

No. **2021-7066**

**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. 27391

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 selected to be tiered in the 2007, 2009, 2010, 2012, or 2014 PBO assessments.

DWC Audit No. IBA-21-123

3. On [REDACTED] DWC initiated DWC Audit No. IBA-21-123 to determine whether XL Insurance complied with the Texas Labor Code and related rules on the timely payment of lifetime income benefits (LIBs) and death benefits (DBs), as well as timely submitting claim data to DWC.
4. The audit examined DB payments that XL Insurance reported issuing between [REDACTED] and [REDACTED]. DWC identified six initial DB claims for audit. A total of three initial DB claims failed to meet selection criteria and were dropped from the audit sample. The remaining three claims were reviewed to determine XL Insurance's compliance.
5. The audit focused on the accuracy of XL Insurance's payment of DBs, as well as timely submitting claim data to DWC. The electronic data interchange (EDI) portion of the audit focused on timely reporting DB terminations.

Failure to Timely Pay Accurate LIBs

6. XL Insurance failed to timely pay accurate LIBs for 100% of examined payments (one out of one).
7. Specifically, XL Insurance underpaid LIBs to an injured employee over a period of over 130 weeks late in one instance. On February 4, 2021, XL Insurance issued to beneficiaries the combined LIB underpayment plus interest of \$1,124.76.

Failure to Timely Pay Accurate DBs

8. XL Insurance failed to timely pay accurate DBs for 50% of examined payments (one out of two).
9. Specifically, XL Insurance underpaid DBs to beneficiaries over a period of 19 weeks in one instance. On March 26, 2021, XL Insurance issued to beneficiaries the combined DB underpayment plus interest of \$5.01.

Failure to Accurately Report Claim Data to DWC

10. XL Insurance failed to accurately report claim data to DWC which caused three claims to be erroneously selected for audit. Subsequently, these claims had to be dropped from the audit for failure to meet selection criteria.

Assessment of Sanction

1. Failure to provide DBs in a timely and cost-effective manner is harmful to injured employees, their beneficiaries, and the Texas workers' compensation system.
2. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions insurance carriers take on claims.
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 or their beneficiaries;
 - the history of compliance with EDI 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.

4. 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 or their beneficiaries; the history of compliance with EDI requirements; and other matters that justice may require, including the size of the company or practice.
5. 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.
6. 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).
7. 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, 409.021, 414.002, 414.003, 415.002, 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 § 408.161(a) and (b), an insurance carrier must pay accurate LIBs to the employee until his or her death. Under TEX. LAB. CODE § 408.161(c), the amount of LIBs is equal to 75% percent of the employee's average weekly wage and increased 3% each year.
 8. Pursuant to 28 TEX. ADMIN. CODE § 131.1(a) and (c), the insurance carrier must initiate the payment of LIBs without a final decision or order from the commissioner if the employee is eligible. The insurance carrier must initiate the first payment of LIBs on or before the 15th day after the date it reasonably believes the injured employee is eligible.
 9. 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.
 10. XL Insurance violated TEX. LAB. CODE §§ 409.023, and 415.002(a)(16), (20), and (22) when it failed to pay accurate LIBs.
 11. Pursuant to TEX. LAB. CODE § 408.061(d), a weekly DB may not exceed 100% of the state average weekly wage rounded to the nearest whole dollar.
 12. Pursuant to TEX. LAB. CODE § 408.181(a) and (b), an insurance carrier must pay accurate DBs to a legal beneficiary. The amount of a DB is equal to 75% of the employee's average weekly wage.

13. Pursuant to 28 TEX. ADMIN. CODE § 124.2(e)(4)-(6), the insurance carrier must notify DWC and the claimant of any changes, resurreptions, or terminations involving DBs.
14. Pursuant to TEX. LAB. CODE § 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of DBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date. It must also notify DWC in writing of its initiation of income or DB payments in the manner DWC rules prescribe.
15. Pursuant to 28 TEX. ADMIN. CODE § 132.17(f), an insurance carrier must initiate payment of DBs to eligible claimants. If the insurance carrier believes a claimant is not eligible, it must file a notice of dispute of eligibility in the form and manner DWC prescribes.
16. XL Insurance violated TEX. LAB. CODE § 415.002(a)(16), (20) and (22) each time it failed to timely pay accurate DBs.
17. 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.
18. XL Insurance violated TEX. LAB. CODE § 415.002(a)(20) each time it 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 Insurance America, Inc. must pay an administrative penalty of \$1,000 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.



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 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, IL, 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.

Declarant

Executed on October 8th, 2021

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092