

No. **2024-8538**

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

Date: 2/20/2024

Subject Considered:

Ace American Insurance Company
115 Wild Basin Road, Suite 207
West Lake Hills, Texas 78746-3347

Consent Order
DWC Enforcement File Nos. 32932, 32933, & 32934

General remarks and official action taken:

This is a consent order with Ace American Insurance Company (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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Act on a Medical Bill

File No. 32932

3. On [REDACTED], a Designated Doctor (DD) provided medical services to an injured employee. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.
4. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
5. On [REDACTED], Respondent issued an explanation of benefits denying the bill, which was 17 days late.
6. On [REDACTED], after further review, Respondent paid \$ [REDACTED] to the DD for the bill.

Failure to Pay Temporary Income Benefits (TIBs) in Accordance with a DD Report

File No. 32933

7. On [REDACTED], Respondent received a DD report of a DD examination performed on [REDACTED].
8. The DD determined the injured employee had disability from [REDACTED], to [REDACTED] because of a compensable injury.
9. A prior Contested Case Hearing Decision and Order had determined the injured employee did not have disability from [REDACTED], to [REDACTED]. So Respondent was required to pay accrued TIBs for the period of [REDACTED], to [REDACTED].
10. Respondent was required to pay the accrued TIBs no later than five days after receiving the DD report. The deadline to pay TIBs was [REDACTED].
11. Respondent paid partial TIBs on [REDACTED], but did not come into full compliance until [REDACTED], when it paid the remaining \$ [REDACTED], which was 47 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 32934

12. On [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.
13. Between [REDACTED], and [REDACTED], Respondent issued two payments to an injured employee for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25% of the income benefits paid to the injured employee as follows:

	Benefits Paid to IE	Attorney Fee Owed	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	14
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	14

14. In total, Respondent paid \$ [REDACTED] in attorney fees 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. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system. It is a serious violation to fail to timely act on a medical bill involving designated doctor services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a designated doctors' participation in the system.

3. 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.

4. 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.

5. 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; and other matters that justice may require, including the size of the company or practice. Further, the conduct includes a violation involving late medical bill payments for DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.

6. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
7. 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).
8. 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 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) and (22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Act on a Medical Bill

6. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
7. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 by failing to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Pay TIBs in Accordance with a DD Report

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 Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
10. Pursuant to 28 Tex. Admin. Code § 127.10(i), 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.
11. Respondent violated Tex. Lab. Code §§ 408.0041(f); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) 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

12. 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.
13. 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.

14. 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.

Order


It is ordered that Ace American Insurance Company must pay an administrative penalty of \$11,850 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Ace American Insurance Company 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Connor Ambrosini
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 AVP, Claims Compliance Manager and am the authorized representative of Ace American Insurance Company. 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 January 19, 2024.