

No. 2024-8657

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

Date: 5/16/2024

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. 33306, 33380, 33516, 33556, 33577, & 33663

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 or Accrued Temporary Income Benefits (TIBs)

File No. 33306

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 initiated TIBs in the amount of [REDACTED], which was 19 days late.
7. Respondent was required to pay TIBs to an injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	17
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	10
c.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	3

Failure to Pay Subsequent Quarters of Supplemental Income Benefits (SIBs)

File No. 33380

8. On [REDACTED], Respondent received a DWC Form-052, *Application for Supplemental Income Benefits*, for the 10th quarter. The 10th quarter of SIBs began on [REDACTED].
9. Respondent's payment for the first month of the 10th quarter was due by the 10th day after Respondent received the application for SIBs or the 7th day of the 10th quarter, whichever is later. In this case, the latest date was [REDACTED].

10. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs for the first month of the 10th quarter which was 20 days late.
11. Respondent's payment for the second month of the 10th quarter was due by the 37th day of the second quarter, or by [REDACTED]. Respondent's payment for the third month of the 10th quarter was due by the 67th day of the second 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]	2
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	3

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

File No. 33516

12. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits and interest in accordance with the decision. Respondent received the CCH D&O on [REDACTED].
13. The CCH D&O became final on [REDACTED]. Respondent had 20 days to comply with the CCH D&O. The deadline to comply was [REDACTED].
14. On [REDACTED], Respondent paid \$ [REDACTED] in benefits.
15. On [REDACTED], Respondent paid \$ [REDACTED] in benefits.
16. On [REDACTED], Respondent paid \$ [REDACTED] in interest, complying with the CCH D&O 133 days late.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

File No. 33556

17. On [REDACTED], Respondent received a DWC Form-69, *Report of Medical Evaluation*, from the injured employee's certifying doctor (CD) in connection with a CD examination.

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18. The CD determined that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED] % impairment rating.
19. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED].
20. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs which was 15 days late.
21. Respondent was required to pay IIBs to an injured employee for the period between [REDACTED], through [REDACTED]. The IIBs payment was due seven days after the first day of the pay period, which was [REDACTED].
22. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs, which was six days late.
23. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 271 days late.

Failure to Timely Act on a Request for Burial Benefits

File No. 33577

24. On [REDACTED], Respondent received bills for burial benefits totaling \$ [REDACTED].
25. Respondent was required to pay or deny the burial benefits within seven days of receipt of the burial bills, which was [REDACTED].
26. On [REDACTED], Respondent paid \$ [REDACTED] in burial benefits, which was 17 days late.

Failure to Timely Act on a Properly Completed Preauthorization Request

File No. 33663

27. On [REDACTED], Respondent received a request for preauthorization from a health care provider for [REDACTED].

28. Respondent was required to act on the preauthorization request and send written notice of the decision to the requestor or the injured employee within three working days of the receipt of the request, which was [REDACTED].
29. On [REDACTED], Respondent sent written notice of an approval of the request, which was 90 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. 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.
3. Failing to timely comply with payment of burial benefits imposes an undue financial burden on the deceased employee's beneficiaries, increases the likelihood of disputes, and is contrary of DWC's goal of a fair and balanced workers' compensation system.
4. Failure to promptly act on a preauthorization request has the potential to delay timely, appropriate, and high-quality medical care to injured employees. This in turn may delay improvements in the injured employees' physical condition and earning capacity and is harmful to injured employees and to the Texas workers' compensation system.
5. 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.
6. 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.
7. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
8. 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).
9. 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 or Accrued TIBs

File No. 33306

7. 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.
8. 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.

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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 Pay Subsequent Quarters of SIBs

File No. 33380

10. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
11. 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.
12. 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.
13. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for a subsequent quarter by the 10th day after receiving the application for supplemental income benefits 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.
14. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 when it failed to timely pay a subsequent quarter of SIBs.

Failure to Timely Comply with a CCH D&O

File No. 33516

15. 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.

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16. 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.
17. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Initiate IIBs Based on a CD Report

File No. 33556

18. 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.
19. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
20. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the treating doctor's medical evaluation report no later than five days after receiving the treating doctor's medical evaluation report when maximum medical improvement is not disputed.
21. Respondent violated Tex. Lab. Code §§ 408.121(b), 409.023 and 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.

Failure to Timely Pay Accrued IIBs

File No. 33556

22. Pursuant to Tex. Lab. Code § 408.121(a), an employee's entitlement to impairment income benefits begins on the day after the date the employee reaches maximum medical improvement.

23. 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.
24. Respondent violated Tex. Lab. Code §§ 408.081, 409.023 and 415.002(a)(16) and (22) and by failing to timely pay accrued IIBs.

Failure to Timely Pay Interest

File Nos. 33380 and 33556

25. 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.
26. 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 Act on a Request for Burial Benefits

File No. 33577

27. Pursuant to Tex. Lab. Code § 408.186, if the death of an employee results from a compensable injury, the insurance carrier shall pay the costs of burial to the person who incurred liability for the costs of burial.
28. Pursuant to Tex. Admin. Code § 132.13(d), once a claim for burial benefits is made, the carrier must either pay or deny the claim within seven days of the date the claim was received.
29. Respondent violated Tex. Lab. Code §§ 408.186 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 132.13(d) by failing to timely pay burial benefits.

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Failure to Timely Act on a Properly Completed Preauthorization Request

File No. 33663

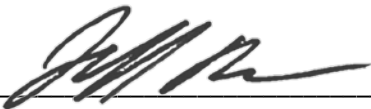
30. Pursuant to 28 Tex. Admin. Code § 134.600(i), an insurance carrier is required to contact the requestor or the injured employee by telephone, facsimile, or electronic transmission to report the insurance carrier's decision regarding preauthorization or concurrent review. The insurance carrier is required to make the contact within three working days of receipt of the request.

31. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.600(i) by failing to act on a request for preauthorization within three working days.

Order


It is ordered that Indemnity Insurance Company of North America must pay an administrative penalty of \$18,250 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, 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, 19382.
(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 April 22, 2024.