

No. **2022-7327**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 5/17/2022

Subject Considered:

LM Insurance Corporation
175 Berkeley Street
Boston, Massachusetts 02116-5066

Consent Order
DWC Enforcement File Nos. 22295, 24679, and 26123

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, and 2020 Performance Based Oversight (PBO) assessments.

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

File No. 22295

3. On [REDACTED] the treating doctor certified that the injured employee reached maximum medical improvement (MMI) on [REDACTED] with a [REDACTED] impairment rating (IR).
4. The injured employee disputed the treating doctor's certification of MMI and IR and requested a designated doctor (DD) exam.
5. On [REDACTED] DWC ordered a DD exam scheduled with an approved DD.
6. On [REDACTED] the DD examined the injured employee and certified that the injured employee reached MMI on [REDACTED] with an IR of [REDACTED]
7. On [REDACTED] the DD submitted his report to all parties, which Respondent received on [REDACTED]
8. Respondent was required to pay accrued impairment income benefits (IIBs) no later than five days after receiving the DD report. The deadline to pay was [REDACTED]
9. On [REDACTED] Respondent issued payment of IIBs based on the DD report, which was 146 days late. Respondent did not provide an explanation.

Failure to Timely Comply with a Benefit Dispute Agreement

File No. 24679

10. On [REDACTED] Respondent entered into a Benefit Dispute Agreement (BDA) to resolve issues of MMI and IR with the injured employee. The parties agreed that the injured employee reached MMI on [REDACTED] with an IR of [REDACTED]
11. DWC approved the BDA on [REDACTED]
12. Respondent received the BDA on [REDACTED] and was required to comply with the BDA by issuing IIBs payments to the injured employee within five days of receipt of the BDA, or by [REDACTED]

13. Respondent issued IIBs payments and interest on [REDACTED] which was 114 days late. Respondent did not provide an explanation.

Failure to File Notice of Change in Amount of Indemnity Benefit Payment

File No. 26123

14. The injured employee was injured on [REDACTED]
15. On [REDACTED] Respondent filed a DWC Form-PLN027, *Notice of First Temporary Income Benefit Payment*, informing DWC and the injured employee that the initial temporary income benefits (TIBs) would amount to [REDACTED] per week.
16. On [REDACTED] Respondent offered the injured employee temporary alternative work (TAW) while he recovered from his injuries. The bona fide job offer stated that the temporary light duty position would pay [REDACTED] per hour for eight hours per day, five days per week beginning on [REDACTED] and ending on [REDACTED]
17. The injured employee accepted the position on the same day.
20. Between [REDACTED] and [REDACTED] Respondent paid the injured employee a TIBs weekly benefit payment of [REDACTED] in addition to the injured employee's hourly wages for the TAW.
21. Respondent is required to notify the division and the injured employee, using a PLN8 *Notice of Change in Amount of Indemnity Benefit Amount* form (PLN8 form), of actions taken on or events occurring on a claim in plain language. Respondent did not issue a PLN8 form notifying the injured employee and DWC of the change in the weekly benefit amount to [REDACTED]
22. When the TAW ended, the injured employee was no longer receiving post injury earnings and Respondent was required to pay the full TIBs weekly benefit amount of [REDACTED]. Respondent did not file a PLN8 form to notify DWC and the injured employee that the weekly benefit amount changed from [REDACTED] to [REDACTED] although the Respondent was aware the injured employee's TAW ended.
23. On [REDACTED] the injured employee received a benefit check for the weekly period of [REDACTED] through [REDACTED] in the amount of [REDACTED]

24. On [REDACTED] Respondent filed the PLN 8 form, notifying the injured employee that his benefit amount would change to [REDACTED] per weekly benefit period.
25. Respondent did not explain why the PLN 8 form was not filed timely.

Assessment of Sanction

1. Violations of the statutes and rules governing the Texas workers' compensation system have significant consequences on workers' compensation claims, the benefits delivered to injured employees and the services provided by attorneys and health care providers. DWC relies on insurance carriers to comply with the statutes and rules to provide a fair and balanced 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 violator's demonstration of good faith, including actions taken to rectify the consequences of the prohibited act. In File no. 26123, Respondent timely issued the first PLN2, *Notice of Temporary Income Payment* form, but mistakenly entered the total TIBs amount, not the adjusted amount owed due to wages earned when the injured employee worked the temporary assignment. When Respondent realized the error, the PLN8 was issued on the due date of the next payment. In File No. 24679, Respondent's agent failed to issue benefits timely but when Respondent realized the error, a more extensive training program was implemented immediately to ensure the error did not reoccur. In File No. 22295, Respondent relied on the treating doctor's certification because it was the first certification made and did not initially understand an appeal could change the first certification's status.
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, 402.00114, 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), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. 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.

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

7. 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.
8. 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.
9. Pursuant to Tex. Lab. Code § 408.1225(c), the report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee has reached maximum medical improvement on the report unless the preponderance of the other medical evidence is to the contrary
10. Pursuant to Tex. Lab. Code § 408.123(e), an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification.
11. Pursuant to 28 Tex. Admin. Code § 127.10(h), an insurance carrier must pay all benefits in accordance with the DD's report for the issues in dispute no later than five days after receiving the report.

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12. Respondent violated Tex. Lab. Code §§ 409.023 and 415.002(a)(16), (20), and (22) by failing to timely pay accrued income benefits in accordance with the DD's report no later than five days after receiving the report.

Failure to Timely Comply with a Benefit Dispute Agreement

13. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
14. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation if they breach a provision of an agreement that DWC approved.
15. Respondent violated Tex. Lab. Code §§ 415.002(a)(17), (20), and (22) and 415.010 by failing to timely comply with a BDA.

Failure to File Notice of Change in Amount of Indemnity Benefit Payment

16. Pursuant to 28 Tex. Admin. Code § 124.2, an insurance carrier shall notify the division and the claimant of actions taken on or events occurring in a claim as required by this title, using plain language notices providing enough sufficient claim-specific substantive information to enable the claimant to understand the insurance carrier's position or action taken on the claim.
17. Respondent violated Tex. Lab. Code §§ 415.002(a)(20), and (22) by failing to timely file notice of a change in the amount of the indemnity benefit payment.

Order

It is ordered that LM Insurance Corporation must pay an administrative penalty of \$13,500 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.



Dan Paschal, J.D.
Deputy Commissioner
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Approved Form and Content:



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