

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

D.H., Q.M., C.H.,¹

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Plaintiffs,

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v.

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Case No. 27-1001-22-00089

**ALLSTATE INDEMNITY COMPANY,
TONYA SEMONES, SEMONES, INC,
D/B/A TONYA SEMONES
INSURANCE, SEMONES
INSURANCE, TONYA G. SEMONES
INSURANCE, AND TINA MARIE
GRABILL**

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Defendants.

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DECISION

D.H., Q.M., and C.H. (“Plaintiffs”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.)², against Allstate Indemnity Company (“Defendant Allstate”), Tonya Semones, Semones, Inc., d/b/a Tonya Semones Insurance, Semones Insurance, Tonya G. Semones Insurance, and Tina Marie Grabill (“Producer Defendants”).

With respect to Defendant Allstate, Plaintiffs D.H. and Q.M. assert that Defendant Allstate breached its contractual obligations under the Uninsured/Underinsured Motorist (“UIM”), Personal Injury Protection (“PIP”), and collision coverages of Plaintiff D.H.’s automobile policy by denying their first-party claims for damages in connection with an automobile accident that occurred in Baltimore, Maryland on April 27, 2020 (the “Claim”). Further, Plaintiffs D.H.,

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s privacy.

² Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

Q.M., and C.H. also assert breach of contract and negligence claims against Defendant Allstate for failing to inform Plaintiff D.H. and C.H. that the 2005 Acura TL was not properly titled with the Maryland Motor Vehicle Administration (“MVA”), failing to properly investigate Plaintiff D.H.’s ownership interest in the 2005 Acura TL, and accepting premium payments for the automobile policy issued to Plaintiff D.H. without fully explaining the ownership interest requirements.

As to Defendants Tonya Semones, Semones, Inc., d/b/a Tonya Semones Insurance, Semones Insurance, Tonya G. Semones Insurance, and Tina Marie Grabill, (“Collectively Defendant Producers”) Plaintiffs also assert claims of negligence for failing to exercise due care when obtaining the automobile policy from Defendant Allstate on behalf of Plaintiff D.H. for the 2005 Acura TL.

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs D.H. and Q.M. have failed to demonstrate that Defendant Allstate breached its duty of coverage by not paying the full amount of damages claimed by Plaintiffs D.H. and Q.M.

Further, all remaining claims against the Producer Defendants are dismissed for lack of jurisdiction.

I. STANDARD OF REVIEW

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), 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 pursuant to § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (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 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

An insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

Section 3-1701 provides “the statutory claim for failure to act in good faith applies to civil actions in which the insured seeks a determination of whether coverage actually exists under an insurance policy.” *St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 739 (4th Cir. 2016); *citing* Md. Code Ann., Cts. & Jud. Proc § 3-1701 (2020 Repl. Vol.). Section 1701(b)

specifically states that it “applies only to **first-party claims** under property and casualty insurance policies or individual disability insurance policies issued, sold, or delivered in the State.” [*Emph. added.*] Clearly and expressly, §§3-1701 and 27-1001 apply only to “**first-party claims under property and casualty insurance policies.**” [*Emph. added.*] See Md. Code Ann., Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.).

II. PROCEDURAL BACKGROUND

On December 7, 2022, the Administration received Complaint No. 27-1001-22-00089 (the “Complaint”). Plaintiffs D.H. and Q.M. stated a cause of action in accordance with § 27-1001 with respect to Defendant Allstate. Specifically, Plaintiffs D.H. and Q.M. assert that Defendant Allstate breached its contractual obligations under the UIM, PIP, and collision coverages of Plaintiff D.H.’s automobile policy, by failing to fully pay their first-party claims for damages in connection with the Claim.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant Allstate on December 22, 2022. With consent of Plaintiff’s attorney, Defendant Allstate’s deadline to file its response to the Complaint was extended until January 27, 2023. On January 27, 2023, Defendant Allstate filed a response to the Complaint and accompanying documents as required by §27-1001(d)(4).

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by Plaintiffs and Defendant Allstate, the Administration finds that Plaintiffs D.H. and Q.M. have not established by a preponderance of the evidence that they are entitled to coverage for the Claim under the Policy or that Defendant Allstate failed to act in good faith in its handling of the Claim.

Further, with respect to the remaining claims against the Producer Defendants, Tonya Semones, Semones, Inc., d/b/a Tonya Semones Insurance, Semones Insurance, Tonya G. Semones Insurance, and Tina Marie Grabill, the Administration concludes that it lacks jurisdiction.

