

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

**K.D. & L.D.,<sup>1</sup>** \*  
**Plaintiffs,** \*  
**v.** \* **Case No. 27-1001-23-00022**  
**UNITED SERVICES AUTOMOBILE** \*  
**ASSOCIATION,** \*  
**Defendant.** \*  
\* \* \* \* \*

**DECISION**

K.D. and L.D. (“Plaintiffs”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.)<sup>2</sup>, alleging that United Services Automobile Association (“Defendant”) breached its contractual obligations to Plaintiffs by failing to fully pay Plaintiffs’ first-party claim for damages in connection with an automobile accident that occurred in Stamford, Connecticut on December 2, 2016.<sup>3</sup> (the “Claim”)

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs have not demonstrated that Defendant breached its duty of coverage by failing to pay the full amount of damages claimed by Plaintiffs.

**I. STANDARD OF REVIEW**

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes

---

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

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

<sup>3</sup> Plaintiffs are residents of Montgomery County, Maryland and the Policy was delivered in Maryland.

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).

## **II. PROCEDURAL BACKGROUND**

On March 13, 2023, the Administration received Complaint No. 27-1001-23-00022 (the “Complaint”) stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiffs allege that they are entitled to \$380,000, as the entirety of the applicable Uninsured Motorist/Underinsured Motorist coverage under the Policy. Specifically, Plaintiffs allege that Defendant failed to make an informed decision based on honesty and diligence, supported by the evidence Defendant knew or should have known. Further, on July 6, 2020, Plaintiff L.D. and Plaintiff K.D. filed a breach of contract lawsuit against Defendant in the Circuit Court for Prince George’s County, Maryland. In Plaintiffs’ Complaint, Plaintiffs assert that as an example of Defendant’s failure to act in good faith, Defendant required Plaintiff K.D. to be examined by a physician and submit to a neuropsychological examination.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on March 17, 2023. On April 18, 2023, the Administration received Defendant’s Motion to Dismiss or Stay the Proceedings (“Motion”). The basis for the Motion was to await the resolution of a breach of contract matter that is currently pending before the Prince George’s County Circuit Court. On April 26, 2023, Plaintiffs’ Attorney filed a letter in opposition to the Motion. On May 3, 2023, the Administration issued an Order denying the Motion. Defendant filed its 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 the Parties, the Administration finds that Plaintiffs have not established by a preponderance of the evidence that they are entitled to additional coverage for the Claim under the Policy or that Defendant failed to act in good faith in its handling of the Claim.

On December 2, 2016, Plaintiff K.D. was involved in an automobile accident involving three successive collisions and several vehicles in Stamford, Connecticut.<sup>4</sup> First, while Plaintiff K.D. was driving a 2010 Honda Civic moving southbound on I-95 in Stamford, Connecticut, he was required to stop due to stopped traffic in front of him. At the time of the accident, the driver of the second vehicle, R.D., was also moving southbound on I-95 behind Plaintiff K.D. R.D. did not stop in time and rear-ended Plaintiff K.D.'s 2010 Honda Civic. Then, while Plaintiff K.D. and R.D. moved to the median to await the police, R.D.'s vehicle collided with Plaintiff K.D. a second time. Lastly, a third vehicle operated by M.H. was also traveling southbound on I-95. M.H. drifted into the median and struck the vehicle operated by R.D. The police were called to the scene of the Accident and the responding police officer prepared a Connecticut Uniform Police Crash Report ("Police Report").

As a result of the Accident, Plaintiff K.D. alleges that he will require a lifetime of medical care for speech, occupational therapy, vision, counseling and medication. Specifically, as a result of the accident, Plaintiff K.D. alleges that he has experienced the following injuries and damages:

a concussion/mild traumatic brain injury; post-traumatic stress disorder; attention deficit disorder; cognitive-communication disorder; post-traumatic vision syndrome; convergence insufficiency; midline shift syndrome; visuovestibular disorder; oculomotor and binocular dysfunction; post-traumatic headaches; (post-traumatic vision syndrome; temporomandibular joint dysfunction, cervicogenic); neuroendocrine disorder (testosterone deficiency); dysexecutive disorder; fatigue; and depression.

Moreover, as a result of the accident, Plaintiff K.D. alleges that he is no longer eligible to reenlist in the military as an Officer in the United States Air Force Reserve Corp. Further, Plaintiff K.D. asserts that he will therefore be ineligible for continued military, retirement pay, or

---

<sup>4</sup> Plaintiffs K.D. and L.D. are married. While Plaintiff L.D. was not an occupant in the 2010 Honda Civic at the time of the accident, both Plaintiff L.D. and Plaintiff K.D. assert that they are raising claims for loss of consortium.

healthcare benefits. In sum, Plaintiff K.D. asserts that he has incurred economic damages of \$3,183,214 to \$3,435,442.

