

**2008 REPORT TO THE
MARYLAND GENERAL ASSEMBLY ON
ABSENCE OF GOOD FAITH CASES
FILED UNDER
§ 27-1001 OF THE
MARYLAND INSURANCE ARTICLE**



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For further information concerning this document contact:

Karen Stakem Hornig, Esq.
Associate Deputy Commissioner
Maryland Insurance Administration
525 St. Paul Place
Baltimore, MD 21202
410-468-2010

This document is available in alternative format upon request
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TTY 1-800-735-2258

MIA's website address: www.mdinsurance.state.md.us

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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 insurance consumers with greater leverage at the time a claim was being adjusted.¹ It 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).

Section 27-1001(h) requires the Maryland Insurance Administration ("MIA") to file an annual report with the General Assembly that outlines the number and type of complaints filed under § 27-1001 along with the administrative and judicial disposition of those complaints and 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 actions. This report provides this information.

The MIA has successfully implemented § 27-1001, processing the cases in a timely manner. A review of the complaints filed under § 27-1001 document the benefit provided to consumers. Section 27-1001 gives consumers greater leverage in resolving

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

disputes and it provides consumers with a full and fair assessment of their 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. 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 a first party claim under property and casualty insurance policies. MD. CODE ANN., CTS. & JUD. PROC. ART., § 3-1701 (b) and (d). 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).

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 law gives the MIA ninety (90) days from the day a complaint is filed to render a decision and during the reporting period the MIA has successfully rendered its decision in all § 27-1001 within the statutory timeframe. At the time the law became effective, the MIA contracted with retired judges to assist in processing the complaints. This practice ended effective July 1, 2008 with all complaints now handled in-house at the MIA. All opinions issued since July 1, 2008 are now available to the public on the MIA website.

III. Analysis of Complaints Filed Under § 27-1001

Section 27-1001(h) requires a report to the General Assembly based upon the prior fiscal year's activity. Because § 27-1001 is a new law and a fiscal year report will

only yield nine months of data (i.e. 10/1/07 through 6/30/08), this report provides data for the first full year the law was in force (10/1/07 through 9/30/08) as well as FY 2008 (10/1/07 through 6/30/08).

A. Number of Complaints

Fifty-four (54) § 27-1001 cases were filed in the law’s first year and forty (40) cases were filed in the last nine months of FY 08. *See* Table 1. Approximately one third of the cases filed were settled or withdrawn or dismissed because of lack of jurisdiction. *Id.* Typically, a case is dismissed for lack of jurisdiction when it does not involve a first party complaint.

TABLE 1 – SECTION 27-1001 CASES FILED WITH THE MIA

	<i>FY 08 (10/1/07 – 6/30/08)</i>	<i>Oct. 1, 2007- Sept. 30, 2008</i>
Total	40	54
Settled or Withdrawn	11	12
No Jurisdiction by MIA	3	6
Absence of Good Faith	1	2
Cases Finding Good Faith or still Pending	25	34

B. Type of Complaints

Every insurance claimant is entitled to a full and fair assessment of their insurance claim, the value of which must be grounded in the actual damage and/or injury suffered. *See* Sections 27-301-27-306. As shown in Charts 1-A and 1-B, most of the § 27-1001 cases involve an unsatisfactory settlement offer and a legitimate disagreement between the insured and the insurer as to the value of the claim. *See e.g. Urbas v. USAA*, MIA No. 27-1001-2008-00024 (August 18, 2008) (Plaintiff had \$8,499.96 in medical expenses

and was demanding policy limit of \$100,000.00 to satisfy claim); *Kruger v. State Farm*, MIA No. 27-1001-2008-00030 (September 18, 2008) (Plaintiffs had \$7,048.34.00 in medical expenses and demanded \$500,000.00 to settle claim); *Seyoum v. GEICO*, MIA No. 27-1001-2008-00035 (October 14, 2008) (Plaintiff had \$5,674.03 in medical expenses and Plaintiff demanded \$75,000.00 to settle claim).² The majority of these cases involved auto claims, as seen in Charts 2-A and 2-B.

