

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAR 05 2020

Subject Considered:

ACE AMERICAN INSURANCE COMPANY
115 Wild Basin Road Suite 207
Westlake Hills, Texas 78746-3347

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 22926

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Ace American Insurance Company (Ace American).

WAIVER

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

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. Ace American 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 in the state of Texas to write multiple lines of insurance, including workers' compensation/employers' liability insurance.
2. Ace American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO TIMELY PAY ATTORNEY FEES
ORDERED BY THE TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS'
COMPENSATION

3. On [REDACTED], Ace American received an order for attorney fees from the Texas Department of Insurance, Division of Workers' Compensation (DWC), totaling \$ [REDACTED].
4. DWC ordered Ace American to pay attorney fees in the amount of [REDACTED]% of each income benefit payment issued to the injured employee.

5. On [REDACTED], Ace American issued a check to the injured employee for indemnity benefits. Ace American was required to issue payment to the attorney the same day.
6. Ace American issued the required payment of attorney fees on [REDACTED], which was 91 days late.

ASSESSMENT OF SANCTION

7. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation system.
8. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
9. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
10. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the insurance carrier has instituted additional training intended to address any future errors in paying attorney fees.
11. Ace American acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

12. Ace American acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
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 §§ 415.0035(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.
7. 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 and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
8. Ace American violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), and 415.021(a) when it failed to timely comply with a DWC order to pay attorney fees.

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

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Texas Labor Code §§402.083 & 402.092

ORDER


Ace American Insurance Company is ORDERED to pay an administrative penalty of \$2,500 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

AFFIDAVIT

STATE OF Delaware §
COUNTY OF New Castle §

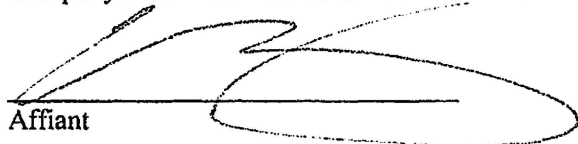
Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is William Ethem. 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 VP, TPA + Client Services, and am the authorized representative of Ace American Insurance Company. I am duly authorized by said organization to execute this statement.

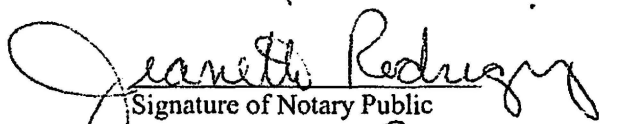
Ace American Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

Ace American Insurance Company is voluntarily entering into this consent order. Ace American Insurance Company consents to the issuance and service of this consent order."


Affiant

SWORN TO AND SUBSCRIBED before me on January 27, 2020

(NOTARY SEAL)


Signature of Notary Public
Jeanette Rodriguez
Printed Name of Notary Public

JEANETTE RODRIGUEZ
Notary Public
Commission Expires On
My Commission Expires On
January 25, 2023