



**2020 Report on Absence of Good Faith Cases
filed under § 27-1001 of the Maryland Insurance
Article**

MSAR # 6587

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December 31, 2020

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I. Introduction

Section 27-1001 of the Insurance Article of the Annotated Code of Maryland¹ took effect on October 1, 2007, and was passed by the General Assembly as a consumer protection measure to provide an insurance policyholder with greater leverage during the insurance claim adjustment process. Sen. Jud. Proc. Comm., Floor Report, H.B. 425 & S.B. 389, p. 4 (Md. 2007). The law requires the Insurance Commissioner to conduct an on-the-record review of complaints filed by insurance policyholders alleging that an insurer failed to act in good faith when improperly denying coverage or failing to pay the full value of a first-party property and casualty claim.² Section 27-1001(e).

According to the legislative history of § 27-1001, the bill was designed to address the General Assembly’s concern that some insurance companies disregard their established legal obligations to adequately pay claims. “Testimony on [§ 27-1001] indicated that insurance companies often ‘lowball’ their offers to policyholders because there’s no incentive for them to offer the policy limits, even when damages exceed policy limits.” Sen. Jud. Proc. Comm., Floor Report, H.B. 425 & S.B. 389, p. 4 (Md. 2007).

This annual report is filed in accordance with § 27-1001(h), which requires the Maryland Insurance Administration (“the Administration”) to report: 1) the number and type of complaints filed under § 27-1001; 2) the administrative and judicial disposition of those complaints; and 3)

¹ Unless otherwise indicated, statutory references are to the Insurance Article of the Annotated Code of Maryland.

² In FY 2017, effective October 1, 2016, Md. Code Ann., Cts. & Jud. Proc. Art., § 3-1701 was amended to include individual disability insurance policies. The FY 2017 Report to the General Assembly on Absence of Good Faith Cases Filed Under §27-1001 of the Maryland Insurance Article will report on claims filed for individual disability insurance policies.

the number and type of regulatory enforcement actions taken by the Administration for unfair claim settlement practices along with the administration and judicial disposition of those enforcement actions.

The Administration has successfully implemented § 27-1001 and continues to process complaints in a timely manner. Section 27-1001 continues to provide consumers with a valuable tool to assist them in resolving disputes with insurers about their insurance claims. Additionally, the statute gives consumers access to an impartial review of their disputed claim(s), which helps them secure a fair and equitable claim settlement without resorting to filing an action in court.

II. Overview of Section 27-1001

Title 27 of the Insurance Article addresses unfair trade practices and other prohibited business practices. It is designed to “regulate trade practices in the business of insurance...that are unfair methods of competition or unfair or deceptive acts or practices.” Section 27-1001. The law defines “good faith” as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim.” Section 27-1001(h). This statutory definition of absence of good faith “focuses on the actions taken by the insurer in forming a judgment as to coverage, as well as what the insurer knew or should have known at the time it denied coverage to its insured.” *Cecilia Schwaber Trust Two v. Hartford Accident and Indemnity Co.*, 636 F. Supp.2d 481, 486 (D. Md. 2009).

Section 27-1001 and its corollary § 3-1701 in the Courts and Judicial Proceedings Article apply to claims alleging that an insurance company failed to act in good faith in determining coverage or in determining the amount of payment for claims made under property and casualty insurance policies. Md. Code Ann., Cts. & Jud. Proc. Art., § 3-1701 (b) and (d). The law applies

only to “first-party” claims. A first-party claim is one made by a person with insurance coverage for their person, personal property, and/or real property. Effective October 1, 2016, individual disability insurance policies were added to the scope of § 3-1701. In contrast, a third-party claim is made by a person who is entitled to receive a benefit payment from another’s insurance policy.

With some exceptions, a first-party insured must first file a complaint with the Administration before bringing an action in court. Section 27-1001(a); Md. Code Ann., Cts. & Jud. Proc. Art., § 3-1701. The complaining party must submit a written complaint outlining the basis for the complaint and the damages sought, and include “each document that the insured has submitted to the insurer for proof of loss.” Section 27-1001(d)(2)(i). The insurer then files a response to the claim along with the documentation supporting its position. Section 27-1001(d)(4)(i)-(ii). The Administration makes its finding based on the written record and without a hearing. Section 27-1001(e).

