

No. **2023-8213**

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

**Date: 9/15/2023**

**Subject Considered:**

First Liberty Insurance Corporation  
PO Box 259015  
Plano, Texas 75025-9015

Consent Order  
DWC Enforcement File No. 31846

**General remarks and official action taken:**

This is a consent order with First Liberty Insurance Corporation (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, 2014, 2016, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2012 PBO assessment. Respondent was not selected to be tiered in the 2018 or 2022 PBO assessments.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

3. On [REDACTED] Respondent received a DWC Form-052, *Application for Supplemental Income Benefits* (SIBs), for the third quarter. The third quarter of SIBs began on [REDACTED]
4. Respondent's payment for the first month of the third quarter was due by the 10th day after Respondent received the application for SIBs or the seventh day of the third quarter, whichever is later. In this case, the latest date was [REDACTED]
5. Respondent's payment for the second month of the third quarter was due by the 37th day of the quarter. In this case, the latest date was [REDACTED]
6. Respondent's payment for the third month of the third quarter was due by the 67th day of the quarter. In this case, the latest date was [REDACTED]
7. Respondent failed to timely pay SIBs, as follows:

Third Quarter Payment Period	Date Due	Date Paid	Days Late
a. [REDACTED]	[REDACTED]	[REDACTED]	84
b. [REDACTED]	[REDACTED]	[REDACTED]	54
c. [REDACTED]	[REDACTED]	[REDACTED]	22

8. Respondent paid a total of [REDACTED] in late SIBs.

**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 history and extent of previous administrative 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 considered the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): retraining of personnel to prevent future violations.
  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.
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 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.
10. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the third quarter by the 10th day after receiving the Application for Supplemental Income Benefits 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.
11. 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 third quarter on [REDACTED] which were 84, 54, and 22 days late, respectively.

**Order**

It is ordered that First Liberty Insurance Corporation Insurance Company must pay an administrative penalty of \$9,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Respondent 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.

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

Approved Form and Content:

  
\_\_\_\_\_

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

**Unsworn Declaration**

**STATE OF** TX §  
§  
**COUNTY OF** Collin §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Ben Fleming. I hold the position of Team Manager and am the authorized representative of First Liberty Insurance Corporation. My business address is: 7900 Windrose Ave, Plano, Collin, TX, 75023.  
(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.

*Benjamin M Fleming*  
Declarant

Executed on September 12th, 2023.