

No. **2022-7534**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 9/30/2022**

**Subject Considered:**

Liberty Mutual Fire Insurance Company  
P.O. Box 259015  
Plano, Texas 75025-9015

Consent Order  
DWC Enforcement File Nos. 29612 & 29687

**General remarks and official action taken:**

This is a consent order with Liberty Mutual Fire 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 2007, 2009, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments.

### Failure to Pay Initial Supplemental Income Benefits

#### File No. 29612

3. On [REDACTED] Respondent received a *Notice of Entitlement to Supplemental Income Benefits* (SIBs), for the first quarter. The first quarter of SIBs began on [REDACTED]
4. Respondent's payment for the first month of the first quarter was due by the 10th day after Respondent received DWC's determination of entitlement or the seventh day of the first quarter, whichever is later. In this case, the latest date was [REDACTED]. The first payment was due [REDACTED]
5. Respondent issued a payment for SIBs for the first, second, and third months of the first quarter on [REDACTED] which was 29 days late.

### Failure to Pay Temporary Income Benefits Accurately

#### File No. 29687

6. Respondent incorrectly withheld attorney fees from the injured employee's temporary income benefits (TIBs) payments from [REDACTED] to [REDACTED]
7. Also, between [REDACTED] and [REDACTED] Respondent incorrectly paid weekly TIBs at a rate of [REDACTED] instead of the required amount, which was [REDACTED]
8. On [REDACTED] Respondent issued the deficit TIBs payment of [REDACTED] to the injured employee.

### **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. 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.
3. 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.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations of this type. Respondent recently conducted office-wide training on SIBs and managers sent copies of all SIBs orders. Additionally, Respondent has corrected a system error which caused the overpayment of attorney fees and implemented improved process controls to prevent similar errors in the future.
5. 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).

6. 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, 402.00111, 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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.
7. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.

### Failure to Pay Initial Supplemental Income Benefits

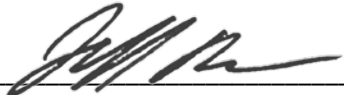
7. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
8. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
9. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the first quarter by the 10th day after receiving a DWC determination of entitlement or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
10. Respondent violated Tex. Lab. Code §§ 408.145, 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 by paying SIBs for the first, second, and third months of the first quarter on December 7, 2021, which was 29 days late.

Failure to Pay Temporary Income Benefits Accurately

11. Pursuant to Tex. Lab. Code § 408.103 and 28 Tex. Admin. Code § 129.3, the insurance carrier is required to pay the correct amount of TIBs.
12. Respondent violated Tex. Lab. Code §§ 408.103, 415.002(a)(20), and 415.002(a)(22) and 28 Tex. Admin. Code § 129.3 each time Respondent failed to accurately pay TIBs.

**Order**

It is ordered that Liberty Mutual Fire Insurance Company must pay an administrative penalty of \$5,500 within 30 days from the date of this order. Liberty Mutual Fire Insurance Company must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:



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Austin Southerland  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF**  Texas  §  
§  
**COUNTY OF**  Collin  §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is  Sean Doody . I hold the position of  Claims Team Manager  and am the authorized representative of Liberty Mutual Fire Insurance Company. My business address is:

7900 Windrose Ave ,  Plano ,  Collin ,  TX ,  75024 .  
(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.

Sean Doody   
Declarant

Executed on  September 28 , 2022.

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