On April 28, 2020, Plaintiff D.H. first reported the Claim to Defendant Allstate. Specifically, Plaintiff D.H. reported that on April 27, 2022, she was involved in a motor vehicle accident in Baltimore City, while operating a 2005 Acura TL. At the time of the accident, Plaintiff D.H. reported that Plaintiff Q.M. was a passenger in the front seat of the vehicle. Plaintiff D.H. initially reported that the first unknown vehicle rear ended her 2005 Acura TL, causing her to enter into the intersection of Moravia Road and Walther Avenue. Plaintiff D.H. also reported that once the 2005 Acura TL entered the intersection, she was struck by a second unknown vehicle. The police were called to the scene of the accident and the responding police officer completed an accident report. Based on a witness that arrived at the scene close to the time of the accident, a photograph of the license plate for the first unknown vehicle that initially rear ended Plaintiff D.H.'s was taken and shared with Plaintiff D.H. at the scene of the accident. Plaintiff D.H. later provided this information to Defendant Allstate on April 30, 2020. Based on the license plate information provided by Plaintiff D.H., Defendant Allstate determined that A.B. was the driver a 2003 Honda Accord that initially rear ended Plaintiff D.H. at the intersection. Further, Defendant Allstate later determined that A.B.'s 2003 Honda Accord was no longer covered under any automobile insurance policy. The driver of the second vehicle remains unknown.

Following the accident, Plaintiff D.H. spoke with a representative on behalf of Defendant Allstate on April 29, 2020. Plaintiff D.H. reported that she was experiencing a sore back,

shoulders, and neck. Plaintiff D.H. also took the 2005 Acura TL to a repair shop for repairs. Based on their inspection of the vehicle, it was deemed a total loss.

At the time of the Accident, Plaintiff D.H. was insured under an automobile insurance policy (policy number ending 1824) issued by Defendant Allstate providing UIM coverage with a policy limit of \$50,000 for each person/\$100,000 for each occurrence, PIP coverage of \$2,500, and collision coverage with a deductible of \$500.00. (“Policy”)

On May 3, 2020, the Claim was subsequently assigned to Investigator Katrina Phillips (“Investigator Phillips”) for further investigation. On May 6, 2020, Defendant Allstate received a letter of representation on behalf of Plaintiff D.H. Thereafter, the application for PIP coverage was directed to the attorney on behalf of Plaintiff D.H. On the same date, Investigator Phillips continued her investigation of the Claim and took a statement from Plaintiff Q.M. On or about May 5, 2020, Investigator Phillips also contacted Producer Tina Grabill and was informed that the Policy obtained by Plaintiff D.H., was a “spin-off” from a separate policy previously obtained by Plaintiff C.H. for the 2005 Acura TL. The Policy was obtained for the purpose of obtaining lower premium for Plaintiff D.H. Investigator Phillips also requested a copy of the title to the 2005 Acura TL.

On June 3, 2020, Investigator Phillips took a recorded statement from the witness that arrived at the scene of the accident. Investigator Phillips confirmed that the witness later observed the 2003 Honda Accord within close proximity to the scene of the accident, and that the witness observed two individuals change the license plates of the 2003 Honda Accord. The witness informed Investigator Phillips that she took pictures of the 2003 Honda Accord and returned to the scene of the accident. The witness then provided the pictures to Plaintiff D.H. Investigator Phillips also reviewed the video from the responding officers at the time of the

accident. Investigator Phillips also spoke with the responding officer on June 3, 2020 regarding his observations and any subsequent investigation following the accident.

On June 4, 2020, Investigator Phillips took a recorded statement from Plaintiff D.H. At that time, Investigator Phillips asked Plaintiff D.H. about how the accident occurred and the extent of Plaintiff D.H.'s injuries resulting from the accident. During the recorded statement, Plaintiff D.H. reported injuries from the accident including headaches and pain to her back, shoulders, knee and neck.

On June 9, 2020, Investigator Phillips determined that Plaintiff D.H. was not on the title of the 2005 Acura TL. Also on June 9, 2020, Defendant Allstate retained Rimkus Consulting Group, Inc. to determine whether the facts of the loss were consistent obtained during the investigation of the Claim were consistent with the claimed damages. On June 16, 2020, Consultant Michelle Price ("Consultant Price") completed a Report of Findings and concluded that the damage to the 2005 Accura TL was not consistent with the reported accident. Specifically, based on her years of experience as a Baltimore City Police Detective investigating hundreds of serious and fatal vehicle collisions, as well as her ten years of consulting experience in traffic crash reconstruction, Consultant Price determined that the accident did not occur as Plaintiff D.H. reported.

By letter dated July 7, 2020, Plaintiff D.H.'s attorney submitted a settlement demand for \$20,000. The settlement demand also listed \$5,159.00 in medical bills for Plaintiff D.H.'s treatment at Maryland Healthcare Clinics and Maryland Physicians Associates. The medical bill from Maryland Physicians Associates included dates of service on May 1, 2020 and May 5, 2022. The medical bill from Maryland Healthcare Clinics listed dates of service from May 1,

2020 through June 24, 2020. The evidence does not include any record of a settlement demand for Plaintiff Q.M. related to the accident.

