

No. **2025-9594**

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

Date: 11/7/2025

Subject Considered:

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

Consent Order
DWC Enforcement File Nos. 37306 & 37663

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 Pay Accrued Temporary Income Benefits Based on a Designated Doctor Report and Timely Comply with a DWC Order to Produce Documents

3. On [REDACTED], Respondent received a designated doctor (DD) report of a DD examination performed on [REDACTED].
4. The DD determined that the injured employee had disability from [REDACTED], to [REDACTED].
5. Respondent was required to pay accrued temporary income benefits (TIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED].
6. On [REDACTED], Respondent received a document request letter instructing Respondent to provide specified documents regarding the failure to pay income benefits based on a DD report.
7. On [REDACTED], Respondent paid [REDACTED] in TIBs 44 days late.
8. On [REDACTED], after Respondent failed to respond to the document request letter, DWC ordered Respondent to produce the following documents:
 - a. A copy of the date stamped Report of Medical Evaluations, DWC Form-069, and Designated Doctor Examination Data Report, DWC Form 68 and narrative report received from the DD after the DD examination on [REDACTED];
 - b. All Plain Language Notices regarding Initiation/Termination Code /Reduction/Disputes of Income Benefits (PLNs #1, 2, 3, 6, 7, 8, 9, 10, 11);
 - c. A complete payment summary that includes the check number, the amount of the payment, the types of payment, the date of payment, and the benefit period for each check paid to the injured employee and the injured employee's attorney from [REDACTED], to present;
 - d. All adjuster file notes from [REDACTED], to present as required by TAC, Chapter 28, Section 102. 4(i); and
 - e. Insurance carrier's statement of position regarding the failure to pay benefits after receipt of a designated doctor's report.
9. On [REDACTED], Respondent received the DWC order to produce. Respondent was ordered to produce the documents by [REDACTED].

10. On [REDACTED], Respondent complied with the order to produce 116 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. Timely submitting information to DWC and complying with DWC orders is imperative to DWC's ability to implement and enforce the Texas Workers' Compensation Act.
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;
 - 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 conduct is serious because:
 - i. Respondent engaged in knowing or intentional conduct and violation of an order, which is a priority violation under Tex. Lab. Code

- § 402.0235 and undermines DWC's ability to perform its statutory functions; and
- ii. Respondent delivered [REDACTED] in benefits to an injured employee 44 days late.
 - b. Respondent has a recent history of similar violations, including three consent orders since November 2023 involving violation of an order or benefit dispute agreement and one recent consent order involving late payment of TIBs.
 - c. A penalty is necessary to deter future non-compliance with DWC orders to produce documents.
 - d. Respondent's conduct has a negative impact on [REDACTED] in benefits to an injured employee.
5. DWC is aware of no mitigating factors pursuant to 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) 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.

Failure to Timely Comply with a DWC Order to Produce Documents

File No. 37306

6. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), a person regulated by DWC under this title commits an administrative violation if they violate the Texas Workers' Compensation Act, a DWC rule, or a commissioner's order or decision.
7. Pursuant to 28 Tex. Admin. Code § 102.9, DWC requires those subject to the Texas Workers' Compensation Act to provide information as necessary. DWC may follow up on a request for information by issuing an order to produce information.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.0035(e); 415.021(a); and 28 Tex. Admin. Code § 102.9 when it failed to comply with a DWC order to produce documents.

Failure to Pay Accrued TIBs Based on a DD Report

File No. 37663

9. 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.
10. Pursuant to Tex. Lab. Code § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.

11. Pursuant to 28 Tex. Admin. Code § 127.10(i), an insurance carrier must pay all benefits in accordance with the DD report for the issues in dispute no later than five days after receiving the report.

12. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(i) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Order

It is ordered that Berkshire Hathaway Direct Insurance Company must pay an administrative penalty of \$10,000 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Missouri §
§
COUNTY OF Jackson §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Emily Pechous. I hold the position of TPA Claims Liasion and am the authorized representative of Berkshire Hathaway Direct Insurance Company. My business address is:

P.O. Box 3300 Wilkes-Barre Luzerne PA 18773
(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.

Emily Pechous
Declarant

Executed on October 10, 2025.