

No. 2021-6819

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

**Date:** 05-10-2021

**Subject Considered:**

The Ohio Casualty Insurance Company  
175 Berkley Street  
Boston, Massachusetts 02116-5066

Consent Order  
DWC Enforcement File No. 26456

**General remarks and official action taken:**

This is a consent order with The Ohio Casualty Insurance Company (Ohio Casualty). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Ohio Casualty.

**Waiver**

Ohio Casualty acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Ohio Casualty 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. Ohio Casualty 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. Ohio Casualty was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

Failure to Accurately Pay Attorney Fees Ordered by DWC

3. On [REDACTED], DWC ordered Ohio Casualty to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Ohio Casualty to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
4. The total attorney fees ordered in connection with the claim was [REDACTED]. Ohio Casualty paid [REDACTED] in attorney fees on this claim, totaling an overpayment of [REDACTED] to the attorney.
5. On [REDACTED], Ohio Casualty issued a lump sum payment to the injured employee for [REDACTED] plus interest.

**Assessment of Sanction**

1. Failure to provide accurate 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 history and extent of previous administrative violations; the penalty necessary to deter future violations.
  4. DWC found the following factors 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 taken to rectify the consequences of the prohibited act, as the attorney fee schedule previously was on an automatic pay system but the insurance carrier has now instituted a program with greater supervisory review and heightened oversight.
  5. Ohio Casualty 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. Ohio Casualty 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, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Ohio Casualty 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 § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
8. 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.
9. 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.
10. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), the fee approved by DWC will be limited to 25% of each weekly income benefit payment to the employee, up to 25% of the total income benefits allowed, and must also be based on the attorney's time and expenses subject to the guidelines and standards in the Texas Workers' Compensation Act and DWC rules.
11. Ohio Casualty violated TEX. LAB. CODE §§ 415.002(a)(17), 415.002(a)(22), 415.021(a), and 415.0035(e) when it failed to accurately pay attorney fees ordered by DWC.

Commissioner's Order  
The Ohio Casualty Insurance Company  
DWC Enforcement File No. 26456  
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### Order

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



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Cassie Brown  
Commissioner of Workers' Compensation

Approved Form and Content:



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Amy Norman  
Staff Attorney, Enforcement  
Compliance and Investigations  
Division of Workers' Compensation

STATE OF Texas §

§  
COUNTY OF Collin §

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

"My name is Leah Hernandez. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

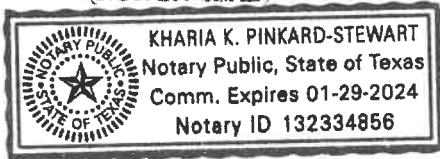
I hold the office of Claims Manager and am the authorized representative of The Ohio Casualty Insurance Company. I am duly authorized by the organization to execute this statement.

The Ohio Casualty Insurance Company has knowingly and voluntarily entered into this consent order and agrees with and consents to the issuance and service of this consent order."

Leah Hernandez  
Affiant

SWORN TO AND SUBSCRIBED before me on 04/06, 2021.

(NOTARY SEAL)



Kharia Pinkard

Signature of Notary Public

Kharia Pinkard

Printed Name of Notary Public

01/29/2024

Commission Expiration

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092