

No. 2019 5991

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: JUN 25 2019

**Subject Considered:**

**SAFETY NATIONAL CASUALTY CORPORATION**  
1832 Schuetz Road  
Saint Louis, Missouri 63146

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NOS. 18602 & 18603

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Safety National Casualty Corporation (Safety National).

**WAIVER**

Safety National acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Safety National waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. Safety National 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. Safety National was classified as "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. Safety National was not selected to be tiered in the 2007 PBO assessment.

**FAILURE TO TIMELY PAY ATTORNEY'S FEES  
ORDERED BY DWC**

3. In two unrelated instances, Safety National failed to timely pay attorney's fees ordered by the Texas Department of Insurance, Division of Workers' Compensation (DWC). The two instances are the subjects of DWC Enforcement File Nos. 18602 and 18603.

**Instance One - DWC Enforcement File No. 18602**

4. On [REDACTED], Safety National received an order for attorney fees – sequence #1 – totaling \$ [REDACTED]. DWC ordered Safety National to pay attorney's fees in the amount of 25% of each income benefit payment to the injured employee.
5. On [REDACTED], Safety National issued a check to the injured employee for indemnity benefits. Safety National was required to issue payment to the attorney for the injured employee the same day but did not issue payment until [REDACTED] [REDACTED], which was five days late.

**Instance two - DWC Enforcement File No. 18603**

6. During the period of [REDACTED], through [REDACTED], Safety National received 24 sequences of attorney's fee orders from DWC, totaling \$ [REDACTED]. DWC ordered Safety National to pay attorney's fees in the amount of 25% of each income benefit payment to the injured employee.
7. On [REDACTED] [REDACTED], Safety National issued a check to the injured employee for indemnity benefits. Safety National was required to issue payment to the attorney for the injured employee the same day but did not issue payment until [REDACTED], which was 62 days late.
8. Additionally, Safety National issued income benefit payments to the injured employee each week for eight weeks following the initial benefits payment on [REDACTED], but also failed to issue payment of attorney's fees on each of those occasions. Safety National issued the payments to the attorney, along with the payment for the [REDACTED] attorney's fees amount, in a lump sum on [REDACTED].

**ASSESSMENT OF SANCTION**

9. Timely payment of attorney's fees to injured employees' attorneys is imperative to DWC's goal of ensuring that injured employees have access to a fair and accessible dispute resolution process.
10. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;



- whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
11. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the seriousness of the violation; the history and extent of previous administrative violations; and the penalty necessary to deter future violations.
12. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act.
13. Safety National acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
14. Safety National acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

### CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to TEX. LAB. CODE §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, 414.003, 415.002, and 415.021; 28 TEX. ADMIN. CODE §§ 152.1 and 180.26.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.

4. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it violates a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of 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 28 TEX. ADMIN. CODE § 152.1, insurance carriers are required to pay attorney's fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
8. Safety National violated TEX. LAB. CODE §§ 415.002(a)(22), 415.021(a), and 415.002(a)(20) each time it failed to timely comply with a DWC order to pay attorney's fees.


**ORDER**

Safety National Casualty Corporation is ORDERED to pay an administrative penalty of \$5,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

  
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Cassie Brown  
Commissioner of Workers' Compensation

Approved as to Form and Content:

  
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Van B. Moreland  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092



