

No. **2023-8040**

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

Date: 6/23/2023

Subject Considered:

XL Specialty Insurance Company
505 Eagleview Boulevard
Exton, Pennsylvania 19341-1120

Consent Order
DWC Enforcement File Nos. 31079, 31516, 31517, and 31624

General remarks and official action taken:

This is a consent order with XL Specialty Insurance Company (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, 2010, 2012, 2014, 2016, 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments. Respondent was classified as "poor" tier in the 2009 PBO assessment.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

File No. 31079

3. Respondent was required to pay temporary income benefits (TIBs) to an injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	54
b.	[REDACTED]	[REDACTED]	[REDACTED]	47
c.	[REDACTED]	[REDACTED]	[REDACTED]	40
d.	[REDACTED]	[REDACTED]	[REDACTED]	33
e.	[REDACTED]	[REDACTED]	[REDACTED]	26
f.	[REDACTED]	[REDACTED]	[REDACTED]	19
g.	[REDACTED]	[REDACTED]	[REDACTED]	12
h.	[REDACTED]	[REDACTED]	[REDACTED]	5

4. Respondent paid a total of [REDACTED] in late TIBs.

Failure to Timely Act on a Medical Bill

File No. 31516

5. On [REDACTED] a Designated Doctor (DD) performed an examination of an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the DD.
6. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
7. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 168 days late.

File No. 31517

8. On [REDACTED] a DD performed an examination of an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the DD.
9. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
10. On [REDACTED] Respondent paid [REDACTED] to the DD, which was 126 days late.

Failure to Timely Pay Death Benefits Promptly As and When They Accrue

File No. 31624

- 11.i Respondent was required to pay weekly death benefits to an injured employee's beneficiary from [REDACTED] through [REDACTED]. Respondent failed to timely pay death benefits to the beneficiary as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	90
b.	[REDACTED]	[REDACTED]	[REDACTED]	83
c.	[REDACTED]	[REDACTED]	[REDACTED]	76
d.	[REDACTED]	[REDACTED]	[REDACTED]	69
e.	[REDACTED]	[REDACTED]	[REDACTED]	62
f.	[REDACTED]	[REDACTED]	[REDACTED]	55
g.	[REDACTED]	[REDACTED]	[REDACTED]	48
h.	[REDACTED]	[REDACTED]	[REDACTED]	41
i.	[REDACTED]	[REDACTED]	[REDACTED]	34
j.	[REDACTED]	[REDACTED]	[REDACTED]	27
k.	[REDACTED]	[REDACTED]	[REDACTED]	20

12. On [REDACTED] Respondent paid [REDACTED] in late death benefits to the beneficiary.

Failure to Timely Pay Interest

File No. 31624

13. On [REDACTED] Respondent paid [REDACTED] in interest on the late death benefits payments, which was seven days late.

Assessment of Sanction

1. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative unnecessary resources in the workers' compensation system.
2. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
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;
 - 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.
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 penalty necessary to deter future violations; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee.
 5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be mitigating: prompt and earnest actions to prevent future violations of this type. Specifically, in file number 31517, Respondent has implemented an improved process of matching and uploading faxed documents to correct claims files.
 6. 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).
 7. 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, 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 §§ 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 fails to comply with a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Initiate Payment of Accrued Temporary Income Benefits

7. Pursuant to Tex. Lab. Code §§ 408.081; 408.082; 409.021; 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. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely initiate payment of TIBs.

Failure to Timely Act on a Medical Bill

9. 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.
10. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (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.

Failure to Timely Pay Death Benefits Promptly As and When They Accrue


11. Pursuant to Tex. Lab. Code § 408.181(a) and (b), an insurance carrier must pay accurate death benefits to a legal beneficiary. Under Tex. Lab. Code § 408.061, the amount of a death benefit is equal to 75% of the employee's average weekly wage.
12. Pursuant to Tex. Lab. Code § 409.021 and 28 Tex. Admin. Code § 132.17, an insurance carrier is required to initiate payment of death benefits no later than the 15th day after it receives a claim for death benefits. The insurance carrier must also notify DWC in writing of its initiation of death benefit payments in the form and manner prescribed by DWC.
13. Pursuant to Tex. Lab. Code §§ 409.023; 408.181; and 28 Tex. Admin. Code § 132.16, an insurance carrier is required to pay DBs weekly, as and when benefits accrue, unless the legal beneficiary and the insurance carrier have entered into an agreement for the benefits to be paid monthly.
14. Pursuant to Tex. Lab. Code § 415.002(a)(5), an insurance carrier or its representative commits and administrative violation if it fails to promptly pay death benefits if a legitimate dispute does not exist as to the insurance carrier's liability.
15. Respondent violated Tex. Lab. Code §§ 408.181; 409.023; 415.002(a)(5), (16), (20), and (22); and 28 Tex. Admin. Code § 132.16 each time Respondent failed to timely pay death benefits.

Failure to Timely Pay Interest

16. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid benefits and interest shall be paid in a lump sum.
17. Respondent violated Tex. Lab. Code §§ 408.064; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 162.12(b) each time Respondent failed to timely pay interest with accrued but unpaid benefits.


Order

It is ordered that XL Specialty Insurance Company must pay an administrative penalty of \$9,500 within 30 days from the date of this order. XL Specialty Insurance Company must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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:



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