

No. 2020 6286

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

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

Date: MAR 12 2020

**Subject Considered:**

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

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 22769

**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 workers' compensation/employers' liability insurance in the state of Texas.
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 INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS**

3. On [REDACTED], Ace American received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day accrued on [REDACTED].
5. Ace American was required to initiate or dispute temporary income benefits (TIBs) no later than the later of 15 days after the insurance carrier received written notice of the injury or seven days after the accrual date, or by [REDACTED]. Ace American would be liable for

all benefits that had accrued and were payable prior to the date Ace American filed a notice of dispute or denial if the notice of dispute or denial was filed after the 15th day.

6. Ace American did not file a notice of dispute or denial with the Texas Department of Insurance, Division of Workers' Compensation (DWC) until [REDACTED]. Therefore, Ace American was liable for all benefits that had accrued and were payable prior to [REDACTED], which were required to have been initiated by [REDACTED]. Ace American did not initiate payment of TIBs for the benefit period of [REDACTED], through [REDACTED], until [REDACTED], which was 69 days late.

### ASSESSMENT OF SANCTION

7. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
8. In assessing the sanction for this case, 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.
9. 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; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
10. 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 mitigating: evidence

of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules, as the insurance carrier was not aware that, due to a change in treating doctors, the injured employee was restricted and unable to work. As soon as it was made aware of the injured employee's disability and restrictions, the insurance carrier properly disputed the doctor's findings and paid the TIBs owed.

11. Ace American acknowledges that DWC and Ace American have communicated 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).
12. 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, 402.00128, 414.002, and 414.003.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs no later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay. If the insurance carrier files a notice of denial after the 15th day but on or before the 60th day after receipt of written notice of injury, the insurance carrier is liable for and shall pay all benefits that had accrued and were payable prior to the date the insurance carrier filed a notice of denial and only then is it permitted to suspend payment of benefits.
7. Ace American violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(20) and (22) when it failed to timely initiate payment of TIBs.

2020 6286

ORDER

Ace American is ORDERED to pay an administrative penalty of \$9,500 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.



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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Amy Norman  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