The decision of the Administration must contain five (5) findings:

1. whether the insurer is obligated under the applicable policy to cover the underlying first-party claim;
2. the amount the insured was entitled to receive from the insurer under the applicable policy on the underlying covered first-party claim;
3. whether the insurer breached its obligation under the applicable policy to cover and pay the underlying covered first-party claim, as determined by the Administration;
4. whether an insurer that breached its obligation failed to act in good faith; and
5. the amount of damages, expenses, litigation costs, and interest, as applicable and as authorized under paragraph (2) of this subsection.

Section 27-1001(e)(1)(i).

If the Administration finds in favor of the insured, it must determine actual damages and the interest on actual damages. Section 27-1001(e)(2)(i). Furthermore, if the Administration finds that the insurer failed to act in good faith, it must “determine the obligation of the insurer to pay:

1. expenses and litigation costs incurred by the insured, including reasonable attorney's fees, in pursuing recovery under this subtitle; and 2. interest on all expenses and litigation costs incurred by the insured." Section 27-1001(e)(2)(ii).

The statute gives the Administration ninety (90) days from the day a complaint is filed to render a decision. If, however, the Administration does not issue a decision within the period specified it shall be considered a determination that the insurer did not breach any obligation to the insured. The Administration's opinions on § 27-1001 complaints are posted to the Administration's website (www.mdinsurance.state.md.us).

III. Analysis of Complaints Filed under § 27-1001

Section 27-1001(h) directs that the report to the General Assembly be based upon the prior fiscal year's activity. This report contains information about the disposition of those complaints filed in fiscal year (FY) 2020 (July 1, 2019, through June 30, 2020).

A. Number of Complaints

Twenty-eight (28) complaints were received in FY 2020 and were processed by the hearings unit. Four (4) complaints did not meet the requirements to file a complaint under § 27-1001 and a decision on the merits was not reached, as there was no jurisdiction. *See Table 1*. Two were out of state cases, and two involved third-party, rather than first-party claims. One (1) case filed a stipulation to bypass the Maryland Insurance Administration according to §27-1001 (c) (2) (ii). Four (4) cases were withdrawn or settled prior to a decision on the merits. In eighteen (18) of the nineteen (19) of the remaining cases, the insurance company did not violate § 27-1001. *Id.* The insurance company violated §27-1001 in one (1) case, accounting for 5.2% of the cases for which a decision on the merits was rendered, and 3.6% of all cases received. *See Table 1*.

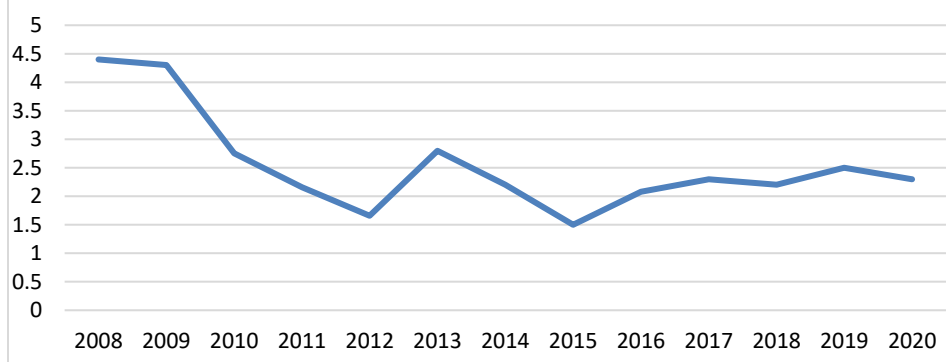
Table 1 – § 27-1001 Complaints Filed with the Administration FY 2015-FY 2020

