

No. 2025-9116

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

Date: 1/30/2025

Subject Considered:

XL Insurance America, Inc.
677 Washington Boulevard, Suite 1000
Stamford, Connecticut 06901-3717

Consent Order
DWC Enforcement File No. 35528

General remarks and official action taken:

This is a consent order with XL Insurance America, Inc. (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 2020, 2022, and 2024 Performance Based Oversight (PBO) assessments.

Failure to Timely Comply with a Benefit Dispute Agreement and
Failure to Timely Pay Subsequent Quarters of Supplemental Income Benefits

3. On [REDACTED], Respondent and an injured employee executed a Benefit Dispute Agreement (BDA) stating that the injured employee was entitled to supplemental income benefits (SIBs) for the fourth quarter, [REDACTED], through [REDACTED].
4. On [REDACTED], Respondent received the DWC-approved BDA. Respondent was required to pay the accrued SIBs for the first and second months of the fourth quarter before the fifth day after receipt of the BDA, or by [REDACTED].
5. On [REDACTED], Respondent paid \$ [REDACTED] in SIBs for the first month of the fourth quarter and \$ [REDACTED] in SIBs for the second month. Respondent underpaid the first month by \$ [REDACTED] and the second month by \$ [REDACTED]. On [REDACTED], the total SIBs underpayment was [REDACTED].
6. Respondent did not pay interest with the [REDACTED], SIBs payment.
7. On [REDACTED], Respondent paid [REDACTED] in SIBs for the third month of the fourth quarter. Respondent still owed \$ [REDACTED] for the third month of the fourth quarter.
8. Respondent's payment for the third month of the fourth quarter was due by the 67th day of the quarter, which was [REDACTED]. On [REDACTED], the total SIBs underpayment was [REDACTED].
9. Between [REDACTED], and [REDACTED], Respondent erratically paid SIBs for quarters other than the fourth quarter.
10. On [REDACTED], Respondent paid the remaining \$ [REDACTED] in unpaid SIBs for the fourth quarter when it made a lump sum payment that included SIBs for other quarters. Respondent paid the first two months of the fourth quarter 58 days late and paid SIBs for the third month 31 days late.
11. On [REDACTED], Respondent fully complied with the BDA when it finished paying SIBs for the fourth quarter, which was 58 days late.
12. On [REDACTED], Respondent paid all interest due, which was 48 and three days late.

Assessment of Sanction

1. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas Workers' Compensation system.
2. Failure to timely comply with a benefit dispute agreement that is executed in good faith by the parties and approved by DWC increases the likelihood of disputes, and is harmful to injured employees and the Texas workers' compensation system because it damages system participants' faith in the dispute resolution process.
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 requirements;
 - 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.
4. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating:
 - a. The seriousness of the violation, including the amount at issue, the lateness of the benefit payments, the systemic errors, and the number of violations;
 - b. Respondent's disciplinary history, which includes recent violations involving SIBs, breach of a BDA, and violation of a DWC order;
 - c. The penalty necessary to deter future violations; and

- d. Other matters that justice may require, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules due to past notice of these violations and Respondent's express agreement to pay the injured employee fourth-quarter SIBs in the BDA.
5. DWC considered the following mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's prompt and earnest actions to prevent future violations, including committing to conducting training on SIBs in January 2025.
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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or a provision of the Texas Workers' Compensation Act.

Failure to Timely Comply with a Benefit Dispute Agreement

6. Pursuant to Tex. Lab. Code § 415.010, a person commits a violation by breaching a provision of an agreement that DWC approved.
7. Respondent violated Tex. Lab. Code §§ 415.002(a)(22) and 415.010 when it failed to timely comply with a BDA.

Failure to Pay Subsequent Quarters of Supplemental Income Benefits

8. Pursuant to Tex. Lab. Code § 408.144, SIBs are calculated quarterly and paid monthly.
9. Pursuant to Tex. Lab. Code § 408.145, an insurance carrier must pay SIBs no later than the seventh day after the employee's impairment income benefit period expires and must continue to pay the benefits in a timely manner.
10. Pursuant to Tex. Lab. Code § 409.023, an insurance carrier must continue to pay benefits promptly as and when benefits accrue without a final decision, order, or other action from the commissioner, except as otherwise provided.
11. Pursuant to 28 Tex. Admin. Code § 130.107, an insurance carrier must make the first payment of SIBs for the fourth quarter by the 10th day after receiving the Application for Supplemental Income Benefits or the seventh day of the quarter. An insurance carrier must make the second payment by the 37th day of the quarter and the third payment by the 67th day of the quarter.
12. Respondent violated Tex. Lab. Code §§ 408.145; 409.023; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 130.107 each time it failed to timely pay SIBs.

Failure to Timely Pay Interest with Income Benefits

13. 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.

14. Respondent violated Tex. Lab. Code §§ 408.064 and 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 126.12(b) each time it failed to pay interest with accrued but unpaid income benefits.

Order

It is ordered that XL Insurance America, Inc. must pay an administrative penalty of \$7,600 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, XL Insurance America, Inc. 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Alberto Garcia
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Illinois §
§
COUNTY OF Cook §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Lynn Munson. I hold the position of V.P. Claims Regulatory and am the authorized representative of XL Insurance America, Inc. My business address is: 111 S. Wacker Dr., Suite 4000, Chicago, Cook, IL, 60606.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.

Lynn Munson
Declarant

Executed on January 3, 2025.