

# Maryland

INSURANCE ADMINISTRATION

## **Fiscal Year 2019 Report on Absence of Good Faith Cases Filed under § 27-1001 of the Maryland Insurance Article**

**MSAR # 6587**

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**TABLE OF CONTENTS**

I. Introduction ..... 3

II. Overview of Section 27-1001 ..... 4

III. Analysis of Complaints Filed Under § 27-1001 ..... 6

    A. Number of Complaints ..... 6

    B. Types of Complaints ..... 8

    C. Complaints in which the Administration Found an Absence of Good Faith.....9

    D. Judicial Review of § 27-1001 Decisions ..... 9

    E. Regulatory Enforcement Action ..... 10

IV. Conclusion..... 10

## **I. Introduction**

Section 27-1001 of the Insurance Article of the Annotated Code of Maryland<sup>1</sup> 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.<sup>2</sup> 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 pursuant to § 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) the number and type of regulatory enforcement actions taken by the Administration for unfair

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

<sup>2</sup> 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.

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 own 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 on the basis of 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 time 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](http://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) 2019 (July 1, 2018 through June 30, 2019).

#### **A. Number of Complaints**

Thirty-eight (38) complaints were received in FY 2019, of which two (2) related cases were consolidated, so thirty-seven cases were processed by the hearings unit. One (1) complaint did not meet the requirements to file a complaint under § 27-1001 was rejected. *See* Table 1. Five (5) cases were dismissed and transferred to the Property and Casualty Investigative unit as Complaints. One (1) case filed a stipulation to bypass the Maryland Insurance Administration pursuant to §27-1001 (c) (2) (ii). Two (2) cases were withdrawn or settled prior to a decision on

the merits. In twenty-seven (27) of the twenty-eight (28) 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 3.6% of the cases for which a decision on the merits was rendered, and 3.3% of all cases received. *Id.*

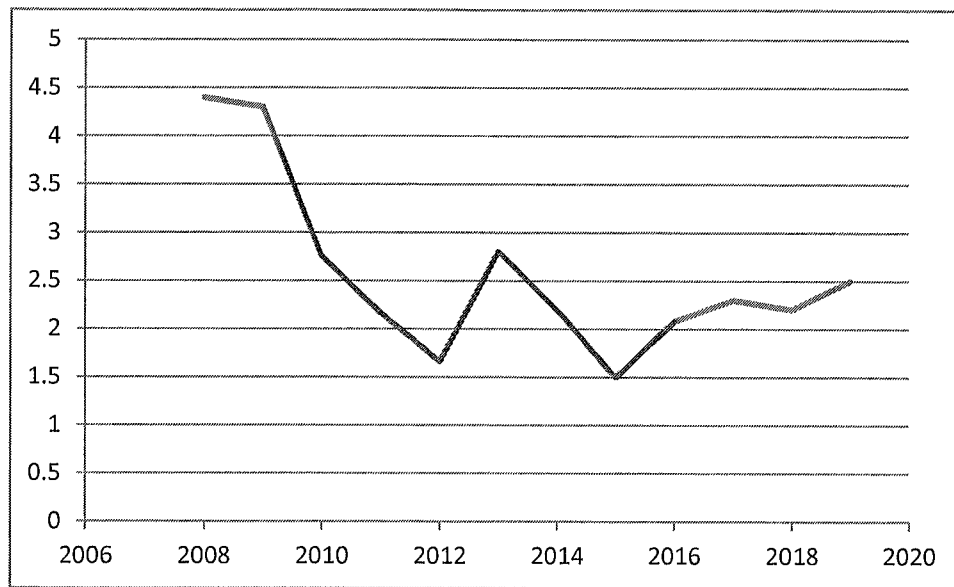
*Table 1 – § 27-1001 Complaints Filed with the Administration FY 2014-FY 2019*