	FY 2015		FY 2016		FY 2017		FY 2018		FY 2019		FY 2020	
	#	%	#	%	#	%	#	%	#	%	#	%
Settled, Withdrawn or Dismissed	3	17%	10	40%	6	21%	8	30%	2	7%	9	32%
§ 27-1001 violation	3	17%	1	4%	1	4%	0	0%	1	3%	1	4%
No Violation	12	60%	14	56%	21	75%	18	70%	27	90%	18	64%
Total	18	100%	25	100%	28	100%	26	100%	30	100%	28	100%

From FY 2019 to FY 2020, the total number of complaints received decreased from thirty (30) to twenty-eight (28), a decrease in FY 2020 of 6.6% from the prior year. During the last quarter of FY2020, the State of Maryland was under a state of emergency due to the COVID-19 pandemic which slowed new complaint filings. So far in FY2021, the MIA has received an uptick in new complaints, as people adjusted to the new work environments as a result of the pandemic.

Initially in FY 2008 complaints were filed at an average rate of 4.4 per month. Since that time, the average number of complaints filed per month has fluctuated. In FY 2014 and FY 2015, the number fell to 2.2 cases per month and 1.5 cases per month respectively. Complaints increased slightly in FY 2016 and FY 2017 to approximately 2 cases filed per month and 2.3 cases filed per month respectively, but in FY 2018 it decreased slightly to 2.2 cases filed per month. In FY 2019 the number of complaints increased again to 2.5 cases filed per month. In FY 2020, the number of complaints decreased slightly to 2.33 cases filed per month. *See Table 2.*

Table 2 – § 27-1001 Average # of Complaints Filed Per Month FY 2008-2020



B. Types of Complaints

Of the nineteen (19) complaints reviewed on the merits, eight (8) involved homeowner’s insurance issues, five (5) involved uninsured or underinsured motorist coverage, two (2) involved commercial policies, one (1) involved a first-party automobile property damage claim, one (1) involved a title insurance claim, one (1) involved a boat claim, and one (1) involved a disability claim. *See Table 3.*

Table 3 – § 27-1001 Complaints Filed in FY 2020 by Type of Insurance

	<i>Number</i>	<i>Percentage</i>
Complaints Reviewed on the Merits	19	100%
Homeowners	8	42%
Auto- Uninsured Motorist	5	27%
Commercial Property	2	11%
Auto- Property Damage	1	5%
Title	1	5%
Boat	1	5%
Disability	1	5%

C. Case in which the Administration Found an Absence of Good Faith

Of the nineteen (19) complaints filed with the Administration during FY 2020 and decided on the merits, the Administration determined one (1) insurer failed to act in good faith in violation of §27-1001. In that case, the MIA determined that the insurer breached its obligation to pay a homeowner's claim for roof damage, which resulted in water entering the house, causing mold. The MIA determined that Defendant did not diligently investigate Plaintiff's wind and water claim and then failed to respond to Plaintiff's initial complaint about mold. The MIA found that Defendant for the most part delegated its obligation to investigate the claim to Plaintiff, who provided credible evidence of mold infiltration. After considerable delay, when Defendant finally re-inspected Plaintiff's home, it failed to check for mold spores in the air or behind walls or collected and sent samples to an environmental lab. Plaintiff provided credible evidence that there were visible signs of mold growth in various parts of the house.

D. Judicial Review of § 27-1001 Decisions

In FY 2020, one (1) aggrieved party appealed the MIA's determination to the Office of Administrative Hearings (OAH). On March 26, 2020, the OAH case was dismissed as the parties settled the case and the appeal was withdrawn.

In FY 2020, one (1) aggrieved party appealed the MIA's determination to Circuit Court for Baltimore City. The appeal was filed on June 30, 2020, and but has not been assigned a hearing date pursuant to emergency orders issued by the Maryland Judiciary suspending hearings in response to the COVID-19 pandemic.

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints to identify regulatory trends or problems. During FY 2020, none of the complaints received required a referral to another MIA Unit for additional regulatory investigation and enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

The absence of good faith provisions in the Maryland Insurance Article continues to provide insurance policyholders with an added layer of consumer protection.