

No. **2022-7713**

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

**Date: 12/29/2022**

**Subject Considered:**

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

Consent Order  
DWC Enforcement File No. 28559, 29047, 28917, 29249, 29098, and 29355

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

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits (TIBs)

*File No. 28559*

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

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	77
b.	[REDACTED]	[REDACTED]	[REDACTED]	70
c.	[REDACTED]	[REDACTED]	[REDACTED]	63
d.	[REDACTED]	[REDACTED]	[REDACTED]	56
e.	[REDACTED]	[REDACTED]	[REDACTED]	49
f.	[REDACTED]	[REDACTED]	[REDACTED]	42
g.	[REDACTED]	[REDACTED]	[REDACTED]	35
h.	[REDACTED]	[REDACTED]	[REDACTED]	28
i.	[REDACTED]	[REDACTED]	[REDACTED]	21
j.	[REDACTED]	[REDACTED]	[REDACTED]	14
k.	[REDACTED]	[REDACTED]	[REDACTED]	7

*File No. 29047*

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

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

Failure to Timely Comply with a DWC Order

*File No. 28917*

5. [REDACTED] DWC issued a contested case hearing decision and order (CCH D&O) requiring Respondent to pay benefits in accordance with the decision. Respondent received the CCH D&O on [REDACTED]

6. The CCH D&O became final on [REDACTED] Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED]
7. Respondent paid benefits on [REDACTED] which was nine days late. Respondent paid interest on [REDACTED] which was 49 days late.

*File No. 29249*

8. On [REDACTED] DWC issued an order requiring Respondent to initiate an advance payment of income benefits of [REDACTED] within seven days from the date Respondent receives the DWC Order.
9. Respondent received the DWC order on [REDACTED] The deadline to comply was [REDACTED]
10. Respondent paid the advance benefits on [REDACTED] which was six days late.

Failure to Timely Act on a Medical Bill

*File No. 29098*

11. [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] 2021, Respondent received a completed medical bill in the amount of [REDACTED] from the health care provider.
12. Respondent was required to act on the bill within 45 days of receiving it on [REDACTED] The deadline to act was [REDACTED]
13. On [REDACTED] Respondent issued payment in the amount [REDACTED] which was 42 days late.

Failure to Timely Initiate Payment of Accrued Impairment Income Benefits

*File No. 29355*

14. Respondent was required to pay impairment income benefits (IIBs) to an injured employee for the period between [REDACTED] through [REDACTED] [REDACTED] The IIBs payment was due seven days after the first day of the pay period which was [REDACTED] Respondent paid IIBs on [REDACTED] which was 14 days late.

15. Respondent was also required to pay IIBs to an injured employee for the period between [REDACTED] through [REDACTED]. The IIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent paid IIBs on [REDACTED] which was 7 days 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 necessary to DWC's goals of ensuring that injured employees have access to prompt, high-quality medical care.
3. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and 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.
4. 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.
  5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations of this type. Regarding file numbers 28559 and 29047, Respondent has implemented a system whereby a weekly report is now sent to each adjuster and their supervisor to ensure payments continue to be made timely each week. In file number 29249, the adjuster for the claim has been retrained on advances that are ordered by DWC. In file number 29098, a system issue which caused the medical bill late payment has been resolved. In file number 29355, a system glitch caused some checks to be issued without a payee name. That glitch has been corrected.
  6. 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).
  7. 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 §§ 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.
6. 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 Initiate Payment of Accrued TIBs

##### *File Nos. 28559 and 29047*

7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 409.021, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

#### Failure to Timely Comply with a DWC Order

##### *File Nos. 28917 and 29249*

9. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.



10. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final.
11. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), and 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.
12. Pursuant to Tex. Lab. Code § 408.129(a) and 28 Tex. Admin. Code § 126.4(d) DWC shall notify the insurance carrier and the injured employee in writing when an advance is ordered. The insurance carrier must pay an advance ordered by DWC within seven days of the receipt of notice from DWC by the insurance carrier's Austin representative.
13. Respondent violated Tex. Lab. Code § 410.169; 415.002(a)(20) and (22); and 415.021; and 28 Tex. Admin. Code § 126.4(d) by failing to timely comply with a DWC order for advance of benefits.

#### Failure to Timely Act on a Medical Bill

##### *File No. 29098*

14. 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.
15. 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 Timely Initiate Payment of Accrued IIBs

##### *File No. 29355*

16. 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.
17. Pursuant to Tex. Lab. Code § 408.121(b) and 28 Tex. Admin. Code § 130.8, an employee's entitlement to IIBs begins the day after the employee reaches

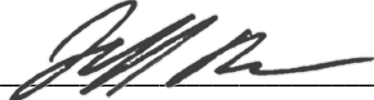
maximum medical improvement (MMI) and, when the date of MMI is not disputed, the carrier shall initiate payment of IIBs on or before the fifth day after the date of receipt of the employee's treating doctor's medical evaluation report.

18. Respondent violated Tex. Lab. Code §§ 408.121; 415.002(a)(16), (20) and (22); and 28 Tex. Admin. Code § 130.8 by failing to timely pay IIBs.



**Order**

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$24,750 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:

  
\_\_\_\_\_  
Austin Southerland  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

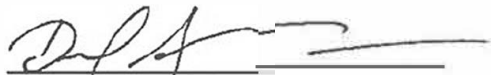
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Unsworn Declaration

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 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, 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.

  
Declarant

Executed on December 12, 2022.