	<i>FY 2014</i>		<i>FY 2015</i>		<i>FY 2016</i>		<i>FY 2017</i>		<i>FY 2018</i>		<i>FY 2019</i>	
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Settled, Withdrawn or Dismissed</b>	10	38%	3	17%	10	40%	6	21%	8	30%	2	7%
<b>§ 27-1001 violation</b>	3	12%	3	17%	1	4%	1	4%	0	0%	1	3%
<b>No Violation</b>	13	50%	12	60%	14	56%	21	75%	18	70%	27	90%
<b>Total</b>	26	100%	18	100%	25	100%	28	100%	26	100%	30	100%

From FY 2018 to FY 2019, the total number of complaints, other than those rejected for non-compliance with § 27-1001, increased from twenty-six (26) to thirty-one (31), an increase in FY 2019 of 19.2% from the prior year. *See* Table 1. 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. The number of complaints decreased until FY 2013, when it rose again to 2.8 cases per month. 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. *See* Table 2.



Table 2 – § 27-1001 Average # of Complaints Filed Per Month FY 2008-2019



B. Types of Complaints

Of the twenty-eight (28) complaints reviewed on the merits, fifteen (15) involved issues of uninsured or underinsured motorist coverage, six (6) involved homeowners insurance, two (2) involved first party automobile property damage claims, two (2) involved condominium policies, two (2) involved commercial liability policies, and one (1) involved a boat claim. *See Table 3.*

Table 3 – § 27-1001 Complaints Filed in FY 2019 by Type of Insurance

	<i>Number</i>	<i>Percentage</i>
<b>Complaints Reviewed on the Merits</b>	28	100%
<b>Auto- Uninsured Motorist</b>	15	54%
<b>Auto- Property Damage</b>	2	7%
<b>Condominium</b>	2	7%
<b>Commercial Property</b>	2	7%
<b>Homeowners</b>	6	21%
<b>Boat</b>	1	4%

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

Of the twenty-eight (28) complaints filed with the Administration during FY 2019 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 an uninsured motorists claim. This result was partially due to the fact that the Defendant did not file a timely response to the Complaint or provide any supporting documents. The Plaintiff also proved by a preponderance of the evidence that Defendant's expert witness did not dispute that the frequency and duration of Plaintiff's treatment was appropriate, the treatment was consistent with medical standards, and that the treatment was reasonable, necessary and causally related to the accident. Additionally Plaintiff proved that Defendant failed to timely return phone calls, repeatedly made requests for information Plaintiff had previously provided, and delayed making a settlement offer.

Defendant appealed the decision, fully participated and the MIA's determination was overturned by the Office of Administrative Hearings where its appeal was heard.

D. Judicial Review of § 27-1001 Decisions

In FY 2019, in eight (8) cases the aggrieved party appealed the Commissioner's determination to the Office of Administrative Hearings (OAH). Of those cases, the MIA's determination was affirmed in seven (7) cases, and reversed in one (1) case as described above. In six (6) of the seven (7) cases affirming the MIA's decision, the aggrieved party either settled or withdrew the case. In one (1) case the aggrieved party failed to appear.

In FY 2019, three (3) cases were appealed to the courts, one (1) to the Circuit Court for Anne Arundel County, one (1) to the Circuit Court for Baltimore County, and one (1) in the Circuit Court for Montgomery County. All three appeals were subsequently dismissed with prejudice by the parties; two (2) were dismissed, and one (1) in the Circuit Court for Baltimore County where the parties agreed to submit the case to binding arbitration. *See Table 4.*

*Table 4 – § 27-1001 Cases on Appeal*

<i>FY 2019</i>		
	Appeals to OAH	Appeals to Circuit Court
Total	8	3
Dismissed / Settled / Withdrawn	6	3
Failed to Appear	1	0
Affirmed Administration	0	0
Reversed Administration	1	0

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints in an effort to identify regulatory trends or problems. During FY 2019, 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). Five (5) of the complaints however were dismissed and transferred to the Property & Casualty investigations unit for additional investigation.

#### **IV. Conclusion**

While the statute has not generated the number of complaints anticipated at the time the law was enacted, the addition of the absence of good faith provision to the Maryland Insurance Article provides insurance policyholders with an added layer of consumer protection.