

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: AUG 09 2019

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 19498

General remarks and official action taken:

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

WAIVER

LM Insurance acknowledges that the Texas Labor Code and other applicable laws provide certain rights. LM Insurance 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 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 types of insurance, including workers' compensation/employers' liability insurance, in the state of Texas.
2. LM Insurance was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

FAILURE TO PAY ACCRUED INCOME BENEFITS BASED ON A DESIGNATED DOCTOR REPORT

3. On [REDACTED], LM Insurance received a report from a designated doctor (DD) in connection with a DD examination.
4. The DD determined that the injured employee was expected to reach maximum medical improvement on or about [REDACTED].
5. LM Insurance was required to pay accrued income benefits no later than five days after receiving the DD report, or by [REDACTED].

6. LM Insurance issued a lump-sum payment on [REDACTED] which was 14 days late.
7. LM Insurance did not come into full compliance until [REDACTED] when the carrier issued a check for interest, 387 days late.

ASSESSMENT OF SANCTION

8. Failure to pay appropriate income benefits in a manner that is timely and cost effective is harmful to the injured employee and the workers' compensation system of Texas.
9. In assessing the sanction for this case, the Texas Department of Insurance, Division of Workers' Compensation (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 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.
10. 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 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; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and the history of compliance with electronic data interchange requirements.
11. LM Insurance acknowledges that DWC and LM Insurance have communicated 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 Insurance 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, and 415.021; 28 TEX. ADMIN. CODE § 180.26; and TEX. GOV'T CODE §§ 2001.051–2001.178.
2. The commissioner has authority to informally dispose of this matter as set forth herein 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)(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.
5. Pursuant to TEX. LAB. CODE §§ 408.081, 409.023, and 415.002(a)(16), an insurance carrier shall pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
6. Pursuant to TEX. LAB. CODE § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a commissioner rule.
7. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receipt of the report.
8. LM Insurance violated TEX. LAB. CODE §§ 415.002(a)(16), 415.002(a)(20), and 415.002(a)(22) when it failed to pay accrued income benefits in accordance with the DD's report within five days of receipt of the report.

ORDER

LM Insurance Corporation is ORDERED to pay an administrative penalty of \$4,000 within 30 days from the date of this Order.

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 *ACTP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



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

AFFIDAVIT

STATE OF Texas §
COUNTY OF ~~Collin~~² Tarrant §

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

“My name is Linda Himes. 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 Technical Claims Spec^{II} and am the authorized representative of LM Insurance Corporation. I am duly authorized by said organization to execute this statement.

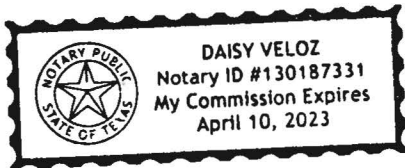
LM Insurance Corporation waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

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

Linda Himes
Affiant

SWORN TO AND SUBSCRIBED before me on May 20, 2019.

(NOTARY SEAL)



Daisy Veloz
Signature of Notary Public

Daisy Veloz
Printed Name of Notary Public

April 10, 2023
Commission Expiration Date