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December 17, 2010

The Honorable Michael V. Miller, Jr.
Senate President
State House, H-107
Annapolis, MD 21401 – 1991

The Honorable Michael E. Busch
Speaker of the House of Delegates
State House, H-101
Annapolis, MD 21401 – 1991

RE: 2010 Report on Absence of Good Faith Cases filed pursuant to
MD. CODE ANN., INS. ART., § 27-1001

Dear Sirs:

Please find enclosed, pursuant to § 27-1001(h) of the Insurance Article of the Annotated Code of Maryland, the Maryland Insurance Administration's FY 2010 annual report on cases filed pursuant to § 27-1001.

Very truly yours,


Karen Stakem Hornig
Deputy Commissioner

KSH:mmh
Enclosure

cc: Sarah Albert, DLS Library (5 copies)

**2010 REPORT TO THE
MARYLAND GENERAL ASSEMBLY ON
ABSENCE OF GOOD FAITH CASES
FILED UNDER
§ 27-1001 OF THE
MARYLAND INSURANCE ARTICLE**



December, 2010

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This document is available in alternative format upon request
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TABLE OF CONTENTS

I. Introduction	1
II. Overview of Section 27-1001	2
III. Analysis of Complaints Filed Under § 27-1001	4
A. Number of Complaints	4
B. Types of Complaints	5
C. Cases in which the MIA has found an absence of good faith	6
D. Section 27-1001 Decisions on Appeal	7
E. Regulatory Enforcement Action.....	7
IV. Conclusion.....	8
APPENDIX	I

I. Introduction

Section 27-1001 of the Insurance Article of the Annotated Code of Maryland, which took effect on October 1, 2007, was designed as a consumer protection measure to provide consumers with greater leverage at the time an insurance claim was being adjusted.¹ The law requires the Insurance Commissioner to conduct an on-the-record review of complaints from policy holders 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. Section 27-1001(e).

The legislative history of § 27-1001 indicates that 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 policy holders 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 ("MIA") 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 MIA for unfair claim settlement practices along with the administration and judicial disposition of those enforcement actions.

The MIA has successfully implemented § 27-1001, processing the cases in a timely manner. Section 27-1001 gives consumers assistance in resolving disputes about their insurance claims and it provides consumers with a full and fair assessment of their

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

disputes with their insurance carrier. All consumers have access to an impartial review of their claim, which helps them secure fairer and more equitable settlements of their claims without resorting to litigation.

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 of 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. In contrast, a third-party claim is made by a person who is entitled to receive a benefit payment from another’s insurance policy.

Typically, a first-party insured must first file a complaint with the MIA 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, the damages sought, and “each document that the insured has submitted to the insurer for proof of loss.” Section 27-1001(d)(2)(i). The insurer then files an opposition to the claim along with the documentation supporting its position. Section 27-1001(d)(4)(i)-(ii). The MIA makes its finding on the basis of the written record and without a hearing. Section 27-1001(e).

The decision of the MIA 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 MIA 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 MIA 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 review and determination of all cases is handled in-house at the MIA. The law gives the MIA ninety (90) days from the day a complaint is filed to render a decision. During the reporting period the MIA has successfully rendered its decision in all § 27-

1001 within the statutory timeframe or within an altered time period agreed upon by the parties. The MIA's opinions in § 27-1001 cases are posted to the MIA website.

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 cases filed with the MIA in FY 2010 (July 1, 2009 through June 30, 2010).

A. Number of Complaints

In total, thirty-three (33) § 27-1001 cases were filed in FY 2010. *See* Table 1. Of the total number of cases filed in FY 2010, nineteen (19) were reviewed and decided on the merits. *See* Appendix, Chart 1. Approximately fourteen (14), or forty-two percent (42%), of those cases were settled, withdrawn, or dismissed because of lack of jurisdiction. *Id.* In comparison, the percentage of cases settled, withdrawn or dismissed in FY 2009 was forty percent (40%). *See* Table 2.