At the time of the Accident, Plaintiffs were insured under automobile insurance policy number 01051 \*\* \*\*\* 7103, which was issued to Plaintiffs by Defendant with an effective date of August 4, 2016 through February 4, 2017. The Policy provided Uninsured/Underinsured Motorist (UIM) coverage with a policy limit of \$500,000 for each person/\$1,000,000 for each accident. (“Policy”)

R.D. and M.H. were each insured under automobile insurance policies issued by USAA and Progressive, respectively, at the time of the Accident. Once the USAA and Progressive agreed to settle the liability claims for their respective insureds, on May 17, 2019, Plaintiffs’ attorney submitted a letter and documents to Defendant, including a cover letter stating as follows,

As part of this package I am enclosing all of the medical records I have to date on [Plaintiff K.D.]. His medical specials are as follows:

Holy Cross Health – Germantown (12/03/16 – 1/13/17)	\$2,363.99
Sarah Potthoff, DC – Casey Health Institute (12/12/16)	\$260.00
Headfirst Concussion Care (12/22/16 – 3/16/17)	\$1,888.00
Center for Neurorehabilitation Services (4/04/17 – 1/10/19)	\$3,350.00
Pivot Physical Therapy (1/09/17 – 3/01/17)	\$2,635.00
Adventist Imaging (1/17/17)	\$3,723.00
Rockville Medical (1/03/17 – 4/12/17)	\$5,012.00
Center for Vision – Dr. Kungle (1/31/17 – 12/02/17)	\$5,938.00
One Medical Group (12/27/16 – 10/09/17)	\$500.00
Fairfax MRI and imaging (12/5/17)	\$1,950.00
Quest Diagnostics (6/02/17)	\$1,205.14
Prescription Medication (4/5/17 – 2/15/19)	\$194.29
<b>Total Amount of Medicals</b>	<b>\$29,819.42</b>
<b>Total Amount of Lost Wages (12/22/16 – 3/31/17)</b>	<b>\$46,561.30</b>

I believe the enclosed medical bills and reports are ample documentation to support a demand of policy limits under [Plaintiffs’] UM/UIM coverage. After reviewing the enclosures, please contact me to discuss the settlement of the UIM claim.

....

Defendant responded to the settlement demand on November 21, 2019 and offered Plaintiff \$65,000 to resolve the Claim. As the parties were unable to resolve the Claim by settlement, Plaintiffs filed a breach of contract lawsuit against Defendant in the Circuit Court for Prince George's County, Maryland on July 6, 2020. The civil action is presently pending and is scheduled for trial.

#### **IV. DISCUSSION**

Plaintiffs assert that Defendant breached its duty owed to the Plaintiffs under the Policy, and that they are entitled to \$380,000, as the entirety of the applicable UM/UIM coverage, less \$120,000 paid from the responsible third parties. Specifically, Plaintiffs allege that Defendant failed to make an informed decision based on honesty and diligence, supported by the evidence Defendant knows or should have known.

I find that Plaintiffs have not demonstrated that they are entitled to additional damages under the Policy at this time. Specifically, Plaintiffs filed a breach of contract lawsuit against Defendant in the Circuit Court for Prince George's County, Maryland on July 6, 2020, and the civil action is presently pending. Plaintiff asserts, as the basis for the 27-1001 Complaint, that the positions taken by Defendant in the context of the pending litigation demonstrate that Defendant failed to act in good faith. Specifically, Plaintiffs assert that as an example of Defendant's failure to act in good faith, Defendant required Plaintiff K.D. to be examined by a physician and submit to a neuropsychological examination.

Defendant asserts that Plaintiffs filed the 27-1001 Complaint in an attempt to divest the Circuit Court of Prince Georges County of its jurisdiction over the civil lawsuit and that

Plaintiffs have no legal authority to proceed with the 27-1001 Complaint. Further, Defendant contends that Plaintiffs' Complaint makes no allegations of improper activity or any violation of Maryland law committed by Defendant.

I find that Plaintiffs have not satisfied their burden of demonstrating that Defendant breached its obligation under the Policy or failed to take adequate steps to investigate the Claim. Instead, based on the evidence in this case, the dispute between the Parties is based solely on Defendant's valuation of the Claim. While Plaintiff makes conclusory assertions that Defendant breached its obligations under the Policy, based on positions taken by Defendant in the context of the litigation, Plaintiffs have not made any specific assertions demonstrating a breach of the insurance contract or a failure to act in good faith in Defendant's investigation of the Claim.

Accordingly, I find that Plaintiffs have not demonstrated that Defendant 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:

1. Plaintiffs established by a preponderance of the evidence that Defendant is obligated under the Policy to cover the Claim.
2. Plaintiffs did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the Policy.
3. Plaintiffs did not establish by a preponderance of the evidence that they are entitled to additional damages as a result of the Claim.
4. Plaintiffs did not establish by a preponderance of the evidence that Defendant 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, Plaintiff did not establish a failure by Defendant to act in good faith.

6. Since Plaintiff did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address special damages.

## **VI. DECISION**

Based on the foregoing findings and conclusions, it is the Administration's Decision on this 12th day of June, 2023, that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

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



---

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.).**