2021 Report on Absence of Good Faith Cases Filed under § 27-1001 of the Maryland Insurance Article

MSAR # 6587

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Introduction

Section 27-1001 of the Insurance Article,[1] which took effect on Oct. 1, 2007, was passed in connection with the passage of § 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.). The purpose of these laws was to establish a process through which a policyholder could seek the award of special damages in a civil coverage or breach of contract action where the insurer failed to act in good faith in denying all or part of a first-party property insurance claim. Before the insured may file an action seeking special damages pursuant to § 3-1701, the insured must first submit their complaint to the Maryland Insurance Administration (Administration or MIA under § 27-1001, which requires the Insurance Commissioner to conduct an on-the-record review of such complaints. § 27-1001(e). These laws were amended in 2017 to apply the process to disability claims.

According to the legislative history of § 27-1001, the bill was designed to address the legislature'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). Section 3-1701 created a disincentive for insurers to engage in such conduct by permitting insureds to recover attorney's fees and interest.

Overview of Section 27-1001

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages under § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within 90 days of the receipt of such a complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs, and interest.

"Good faith" is defined in §27-1001 as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim." A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physician v. Elliott,* Md. App. 369, 435, *cert denied,* 396 Md. 12 (2006).

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

Analysis of Complaints Filed under § 27-1001

Section 27-1001(h) directs that this report be based upon the prior fiscal year's activity. This report contains information about the disposition of those complaints filed in fiscal year (FY) 2021 (July 1, 2020, through June 30, 2021).

A. Number of Complaints

In FY21, the Office of Hearings (OAH) received and processed 58 complaints. In 3 instances the complaint did not fall within the scope of § 27-1001 and the complaint was dismissed for lack of jurisdiction therefore a decision on the merits was not reached. *See Table 1*. Each of these cases involved a third-party, rather than a first-party claim. 15 cases were withdrawn or settled before a decision on the merits.

Of the 40 remaining cases that were reviewed on the merits, the Administration determined that the insurer had breached its contractual obligation to fully pay the underlying insurance claim in 11 cases, accounting for 19% of all cases received and 27.5% of the cases in which a decision was rendered on the merits. *See Table 1*. Of those 11 cases in which the Administration found a breach of the claim payment obligation, in 3 cases the Administration also found that the insurer had breached its obligation to act in good faith, accounting for 5% of all cases received and 7.5% of the cases for which a decision on the merits was rendered. *See Tables 1 and 2*.

Table 1 – § 27-1001 Complaints Filed with the Administration FY 2021

FY 2021				
		Number Filed	**% of Filed**	**% of Reviewed**
Settled, Withdrawn, or Dismissed		18	31%	N/A
Breach Found		11	19%	27.5%
	Breach of an obligation to pay only	8	14%	20%
	Breach of an obligation to pay and obligation to act in good faith	3	5%	7.5%
No Breach Found		29	50%	72.5%
Total Reviewed		40	69%	100%
Total		58	100%	N/A

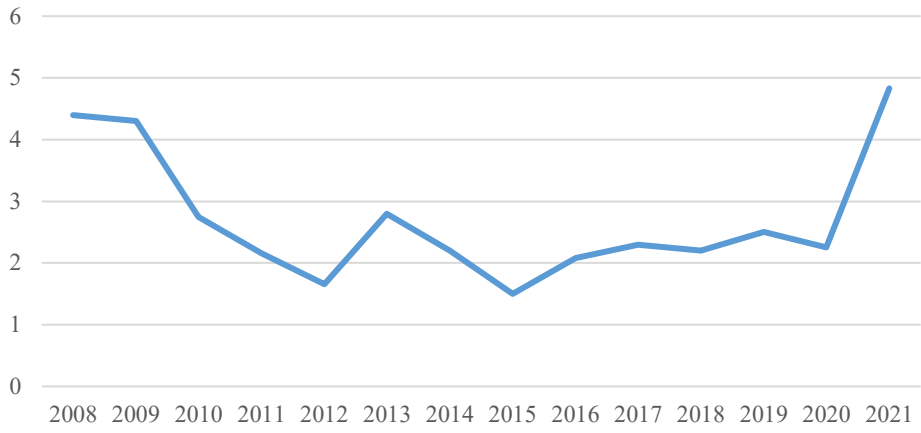
Table 2 – § 27-1001 Complaints Filed with the Administration FY 2016 to FY 2021

	FY 2016		**FY 2017**		**FY 2018**		**FY 2019**		**FY 2020**		**FY 2021**	
	#	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**	**#**	**%**
Settled, Withdrawn, or Dismissed	10	40%	6	21%	8	30%	2	7%	9	32%	18	31%
§27-1001 (absence of good faith) violation	1	4%	1	4%	0	0%	1	3%	1	4%	3	5%
No Violation	14	56%	21	75%	18	70%	27	90%	18	64%	37	64%
Total	25	100%	28	100%	26	100%	30	100%	28	100%	58	100%

From FY 2020 to FY 2021, the total number of complaints received more than doubled, from 28 to 58 filings, an increase in FY 2021 of 207% from the prior year. During the majority of FY2021, the State of Maryland was under a state of emergency due to the COVID-19 pandemic. With the courts operating at a limited capacity, the MIA received a significant increase in the number of new complaints, a trend that continues in FY2022.

