

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: FEB 12 2020

Subject Considered:

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

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 17461

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 in the state of Texas to write multiple lines of insurance, including workers' compensation/employers' liability insurance.
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 INITIATE PAYMENT OF TEMPORARY INCOME BENEFITS

3. On [REDACTED], LM received notice of an injury to an injured employee.
4. The first day of disability for the injured employee began on [REDACTED], and the eighth day of disability accrued on [REDACTED].
5. LM was required to initiate or dispute temporary income benefits (TIBs) the later of 15 days after LM's written notice of the injury or seven days after the accrual date, which in this case was on [REDACTED].

6. LM did not file a dispute of disability with the Texas Department of Insurance, Division of Workers' Compensation (DWC) and issued the initial TIBs payment totaling \$ [REDACTED] on [REDACTED], which was 10 days late.

FAILURE TO TIMELY PAY TIBS IN ACCORDANCE WITH A DESIGNATED DOCTOR REPORT

7. On [REDACTED], LM received a report from the designated doctor (DD). The DD determined the injured employee reached maximum medical improvement (MMI) on [REDACTED], with a [REDACTED]% impairment rating (IR).
8. LM was required to pay the full amount of accrued income benefits no later than five days after receipt of the DD report, which in this case was by [REDACTED].
9. LM issued a lump sum payment of \$ [REDACTED] on [REDACTED], which was 51 days late.

ASSESSMENT OF SANCTION

10. Failure to provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the Texas workers' compensation system.
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, 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 other matters that justice may require, including the size of the company or practice.

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 actions taken to rectify the consequences of the prohibited act.
14. LM acknowledges that DWC and LM 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).
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.
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 fails to comply with a provision of the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE §§ 408.081, 408.082, and 409.021 and 28 TEX. ADMIN. CODE §§ 124.3 and 124.7, insurance carriers are required to initiate payment of TIBs not later than the 15th day after the date on which the insurance carrier receives written notice of the injury, or the seventh day after the accrual date, unless the insurance carrier has notified DWC and the injured employee in writing of its refusal to pay.
7. LM violated TEX. LAB. CODE §§ 415.002(a)(20), 415.002(a)(22), and 409.021 each time it failed to timely initiate payment of TIBs.

<p>Confidential Information Redacted Texas Labor Code §§402.083 & 402.092</p>
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8. Pursuant to TEX. LAB. CODE § 408.0041(f), the insurance carrier must pay benefits based on the opinion of the DD during the pendency of any dispute.
9. LM violated TEX. LAB. CODE § 415.002(a)(22) each time it failed to pay benefits based on the opinion of the DD during the pendency of a dispute.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), insurance carriers are required to pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.
11. LM violated TEX. LAB. CODE § 415.002(a)(20) when it failed to timely pay accrued income benefits in accordance with the DD's report no later than five days after receipt of the report.

ORDER

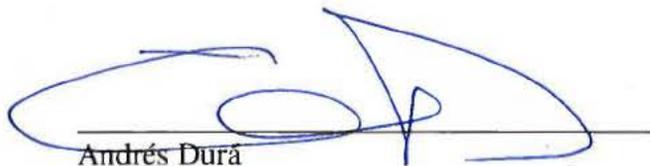
LM Insurance Company is ORDERED to pay an administrative penalty of \$10,000 within 30 days from the date of this Order.

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
Commissioner of Workers' Compensation

Approved as to Form and Content:



Andrés Dura
Staff Attorney, DWC Enforcement
Texas Department of Insurance