The legitimate disagreement between the insured and the insurer over the value of the claim may be partially explained by the type of cases. The majority of the complaints filed with the MIA involve claims for soft tissue injuries that resulted from uninsured motorist claims. In these cases, the insured believed that the insurance company made an unsatisfactory settlement offer. Since July 1, 2008, the MIA has issued eighteen (18) decisions in § 27-1001 cases (in which the agency had jurisdiction) and fourteen (14) of those have involved personal injury claims resulting from an automobile accident involving an uninsured motorist. *See* Appendix Chart 3. Of those fourteen (14) cases, eleven (11) cases involved soft tissue injuries (usually to the neck and back). *Id.*

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

In two cases the MIA found that the insurance company failed to act in good faith. In *Rothman v. Esurance Insurance Company*, MIA NO. 27-1001-08-00006 (February 27, 2008) the MIA found that Esurance had acted in an absence of good faith when it refused to pay up to the maximum policy limits (\$250,000.00) for a bodily injury claim in excess of the minimum coverage amounts under the personal liability portion of the insured's policy based on a "household member exclusion." The case was appealed to the Office of Administrative Hearing, which reversed the MIA finding and ruled that Esurance was

² Copies of all § 27-1001 decisions issued by the MIA since July 1, 2008 are available on the MIA website at <http://www.mdinsurance.state.md.us>.

not obligated to pay the insured any damages under bodily injury coverage in excess of the statutory minimum of \$20,000.00. *Rothman v. Esurance Insurance Company*, OAH No. MIA-CBC-37-08-09255 (June 19, 2008).

In *Huggins v. Hudson Insurance Company*, MIA 27-1001-08-00025 (August 25, 2008), the plaintiff, Ms. Huggins, filed a complaint challenging Hudson's refusal to pay an uninsured motorist claim. Ms. Huggins was involved in an automobile accident with an uninsured motorist and sued the tortfeasor in the Circuit Court for Baltimore City. Hudson was on notice of the pending action, but chose not to intervene in the action. Maryland law is clear that an insurer with notice of a tort action against an uninsured motorist and with ample opportunity to intervene is bound by the result of that judgment. *Nationwide Mut. Ins. Co. v. Webb*, 291 Md. 721, 737-738 (1981); *Zelinski v. Townsend*, 163 Md.App. 211, 219 (2005) *rev'd on other grounds*, *Harleysville Mut. Ins. Co. v. Zelinski*, 393 Md. 83 (2006).

Ms. Huggins received a judgment in the Circuit Court for Baltimore City in the amount of \$24,782.68, but Hudson did not immediately fulfill its legal obligation to pay the judgment entered in Ms. Huggins favor. The company went to some lengths to develop justifications for not satisfying its obligation. This is the type of behavior that the General Assembly had in mind when it passed § 27-1001. The insurer's legal obligation was clear, but yet it refused to pay. As a result, the MIA found that Plaintiff had met her burden of proving an absence of good faith. This case is currently pending in the Circuit Court for Baltimore City. *Hudson Insurance Company v. Maryland Insurance Administration*, Civil Case No. 24C08006003.

D. Section 27-1001 Decisions on Appeal

Only a small percentage of § 27-1001 cases have been appealed to the Office of Administrative Hearing (“OAH”) or to the Circuit Court for Baltimore City. *See* Table 2. From October 1, 2007 through June 30, 2008 (FY 2008), seven (7) case comprising 17.5% of all cases filed were appealed to OAH. For the first full year, from October 1, 2007 through September 30, 2008, that number is eight (8) cases comprising 14.8% of the total cases. Four (4) of those appeals have been withdrawn and two remain pending. Of the two cases decided, OAH affirmed the MIA in one case and reversed the MIA in the other. Five cases have been appealed to the Circuit Court for Baltimore City and all five are pending in that court.

TABLE 2 – SECTION 27-1001 CASES ON APPEAL

	<i>FY 08 (10/1/07 – 6/30/08)</i>	<i>Oct. 1, 2007- Sept. 30, 2008</i>
Appeals to OAH		
Total	7	8
Withdrawn	4	4
Pending	1	2
Affirmed MIA	1	1
Reversed MIA	1	1
Appeals to Circuit Court for Baltimore City		
Total	0	5
Pending	0	5

E. Regulatory Enforcement Action

The MIA continuously tracks § 27-1001 case data looking for trends or problems that should be addressed by the agency's Compliance and Enforcement Unit. The cases brought to date, however, 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 provided Maryland's insurance consumers with an important consumer protection, which serves to encourage insurance companies to value and adjust claims in a fair and timely manner. While valuation disputes between insureds and their insurers will always be part of the insurance landscape, § 27-1001 provides strong deterrence against insurance companies making offers below policy limits when the damages incurred clearly meet or exceed those limits.

