

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

**Date:** 4-10-2020

**Subject Considered:**

**ACE AMERICAN INSURANCE COMPANY**  
115 Wild Basin Road, Suite 207  
Westlake Hills, Texas 78746-3347

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 23217

**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 in the state of Texas to write multiple lines of insurance, including workers' compensation/employers' liability insurance.
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 TIMELY COMPLY WITH  
A BENEFIT DISPUTE AGREEMENT**

3. On [REDACTED], an injured employee and Ace American entered into a benefit dispute agreement (BDA) which was approved by Texas Department of Insurance, Division of Workers' Compensation (DWC). The BDA stated that the injured employee had a disability and was entitled to [REDACTED] from [REDACTED], through [REDACTED].
4. Ace American received the BDA on [REDACTED]. Ace American was required to comply with the BDA and issue payment of [REDACTED] within five days of receipt, or by [REDACTED].

5. Ace American issued payment of accrued TIBs 15 days late, on [REDACTED].

### ASSESSMENT OF SANCTION

6. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to injured employees and the Texas workers' compensation system.
7. 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.
8. 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; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
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 mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act, as the insurance carrier instituted additional procedures to ensure BDAs are escalated to team leaders as well as to adjusters, in an effort to avoid future inaccuracies.
10. Ace American 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).

11. 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, and 402.00128.
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 fails to comply with a provision of the Texas Workers' Compensation Act.
5. Pursuant to TEX. LAB. CODE § 415.010, a person commits a violation if the person breaches a provision of an agreement approved by DWC.
6. Ace American violated TEX. LAB. CODE §§ 415.010 and 415.002(a)(22) when it failed to timely comply with a BDA approved by DWC.

### **ORDER**

Ace American Insurance Company is ORDERED to pay an administrative penalty of \$2,500 within 30 days from the date of this Order.

COMMISSIONER'S ORDER  
Ace American Insurance Company  
TDI-DWC Enforcement File No. 23217  
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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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Amy Norman  
Staff Attorney, DWC Enforcement  
Compliance & Investigations  
Division of Workers' Compensation  
Texas Department of Insurance

**AFFIDAVIT**

STATE OF Delaware §

COUNTY OF New Castle §

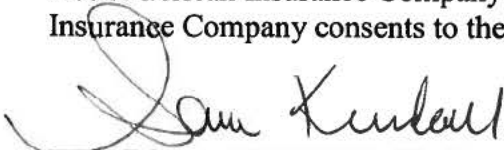
Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

“My name is Sara Kendall. 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 Vice President, 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.

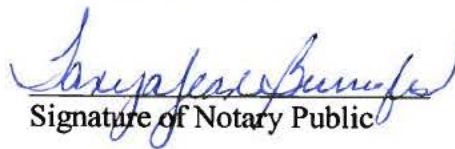
Ace American Insurance Company is voluntarily entering into this consent order. Ace American Insurance Company consents to the issuance and service of this consent order.”

  
Affiant

SWORN TO AND SUBSCRIBED before me on March 5, 2020.

(NOTARY SEAL)

TANYA JEAN BURROUGHS  
Notary Public  
STATE OF DELAWARE  
My Commission Expires 03-06-2020

  
Signature of Notary Public

Tanya Jean Burroughs  
Printed Name of Notary Public

03-06-2020  
Commission Expiration Date