

No. **2023-7860**

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

**Date: 3/22/2023**

**Subject Considered:**

New Hampshire Insurance Company  
175 Water Street, Floor 18  
New York, New York 10038-4976

Consent Order  
DWC Enforcement File Nos. 31141 and 31362

**General remarks and official action taken:**

This is a consent order with New Hampshire 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 "poor" tier in 2007 Performance Based Oversight (PBO) assessment, and "average" in 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Pay Supplemental Income Benefits

*File No. 31141*

3. On [REDACTED] Respondent received a *Notice of Entitlement for 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 *Notice of Entitlement for SIBs* or the 7th day of the first quarter, whichever is later. In this case, the latest date was [REDACTED]
5. Respondent issued payments for the first two months of the first Quarter of SIBs late, as follows:

	<b>Payment Period</b>	<b>Date Due</b>	<b>Date Paid</b>	<b>Days Late</b>
1.	[REDACTED]	[REDACTED]	[REDACTED]	11
2.	[REDACTED]	[REDACTED]	[REDACTED]	1

6. Respondent paid [REDACTED] late, including interest.

*File No. 31362*

7. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits*, for the second Quarter. The second quarter of SIBs began on [REDACTED]
8. Respondent's payment for the first month of the second quarter was due by the 10th day after Respondent received the application for SIBs or the 7th day of the second quarter, whichever is later. In this case, the latest date was [REDACTED].
9. Respondent issued payment for the first month of the second Quarter of SIBs on [REDACTED] which was nine days late.
10. Respondent paid [REDACTED] late, including interest.

### **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 considers the following factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited

act; the minimal economic impact resulting from the prohibited act; and prompt and earnest actions to prevent future violations. Specifically, an adjuster reviewed Respondent's payments, realized the date calculation errors in less than 11 days, and self-corrected, prior to contact by DWC. All remedial payments included interest, and one included the subsequent month's benefits 20 days early.

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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

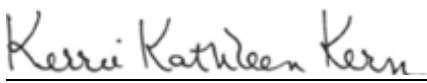
6. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
7. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
8. 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.
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 7th day of the quarter, and the second payment shall be made on or before the 37<sup>th</sup> day of the first quarter.
10. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 each time it failed to timely pay SIBs.

**Order**

It is ordered that New Hampshire Insurance Company must pay an administrative penalty of \$5,500 within 30 days from the date of this order. New Hampshire 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.

  
\_\_\_\_\_  
Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
\_\_\_\_\_  
Kathleen Kern  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF NEW JERSEY** §  
§  
**COUNTY OF HUDSON** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Peter Macdonald. I hold the position of Vice President and am the authorized representative of New Hampshire Insurance Company. My business address is:

30 Hudson Street, Jersey City, Hudson, NJ, 07302.  
(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.

DocuSigned by:  
*Peter Macdonald*  
D382AEAD7B074AC...

Declarant

Executed on March 8, 2023.