

No. **2022-7170**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 1/10/2022

Subject Considered:

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

Consent Order
DWC Enforcement File No. 27737

General remarks and official action taken:

This is a consent order with Ace American Insurance Company (Ace American). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against 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 procedural rights that apply, in consideration of the entry of this consent order.

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 to write workers' compensation/employers' liability insurance in Texas.
2. Ace American was classified as "average" tier 2007, 2009, 2010, 2012, 2014, 2016, 2018, or 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Increase Lifetime Income Benefits

3. On [REDACTED] the injured employee became entitled to lifetime income benefits (LIBs) with a 3% annual increase due each year on the anniversary date of the day LIBs began to accrue.
4. The 3% increase for benefit period [REDACTED] through [REDACTED] was due on [REDACTED].
5. Ace American issued a partial payment of LIBs on [REDACTED] for benefit period [REDACTED] through [REDACTED] when it paid LIBs, but the LIBs payment amount was not increased by 3%.
6. On [REDACTED] Ace American issued payment of LIBs for the [REDACTED], through [REDACTED] benefit period. However, the LIBs payment was not increased by 3%.
7. On [REDACTED] Ace American came into compliance when it issued a deficit payment, plus interest, 65 days late.
8. Also, Ace American did not timely increase the LIBs benefit amount by 3% on the [REDACTED] and [REDACTED] benefit anniversaries.

Assessment of Sanction

1. Failure to provide appropriate income 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 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; and other matters that justice may require, including the size of the company or practice.
4. DWC found the following factor in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act.
5. Ace American 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. Ace American 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, 414.003, 415.002, and 415.021.
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. Ace American 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.
7. Pursuant to TEX. LAB. CODE § 408.161, LIBs are equal to 75% of the employee's average weekly wage. LIBs also receive a 3% increase each year.
8. Pursuant to 28 TEX. ADMIN. CODE § 131.2(b), each year, on the anniversary date of the day LIBs began to accrue, the amount of benefits being paid must be increased by 3%.
9. Ace American violated TEX. LAB. CODE § 415.002(a)(20) and 415.002(a)(22) each time it failed to timely increase LIBs by 3% on the anniversary date of the day LIBs began to accrue.

Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$2,000 within 30 days from the date of this order. Ace American Insurance Company must pay the administrative penalty by 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
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 Pennsylvania §

§

COUNTY OF Chester §

§

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Dan Hawthorne. I hold the position of North American Compliance Manager and am the authorized representative of Ace American Insurance Company. My business address is:

1 Beaver Valley Road, Wilmington, New Castle, DE, 19083.

(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 6, 2022.

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