

No. 2025-9126

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

**Date: 2/7/2025**

**Subject Considered:**

Berkshire Hathaway Direct Insurance Company  
1314 Douglas Street, Suite 1400  
Omaha, Nebraska 68102-1944

Consent Order  
DWC Enforcement File Nos. 35570 & 35571

**General remarks and official action taken:**

This is a consent order with Berkshire Hathaway Direct 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was not selected to be tiered in the 2020, 2022, or 2024 Performance Based Oversight (PBO) assessments.

Failure to Timely Comply with a Contested Case Hearing Decision and Order

*File No. 35570*

4. On [REDACTED], DWC issued a contested case hearing decision and order (CCH D&O) in Docket Number [REDACTED]. The CCH D&O found the injured employee was entitled to supplemental income benefits (SIBs) for the sixth quarter. The CCH D&O required Respondent to pay benefits and interest in accordance with the decision. Respondent received the CCH D&O on [REDACTED].
5. The CCH D&O became final on April 24, 2024. Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED].
6. On [REDACTED], Respondent paid [REDACTED] in SIBs and attorney fees in compliance with the CCH D&O, leaving a balance of \$ [REDACTED].
7. On May 20, 2024, Respondent paid \$ [REDACTED] in SIBs, leaving a balance of \$ [REDACTED]. The payment was six days late.
8. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs and interest 224 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 33571*

9. On [REDACTED], in Attorney Fee Order (AFO) No. 35, DWC ordered Respondent to pay \$ [REDACTED] in attorney fees for legal services provided to an injured employee. The legal services were in connection with a dispute related to supplemental income benefits in which the injured employee prevailed.<sup>1</sup> Respondent was required to pay attorney fees within seven days of receipt of the attorney fee order.
10. On [REDACTED], Respondent received AFO No. 35. The deadline for payment was [REDACTED].
11. On [REDACTED], in AFO No. 36, DWC approved \$ [REDACTED] in attorney fees for representing an injured employee and to be paid at a rate of 25% of each income benefit paid to the injured employee.

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<sup>1</sup> The injured employee was found entitled to SIBs for the sixth quarter in Docket Number 20122047-04-CC.

12. On [REDACTED], Respondent complied with AFO No. 35 by paying \$ [REDACTED] to the injured employee's attorney. The payment was 34 days late.
13. Respondent also made a benefit payment to the injured employee on [REDACTED]. [REDACTED] AFO No. 36 required Respondent to pay [REDACTED] in attorney fees from the injured employee's benefit payment.
14. On [REDACTED], Respondent paid \$ [REDACTED] in attorney fees 218 days late.

### **Assessment of Sanction**

1. 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.
2. 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.
3. 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:
    - a. the seriousness of the violation, including the 2018 and 224 days of non-compliance with DWC orders, which is a priority violation pursuant to Tex. Lab. Code § 415.0235, and resulted in the late payments of \$4,816.32 in SIBs and \$2,250 in attorney fees;
    - b. the penalty necessary to deter future violations; and
    - c. that the administrative violation had a negative impact on the delivery of \$4,816.32 in SIBs benefits to an injured employee.
  5. DWC found the Respondent's lack of prior disciplinary history for this violation mitigating under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
  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 § 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 Comply with a Contested Case Hearing Decision and Order

*File No. 35570*

7. 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.
8. 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. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
9. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e), 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 33571*

10. 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.

11. Pursuant to Tex. Lab. Code § 408.147(c), if an insurance carrier disputes the commissioner's determination that an injured employee is entitled to SIBs or the amount of SIBs due and the injured employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the injured employee as a result of the insurance carrier's dispute, and for SIBs accrued, but not paid, and interest on that amount.
12. Pursuant to 28 Tex. Admin. Code § 130.108(e), an insurance carrier who unsuccessfully contests a DWC determination of entitlement to SIBs is liable for all accrued, unpaid supplemental income benefits, and any interest on that amount, and all reasonable and necessary attorney's fees incurred by the injured employee as a result of the insurance carrier's dispute which have been ordered by the division or court.
13. 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.
14. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) each time it failed to timely comply with a DWC order to pay attorney fees.

**Order**

It is ordered that Berkshire Hathaway Direct Insurance Company must pay an administrative penalty of \$9,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Berkshire Hathaway Direct Insurance Company 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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Tyrus Housh  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF** Texas §  
§  
**COUNTY OF** Denton §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Pam Halsey. I hold the position of Sr. Claim Rep and am the authorized representative of Berkshire Hathaway Direct Insurance Company. My business address is:

1314 Douglas St #1400, Omaha, Douglas, NE, 68102.  
(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.

Pam Halsey  
Declarant

Executed on 1/17, 2025.