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Governor

BOYD K. RUTHERFORD
Lt. Governor

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December 20, 2022

The Honorable Bill Ferguson
President of the Senate
State House, Room H-107
100 State Circle
Annapolis, MD 21401

The Honorable Adrienne A. Jones
Speaker of the House of Delegates
State House, H-101
100 State Circle
Annapolis, MD 21401

**Re: Report Required by IN § 27-1001(h) and HB 990/Ch. 729, 2016 - (MSAR #6587) - FY 2022
Report on Absence of Good Faith Cases**

Dear President Ferguson and Speaker Jones:

House Bill 990/Chapter 729, of the Acts of 2016 and Insurance Article §27-1001(h) require that on or before January 1 of each year beginning in 2009, in accordance with § 2-1257 of the State Government Article, the [Insurance] Administration shall report to the General Assembly on the following for the prior fiscal year:

- (1) the number and types of complaints under this section or § 3-1701 of the courts Article from insureds regarding first-party insurance claims under property and casualty insurance policies;
- (2) the administrative and judicial dispositions of the complaints described in item (1) of this subsection;
- (3) the number and types of regulatory enforcement actions instituted by the administration for unfair claim settlement practices under § 27-303(9) or § 27-304(18) of this title; and
- (4) the administrative and judicial dispositions of the regulatory enforcement actions for unfair claim settlement practices described under item (3) of this subsection.

On behalf of the Maryland Insurance Administration (MIA), I am pleased to submit the 2022 Report on Absence of Good Faith Cases.

Five printed copies of this been mailed to the DLS Library for their records.

Should you have any questions regarding this report, please do not hesitate to contact me or my Director of Government Relations, Andrew Tress, at Andrew.tress1@maryland.gov.

Sincerely,

Kathleen A. Birrane
Insurance Commissioner

cc: Sarah T. Albert, Department of Legislative Services (5 copies)



Maryland

INSURANCE ADMINISTRATION

2022 Report on Absence of Good Faith Cases Filed under § 27-1001 of the Maryland Insurance Article

MSAR # 6587

**Kathleen A. Birrane
Insurance Commissioner**

December 20, 2022

For further information concerning this document contact:

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This document is available in alternative format upon request
from a qualified individual with a disability.

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Introduction

Section 27-1001 of the Insurance Article,¹ which took effect on October 1, 2007, was passed by the General Assembly in connection with the passage of § 3-1701, Md. Code Ann., Cts. & Jud. Proc. (2020 Repl. Vol.). The purpose of these enactments 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. Subject to certain exceptions, 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 (MIA or Administration) under § 27-1001, which requires the Insurance Commissioner to conduct a non-evidentiary on-the-record review of such complaints. *See* Cts. & Jud. Proc. § 3-1701(c); Ins. § 27-1001(e). These laws were amended in 2016 to apply the process to disability claims.

Overview of § 27-1001

Section 3-1701 of the Cts. & Jud. Proc. Article 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(a) 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.” A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See, e.g.,* Md. Code Ann., State Gov’t § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physician v. Elliott*, 170 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 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) 2021 (July 1, 2021, through June 30, 2022).

A. Number of Complaints

In FY22 the Office of Hearings received and processed 85 complaints. In six 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.* Of the six cases dismissed, five involved a third-party, rather than a first-party claim. One of the six involved an allegation of negligence on the part of the agent/producer, which was deemed beyond the scope of § 27-1001. Nineteen cases were withdrawn or settled before a decision on the merits.

Of the 60 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 one case, accounting for 1.17% of all cases filed and 1.66% of all cases reviewed. *See Table 1.* The one case in which the Administration found a breach of obligation to fully pay the claim, the Administration did not find a failure to act in good faith. *See Tables 1 and 2.*

