

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **AUG 26 2019**

Subject Considered:

ACE AMERICAN INSURANCE COMPANY
P.O. Box 1000
Philadelphia, Pennsylvania 19105-1000

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19562

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Ace American Insurance Company (Ace American).

WAIVER

Ace American acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Ace American 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. Ace American 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 types of insurance including workers' compensation/employers' liability insurance in the state of Texas.
2. Ace American was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO PAY ACCRUED INCOME BENEFITS BASED ON A DESIGNATED DOCTOR REPORT

3. On June 19, 2017, Ace American received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED] % impairment rating; that the injured employee could return to work light duty from [REDACTED], through the date of the DD examination on [REDACTED]; and that disability from [REDACTED], to present was a direct result of the compensable injury.

5. Ace American was required to pay accrued income benefits no later than five days after receiving the DD report, or by [REDACTED].
6. Ace American issued payments late for weeks [REDACTED], to [REDACTED], on [REDACTED]; for weeks [REDACTED], to [REDACTED], on [REDACTED]; and [REDACTED], to [REDACTED], on [REDACTED].

ASSESSMENT OF SANCTION

7. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
8. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (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.
9. 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, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.
10. 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: the demonstrated good faith of the violator, including actions taken to rectify the consequences

of the prohibited act. In his report, the DD went beyond scope of request and included conditions neither party requested or anticipated as part of the compensable injury. The DD determined claimant was at MMI for compensable and disputed injuries and his condition should be resolved but also included his own determination of [REDACTED], that he was not asked to opine on, and determined need for [REDACTED]. These issues with the DD opinion caused confusion and delay in moving forward and is shown by multiple letters of clarification exchanged between all parties. Finally, there was additional misunderstanding between the insurance carrier and the employer and whether the claimant was receiving full wages between [REDACTED], and [REDACTED].

11. Ace American acknowledges that DWC and Ace American have communicated 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).
12. Ace American 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, and 415.021; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE §§ 2001.051–2001.178.
2. The commissioner has authority to informally dispose of this matter as set forth herein 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 fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from 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 commissioner rule.
7. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.

8. Ace American violated TEX. LAB. CODE §§ 415.002(a)(16), 415.002(a)(20), and 415.002(a)(22) when it failed to pay accrued income benefits in accordance with the DD's report, within five days after receipt of the report.

ORDER

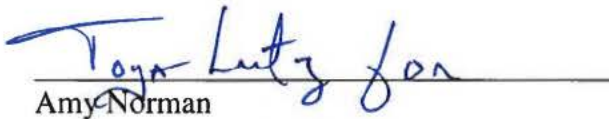
Ace American Insurance Company is ORDERED to pay an administrative penalty of \$18,000 within 30 days from the date of this Order.

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.



Cassie Brown
Commissioner of Workers' Compensation

Approved as to Form and Content:



Amy Norman
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

AFFIDAVIT

STATE OF Delaware §
 COUNTY OF New Castle §
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Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is Christopher Sitowski. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of VP, Claims, and am the authorized representative of Ace American Insurance Company. I am duly authorized by said organization to execute this statement.

Ace American Insurance Company waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers’ compensation.

Ace American Insurance Company is voluntarily entering into this consent order. Ace American Insurance Company consents to the issuance and service of this consent order.”

x Ch Sitowski
 Affiant

SWORN TO AND SUBSCRIBED before me on June 21, 2019.

(NOTARY SEAL)

Jeanette Rodriguez
 Signature of Notary Public

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| JEANETTE RODRIGUEZ Notary Public State of Delaware Printed Name of Notary Public My Commission Expires On January 25, 2023 |
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Commission Expiration Date