

No. 2023-7727

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

Date: 1/6/2023

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 30136, 30312, 30334, 30457, & 30484

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, and 2020 Performance Based Oversight (PBO) assessments.

Failure to Continue to Timely Pay Death Benefits Promptly When Benefits Accrue

File No. 30136

3. Respondent was required to pay death benefits to a beneficiary from [REDACTED] through [REDACTED]. The death benefits payments were due seven days after the first day of the pay period. Respondent failed to timely issue the death benefits payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	16
b.	[REDACTED]	[REDACTED]	[REDACTED]	8
c.	[REDACTED]	[REDACTED]	[REDACTED]	2

4. On [REDACTED] Respondent paid [REDACTED] in late accrued death benefits.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 30312

5. Respondent was required to initiate payment of temporary income benefits (TIBs) to an injured employee no later than the 15th day after Respondent received written notice of the injury. Respondent received written notice of the injury on [REDACTED], and the TIBs were due on [REDACTED]. Respondent paid on [REDACTED] which was 17 days late.

File No. 30334

6. 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]	32
b.	[REDACTED]	[REDACTED]	[REDACTED]	25
c.	[REDACTED]	[REDACTED]	[REDACTED]	18

File No. 30484

7. 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]	27
b.	[REDACTED]	[REDACTED]	[REDACTED]	20
c.	[REDACTED]	[REDACTED]	[REDACTED]	13
d.	[REDACTED]	[REDACTED]	[REDACTED]	6
e.	[REDACTED]	[REDACTED]	[REDACTED]	23
f.	[REDACTED]	[REDACTED]	[REDACTED]	16
g.	[REDACTED]	[REDACTED]	[REDACTED]	9
h.	[REDACTED]	[REDACTED]	[REDACTED]	2

File No. 30457

DWC Audit No. IP-22-201

8. On [REDACTED], DWC initiated DWC Audit No. IP-22-201 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial TIBs and timely and accurate submission of initial payment information to DWC.
9. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED]. DWC identified 50 initial TIBs payments for audit. A total of three initial TIBs payments failed to meet selection criteria and were dropped from the audit sample. The remaining 47 payments were reviewed to determine Respondent's compliance.
10. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

11. Respondent failed to timely initiate TIBs for 36.17% of examined payments (17 out of 47).
12. Specifically, Respondent issued payments to injured employees less than six days late in nine instances, between six and 15 days late in five instances, and over 30 days late in three instances.

Failure to Timely or Accurately Report EDI Data to DWC

13. Respondent failed to timely report initial TIBs payments for 4.26% of examined payments (2 out of 47).
14. Respondent failed to accurately report the First Date of Disability for 10.64% of examined payments (5 out of 47).
15. Respondent failed to accurately report the Date of First Written Notice for 8.51% of examined payments (4 out of 47).
16. Respondent failed to accurately report the initial TIBs from Date for 2.13% of examined payments (1 out of 47).
17. Respondent failed to accurately report the initial TIBs End Date for 4.26% of examined payments (2 out of 47).
18. Respondent failed to accurately report the Initial TIBs Payment Date for 8.51% of examined payments (4 out of 47).

Assessment of Sanction

19. Failure to provide income and death benefits in a timely and cost-effective manner is harmful to injured employees and beneficiaries and the Texas workers' compensation system.
20. Timely submitting information and documents to DWC is imperative for it to implement and enforce the Texas Workers' Compensation Act.

21. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
22. 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.
23. 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.
24. DWC found the following factors to be mitigating pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations.

25. 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).
26. 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 §§ 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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
7. 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 Continue to Timely Pay Death Benefits Promptly When Benefits Accrue

8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Under Tex. Lab. Code § 408.061 and 28 Tex. Admin. Code § 132.1, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
10. Pursuant to 28 Tex. Admin. Code § 132.17(f), an insurance carrier must initiate payment of death benefits to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
11. Respondent violated Tex. Lab. Code §§ 408.081, 408.181, 409.021, 409.023, 415.002(a)(16), (20), & (22), and 28 Tex. Admin. Code §§ 124.3, 124.7 and 132.17(f) each time Respondent failed to continue to timely pay death benefits as and when the benefits accrued.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

12. 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.
13. 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 accrued TIBs.


Failure to Timely or Accurately Report EDI Data to DWC

14. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.

15. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a) and (b) each time Respondent failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.


Order

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$60,000 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.



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

Commissioner's Order
Ace American Insurance Company
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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 Delaware 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 15, 2022.

Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092