TABLE 1 – § 27-1001 CASES FILED WITH THE MIA FY 2010

	<i>Number</i>	<i>Percentage</i>
Total	33	100%
Settled or Withdrawn	13	39%
No Jurisdiction by MIA	1	3%
Absence of Good Faith	1	3%
Cases Finding Good Faith	18	55%

While these percentages are close, there is a notable difference. In 2009, the percentage of cases dismissed for lack of jurisdiction (typically, a case that does not involve a first- party complaint) was 27% as compared to only 3% in FY 2010. *See*

Table 2. The percentage of cases settled and/or withdrawn increased from 13% in FY 2009 to 39% in FY 2010.

TABLE 2 – § 27-1001 CASES FILED WITH THE MIA FY 2009 AND FY 2010

	FY 2009		FY 2010	
	Number	Percentage	Number	Percentage
Total	52	100%	33	100%
Settled or Withdrawn	7	13%	13	39%
No Jurisdiction by MIA	14	27%	1	3%
Absence of Good Faith	3	6%	1	3%
Cases Finding Good Faith	28	54%	18	55%

The overall number of cases filed in FY 2010 was down thirty-seven percent (37%) from the number filed in FY 2009. *See* Table 2. In the nine (9) months of FY 2008 in which § 27-1001 was in effect, cases were filed at a rate of 4.4 cases per month. In FY 2009, cases were being filed at a rate of 4.3 cases per month. In FY 2010, cases were filed at a rate of 2.75 cases per month.

B. Types of Complaints

Following the trend of prior years, most of the cases filed pursuant to § 27-1001 involve issues of uninsured or under insured motorist (“UM”) coverage.² Of the nineteen (19) cases reviewed by the MIA on the merits, sixteen (16) of those cases, or eighty-four percent (84%), involved UM coverage. *See* Table 3. Homeowners’ insurance was

² The term “uninsured motorist” includes within its meaning the concept of the “under insured motorist.” Section 19-509(a); *Waters v. U.S. Fidelity & Guar. Co.*, 328 Md. 700, 713 (1992); *Aetna Casualty & Surety Co. v. Souras*, 78 Md. App. 71, 75 (1989).

involved in two (2) of the cases decided on the merits and commercial insurance was involved in one (1) case. *Id.*

TABLE 3 – § 27-1001 CASES BY TYPE OF INSURANCE

	<i>Number</i>	<i>Percentage</i>
Cases Reviewed on the Merits	19	100%
UM Cases	16	84%
Homeowners	2	11%
Commercial	1	5%

Also like prior years, the overwhelming majority of the § 27-1001 cases involve disagreement between the policy holder and the insurance company about the settlement value of the claim. Most of the cases involve claims for soft tissue injuries that resulted from UM claims where the insured believes that the insurance company made an unsatisfactory settlement offer. *See* Appendix 1.

C. Case in which the MIA found an absence of good faith

Of the nineteen (19) cases decided on the merits, the MIA found an absence of good faith in one (1) case, compared with FY 2009 in which an absence of good faith was found in three (3) cases. This case, *S.L. v. Hartford Underwriters Insurance Company*, MIA Case No. 27-1001-09-00042 (March 16, 2010),³ involved a UM claim and the insurer failed to file an appropriate response as required by § 27-1001.

In response to the § 27-1001 complaint, the insurer submitted only a brief letter by a claims supervisor. The Office of the Commissioner informed the insurer in writing of the requirements of § 27-1001 and instructed Hartford to submit a compliant response.

³ In response to privacy concerns, particularly concerns about the privacy of complaints' medical information, the MIA has begun using initials to identify complainants.

The insurer submitted only the Plaintiff's medical records and did not submit a copy of the claim log or other documents as required by § 27-1001(d)(4)(i).

D. Judicial Review of § 27-1001 Decisions

In FY 2010, five (5) § 27-1001 cases were filed with the Office of Administrative Hearing ("OAH") or to one of Maryland's circuit courts. See Table 4. One case was filed with OAH and OAH agreed with the determination of the MIA. Of the cases filed in Maryland's circuit courts, one(1) case was filed in Montgomery County, three (3) were filed in Baltimore City, although one of those cases was removed to Prince Georges County.⁴ All of these cases are currently pending in circuit court. See Table 4.