APPENDIX

CHART 1-A
SECTION 27-1001 CASES BY REASON FOR FIRST YEAR (10/1/07 - 9/30/08)

**27-1001 Cases
By Reason**

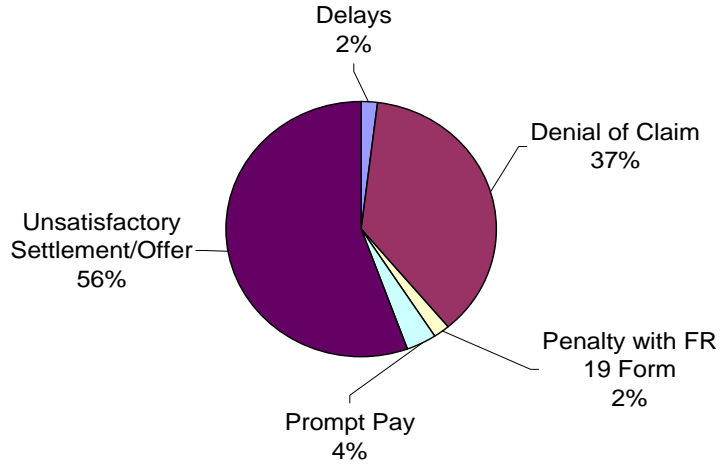


CHART 1-B
SECTION 27-1001 CASES BY REASON FOR FY 2008 (10/1/07 - 6/30/08)

**27-1001 Cases
By Reason
10/1/07-6/30/08**

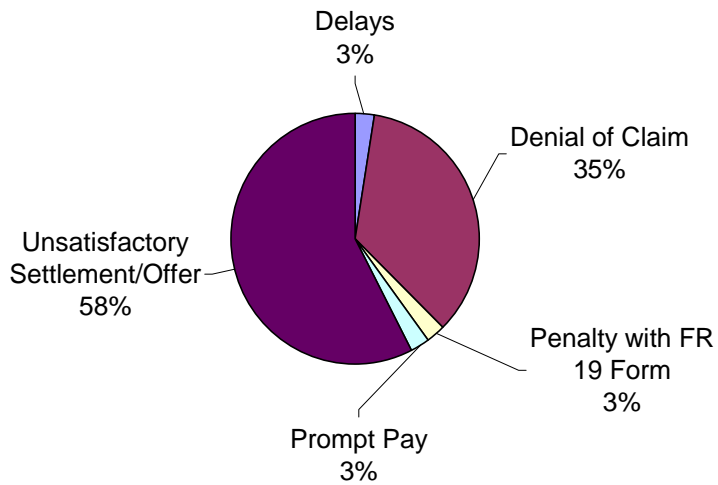


CHART 2-A
SECTION 27-1001 CASES BY LINE OF BUSINESS FOR FIRST YEAR
10/1/07 - 9/30/08

27-1001 Cases
By Line of Business

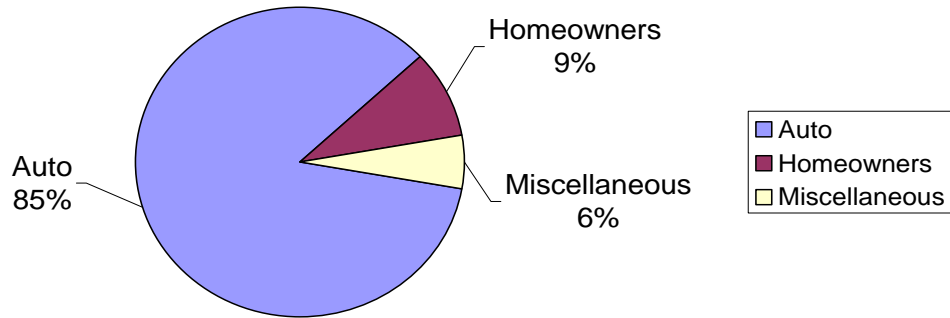


CHART 2-B
SECTION 27-1001 CASES BY LINE OF BUSINESS FOR FY 2008 (10/1/07 - 6/30/08)

