

No. **2022-7400**

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

Date: 7/25/2022

Subject Considered:

LM Insurance Corporation
P.O. Box 259015
Plano, Texas 75025-9015

Consent Order
DWC Enforcement File No. 29296

General remarks and official action taken:

This is a consent order with LM Insurance Corporation (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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018 and 2020 Performance Based Oversight (PBO) assessments.

Failure to Timely Pay or Dispute Initial Temporary Income Benefits

3. On [REDACTED] Respondent received notice of an injury to an employee.
4. The date of injury for the injured employee was [REDACTED] Income benefits accrued on [REDACTED]
5. Respondent was required to initiate or dispute temporary income benefits (TIBs) either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED]
6. On [REDACTED] Respondent disputed the claim, which was 13 days late.
7. Respondent issued the initial TIBs payment on [REDACTED] which was 82 days late.

Assessment of Sanction

1. Failure to initiate 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 is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 5. Respondent 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. 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, 414.003, 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)(7), and 28 Tex. Admin. Code § 180.26(h).
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 violates a DWC rule or the Texas Workers' Compensation Act.
7. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021(e) 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. Pursuant to 28 Tex. Admin. Code § 124.3(a)(2), if the insurance carrier files a Notice of Denial after the 15th day but on or before the 60th day after receipt of written notice of injury, the insurance carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the insurance carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits.
9. Respondent violated Tex. Lab. Code §§ 409.021(e), 415.002(a)(16), (20) and (22), and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely initiate payment of TIBs.


Order

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



Daniel Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Texas

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COUNTY OF Collin

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Michelle Ware. I hold the position of Team Manager and am the authorized representative of LM Insurance Corporation. My business address is:

7900 Windrose Avenue, Plano, Collin, TX, 75024.

(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.

Michelle Ware

Declarant

Executed on 7/13/2022, 2022.