, which was [REDACTED].
5. On [REDACTED], Arch issued a lump sum payment, plus interest, of [REDACTED].

Assessment of Sanction

1. Failure to provide accurate death 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
 - 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.
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; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the penalty necessary to deter future violations and other matters that justice may require, including, but not limited to prompt and earnest actions to prevent future violations, as the insurance carrier relied on the employer's information regarding pecuniary benefits and neither the widow nor the employer notified the insurance carrier of the widow's change in status.
 5. Arch 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. Arch 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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Arch 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)(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.
 6. Pursuant to TEX. LAB. CODE § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
 7. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Under TEX. LAB. CODE § 408.061, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
 8. Arch violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay accurate death benefits.
 9. 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.
 10. Arch violated TEX. LAB. CODE §§ 415.021(a) and 415.0035(e) when it failed to comply with a DWC order.

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Order

It is ordered that Arch Insurance Company must pay an administrative penalty of \$69,000 within 30 days from the date of this order. Arch Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF New Jersey

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COUNTY OF Hudson

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

"My name is David Viscusi. 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 and am the authorized representative of
Arch Insurance Company. I am duly authorized by the organization to execute this
statement.

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

DocuSigned by:
David Viscusi
A8F30D68CD37490...

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2021.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration