

No. **2024-9039**

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

**Date: 12/17/2024**

**Subject Considered:**

American Casualty Company of Reading, PA  
PO Box 8317  
Chicago, Illinois 60680-8317

Consent Order  
DWC Enforcement File Nos. 35128 & 35129

**General remarks and official action taken:**

This is a consent order with American Casualty Company of Reading, PA (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 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

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3.i From [REDACTED], through [REDACTED], Respondent inappropriately deducted 25% in attorney fees from the injured employee's temporary income benefits (TIBs) resulting in an underpayment of \$ [REDACTED] as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.i	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	756
b.i	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	749
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	741
d.i	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	734
e.i	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	727
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	720
g.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	713i
h.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	706i
i.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	560i
j.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	525

- 4. Respondent paid \$ [REDACTED] in late TIBs.i
- 5. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was 36 days late.i

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- 6.i On [REDACTED], Respondent received a designated doctor (DD) report in connection with a DD examination. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], and had an [REDACTED] % impairment rating (IR).i
- 7.i Respondent was required to pay IIBs to the injured employee for the periods between [REDACTED], through [REDACTED]. Respondent failed to pay timely IIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	██████████ to ██████████		██████████	16
b.	██████████ to ██████████		██████████	9
c.	██████████ to ██████████		██████████	2

- 8. Respondent paid \$ ██████████ in late IIBs.
- 9. On ██████████, Respondent paid \$ ██████████ in interest, which was 379 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. 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:

- a. the seriousness of the violation, including the fact that IIBs were paid 756 days late;
  - b. the penalty necessary to deter future violations;
  - c. Respondent's significant disciplinary history regarding late payments;
  - d. Respondent's history of compliance with EDI requirements;
  - e. Respondent's status in the top 40 workers' compensation carriers in market share; and
  - f. The negative impact on the delivery of benefits to an injured employee.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: Respondent has confirmed an action plan has been created for all Texas claims which includes additional training for claim professionals, additional oversight by management, and time tracking mechanisms.
  5. 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).
  6. 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.

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7. Pursuant to Tex. Lab. Code § 408.101, an employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.
8. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 28 Tex. Admin. Code § 124.7, an insurance carrier is required to initiate payment of TIBs no later than the seventh day after the accrual date.
9. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 124.7 each time Respondent failed to timely initiate TIBs.

Failure to Timely and Accurately Pay Accrued Impairment Income Benefits (IIBs)

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10. Pursuant to Tex. Lab. Code § 408.126, an impairment income benefit is equal to 70% of the employee's average weekly wage.
11. Respondent violated Tex. Lab. Code §§ 408.081, 408.126, 409.023, 415.002(a)(16) and (22) each time Respondent failed to timely and accurately pay IIBs.

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Failure to Timely Pay Interest

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12. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
13. Respondent violated Tex. Lab. Code § 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) each time Respondent failed to timely pay interest with accrued but unpaid income benefits.

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**Order**

It is ordered that American Casualty Company of Reading, PA must pay an administrative penalty of \$5,500 within 30 days from when the Commissioner signs the order.

After receiving an invoice, American Casualty Company of Reading, PA must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.

  
\_\_\_\_\_  
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** Illinois §  
§  
**COUNTY OF** Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter McCarron. I hold the position of Head of P/C Claims and Specialty & Commercial and am the authorized representative of American Casualty Company of Reading, PA. My business address is:

151 N Franklin, Chicago, Cook, Illinois, 60606.  
(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.

*Peter McCarron*

Declarant

Executed on November 25, 2024.