

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: **MAY 08 2019**

Subject Considered:

LM INSURANCE CORPORATION
175 Berkeley Street
Boston, Massachusetts 02116-5066

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17938

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against LM Insurance Corporation (LM).

WAIVER

LM acknowledges that the Texas Labor Code and other applicable laws provide certain rights. LM waives all of these rights and any other applicable procedural rights in consideration of the entry of this consent order.

FINDINGS OF FACT

The commissioner makes the following findings of fact:

1. LM 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 workers' compensation/employers' liability insurance in the state of Texas.
2. LM was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018, Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY INITIATE OR DISPUTE PAYMENT OF
TEMPORARY INCOME BENEFITS**

3. On [REDACTED], LM received notice of an injury to an injured employee.
4. The first day of disability for the injured employee was on [REDACTED].
5. The insurance carrier was required to initiate or dispute temporary income benefits (TIBs) no later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified Texas Department of Insurance, Division of Workers' Compensation (DWC)

and the injured employee in writing of its refusal to pay, which in this case was by [REDACTED].

6. LM timely notified the injured employee of its refusal to pay on [REDACTED]. LM filed a complete notice of dispute with DWC 371 days late on [REDACTED].

ASSESSMENT OF SANCTION

7. Failure to provide appropriate notice of refusal to pay TIBs in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state of Texas.
8. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange (EDI) requirements;
 - other matters that justice may require, including but not limited to:
 - PBO assessments;
 - the promptness and earnestness of 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; and
 - to the extent reasonable, the economic benefit resulting from the prohibited act.
9. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating, the history and extent of previous administrative violations; the penalty necessary to deter future violations; and whether the administrative violation has negative impact on the delivery of benefits to an injured employee.
10. In assessing the penalty for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating, other matters that justice may require, including but not limited to: LM timely filed the PLN 1 with the injured employee and with DWC via EDI.

11. LM acknowledges that it has communicated with DWC regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
12. LM acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

CONCLUSIONS OF LAW

The commissioner makes the following conclusions of law:

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. LM Insurance Corporation violated TEX. LAB. CODE §§ 408.081, 408.082, 409.021, 415.002(a)(20), and 415.002(a)(22) and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7 when it failed to timely initiate payment of TIBs or properly dispute.

ORDER

LM Insurance Corporation is ORDERED to pay an administrative penalty of \$2,500 within 30 days from the date of this Order.

Confidential Information Redacted Texas Labor Code §§402.083 & 402.092

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



Cassie Brown *NCW*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Toya Lutz
Staff Attorney, DWC Enforcement
Compliance & Investigations
Division of Workers' Compensation
Texas Department of Insurance

AFFIDAVIT

STATE OF Texas §
 COUNTY OF TRAVIS §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Kevin McGillicuddy. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of Designated Austin Representative, and am the authorized representative of LM Insurance Corporation. I am duly authorized by said organization to execute this statement.

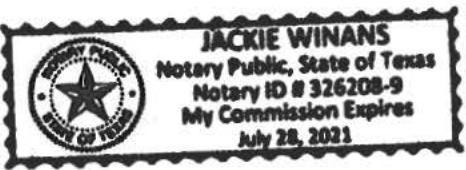
LM Insurance Corporation waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

LM Insurance Corporation is voluntarily entering into this consent order. LM Insurance Corporation consents to the issuance and service of this consent order."

[Signature]
 Affiant

SWORN TO AND SUBSCRIBED before me on March 22, 2019.

(NOTARY SEAL)



[Signature]
 Signature of Notary Public

JACKIE WINANS
 Printed Name of Notary Public

7-28-2021
 Commission Expiration Date

Confidential Information Redacted
 Texas Labor Code §§402.083 & 402.092