

No. **2019 6139**

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **NOV 08 2019**

Subject Considered:

LIBERTY INSURANCE CORPORATION
175 Berkeley Street
Boston, Massachusetts 02116-5066

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 21791

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against Liberty Insurance Corporation (Liberty).

WAIVER

Liberty acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Liberty 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. Liberty 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, including workers' compensation/employers' liability.
2. Liberty 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 TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION ORDER**

3. A Contested Case Hearing Decision & Order (CCH D&O) was held on [REDACTED]. A decision was issued on [REDACTED], which Liberty received on [REDACTED]. The CCH D&O determined that the injured employee had [REDACTED] resulting from the compensable injury on [REDACTED], from [REDACTED] through [REDACTED]. The injured employee [REDACTED].

4. Liberty did not file an appeal. Liberty was required to comply with the CCH D&O within 20 days of the date it became final, which was [REDACTED]
5. Liberty issued an initial payment in the amount of [REDACTED] on [REDACTED], 55 days late, and came into compliance with a final payment of [REDACTED] on [REDACTED], which was 90 days late.

ASSESSMENT OF SANCTION

6. Failure to provide appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the Texas workers' compensation system.
7. 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.
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; whether the administrative violation has a negative impact on the delivery of benefits to the injured party; and other matters that justice may require, including the size of the company.
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 immediately issued payment and corrected the violation once it was discovered.

10. Liberty 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. Liberty 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 §§ 401.021 and 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 § 415.021(a), an insurance carrier commits an administrative violation by failing to comply with a DWC order.
6. Liberty violated TEX. LAB. CODE §§ 415.002(a)(22) and 415.021(a) when it failed to timely comply with a DWC order.

ORDER

Liberty Insurance Corporation is ORDERED to pay an administrative penalty of \$6,500 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.

C Brown

Cassie Brown *NCTW*
Commissioner of Workers' Compensation

Approved as to Form and Content:

A Norman

Amy Norman
Staff Attorney, DWC Enforcement
Texas Department of Insurance

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