

No. **2023-7734**

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

Date: 1/13/2023

Subject Considered:

XL Specialty Insurance Company
505 Eagleview Boulevard, P.O. Box 636
Exton, Pennsylvania 19341-1120

Consent Order
DWC Enforcement File Nos. 30320 and 30453

General remarks and official action taken:

This is a consent order with XL Specialty 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, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments. Respondent was classified as "poor" tier in the 2009 PBO assessment.

Failure to Pay Accrued Temporary Income Benefits

File No. 30320

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED] through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay 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]	2

DWC Audit No. IP-22-111

File No. 30453

4. On [REDACTED] DWC initiated DWC Audit No. IP-22-111 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely payment of initial TIBs and timely and accurate submission of initial information to DWC.
5. The audit examined TIBs payments that Respondent reported issuing between [REDACTED] and [REDACTED]. DWC identified 37 initial TIBs payments for audit. One initial TIBs payments failed to meet selection criteria and was dropped from the audit sample. The remaining 36 payments were reviewed to determine Respondent's compliance.
6. The audit focused on the timely payment of initial TIBs and electronic data interchange (EDI) reporting. The EDI portion of the audit focused on the timely reporting of initial TIBs payments and accuracy of five data elements reported to DWC (First Date of Disability, Date of First Written Notice, TIBs from Date, TIBs End Date, and Initial TIBs Payment Date).

Failure to Timely Pay Initial Temporary Income Benefits

File No. 30453

7. Respondent failed to timely initiate TIBs for 47% of examined payments (17 out of 36).
8. Specifically, Respondent issued payments to injured employees less than six days late in five instances, between six and 15 days late in one instance, between 16 and 30 days late in six instances, and over 30 days late in five instances.

Failure to Timely or Accurately Report EDI Data to DWC

File No. 30453

9. Respondent failed to timely report initial TIBs payments for 3% of examined payments (one out of 36).
10. Respondent failed to accurately report the First Date of Disability for 17% of examined payments (six out of 36).
11. Respondent failed to accurately report the Date of First Written Notice for 6% of examined payments (two out of 36).
12. Respondent failed to accurately report the Initial TIBs Payment Date for 3% of examined payments (one out of 36).

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 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 factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations of this type. In September of 2021, Respondent created a compliance officer position specifically tasked with reviewing initial payment of TIBs files. Respondent now requires team leads to carry 10-day diaries to ensure initial payments are timely processed and issued. Respondent's internal system has been upgraded to generate an automatic report each morning which documents all forms that were filed the previous day to assist claims examiners in tracking EDI filings with DWC.
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 §§ 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.
6. 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 Pay TIBs Promptly When Benefits Accrue & Failure to Timely Pay Initial TIBs


7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
8. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay TIBs.

Failure to Timely or Accurately Report EDI Data to DWC

9. Pursuant to 28 Tex. Admin. Code § 124.2(a) and (b), insurance carriers are required to notify DWC and the injured employee of actions taken or events occurring in a claim, as specified by rule in the form and manner DWC prescribes. Inherent in this duty is the requirement that insurance carriers report this information accurately.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 124.2(a) and (b), each time Respondent failed to timely or accurately notify DWC and the injured employee of actions it took or events that occurred in a claim, as specified by rule in the form and manner DWC prescribed.

Order

It is ordered that XL Specialty Insurance Company must pay an administrative penalty of \$22,500 within 30 days from the date of this order. XL Specialty 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF Illinois §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Lynn Munson. I hold the position of V.P. Claims Regulatory and am the authorized representative of XL Specialty Insurance Company. My business address is: 111 S. Wacker Dr., Suite 4000, Chicago, Cook, IL, 60606.
(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.

Lynn Munson
Declarant

Executed on December 30, 2022.