27-1001 Cases
By Line of Business
10/1/07-6/30/08

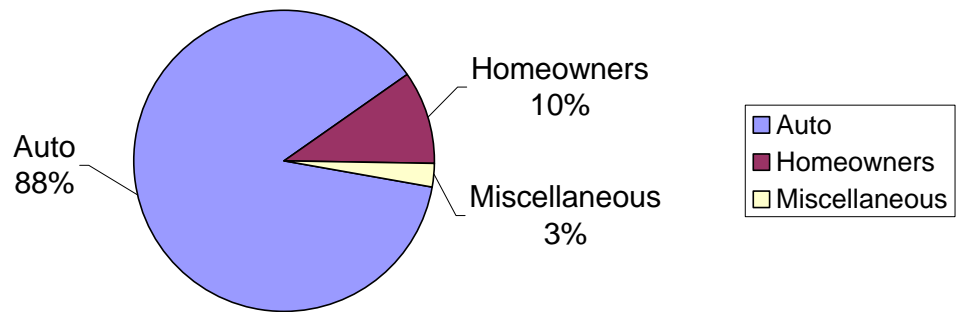


CHART 3
ANALYSIS OF § 27-1001 CASES BY DECIDED SINCE JULY 1, 2008

CASE #	PLAINTIFF	DEFENDANT	DATE ISSUED	CLAIM TYPE	INJURY	ISSUES AND FINDING
08-21	King	GEICO	7/24/08	UM	Soft Tissue	Low impact collision; denial of claim
08-22	Smith	All-State	7/25/08	UM	Soft Tissue	Dispute over amount of claim
08-23	No Jurisdiction					Not a first party claim
08-24	Urbas	USAA	8/18/08	UM	Soft Tissue	Dispute over amount of claim; low impact collision
08-25	Huggins	Hudson	8/25/08	UM	Soft Tissue	Absence of good faith; pl. got judgment; insurer did not
08-26	Monroe	GEICO	9/8/2008	UM	N/A	Dispute about quality of repairs
08-27	Settled/withdrawn					Withdrawn
08-28	Settled/withdrawn					Withdrawn
08-29	Travis	State Farm	9/15/08	UM	Knee Replacement	Ripeness; no final decision on claim; preliminary offer
08-30	Kruger	State Farm	9/18/08	UM	Soft Tissue	Dispute over amount of claim; Plaintiffs misstate amount of offer
08-31	Parks	State Farm	9/25/08	Home Owners	N/A	Theft of property after policy holder's death; statute of limitation; misrep. policy provisions
08-32	Thompson	Churchill	9/29/08	Premises Injury	Hand Injury	No jurisdiction; not a first party claim
08-33	Battle	State Farm	9/30/08	UM	Soft Tissue	Dispute over amount of claim
08-34	Stone	USAA	10/8/08	Fire	N/A	Denial of claim
08-35	Seyoum	GEICO	10/14/08	UM	Soft Tissue	Dispute over amount of claim
08-36	No Jurisdiction					Not a first party claim
08-37	Westbrook	State Farm	10/27/08	UM	Hospitalization	Denial of claim; negligence by insured
08-38	Akselrod	All-State	10/31/08	UM	Soft Tissue	Denial of claim; lack of UM coverage
08-39	Euth	State Farm	11/12/08	UM	Neck Injury	Ripeness; pre-existing condition
08-40	Mansilla	Am. Skyline	10/31/08	Auto	N/A	Not first party claim; insurer has gone out of business;
08-41	No Jurisdiction					Not a first party claim
08-42	DiPasquale	Farmers	12/1/08	UM	Soft Tissue	Dispute over value of claim; found good faith; ripeness
08-43	Thompson	State Farm	12/3/08	UM	Soft Tissue	Denial of additional UM coverage; pregnant driver; dispute over value of claim; found good faith
08-44	Francia	MAIF	12/19/08	UM	Soft Tissue	Denial of coverage; failure to give statements; police report said no passengers in the car.
08-45	Evans	Selective	12/23/08	Fire	N/A	Commercial Fire Claim; Ripeness; Value of Claim; Delay

NOTE: Case highlighted in red had finding of absence of good faith. Those highlighted in blue had a finding of lack of jurisdiction. All other cases had a finding of no lack of good faith.