

IN THE MATTER OF THE
MARYLAND INSURANCE
ADMINISTRATION

v.

BRIAN ALLEN WALLACE
9507 Glade Avenue
Walkersville, Maryland 21793

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BEFORE THE MARYLAND
INSURANCE COMMISSIONER

CASE NO. MIA - 2015 - 02 - 016
Fraud Division File No. R-2015-0980A

ORDER

This Order is entered by the Maryland Insurance Administration (“MIA”) against Brian Allen Wallace (“Wallace” or “Respondent”) in accordance with §§2-108, 2-201, 2-204 and 2-405 of the Insurance Article, Annotated Code of Maryland (“the Insurance Article”).

I. Facts

1. Respondent has an automobile insurance policy with United Services Automobile Association General Indemnity Company (“USAA”), an authorized insurer, for his 2008 Toyota. The policy number is [REDACTED]

2. On June 2, 2014, Respondent reported to USAA that on June 1, 2014, his Toyota was damaged when an unknown vehicle struck it in a hit and run accident. USAA assigned claim number 026517731005.

3. On June 10, 2014, USAA inspected Respondent’s Toyota and estimated the repairs to cost \$1,107.12. USAA issued to Wallace a check for \$857.12 taking into account his \$250.00 deductible.

4. On July 8, 2014, Respondent reported to USAA that repairs to his vehicle had been completed and exceeded the amount USAA paid him. Respondent advised he paid out-of-pocket expenses, for which he requested reimbursement.

5. In support of his claim, Respondent faxed to USAA a Fitzgerald's Collision Center (Fitzgerald's) estimate citing the repair cost for his Toyota had been \$1,743.07, which is \$885.95 more than the amount paid to him by USAA.

6. USAA contacted Fitzgerald's to validate this higher amount. Fitzgerald's reported Respondent paid \$782.98 for repairs to his Toyota, which was less than the amount USAA paid Respondent. The billing rate was based upon Respondent's discount as an employee of Fitzgerald Auto Malls, a corporate affiliate of Fitzgerald's.

7. USAA referred the case to its Special Investigations Unit ("SIU") due to the above discrepancies.

8. The SIU contacted Fitzgerald's and confirmed that Respondent had his vehicle repaired there for cost of \$782.98, not \$1,743.07 as alleged by Respondent.

9. On September 29, 2014, USAA sent Respondent a letter denying his entire claim based upon a determination that Respondent misrepresented material facts in the presentation of his claim.

10. Section 27-802(a)(1) of the Insurance Article states, "An authorized insurer, its employees, producers...or agents, who in good faith have cause to believe that insurance fraud has been or is being committed, shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State or local law enforcement authorities." USAA, having a good faith belief that insurance fraud had been committed, referred the matter to the Maryland Insurance Administration Fraud Division.

11. MIA confirmed USAA's handling of the claim as set forth above.

12. MIA interviewed personnel from Fitzgerald's and learned that Respondent had contacted an employee at the repair facility and requested two repair estimates – one at an

employee discounted rate, and another reflecting insurance industry standard labor and material rates.

13. MIA interviewed Fitzgerald's Service Director as well as the Assistant Body Shop Manager. They advised Respondent was only charged \$782.98 for the repairs to his Toyota, and that this amount was all he paid.

14. Respondent's payroll records and repair estimates and invoices were obtained by MIA via subpoena. Those records corroborate that Respondent paid \$782.98 to Fitzgerald's, through payroll deductions.

II. Violation(s)

15. In addition to all relevant sections of the Insurance Article, the Administration relies on the following pertinent sections in finding that Respondent violated Maryland's insurance laws:

16. **§27-403(2)**

It is a fraudulent insurance act for a person:

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim...with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim.

17. **§27-408(c)(1)**

(1) In addition to any criminal penalties that may be imposed under this section, on a showing by clear and convincing evidence that a violation of this subtitle has occurred, the Commissioner may:

(i) impose an administrative penalty not exceeding \$25,000 for each act of insurance fraud; and

(2) In determining the amount of an administrative penalty, the Commissioner shall consider:

- (i) the nature, circumstances, extent, gravity, and number of violations;
- (ii) the degree of culpability of the violator;
- (iii) prior offenses and repeated violations of the violator; and
- (iv) any other matter that the Commissioner considers appropriate and relevant.

18. By the conduct described herein, Respondent knowingly violated §27-403 and is subject to an administrative penalty under the Insurance Article.

III. Sanctions

19. Insurance fraud is a serious violation which harms consumers in that the losses suffered by insurance companies are passed on to consumers in the form of higher premiums. The Commissioner may investigate any complaint that alleges that a fraudulent claim has been submitted to an insurer. Insurance Article, §§2-201(d)(1) and 2-405.

20. Respondent filed a claim with USAA for damages to his 2008 Toyota, for which USAA paid him. Respondent then reported that he paid more than USAA had compensated him, and submitted a repair estimate as proof that he incurred an additional out-of-pocket expense. Investigation confirmed that Respondent had not paid the amount reflected on the higher estimate. Having considered all relevant factors, including those set forth in Insurance Article §27-408(c)(2) and COMAR 31.02.04.02, MIA has determined that \$1,500.00 is an appropriate penalty.

21. Administrative penalties shall be made payable to the Maryland Insurance Administration and shall identify the case by number (R-2015-0980A) and name (Brian Allen Wallace). Unpaid penalties will be referred to the Central Collections Unit. Payment of the administrative penalty shall be sent to the attention of: Associate Commissioner, Insurance Fraud Division, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202.

22. This Order does not preclude any potential or pending action by any other person, entity or government authority, regarding any conduct by Respondent including the conduct that is the subject of this Order.

WHEREFORE, for the reasons set forth above, and subject to the right to request a hearing, it is this 10th day of February 2015, **ORDERED** that:

(1) Brian Wallace shall pay an administrative penalty of \$1,500.00 within 30 days of the date of this Order.

ALFRED W. REDMER, JR.
Insurance Commissioner

Signature on original

BY:

CAROLYN HENNEMAN
Associate Commissioner
Insurance Fraud Division

RIGHT TO REQUEST A HEARING

Pursuant to §2-210 of the Insurance Article and Code of Maryland Regulations (“COMAR”) 31.02.01.03, an aggrieved person may request a hearing on this Order. This request must be in writing and received by the Commissioner within thirty (30) days of the date of the letter accompanying this Order. Pursuant to §2-212 of the Article, the Order shall be stayed pending a hearing only if a demand for hearing is received by the Commissioner within ten (10) days after the Order is issued. The written request for hearing must be addressed to the Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202, Attn: Hearing and Appeals Coordinator. The request shall include the following information: (1) the action or non-action of the Commissioner causing the person requesting the hearing to be aggrieved; (2) the facts related to the incident or incidents about which the person requests the Commissioner to act or not act; and (3) the ultimate relief requested. Failure to request a hearing timely or to appear at a scheduled hearing will result in a waiver of your rights to contest this Order and the Order shall be final on its effective date. Please note that if a hearing is requested on this initial Order, the Commissioner may affirm, modify, or nullify an action taken or impose any penalty or remedy authorized by the Insurance Article against Respondent in a Final Order after hearing.