

No. **2022-7259**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 3/3/2022

Subject Considered:

First Liberty Insurance Corporation
2100 West Walnut Hill Lane
Irving, Texas 75038

Consent Order
DWC Enforcement File No. 26168

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 workers' compensation/employers' liability insurance in Texas.
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 PBO assessment.

Failure to Timely Pay Death Benefits

3. On [REDACTED] Respondent received a DWC Form-001, *Employer's First Report of Injury*, for a date of injury of [REDACTED]. The DWC-001 stated the injured employee was deceased.
4. On [REDACTED] Respondent received a DWC Form-042, *Claim for Workers' Compensation Death Benefits*, from a potential beneficiary.
5. Respondent was required to initiate or dispute death benefits (DBs) 15 days after it received written notice. In this case, the latest date was [REDACTED].
6. Respondent issued the initial DBs payment totaling [REDACTED] on [REDACTED], which was 66 days late.

Assessment of Sanction

1. Failure to provide accurate death 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; 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, including, but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 4. DWC is aware of no mitigating factors pursuant to TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
 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, 402.00114, 402.00116, 402.00128, and 414.002.
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 §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
8. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. Under Tex. Lab. Code § 408.061, the amount of a DB is equal to 75% of the employee's average weekly wage.
9. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code § 132.17, an insurance carrier is required to initiate payment of DBs no later than the 15th day after it receives a claim for DBs. The insurance carrier must also notify DWC in writing of its initiation of DB payments in the manner DWC rules prescribe.
10. Respondent violated TEX. LAB. CODE §§ 409.021 and 415.002(a)(16), (20), and (22) each time it failed to timely pay DBs.

Order

It is ordered that First Liberty Insurance Corporation must pay an administrative penalty of \$8,200 within 30 days from the date of this order. First Liberty Insurance Corporation 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.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Texas §
§
COUNTY OF Tarrant §

Pursuant to the TEX. CIV. PRAC. AND REM. CODE § 132.001(a), (b), and (d), my name is Monica Reince. I hold the position of Claims Team Manager and am the authorized representative of First Liberty Insurance Corporation. My business address is: PO Box 259015, 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.

Monica Reince

Declarant

Executed on March 1, 2022.