

No. **2025-9390**

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

Date: 7/3/2025

Subject Considered:

Berkley National Insurance Company
1250 East Diehl Road, Suite 200
Naperville, Illinois 60563-9338

Consent Order
DWC Enforcement File No. 36886

General remarks and official action taken:

This is a consent order with Berkley National 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 classified as "average" tier in the 2020 and 2022 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2024 PBO assessment.

DWC Audit No. IBA-25-103

3. On [REDACTED], DWC initiated DWC Audit No. IBA-25-103 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits as well as timely submitting claim data to DWC.
4. The audit examined death benefit payments that Respondent reported issuing between [REDACTED], and [REDACTED]. DWC identified two LIBs claims and six initial death benefit claims for audit. The two LIBs claims failed to meet selection criteria and were dropped from the audit sample. All six death benefit claims were reviewed to determine Respondent's compliance.
5. The audit focused on the accuracy of Respondent's payment of death benefits and timely submission of claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting death benefit terminations.
6. Respondent failed to timely or accurately pay [REDACTED] % of examined death benefit claims (2 out of 6).
7. Respondent underpaid \$ [REDACTED] of death benefits over 362 weeks in two claims.

Assessment of Sanction

1. Failure to provide death benefits or lifetime income benefits in a timely and cost-effective manner is harmful to injured employees or beneficiaries under particularly stressful circumstances, and increases the likelihood of disputes in 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 or their beneficiaries;
 - the history of compliance with EDI requirements;
 - 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 violations are serious, negatively impacting the delivery of \$ [REDACTED] in benefits over 362 weeks;
 - b. Respondent has a history of similar administrative violations, including one consent order and one warning letter involving late death benefits;
 - c. a penalty is necessary to deter future violations;
 - d. the conduct negatively impacted the delivery of \$ [REDACTED] to beneficiaries;
 - e. Respondent received an economic benefit from the conduct; and
 - f. Respondent has a heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
4. As a matter of justice, DWC considered as mitigating the fact that this matter results from a DWC audit and not a system participant complaint pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
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, 409.021, 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 § 408.061(d), a weekly death benefit may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
7. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. The amount of a death benefit is equal to 75% of the employee's average weekly wage.
8. Pursuant to Tex. Lab. Code § 409.021, 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. It must also notify DWC in writing of its initiation of income or death benefit payments in the manner DWC rules prescribe.
9. Pursuant to Tex. Lab. Code § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

10. Pursuant to 28 Tex. Admin. Code § 124.2(d)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resumptions, or terminations involving death benefits.
11. 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.
12. Respondent violated Tex. Lab. Code §§ 408.181, 409.023, 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code § 132.17 each time Respondent failed to timely pay accurate death benefits.

Order

It is ordered that Berkley National Insurance Company must pay a \$39,000 administrative penalty within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Berkley National 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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