Table 1 – § 27-1001 Complaints Filed with the Administration FY22

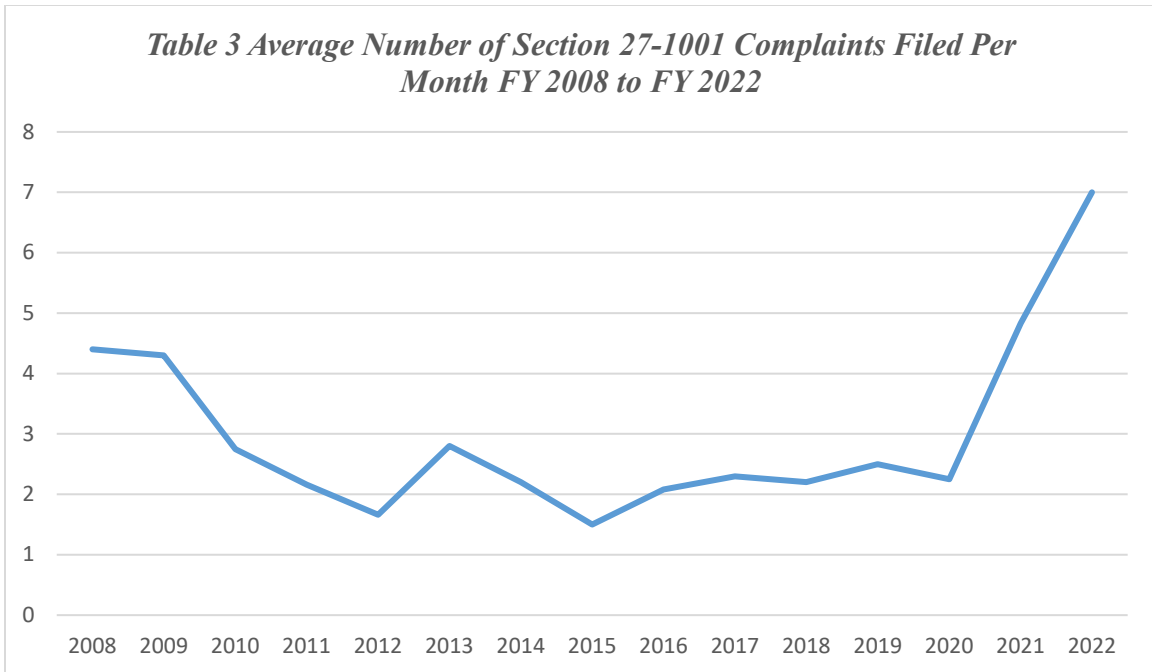
FY 22				
		Number Filed	% of Filed	% of Reviewed
Dismissed		6	7%	N/A
Settled or Withdrawn		19	22%	N/A
Breach Found		1	1.17%	1.66%
	Breach of an obligation to pay only	1	1.17%	1.66%
	Breach of an obligation to pay and obligation to act in good faith	0	0%	0%
No Breach Found		59	69%	98%
Total Reviewed		60	70%	100%
Total		85	100%	N/A

Table 2 – § 27-1001 Complaints Filed with the Administration FY18 to FY22

	FY 18		FY 19		FY 20		FY 21		FY 2022	
	#	%	#	%	#	%	#	%	#	%
Settled, Withdrawn, or Dismissed	8	30%	2	7%	9	32%	18	31%	25	29%
§27-1001 (absence of good faith) violation	0	0%	1	3%	1	4%	3	5%	0	0%
No Violation	18	70%	27	90%	18	64%	37	64%	59	69%
Breach of obligation to pay only	0	0	0	0	0	0	0	0	1	1.17%
Total	26	100%	30	100%	28	100%	58	100%	85	100%

The number of complaints filed with the Administration has increased from FY21 to FY22 by 46.55%, 58 to 85 filings. Eighty-five filings is the highest number of filings since the statute was enacted. As normal operations have resumed during the COVID-19 pandemic, the Administration has seen a steady increase in filings for FY21 and FY22.

In FY08, the first year following the effective date of § 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 FY14 and FY15, the number fell to 2.2 and 1.5 complaints filed per month respectively. Complaints increased slightly in FY16 and FY17 to approximately 2 and 2.3 complaints filed per month respectively, but in FY18 the number of complaints filed decreased slightly to 2.2 per month. In FY19 the number of complaints filed increased to 2.5 complaints per month, but decreased slightly in FY20 to 2.33 per month. In FY21, the average rate of complaints filed per month increased significantly to 4.8 complaints per month. In FY22, the number of complaints increased sharply to 7 per month. *See Table 3 on the next page.*



B. Types of Complaints

Of the 60 complaints reviewed on the merits, 39 involved homeowner’s insurance claims, 16 involved uninsured or underinsured motorist claims, one involved a commercial policy claim, two involved a first-party automobile property damage claim, one involved a marine insurance claim, and one involved event cancellation insurance. See Table 4

Table 4 – § 27-1001 Complaints Filed in FY 22 by Type of Insurance

	Number	Percentage
Complaints Reviewed on the Merits	60	100%
Homeowners	39	65%
Auto- Uninsured Motorist	16	27%
Commercial Property	1	1.7%
Auto - Property Damage	2	3%
Marine	1	1.7%
Event Cancellation	1	1.7%
Disability	0	0.0%

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

Of the 60 complaints reviewed on the merits in FY22, the Administration determined that there was one instance in which the insurer had breached its claim payment obligation and that the Plaintiff was entitled to additional claim compensation. In that case, the Administration found the insurer failed to pay the full value of the plaintiff’s first-party underinsured motorist bodily injury claim. For FY22, there were no instances where the Administration found that an insurer had breached its obligation to act in good faith in handling a claim.

D. Judicial Review of the § 27-1001 Decisions

In FY22, two 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 two cases appealed to the OAH, both were withdrawn or settled by the parties.

Five additional aggrieved parties appealed the MIA’s decisions finding no breach by the insurer directly to circuit courts. Two were appealed to Montgomery County Circuit Court. The remaining three were appealed to Baltimore City, Prince George’s County and Charles County circuit courts. Of the five appeals, three were dismissed, one was reversed and remanded back to the Administration and one is still pending.

Table 4 – Appeals of § 27-1001 Decisions Filed in FY22

	Appeals to OAH	Appeals to Circuit Court
Dismissed / Settled / Withdrawn	2	3
Affirmed Administration	0	0
Reversed Administration	0	1
Appeals Pending	0	1
Total	2	5

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints to identify regulatory trends or problems. During FY22, 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)-(5).

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.