TABLE 4 – § 27-1001 CASES ON APPEAL

FY 2010 (07/01/09 – 6/30/10)		
	Appeals to OAH	Appeals to Circuit Court
Total	1	4
Withdrawn	0	0
Pending	0	4
Affirmed MIA	1	0
Reversed MIA	0	0

E. Regulatory Enforcement Action

The Office of the Commissioner tracks the data from § 27-1001 cases looking for trends or problems. The cases are distributed among carriers in percentages that roughly

⁴ The Court of Special Appeals issued a reported opinion on December 2, 2010 that rejected the plaintiff insured's contention that the statutory scheme set forth in §§ 3-1701 and 27-1001 confers a statutory right to a jury trial in the Circuit Court for Baltimore City. The Court held that venue is to be "governed by the general venue statute, CJP §6-201." *Thompson v. State Farm Mutual Automobile Insurance Company*, __ Md. __, 2010 WL 4894672*6 (2010).

correspond to the carrier's market share. *See* Appendix, Chart 1. The cases brought to date have not required the MIA to institute any regulatory enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

Section 27-1001 has not generated the number of cases anticipated at the time the law was passed and, in fact, the number of cases has declined over time. Nonetheless, the addition of the absence of good faith provision to the Maryland Insurance Article does provide insurance policy holders with a valuable consumer protection, which encourages insurance companies to value and adjust claims in a fair and timely manner.

The fact that now thirty-nine percent (39%) of all cases filed are settled and/or withdrawn before a decision can be rendered by the MIA supports the contention that § 27-1001 provides consumers with a valuable bargaining tool. Not only does § 27-1001 deter insurance companies from making offers below policy limits when the damages incurred clearly meet or exceed those limits, but it serves to insure that companies carefully and honestly consider all information available to them in the claims adjustment process.

APPENDIX

CHART 1

ANALYSIS OF § 27-1001 CASES BY DECIDED ON THE MERITS IN FY 2009

Case #	Defendant	Issued	Claim Type	Loss	Issues
2009-32	Allstate	11/13/2009	UM		
2009-35	Encompass	12/11/2009	Home	House Fire	Denial of coverage for ALE and contents; found GF
2009-36	State Farm	12/08/2009	UM	Fracture	Valuation; found GF
2009-39	Erie	2/24/2010	UM		Coverage dispute; found GF
2009-40	Allstate	2/17/2010	UM	Serious Injury	Valuation & causation; found GF
2009-41	Farmers	04/02/2010	UM	Soft Tissue	Valuation; found GF
2009-42	Hartford	03/16/2010	UM	Soft Tissue	Insurer filed insufficient response; absence of good faith
2010-01	Peerless	02/24/2010	Business	Water Damage	Coverage dispute; found GF
2010-03	GEICO	03/02/2010	UM	Soft Tissue	Valuation; found GF
2010-04	State Farm	04/05/2010	UM	Surgery	Ripeness; found GF
2010-06	USAA	06/03/2010	UM	Soft Tissue	Valuation; found GF
2010-07	State Farm	06/25/2010	UM	Surgery	Valuation & causation; found GF
2010-10	State Farm	07/15/2010	UM	Cardiac Issues	Valuation & causation; found GF
2010-11	GEICO	07/27/10	UM	Serious Injury	Damages cap issue; found GF
2010-13	State Farm	07/29/2010	UM	Surgery	Valuation & causation; found GF
2010-14	Metropolitan	07/23/2010	Home	House Fire	Claim denial due to arson; found GF
2010-16	Seminole	09/09/2010	UM	N/A	Lease of car; found GF
2010-17	Travelers	09/08/2010	UM	Soft Tissue	Valuation dispute; found GF
2010-18	State Farm	09/07/2010	UM	Soft Tissue	Valuation dispute; found GF