

No. **2021-7075**

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.
505 Eagleview Boulevard
Exton, Pennsylvania 19341-0636

Consent Order
DWC Enforcement File No. 27734

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.

Failure to Timely Pay Accrued Impairment Income Benefits Based on a Treating Doctor Maximum Medical Improvement/Impairment Rating Examination

3. On [REDACTED] XL Insurance received a report from a treating doctor in connection with an examination to certify maximum medical improvement (MMI)/impairment rating (IR).
4. The treating doctor determined that the injured employee reached MMI on [REDACTED] with an [REDACTED] IR.
5. XL Insurance was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the treating doctor's report. The deadline to pay benefits was [REDACTED]
6. XL Insurance issued payment of IIBs as required by the MMI/IR certification until [REDACTED]. It resumed paying IIBs on [REDACTED] 148 days late from the seventh day after the first day of the pay period, which was [REDACTED]
7. XL Insurance also paid IIBs late for the approximate 21-week period of [REDACTED] through [REDACTED] when it issued benefits on [REDACTED]

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 § 408.121(b), the insurance carrier must begin to pay IIBs no later than the fifth day after the date the insurance carrier receives the doctor's report certifying MMI.
9. Pursuant to 28 TEX. ADMIN. CODE § 130.8(b)(1), an insurance carrier must initiate payment of IIBs in accordance with the treating doctor's MMI/IR certification no later than five days after receiving the report for the issues not in dispute.

10. XL Insurance violated TEX. LAB. CODE §§ 409.023 and 415.002(a)(16), (20), and (22) when it failed to timely pay accrued IIBs in accordance with the treating doctor's MMI/IR certification 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 \$10,000 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:



Van Moreland
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.Claim 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 14, 2021.

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