

No. 2025-9061

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

**Date:** 1/10/2025

**Subject Considered:**

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

Consent Order  
DWC Enforcement File No. 34063

**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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2020 and 2022 Performance Based Oversight (PBO) assessments. Respondent was classified as "high" tier in the 2024 PBO assessment.

Failure to Accurately and Timely Pay Temporary Income Benefits

3. On [REDACTED], Respondent received notice of an employee's workplace injury that happened the same day.
4. On [REDACTED], the injured employee returned to light duty work until [REDACTED] 2023. The injured employee did not earn his average weekly wage except for one benefit week.
5. On [REDACTED] 2023, Respondent sent a Plain Language Notice (PLN) Form 02, *Notice of First Temporary Income Benefit Payment*, stating that the injured employee would receive \$ [REDACTED] each week starting on [REDACTED] (the eight day of accrual).
6. On [REDACTED], Respondent paid \$ [REDACTED] in temporary income benefits (TIBs) for the benefit period [REDACTED], through [REDACTED], which created an overpayment of \$ [REDACTED] due to the injured employee having post-injury earnings.
7. On [REDACTED], Respondent sent a PLN-09, *Notice of Suspension of Indemnity benefits*, stating the injured employee's benefits will stop on [REDACTED], which was the date the PLN-02 was sent. Respondent incorrectly stated that the reason for stopping benefits was due to the injured employee being released to return to work. However, the injured employee was only cleared for light duty.
8. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely pay TIBs, as follows:

	Payment Period		Date Due	Date Paid	Days Late
a.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	35
b.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	28
c.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	21
d.	[REDACTED]	to [REDACTED]	[REDACTED]	[REDACTED]	14

9. On [REDACTED], Respondent paid [REDACTED] in late interest, which was three days late.

Failure to Properly Recoup an Overpayment of Income Benefits

10. On [REDACTED], Respondent sent a PLN-10A, *Notice of Reinstatement of Indemnity Benefits*, stating TIBs would resume for the benefit period beginning [REDACTED], with the injured employee would receive \$ [REDACTED] weekly, and Respondent would recoup an overpayment of \$ [REDACTED]<sup>1</sup>.
11. However, recoupment occurred before the second income benefit payment made after Respondent sent the written notice to the injured employee.
12. Additionally, for the benefit period [REDACTED], through [REDACTED] Respondent owed \$ [REDACTED] in TIBs. Respondent paid \$ [REDACTED] in TIBs for that benefit period, which reduced the overpayment by [REDACTED].

**Assessment of Sanction**

1. Failure to provide accurate income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
2. Improper attempts to recoup an overpayment harm injured employees and abrogate a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.
3. 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 (EDI) requirements;
  - to the extent reasonable, the economic benefit resulting from the prohibited act; and

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<sup>1</sup> In part, Respondent reached the conclusion that there was an overpayment due to an incorrect calculation of the injured employee's post-injury earnings.

- 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.
4. 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 totality of circumstances in the way this claim was investigated and adjusted; Respondent's disciplinary history, including four recent consent orders and two warning letters involving late TIBs; evidence of heightened awareness of the duty to comply with the Act and DWC rules; the penalty necessary to deter future violations; the history of compliance with EDI requirements; the size of the company; and the negative impact on the delivery of benefits to an injured employee.
  5. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
  6. 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).
  7. 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 fails to comply with 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 Timely Pay TIBs

7. 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.
8. Pursuant to Tex. Lab. Code § 408.101, an employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.
9. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 28 Tex. Admin. Code § 124.7, an insurance carrier is required to initiate payment of TIBs no later than the seventh day after the accrual date.
10. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code § 124.7 each time Respondent failed to timely initiate payment of TIBs.

Failure to Accurately Pay TIBs

11. Pursuant to Tex. Lab. Code § 408.081, an insurance carrier must pay accurate benefits weekly, as and when the benefits accrue, without an order from the commissioner.
12. Pursuant to Tex. Lab. Code § 408.103 and 28 Tex. Admin. Code § 129.3, the amount of a temporary income benefit is equal to 70% of the injured employee's lost wage.
13. Respondent violated Tex. Lab. Code § 408.081, 408.103, 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 129.3 by failing to accurately pay accrued TIBs.

Failure to Timely Pay Interest

14. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
15. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22) and 28 Tex. Admin. Code § 126.12(b) when it failed to pay interest with accrued but unpaid income benefits.

Failure to Properly Recoup an Overpayment of Income Benefits

16. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.
17. Pursuant 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.
18. Pursuant 28 Tex. Admin. Code § 126.16(b)(2), if the injured employee's income benefits are concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 10% of the income benefit payment to which the injured employee is entitled. The insurance carrier

may not begin recoupment of the overpayment earlier than the second income benefit payment made after the written notice has been sent to the injured employee.

19. Respondent violated Tex. Lab. Code § 415.002(a)(20); and 28 Tex. Admin. Code § 126.16(b)(1) and (2) by failing improperly recouping overpayments of income benefit.

**Order**

It is ordered that LM Insurance Corporation must pay an administrative penalty of \$4,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, LM Insurance Corporation must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, 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, PO Box 12030, Austin, Texas 78711-2030.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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