On July 12, 2020, Investigator Phillips notified Plaintiff D.H.'s attorney that Defendant Allstate had completed its investigation of the accident and denied the Claim. In the denial letter, Investigator Phillips stated the following,

We have completed our investigation of the aforementioned loss and our findings render Allstate Indemnity Company unable to pay your client's claim for the following reasons:

The policy states on page 6 in the "Fraud Or Misrepresentation" section, "This entire policy is void from its inception if it was obtained or renewed through material misrepresentation, fraud or concealment of material fact. This means that we will not be liable for any claims or damages that would otherwise be covered. We may not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with any accident or loss for which coverage is sought under this policy."

Please be advised that we are denying your client's claims because there is no proof that a loss occurred as presented.

We are requesting reimbursement of the \$300.00 that we paid under the rental coverage. Please send a check or money order payable to Allstate with the claim number on it.

If you have any questions regarding the full denial of your client's claim, please feel free to contact me.

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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IV. DISCUSSION

Plaintiffs D.H. and Q.M. assert that Defendant Allstate breached its contractual obligations under the UIM, PIP and collision coverages of the Policy. Further, Plaintiffs D.H., Q.M., and C.H. also assert breach of contract and negligence claims against Defendant Allstate for failing to inform Plaintiff D.H. and C.H. that the 2005 Acura TL was not properly titled with

the MVA, failing to properly investigate Plaintiff D.H.'s ownership interest in the 2005 Acura TL, and accepting premium payments for the Policy without fully explaining the ownership interest requirements.

With respect to the Defendant Producers, Plaintiffs also assert claims of negligence for failing to exercise due care when obtaining the automobile policy from Defendant Allstate on behalf of Plaintiff D.H. for the 2005 Acura TL.

I find that Plaintiffs D.H. and Q.M. did not prove that they are entitled to additional damages under the Policy, as Plaintiffs have not produced any evidence refuting Consultant Price's findings. Rather, the evidence demonstrates that Consultant Price has years of experience as a Baltimore Police Detective and experience reconstructing traffic accidents. Based on her experience and training, Consultant Price conducted an analysis of the facts of the loss and determined that the accident did not occur as Plaintiff D.H. reported. Further, Investigator Phillips relied on the report prepared by Consultant Price and the Policy language as the basis for denying Plaintiff D.H.'s and Q.M.'s Claim. Plaintiff D.H. and Q.M. have not satisfied their burden of demonstrating that Defendant Allstate breached its obligations under the Policy. Instead, based on the evidence in this case, Defendant Allstate completed a thorough investigation of the accident by promptly obtaining documents, photographs, and recorded statements. Defendant Allstate then hired a consultant to analyze the facts of the loss. Based on the findings from Consultant Price and the Policy language, Defendant Allstate made a determination to deny the Claim. Accordingly, as to Plaintiff D.H. and Q.M.'s Claim against Defendant Allstate, I find that Plaintiffs have not demonstrated that Defendant Allstate breached its obligations under the Policy or failed to act in good faith in connection with the Claim.

V. CONCLUSIONS OF LAW

In accordance with § 27-1001, the Administration concludes as to Defendant Allstate:

1. Plaintiffs D.H and Q.M have not established by a preponderance of the evidence that Defendant Allstate is obligated under the policy to cover the Claim.
2. Plaintiffs D.H. and Q.M. did not establish by a preponderance of the evidence that Defendant Allstate failed to provide the coverage required under the Policy.
3. Plaintiffs D.H. and Q.M. did not establish by a preponderance of the evidence that they are entitled to additional damages as a result of the Claim.
4. Plaintiffs D.H. and Q.M. did not establish by a preponderance of the evidence that Defendant Allstate breached its obligation under the policy to cover and pay the Claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiffs D.H. and Q.M. did not establish a failure by Defendant Allstate to act in good faith.
6. Since Plaintiffs D.H. and Q.M. did not establish a breach or failure by Defendant Allstate to act in good faith, there is no basis for the Administration to address special damages.

As to the Producer Defendants, Plaintiffs have not asserted a claim that falls within the scope of §3-1701 of the Courts and Judicial Proceedings Article and § 27-1001 of the Insurance Article, and thus is not within the Administration's jurisdiction.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration's Decision on this 14th day of March, 2023, that

Defendant Allstate did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

It is hereby **ORDERED** that the Complaint as to Defendants Tonya Semones, Semones, Inc., d/b/a Tonya Semones Insurance, Semones Insurance, Tonya G. Semones Insurance, and Tina Marie Grabill, is **DISMISSED**.

This Decision shall take effect as a Final Decision if no administrative hearing is requested in accordance with § 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

ERICA J. BAILEY
Associate Commissioner, Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision, or to appeal the decision to the Circuit Court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. § 27-1001(f) and (g) (2017 Repl. Vol.).