In FY 2008, the first year following the effective date of section 27-1001, complaints were filed at an average rate of 4.4 per month. Since that time, the average number of complaints filed has fluctuated. In FY 2014 and FY 2015, the number fell to 2.2 and 1.5 complaints filed per month respectively. Complaints increased slightly in FY 2016 and FY 2017 to approximately 2 and 2.3 complaints filed per month respectively, but in FY 2018 the number of complaints filed decreased slightly to 2.2 per month. In FY 2019 the number of complaints filed increased to 2.5 complaints per month but decreased slightly in FY 2020 to 2.33 per month. In FY 2021, the average rate of complaints filed per month increased significantly to 4.8 complaints per month. *See Table 3 on the next page.*

Table 3
Average Number of §27-1001
Complaints Filed PerMonth
FY 2008 to FY 2021



B. Types of Complaints

Of the 40 complaints reviewed on the merits, 9 involved homeowner's insurance claims, 27 involved uninsured or underinsured motorist claims, 1 involved a commercial policy claim, 1 involved a first-party automobile property damage claim, 1 involved a marine insurance claim, and 1 involved a rental property claim. *See Table 4*

Table 4 – § 27-1001 Complaints Filed in FY 2021 by Type of Insurance

	Number	**Percentage**
Complaints Reviewed on the Merits	40	100%
Homeowners	9	22.5%
Auto- Uninsured Motorist	27	67.5%
Commercial Property	1	2.5%
Auto- Property Damage	1	2.5%
Marine	1	2.5%
Rental Property	1	2.5%

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

Of the 40 complaints reviewed on the merits in FY 2021, the Administration determined in 11 cases that the insurer had breached its claim payment obligation and that the Plaintiff was entitled to additional claim compensation. In 8 of those cases, the Administration did not find that the insurer had breached its obligation to act in good faith in handling the claim. In the other 3 cases, the Administration found the insurers had failed to act in good faith in handling the claim.

The basis of the Administration's findings that the insurance companies failed to act in good faith in those three cases were, respectively: 1) an uninsured motorist's claim where the Administration determined that the insurer failed to undertake an adequate investigation to obtain information related to the claim; 2) a homeowner's claim where the Administration determined that an insurer failed to respond to several communications from its policyholder, failed to perform a timely inspection of its policyholder's property, failed to consider three repair estimates provided by its policyholder for the damage to the policyholder's property, and failed to issue a timely coverage letter approving or denying the claim; and 3) an uninsured motorist's claim where the Administration determined that the insurer failed to assess the information it was provided, failed to timely evaluate the claim, and failed to reach a timely conclusion as to the claim's settlement value.

D. Judicial Review of the § 27-1001 Decisions

In FY 2021, 11 aggrieved parties appealed the MIA's determination to the Office of Administrative Hearings (OAH). In cases appealed to the OAH, the parties are entitled to a *de novo* hearing, as opposed to a review of the record. Of the 11 cases appealed to the OAH, 4 cases are pending, 4 cases were withdrawn or settled by the parties, and the OAH affirmed the MIA decision in 2 cases.

In the remaining case appealed to the OAH, the MIA determined the Plaintiff was entitled to $113,163.81 in damages, and while the insurer breached its obligation to pay the full value of Plaintiff's claim, it did not fail to act in good faith. The MIA noted that there was nothing inherently wrong with the insurer using an outside vendor to assist in reviewing Plaintiff's claim and that the insurer was waiting on Plaintiff to provide Current Procedural Terminology (CPT) codes so the insurer could complete its evaluation. The OAH disagreed with the MIA findings, finding that the insurer arbitrarily adjusted Plaintiff's medical costs, devaluing the medical bills using its outside vendor as its sole resource. Further, the OAH found that the insurer did not timely request the CPT codes. The OAH determined that the insurer failed to act in good faith, and awarded Plaintiff $120,558.15 in damages, as well as attorney fees. The insurer appealed the OAH's decision to the Circuit Court for Baltimore City. That appeal is currently pending.

Two additional aggrieved parties appealed the MIA's decisions finding no liability by the insurer directly to Circuit Courts, one in Montgomery County the other in St. Mary's County. Both appeals were dismissed voluntarily by the parties. *See Table 4.*

Table 4 – Appeals of § 27-1001 Decisions Filed in FY

	Appeals to OAH	Appeals to Circuit Court
Dismissed / Settled / Withdrawn	4	2
Affirmed Administration	2	0
Reversed Administration	1	0
Appeals Pending	4	1
Total	11	3

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints to identify regulatory trends or problems. During FY 2021, 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).

Conclusion

The Administration has successfully implemented § 27-1001, and continues to process complaints in a timely manner. Section 27-1001 provides policyholders with an impartial review of their disputed claim(s) and can provide policyholders with a valuable tool to assist them in resolving disputes with insurers without incurring the expense of judicial action.