

No. **2021-7065**

Confidential Information Redacted  
Texas Labor Code §§402.083 and 402.092

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

**Date: 11/9/2021**

**Subject Considered:**

XL Insurance America, Inc.  
P.O. Box 636  
505 Eagleview Boulevard  
Exton, Pennsylvania 19341-0636

Consent Order  
DWC Enforcement File No. 27496

**General remarks and official action taken:**

This is a consent order with XL Insurance America, Inc. (XL Insurance). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against XL Insurance.

**Waiver**

XL Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. XL Insurance 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. XL Insurance 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. XL Insurance was classified as "average" tier in the 2016, 2018 and 2020 Performance Based Oversight (PBO) assessments. XL Insurance was not classified in the 2007, 2009, 2010, 2012, or 2014 PBO assessments.

Failure to Pay Accrued Impairment Income Benefits Based on a Designated Doctor Report

3. On [REDACTED] XL Insurance received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee reached maximum medical improvement on [REDACTED] with an [REDACTED] impairment rating.
5. XL Insurance was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD's report. The deadline to pay benefits was [REDACTED].
6. XL Insurance issued payment of IIBs on [REDACTED] which was 10 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 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; 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: 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; and other matters that justice may require, including, but not limited to prompt and earnest actions to prevent future violations.
  5. XL Insurance acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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. XL Insurance 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 415.021.
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. XL Insurance 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 § 408.0041(f), an insurance carrier must pay benefits based on the opinion of the DD during any pending dispute.
9. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.
10. XL Insurance violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

**Order**

It is ordered that XL Insurance America, Inc. must pay an administrative penalty of \$3,500 within 30 days from the date of this order. XL Insurance America, Inc. 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:



Mackenzie Arthur  
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. & 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 Insurance America, Inc. My business address is:

10 N. Martingale Rd., Suite 220, Schaumburg,, Cook, Illinois, 60173.

(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.

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Declarant

Executed on October 8, 20<sup>21</sup>.