

No. **2022-7354**

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

**Date: 6/24/2022**

**Subject Considered:**

Federated Mutual Insurance Company  
P.O. Box 486  
Owatonna, Minnesota 55060

Consent Order  
DWC Enforcement File Nos. 27621 and 29108

**General remarks and official action taken:**

This is a consent order with Federated Mutual 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 "average" tier in the 2007 Performance Based Oversight (PBO) assessment and was classified as "high" tier in the 2009, 2010,

2012, 2014, and 2020 PBO assessments. Respondent was not selected to be tiered in the 2016, or 2018 PBO assessments.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits (TIBs)

*File No. 27621*

3. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was 15 days late.
4. Respondent was required to pay TIBs to an injured employee for the period of [REDACTED] through [REDACTED]. The TIBs payment was due seven days after the first day of the pay period, which was [REDACTED]. Respondent issued payment on [REDACTED] which was seven days late.

Suspension of Benefits without Reasonable Grounds

*File No. 29108*

5. On [REDACTED] Respondent was informed that an injured employee requested the rescheduling of a designated doctor (DD) exam that was originally scheduled for [REDACTED].
6. The injured employee was rescheduled to attend a DD exam with a different DD on [REDACTED].
7. On [REDACTED] the DD who was selected to examine the injured employee submitted a DD Appointment Selection Response Sheet stating the DD examination appointment scheduled on [REDACTED] was cancelled due to a conflict of interest.
8. On Monday, [REDACTED] Respondent issued a PLN-9, *Notice of Suspension of Indemnity Benefits*, notifying the injured employee that TIBs payments were suspended the previous Wednesday, [REDACTED]. Respondent stated the TIBs were stopped because the injured employee failed to attend the DD exam without

good cause. Respondent did not present other evidence or establish other grounds to terminate benefits.

9. On [REDACTED] the DD notified DWC that the injured employee was rescheduled to attend a new DD examination on [REDACTED] which was also rescheduled. The injured employee finally attended a DD examination on [REDACTED]
10. On [REDACTED] DWC issued a contested case hearing decision and order determining that the injured employee had good cause for failing to attend the DD exam on [REDACTED]

Failure to Timely Pay Accrued Temporary Income Benefits in Accordance with a DD Report

11. On [REDACTED] the injured employee attended a rescheduled DD exam with a third DD.
12. On [REDACTED] Respondent received the DD report, where the DD determined the injured employee had reached maximum medical improvement on [REDACTED] with an impairment rating of [REDACTED]
13. On [REDACTED] Respondent reinstated payment of income benefits beginning on [REDACTED] However, Respondent did not pay accrued TIBs for the period of [REDACTED] to [REDACTED]
14. Respondent was required to pay accrued TIBs no later than seven days after receiving the DD report. The deadline to pay TIBs was [REDACTED]
15. On [REDACTED] DWC issued a contested case hearing decision and order determining that the injured employee was entitled to TIBs for the time period of [REDACTED] to [REDACTED]
16. On [REDACTED] Respondent issued payment for accrued TIBs for the period of [REDACTED] to [REDACTED] which was 73 days late.

### **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 violations, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
4. DWC found the following mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): PBO assessments - Respondent was classified as "average" tier in the 2007 PBO assessment and was classified as "high" tier in the 2009, 2010, 2012, 2014, and 2020 PBO assessments.

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, 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), 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.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

8. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.023 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) each time it failed to timely initiate payment of TIBs.

Suspension of Benefits without Reasonable Grounds

10. Pursuant to Tex. Lab. Code §§ 409.022 and 415.002(a)(2), (12), and (22), an insurance carrier commits an administrative violation if it does not have reasonable grounds to refuse to pay benefits.
11. Respondent violated Tex. Lab. Code §§ 409.022 and 415.002(a)(2), (12), and (22) when it refused to pay benefits without reasonable grounds.

Failure to Timely Pay Accrued Temporary Income Benefits in Accordance with a DD Report

12. Pursuant to Tex. Lab. Code § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
13. Pursuant to 28 Tex. Admin. Code § 127.25(e), the insurance carrier must reinstate TIBs no later than seven days after receiving the DD report.
14. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely pay accrued income benefits after a DD report no later than seven days after receiving the report.

**Order**

It is ordered that Federated Mutual Insurance Company must pay an administrative penalty of \$20,000.00 within 30 days from the date of this order. Federated Mutual 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.



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

Approved Form and Content:



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

