

No. **2025-9642**

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

**Date: 12/3/2025**

**Subject Considered:**

Tokio Marine America Insurance Company  
3 Bala Plaza East, Suite 400  
Bala Cynwyd, Pennsylvania 19004

Consent Order  
DWC Enforcement File Nos. 36790 & 36791

**General remarks and official action taken:**

This is a consent order with Tokio Marine America 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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was not selected to be tiered in 2020, 2022, or 2024 Performance Based Oversight (PBO) assessments.

Failure to Timely Correct an Underpayment of Temporary Income Benefits (TIBs),  
Accurately Pay TIBs, Timely Pay Accrued TIBs, and Timely Pay Attorney Fees

3. On [REDACTED], an employee sustained a compensable injury to the [REDACTED].
4. The injured employee returned to work after the injury. Eventually, the injured employee's post-injury earnings dropped below the injured employee's average weekly wage and Respondent initiated TIBs. The full TIBs rate for the injured employee was [REDACTED].
5. On [REDACTED], Respondent paid [REDACTED] in TIBs for the benefit period of [REDACTED] [REDACTED], to [REDACTED]. However, Respondent actually owed [REDACTED] in TIBs after accounting for post-injury earnings.
6. On [REDACTED], the injured employee underwent [REDACTED] surgery, notified Respondent of the surgery, and inquired about receiving full TIBs after the surgery.
7. As of [REDACTED], Respondent had overpaid TIBs by [REDACTED].
8. Beginning [REDACTED], Respondent owed [REDACTED] in weekly TIBs to the injured employee. However, Respondent continued to pay [REDACTED] per week for the next four benefit weeks.
9. On [REDACTED], DWC ordered Respondent to pay [REDACTED] in attorney fees at a rate of 25% of each income benefit paid to the injured employee.
10. On [REDACTED], Respondent received a DWC Form-073, *Work Status Report*, removing the injured employee from work until [REDACTED], due to the injured employee's recovery from the [REDACTED] surgery.
11. On [REDACTED], Respondent paid [REDACTED] in TIBs to the injured employee, having deducted [REDACTED] in attorney fees from the injured employee's benefits. However, Respondent failed to issue a check to the injured employee's attorney.
12. After making the TIBs payment on [REDACTED], Respondent owed [REDACTED] in underpaid TIBs to the injured employee.

13. Respondent was required to continue paying TIBs to the injured employee from [REDACTED], to [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay [REDACTED] in TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	17
b.	[REDACTED]	[REDACTED]	[REDACTED]	9
c.	[REDACTED]	[REDACTED]	[REDACTED]	3

14. On [REDACTED], Respondent also paid TIBs and attorney fees from [REDACTED], to [REDACTED]. Attorney's fees from [REDACTED], were 31 days late.

### Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC hinders the division's goal of providing a fair and accessible dispute resolution process and is harmful to the Texas workers' compensation system.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system
3. 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;
  - 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.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating:
    - a. the violations are serious, involving the underpayment or late payment of seven weeks of TIBs and attorney's fees;
    - b. Respondent has a prior recent consent order involving non-payment of attorney fees;
    - c. a penalty is necessary to deter future violations; and
    - d. there is a negative impact on the delivery of ██████████ in benefits to an injured employee.
  5. DWC considered as mitigating Respondent's lack of disciplinary history regarding benefit delivery (TIBs) pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
  6. 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).
  7. 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, 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 fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Pay Accrued TIBs

*File No. 36791*

6. Pursuant to Tex. Lab. Code § 408.101, an employee is entitled to TIBs if the employee has a disability and has not attained maximum medical improvement.
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 §§ 408.081, 408.082, and 28 Tex. Admin. Code § 124.7, an insurance carrier is required to initiate payment of TIBs no later than the seventh day after the accrual date.
9. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 124.7 each time Respondent failed to timely pay accrued TIBs.

Failure to Accurately Pay TIBs

*File No. 36791*

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

Failure to Timely Correct an Underpayment of TIBs

*File No. 36791*

12. 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.
13. Pursuant to 28 Tex. Admin. Code § 126.15(b), if an insurance carrier determines an underpayment of income benefits has occurred, the insurance carrier shall pay the full amount of the underpayment with interest on accrued but unpaid benefits within seven days of the determination.
14. Respondent violated Tex. Lab. Code §§ 408.081, 409.023, 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code § 126.15(b) by failing to timely pay an underpayment of income benefits it had determined had occurred.

Failure to Timely Pay Attorney Fees Ordered by DWC

*File No. 36790*

15. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
16. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
17. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

**Order**

It is ordered that Tokio Marine America Insurance Company must pay an administrative penalty of \$1,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Tokio Marine America Insurance Company 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.



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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Commissioner's Order  
Tokio Marine America Insurance Company  
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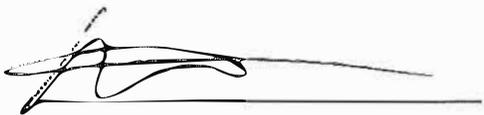
**Unsworn Declaration**

**STATE OF California** §  
§  
**COUNTY OF Los Angeles** §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Ronald Withers. I hold the position of Senior Manager and am the authorized representative of Tokio Marine America Insurance Company. My business address is: 283 S. Lake Ave Ste 160, Pasadena, Los Angeles, CA, 91010.

(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.



Declarant

Executed on October 28, 2025.