

No. **2024-8782**

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

**Date: 8/14/2024**

**Subject Considered:**

Ace American Insurance Company  
436 Walnut Street  
Philadelphia, Pennsylvania 19106-3703

Consent Order  
DWC Enforcement File Nos. 34630, 34691, 34732, & 34794

**General remarks and official action taken:**

This is a consent order with Ace American 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 34630

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay \$ [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	81
b.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	78
c.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	71
d.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	64
e.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	57
f.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	50
g.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	43
h.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	36
i.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	29
j.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	22
k.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	15
l.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	8
m.	[REDACTED] to [REDACTED]	[REDACTED]	[REDACTED]	1

Failure to Timely Comply with a Benefit Dispute Agreement (BDA)

File No. 34732

4. On [REDACTED], the parties executed a BDA regarding an injured employee's impairment income benefits (IIBs)].
5. On [REDACTED], Respondent received the DWC-approved BDA.
6. Respondent was required to pay benefits to the injured employee within five days from executing the BDA. The deadline to pay was [REDACTED].
7. On [REDACTED], Respondent paid \$ [REDACTED] in IIBs 43 days late.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 34691

8. Between [REDACTED], and [REDACTED], DWC ordered Respondent to pay attorney fees for representing an injured employee at a rate of 25% of each income benefit paid to the injured employee.<sup>1</sup>
9. Between [REDACTED], and [REDACTED], Respondent issued multiple payments to the injured employee (IE) for supplemental income benefits. Respondent failed to timely pay \$ [REDACTED] in attorney fees as follows:

	<b>Date Paid to the injured employee</b>	<b>Date Due to the Attorney</b>	<b>Date Paid</b>	<b>Days Late</b>
a.	[REDACTED]	[REDACTED]	[REDACTED]	<b>259</b>
b.	[REDACTED]	[REDACTED]	[REDACTED]	<b>231</b>
c.	[REDACTED]	[REDACTED]	[REDACTED]	<b>207</b>
d.	[REDACTED]	[REDACTED]	[REDACTED]	<b>169</b>
e.	[REDACTED]	[REDACTED]	[REDACTED]	<b>138</b>
f.	[REDACTED]	[REDACTED]	[REDACTED]	<b>109</b>
g.	[REDACTED]	[REDACTED]	[REDACTED]	<b>77</b>
h.	[REDACTED]	[REDACTED]	[REDACTED]	<b>47</b>
i.	[REDACTED]	[REDACTED]	[REDACTED]	<b>15</b>

File No. 34794

1. On [REDACTED], DWC ordered Respondent to pay \$ [REDACTED] in attorney fees for representing an injured employee at a rate of 25% of each income benefit paid to the injured employee.
2. Between [REDACTED], and [REDACTED], Respondent paid benefits to the injured employee (IE) on multiple dates. However, Respondent failed to timely pay \$ [REDACTED] in attorney fees at a rate of 25% of the income benefits paid to the injured employee as follows:

<sup>1</sup> Attorney Fee Order (AFO) Seq. Nos. 15-31

	<b>Benefits Paid to IE</b>	<b>Attorney Fee Owed</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
a.					<b>24</b>
b.					<b>17</b>
c.					<b>10</b>
d.					<b>3</b>

**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. Failure to timely comply with a benefit dispute agreement that is executed in good faith by the parties and approved by DWC increases the likelihood of disputes, and is harmful to injured employees and the Texas workers' compensation system because it damages system participants' faith in the dispute resolution process.
3. 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.
4. 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.
5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity 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; and other matters that justice may require, including but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
  6. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
  7. 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).
  8. 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.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 34630

7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Comply with a Benefit Dispute Agreement (BDA)

File No. 34732

9. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation by breaching a provision of an agreement that DWC approved.
10. Respondent violated Tex. Lab. Code §§ 415.002(a)(22) and 415.010 by failing to timely comply with a BDA.

Failure to Timely Pay Attorney Fees Ordered by DWC

File Nos. 34691 & 34794

11. 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.
12. 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.
13. Pursuant to 28 Tex. Admin. Code § 152.1(f), an attorney for an employee who prevails when a carrier contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits, and the fee shall not be limited to a maximum of 25% of the employee's recovery. All provisions of these rules, except §152.4 of this title (relating to Guidelines for Legal Services Provided to Claimants and Carriers), apply.
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) by failing to timely comply with a DWC order to pay attorney fees.

**Order**

It is ordered that Ace American Insurance Company must pay an administrative penalty of \$11,000 within 30 days from when the Commissioner signs the order.

After receiving an invoice, Ace American 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:



\_\_\_\_\_  
Dan Garcia  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation



**Unsworn Declaration**

**STATE OF** Delaware §  
§  
**COUNTY OF** New Castle §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Daniel S. Hawthorne. I hold the position of VP, Quality Assurance & Compliance and am the authorized representative of Ace American Insurance Company. My business address is:  
1 Beaver Valley Road, Wilmington, New Castle, Delaware, 19803.  
(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.

*Daniel S. Hawthorne*  
Declarant

Executed on July 18, 2024.