

No. 2019 5975

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: MAY 31 2019

**Subject Considered:**

**ACE AMERICAN INSURANCE COMPANY**  
P.O. Box 1000  
Philadelphia, Pennsylvania 19105-1000

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 18600

**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 to write multiple lines of insurance, including workers' compensation/employers' liability.
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 COMPLY WITH A TEXAS DEPARTMENT OF INSURANCE,  
DIVISION OF WORKERS' COMPENSATION (DWC) ORDER**

3. A Contested Case Hearing Decision & Order (CCH D&O) was held on [REDACTED]. A decision was issued on [REDACTED], which Ace American received on [REDACTED]. The CCH D&O determined that the injured employee had disability resulting from the compensable injury, on [REDACTED], from [REDACTED], through the date of the hearing.

4. Ace American timely filed an appeal on [REDACTED]. Ace American was required to comply with the CCH D&O by paying within five days of filing its appeal, which was [REDACTED].
5. Ace American issued an initial payment in the amount of \$ [REDACTED] on [REDACTED], and a final payment of \$ [REDACTED] on [REDACTED], which was 27 days late.

#### ASSESSMENT OF SANCTION

6. Failure to provide appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
7. In assessing the sanction for this case, Texas Department of Insurance, Division of Workers' Compensation (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.
8. 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, 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 has a negative impact on the delivery of benefits to the injured party; and other matters that justice may require, including the size of the company.
9. 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).

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10. 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, and 402.00128.
2. The commissioner has authority to informally dispose of this matter as set forth under 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. 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)(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.
5. Pursuant to TEX. LAB. CODE § 415.021(a), an insurance carrier commits an administrative violation by failing to comply with a DWC order.
6. Ace American violated TEX. LAB. CODE §§ 415.002(a)(22) and 415.021(a) when it failed to timely comply with a DWC order.

**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*

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Cassie Brown *net*  
Commissioner of Workers' Compensation

Approved as to Form and Content:

*A Norman*

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Amy Norman  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

