

No. **2023-7905**

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

**Date: 4/24/2023**

**Subject Considered:**

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

Consent Order

DWC Enforcement File Nos. 31168, 31261, 31262, 31266, 31267, 31335, 31336 & 31337

**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 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 31168*

3. 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.
4. Respondent issued a [REDACTED] payment to the injured employee for unpaid income benefits on [REDACTED]
5. On March [REDACTED] Respondent was required to pay [REDACTED] in attorney fees, or 25% of the income benefit paid to the injured employee.
6. Respondent did not pay the injured employee's attorney until [REDACTED] which was 13 days late.
7. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to the same injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
8. Respondent owed a balance of [REDACTED] in attorney fees as of [REDACTED]
9. Respondent paid [REDACTED] to the injured employee for unpaid income benefits on [REDACTED]
10. On [REDACTED] Respondent was required to pay [REDACTED] in attorney fees, or 25% of the income benefit paid to the injured employee.
11. Respondent did not issue payment to the injured employee's attorney until [REDACTED], which was 22 days late.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

*File No. 31261*

- 12.i On [REDACTED] Respondent received a DWC Form-69, Report of Medical Evaluation, from the injured employee's certifying doctor (CD) in connection with a CD examination.i
- 13. The CD determined that the injured employee reached maximum medical improvement on [REDACTED] with a [REDACTED] impairment rating.i
- 14. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the CD report. The deadline to pay benefits was [REDACTED]
- 15. Respondent paid IIBs and interest in the amount of [REDACTED] on [REDACTED] which was 13 days late.

Failure to Timely Pay Temporary Income Benefits

*File No. 31262*

- 16.i Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED] through [REDACTED] the amount of [REDACTED] per week. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely issue the TIBs payments, as follows:i

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	17
b.	[REDACTED]	[REDACTED]	[REDACTED]	10
c.	[REDACTED]	[REDACTED]	[REDACTED]	3

*File No. 31266*

- 17.i Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED] the amount of [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was five days late.

*File No. 31336*

18. Respondent was required to pay TIBs to an injured employee from [REDACTED] through [REDACTED] in the amount of [REDACTED] per week. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely issue the TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	55
b.	[REDACTED]	[REDACTED]	[REDACTED]	48
c.	[REDACTED]	[REDACTED]	[REDACTED]	41
	[REDACTED]	[REDACTED]	[REDACTED]	34
	[REDACTED]	[REDACTED]	[REDACTED]	27
	[REDACTED]	[REDACTED]	[REDACTED]	20
	[REDACTED]	[REDACTED]	[REDACTED]	13
	[REDACTED]	[REDACTED]	[REDACTED]	6

Failure to Timely Act on a Medical Bill

*File No. 31267*

19. A health care provider provided medical services to an injured employee eight times in [REDACTED]. On [REDACTED], Respondent received completed medical bills in the amount of [REDACTED] 0 from the health care provider for all dates of service.
20. Respondent was required to act on the bills within 45 days of receiving them. The deadline to act was [REDACTED].
21. On [REDACTED], Respondent issued a partial payment for all dates of service in the amount of [REDACTED], which was 58 days late.

*File No. 31335*

22. On [REDACTED], a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider for that date of service.

23. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
24. On [REDACTED] Respondent issued a partial payment with interest in the amount of [REDACTED] which was 104 days late.
25. On [REDACTED] a health care provider provided medical services to the same injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider for that date of service.
26. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
27. On [REDACTED], Respondent issued a partial payment with interest in the amount of [REDACTED] which was 73 days late.

*File No. 31337*

28. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider for that date of service.
29. On [REDACTED] prior to the receipt of the medical bill, Respondent denied the underlying claim, disputing that the claimant sustained a compensable injury in the course and scope of employment.
30. However, Respondent was still required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
31. On [REDACTED] Respondent issued payment on the bill in the amount of \$ [REDACTED] which was 147 days late.

**Assessment of Sanction**

32. 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.

33. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and beneficiaries and the Texas workers' compensation system.
34. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
35. 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.
36. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.

37. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
38. 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).
39. 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, 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)(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), 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.

Failure to Timely Pay Attorney Fees Ordered by DWC

7. 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.
8. 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.
9. Respondent violated Tex. Lab. Code §§ 415.002(a)(20); 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.

Failure to Pay Accrued Impairment Income Benefits Based on a Certifying Doctor Report

10. 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.
11. Pursuant to Tex. Lab. Code § 408.121(b), an insurance carrier must pay IIBs no later than five days after the insurance carrier receives the doctor's report certifying maximum medical improvement.
12. Pursuant to 28 Tex. Admin. Code § 130.8, an insurance carrier must pay benefits in accordance with the doctor's medical evaluation report no later than five days after receiving the doctor's medical evaluation report when maximum medical improvement is not disputed.
13. Respondent violated Tex. Lab. Code §§ 408.121(b); 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely pay accrued income benefits within five days of receiving the CD report.



Failure to Timely Pay Temporary Income Benefits

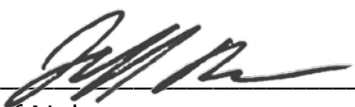
14. Pursuant to Tex. Lab. Code §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
15. Pursuant to 28 Tex. Admin. Code §§ 124.3, an insurance carrier is required to initiate payment of TIBs no later than the seventh day after the accrual date.
16. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 each time Respondent failed to timely pay TIBs.

Failure to Timely Act on a Medical Bill

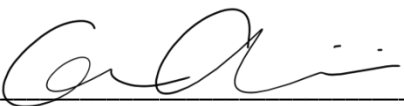
17. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
18. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20); 415.002(a)(22); and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

**Order**

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$38,500 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.

  
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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, DE, 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 April 13, 2023.