

No. 2019 6129

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: NOV 05 2019

**Subject Considered:**

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

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NOS. 18352 & 19446

**General remarks and official action taken:**

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

**WAIVER**

LM acknowledges that the Texas Labor Code and other applicable laws provide certain rights. LM 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 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. LM was classified as "average" tier in the 2007, 2009, 2010, 2012, 2014, 2016, and 2018 Performance Based Oversight (PBO) assessments.

**FAILURE TO TIMELY PAY ATTORNEY'S FEES ORDERED BY DWC**

3. In two unrelated instances, LM failed to timely pay attorney's fees ordered by the Texas Department of Insurance, Division of Workers' Compensation (DWC). The two instances are the subjects of DWC Enforcement File Nos. 18352 and 19446.

**Instance One - DWC Enforcement File No. 18352**

4. During the period of [REDACTED], through [REDACTED], LM received 21 sequences of attorney's fee orders from DWC totaling \$ [REDACTED]. DWC ordered LM to pay

attorney's fees in the amount of 25% of each income benefit payment to the injured employee.

5. On [REDACTED], LM issued a check to the injured employee for indemnity benefits. LM was required to issue payment to the attorney for the injured employee the same day but did not issue payment until [REDACTED], which was 28 days late.
6. Additionally, LM issued income benefit payments to the injured employee each week for [REDACTED] weeks following the benefits payment on [REDACTED], but also failed to issue payment of attorney's fees on each of those occasions.

#### Instance two - DWC Enforcement File No. 19446

7. On [REDACTED], and [REDACTED], LM received orders for attorney's fees totaling [REDACTED]. DWC ordered LM to pay attorney's fees in the amount of 25% of each income benefit payment to the injured employee.
8. On [REDACTED], LM issued a check to the injured employee for indemnity benefits. LM was required to issue payment to the attorney for the injured employee the same day but did not issue payment until [REDACTED], which was 30 days late.
9. Additionally, LM issued income benefit payments to the injured employee each week for the [REDACTED] weeks following the [REDACTED] benefits payment, but also failed to issue payment of attorney's fees on each of those occasions. LM issued the attorney's fee payment along with the payment for attorney's fees amount for [REDACTED], in a lump sum on [REDACTED].

#### ASSESSMENT OF SANCTION

10. Timely payment of attorney's fees to injured employees' attorneys is imperative to DWC's goal of ensuring that injured employees have access to a fair and accessible dispute resolution process.
11. In assessing the sanction for this case, 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.
12. 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; the history and extent of previous administrative violations; and the penalty necessary to deter future violations.
  13. 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 mitigating: the demonstrated good faith of the violator, including action taken to rectify the consequences of the prohibited act.
  14. LM acknowledges that it has communicated with DWC 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).
  15. LM 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, 414.002, 414.003, 415.002, and 415.021; and 28 TEX. ADMIN. CODE §§ 152.1 and 180.26.
2. The commissioner has authority to informally dispose of this matter as set forth 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)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.

5. Pursuant to TEX. LAB. CODE § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it violates a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 415.021(a), a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with a rule, order, or decision of the commissioner.
7. Pursuant to 28 TEX. ADMIN. CODE § 152.1, insurance carriers are required to pay attorney's fees ordered by DWC. The insurance carrier must begin payment out of the approved income benefits by mailing a check to the attorney within seven days after receiving the order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.
8. LM violated TEX. LAB. CODE §§ 415.002(a)(20) and (22), and 415.021(a), each time it failed to timely comply with a DWC order to pay attorney's fees.

**ORDER**

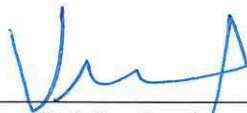
LM Insurance Corporation is ORDERED to pay an administrative penalty of \$4,000 within 30 days from the date of this Order.

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.



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Cassie Brown *WCTJ*  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Van B. Moreland  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

Confidential Information Redacted  
Texas Labor Code §§402.083 & 402.092

