

No. **2024-8804**

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

Date: 9/4/2024

Subject Considered:

XL Specialty Insurance Company
677 Washington Boulevard, Suite 1000
Stamford, Connecticut 06901-3717

Consent Order
DWC Enforcement File Nos. 34399 & 34400

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 2022, 2020, and 2018 Performance Based Oversight (PBO) assessments.

File No. 34399

Failure to Timely Comply with a Benefit Dispute Agreement

3. On [REDACTED], and [REDACTED], the parties executed a Benefit Dispute Agreement (BDA) regarding an injured employee's average weekly wage (AWW). The parties agreed that an injured employee's AWW was \$ [REDACTED].
4. Respondent received the DWC-approved BDA by mail on [REDACTED].
5. Respondent had paid TIBs from [REDACTED], through [REDACTED], at a lower AWW, resulting in a total underpayment of \$ [REDACTED]. Respondent was required to correct the underpayment five days from executing the BDA. In this case, the deadline to pay was [REDACTED].
6. Respondent paid \$ [REDACTED] in TIBs on [REDACTED], which was 208 days late.

Failure to Accurately Pay Accrued Temporary Income Benefits (TIBs)

7. TIBs were required to be paid at a rate equal to 70% of the injured employee's AWW. In this case, the correct weekly rate of TIBs due to the injured employee was [REDACTED].
8. Respondent paid TIBs at an incorrect rate from [REDACTED], through [REDACTED], resulting in a total underpayment of \$ [REDACTED].
9. On [REDACTED], Respondent paid the deficiency in TIBs.

File No. 34400

Failure to Accurately Pay Accrued Impairment Income Benefits (IIBs)

10. On [REDACTED], Respondent received a designated doctor (DD) report in connection with a DD examination. The DD determined that the injured employee reached maximum medical improvement (MMI) on [REDACTED], and had a [REDACTED] % impairment rating (IR).

11. Respondent was required to pay IIBs to the injured employee for the periods between [REDACTED], and [REDACTED].
12. Between [REDACTED], and [REDACTED], DWC approved and ordered Respondent to pay attorney fees totaling \$ [REDACTED] in connection with legal services provided to the injured employee. DWC ordered Respondent to pay attorney fees at a rate of 25% of each income benefit payment to the injured employee.
13. While paying IIBs, Respondent overpaid attorney fees, resulting in a \$ [REDACTED] underpayment of IIBs to the injured employee.
14. On [REDACTED], Respondent paid the deficiency in IIBs.

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. 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;
 - 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.
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 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 had a negative impact on the delivery of benefits to an injured employee; and other matters that justice requires, including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
 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, 414.003, and 415.021.
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 the DWC rules or a provision of the Texas Workers' Compensation Act.

Failure to Timely Comply with a Benefit Dispute Agreement

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

Failure to Accurately Pay Accrued Income Benefits

9. 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. An employee is entitled to timely and accurate benefits.
10. Pursuant to Tex. Lab. Code § 408.126, an impairment income benefit is equal to 70% of the employee's average weekly wage.
11. 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 average weekly wage.
12. Respondent violated Tex. Lab. Code §§ 408.081, 408.103, 408.126, 409.023, 415.002(a)(16), (20), & (22) each time Respondent failed to timely and accurately pay TIBs and IIBs.

Order

It is ordered that XL Specialty Insurance Company must pay an administrative penalty of \$2,500 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, XL Specialty Insurance Company 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, P.O. Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Connor Ambrosini
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 Specialty Insurance Company. 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 August 15, 2024.