

No. **2022-7523**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 9/26/2022

Subject Considered:

XL Specialty Insurance Company
P.O. Box 636
505 Eagleview Blvd.
Exton, Pennsylvania 19341-0636

Consent Order
DWC Enforcement File Nos. 28323, 29113, 29432, and 29656

General remarks and official action taken:

This is a consent order with XL Specialty Insurance Company (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, 2010, 2012, 2014, 2016, 2018, and 2020 Performance Based Oversight (PBO) assessments, and as “poor” in the 2009 PBO assessment.

Failure to Timely Pay Attorney Fees Ordered by DWC

File No. 28323

- 3. On [REDACTED] DWC ordered Respondent to pay attorney fees in connection with legal services provided to an injured employee. DWC ordered Respondent to pay attorney fees in the amount of 25% of each income benefit payment to the injured employee.
- 4. Between [REDACTED] and [REDACTED] Respondent issued multiple payments to the injured employee (IE) for unpaid income benefits. Respondent failed to timely pay attorney fees in an amount equal to 25 percent of the income benefits paid to the injured employee as follows:

	IIBs Paid to IE	Attorney Fees Owed	Attorney Fees Paid	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	20
b.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	26
c.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	12
d.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	20
e.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	12
f.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	5

Failure to Timely Act on a Medical Bill

File No. 29113

- 5. On [REDACTED] a health care provider (HCP) provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.
- 6. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]

<p>Confidential Information Redacted Texas Labor Code §§402.083 and 402.092</p>

7. On [REDACTED] Respondent denied payment for the bill seven days late.

File No. 29656

8. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.

9. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]

10. On [REDACTED] Respondent issued payment in the amount of [REDACTED] which was 138 days late.

11. On [REDACTED] a HCP provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill in the amount of [REDACTED] from the HCP.

12. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]

13. On [REDACTED] Respondent issued payment in the amount of [REDACTED] which was 65 days late.

Failure to Timely Pay Accrued Temporary Income Benefits

File No. 29432

14. Respondent was required to pay temporary income benefits (TIBs) to an 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 issue the TIBs payments, as follows:

	Payment Period	Date Due	Date Paid	Days Late
a.	[REDACTED]	[REDACTED]	[REDACTED]	16
b.	[REDACTED]	[REDACTED]	[REDACTED]	10
c.	[REDACTED]	[REDACTED]	[REDACTED]	3
d.	[REDACTED]	[REDACTED]	[REDACTED]	13
e.	[REDACTED]	[REDACTED]	[REDACTED]	5

Assessment of Sanction

1. Failure to timely pay attorney fees ordered by DWC makes it more difficult for attorneys to provide adequate legal services to injured employees and is harmful to the Texas workers' compensation 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 violations, 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 mitigating factor pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited acts.

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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC statute or rule.

Failure to Timely Pay Attorney Fees Ordered by DWC

6. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.

7. Pursuant to 28 Tex. Admin. Code § 152.1(c), insurance carriers are required to pay attorney 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. As the insurance carrier pays income benefits, it must pay attorney fees until the fees are completely paid or income benefits cease.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20); 415.021(a); 415.0035(e); and 28 Tex. Admin. Code § 152.1(c) by failing to timely comply with a DWC order to pay attorney fees.

Failure to Timely Act on a Medical Bill


9. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
10. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time it failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Accrued Temporary Income Benefits

11. 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.
12. Pursuant to Tex. Lab. Code §§ 408.081, 408.082, and 409.021 and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
13. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22) and 28 Tex. Admin. Code §§ 124.3 and 124.7 each time Respondent failed to timely pay TIBs.


Order

It is ordered that XL Specialty Insurance Company must pay an administrative penalty of \$10,500.00 within 30 days from the date of this order. XL Specialty Insurance Company 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.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



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