

No. 2020-6362

Confidential Information Redacted
Texas Labor Code §§402.083 & 402.092

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

Date: 06-10-2020

Subject Considered:

XL Specialty Insurance Company
70 Seaview Avenue
Stamford, Connecticut 06902-6066

Consent Order
DWC Enforcement File No. 19167

General remarks and official action taken:

This is a consent order with XL Specialty Insurance Company (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 2007, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments. XL Insurance was classified as "poor" tier in the 2009 PBO assessment.

Failure to Timely Pay Attorney Fees Ordered by DWC

3. DWC ordered XL Insurance to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered XL Insurance to pay attorney fees in the amount of [REDACTED] of each income benefit payment to the injured employee.
4. On [REDACTED], XL Insurance issued a payment to the injured employee for unpaid [REDACTED] benefits. XL Insurance was required to issue a payment \$ [REDACTED] for attorney fees to the injured employee's attorney the same day but did not issue full payment until [REDACTED], which was 70 days late.

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to 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 penalty necessary to deter 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, and 414.002.
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. 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 §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1(c), insurance carriers are required to pay attorney fees ordered by DWC. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order. As the carrier pays income benefits, it must pay attorney fees until the fees have been completely paid or income benefits cease.
8. XL Insurance violated TEX. LAB. CODE §§ 415.002(a)(20), 415.021(a), and 415.0035(e) when it failed to timely comply with a DWC order to pay attorney fees.

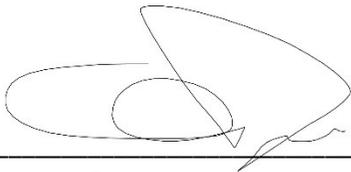
Order

It is ordered that XL Specialty Insurance Company must pay an administrative penalty of \$7,000 within 30 days from the date of this order. XL Specialty Insurance Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Andrés Durá
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

Affidavit

STATE OF _____

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COUNTY OF _____

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

"My name is Lynn Munson. 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 VP, Claims Regulatory & Compliance Manager and am the authorized representative of
XL Specialty Insurance Company. I am duly authorized by the organization to execute this
statement.

XL Specialty Insurance Company has knowingly and voluntarily entered into this consent
order and agrees with and consents to the issuance and service of this consent order."

Lynn Munson

May 13, 2020

Affiant

SWORN TO AND SUBSCRIBED before me on _____, 2020.

(NOTARY SEAL)

Signature of Notary Public

Printed Name of Notary Public

Commission Expiration