

No. 2023-7909

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

Date: 4/26/2023

Subject Considered:

LM Insurance Corporation
PO Box 259015
Plano, Texas 75025-9015

Consent Order
DWC Enforcement File Nos. 31137, 31560, 31561, 31562

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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

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

File No. 31137

1. On [REDACTED] Respondent received a report from a designated doctor (DD) in connection with a DD examination. This was the second DD exam in connection with this claim.
2. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR).
3. Respondent was required to reinitiate impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay benefits was [REDACTED]
4. Respondent paid IIBs on [REDACTED] which was 359 days late.
5. Respondent paid 26 weeks, or a total of [REDACTED] in late IIBs.

Failure to Timely Comply with a Contested Case Hearing Decision and Order (CCH D&O)

File No. 31137

6. On [REDACTED] DWC issued a CCH D&O requiring Respondent to pay benefits pursuant to the decision. Respondent received the CCH D&O on [REDACTED]
7. The CCH D&O became final on [REDACTED] Respondent was required to comply with the CCH D&O within 20 days. The deadline to comply was [REDACTED]
8. Respondent paid benefits and accrued interest on [REDACTED] which was 94 days late.

Failure to Timely Act on a Medical Bill

File No. 31560

1. On [REDACTED] a health care provider (HCP) provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.
2. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
3. On [REDACTED] Respondent issued payment, which was 193 days late.

File No. 31561

4. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.
5. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
6. On [REDACTED] Respondent issued payment, which was 336 days late.

File No. 31562

7. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.
8. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
9. On [REDACTED] Respondent issued payment which was 344 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. Compliance with DWC orders is imperative to minimize disputes and resolve them promptly and fairly. In addition, failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
3. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
4. 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.
5. 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; and the penalty necessary to deter future violations.

6. 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 communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that 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, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
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. 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 § 415.002(a)(20) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Pay Accrued Impairment Income Benefits Based on a DD Report

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 report for the issues in dispute no later than five days after receiving the report.
7. Respondent violated Tex. Lab. Code §§ 409.023; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 127.10(h) by failing to timely pay accrued income benefits in accordance with the DD report no later than five days after receiving the report.

Failure to Timely Comply with a CCH D&O

8. Pursuant to Tex. Lab. Code §§ 415.0035(e) and 415.021(a), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
9. Pursuant to Tex. Lab. Code § 410.169 and 28 Tex. Admin. Code § 142.16, a party is required to comply with a CCH D&O within 20 days of the order becoming final. However, if the CCH D&O involves benefits, a party must comply no later than the fifth day after filing a written request for appeal.
10. Respondent violated Tex. Lab. Code §§ 410.169; 415.002(a)(20) and (22); 415.0035(e); 415.021; and 28 Tex. Admin. Code § 142.16 by failing to timely comply with a DWC order for benefits.


Failure to Timely Act on a Medical Bill

11. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.

12. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20); 415.002(a)(22); and 28 Tex. Admin. Code § 133.240 each time it failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.


Order

It is ordered that LM Insurance Corporation must pay an administrative penalty of \$28,000 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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

Unsworn Declaration

STATE OF TX §
 §
COUNTY OF _____ §

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

7500 W. Shoreline Drive Plaza _____ 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 April 17, 2023.

**Confidential Information Redacted Texas
Labor Code §§402.083 and 402.092**

STATE OF Texas
COUNTY OF Denton

The foregoing instrument was acknowledged before me this 17th day of April, 2023, by Michelle Ware

[Signature] Madison Carter
Notary Public's Signature Notary Name
My Commission Exp. 03/02/2027

