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

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| **MARYLAND INSURANCE ADMINISTRATION *EX. REL.* J.H.[1],** | * | |
| **Complainant** | * | |
| **v.** | * | **Case No. MIA 2022-12-009** |
| **GEICO CASUALTY COMPANY,** | * | |
| **Licensee.** | * | |

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## MEMORANDUM AND FINAL ORDER

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,[2] the Undersigned concludes that Geico Casualty Company ("Licensee") did not violate the Insurance Article in its handling of J.H.'s ("Complainant") auto insurance claim.

### STATEMENT OF THE CASE

This matter arose from an administrative complaint ("Complaint") filed by Complainant with the Maryland Insurance Administration ("MIA") on November 21, 2022. (MIA Exhibit ("Ex.") 1.) Complainant brought his Complaint regarding Licensee's denial of his auto insurance claim for payment of damages to his 2018 Toyota Highlander after it was stolen at gunpoint on January 11, 2020. (*Id.*) Specifically, Complainant argued that he is entitled to payment since he had paid his insurance premiums and held an auto insurance policy with Licensee. (*Id.*) After investigating the Complaint, the MIA determined that Licensee had not violated the Insurance

[1] The MIA uses initials to identify the Complainant to protect the privacy of the Parties.
[2] Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

Article and notified the Parties of its findings by letter dated November 30, 2022 ("Determination"). (MIA Ex. 6.) The Determination included a notice of hearing rights for the Parties. (*Id.*) Complainant disagreed with this determination and filed a timely request for a hearing, which was granted. (MIA Exs. 7, 8.)

## ISSUE

The issue presented in this case is whether Licensee violated the Insurance Article in its handling of Complainant's auto insurance claim.

## SUMMARY OF THE EVIDENCE

### A. Testimony

A hearing was held using remote video technology on May 11, 2023.

Complainant represented himself and provided sworn testimony on his own behalf.

Licensee was represented by Frank Daily, Esquire, with the Law Offices of Frank F. Daily, P.A.. Additionally, Licensee called Debra Decker ("Underwriter Decker"), a trial preparation underwriter for Licensee, and she provided sworn testimony on Licensee's behalf.

### B. Exhibits

*MIA Exhibits*[3] *(In Record)*

1. Initial Complaint from Complainant to MIA, dated November 21, 2022
2. Letter from MIA to Licensee regarding Complaint, dated November 23, 2022
3. Response from Licensee to MIA, dated November 23, 2022
4. Letter from MIA to Licensee requesting documents, dated November 29, 2022
5. Response from Licensee and supporting documents, undated
6. Determination letter from MIA to Parties, dated November 30, 2022
7. Request for a hearing from Complainant, dated December 1, 2022
8. Letter granting hearing request from MIA to parties, dated December 2, 2022

*Licensee's Exhibits*

1. Declaration pages of Complainant's policy, dated June 13, 2019

[3] At the start of the Hearing, the Parties stipulated to the admission of all of the MIA exhibits.

2. Applicable policy provisions, undated
3. Recorded statement of Complainant dated February 18, 2020
4. Licensee's denial letter, dated February 19, 2020
5. Determination letter from MIA to Parties, dated November 30, 2022

## FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the entire record in this case, including the hearing transcript and all exhibits and documentation provided by the Parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. To the extent that there are any facts in dispute, the following facts are found to be true by a preponderance of the evidence. Citations to particular parts of the record are for ease of reference and are not intended to exclude, and do not exclude, reliance on the entire record.

1. At all relevant times, Licensee held, and currently holds, a Certificate of Authority from the State of Maryland to act as a property and casualty insurer.

2. At the time of the incident, Complainant held an auto insurance policy under policy number 4578-33-31-57 ("Policy") issued by the Licensee. (MIA Ex. 3, Licensee Exhibit ("Lic. Ex.") 1.) This Policy was in effect from August 5, 2019 through February 5, 2020. (*Id.*) The Policy provided coverage for physical damage to the insured automobile due to a covered loss, subject to the Policy's exclusions. (*Id.)* The Policy's exclusions section provided, in pertinent part:

> **SECTION III – PHYSICAL DAMAGE COVERAGES**
> ***Your* Protection For *Loss* Or Damage To *Your* Auto**
>
> * * *
>
> **Exclusions**
>
> **Section III** does not apply:

1. To an auto used to carry persons or property for compensation for a fee, including but not limited to the delivery of food or any other products. However, a vehicle used in an ordinary carpool on a ride sharing or cost sharing basis is covered.

* * * *

(*Id.*)

2. On January 11, 2020, Complainant was using his vehicle to make a food delivery for Uber Eats. (MIA Ex. 5, Lic. Ex 3; Transcript ("Tr.") at 7, 38-39.) While he was making the delivery, someone came up behind Complainant with a gun asking for the keys to the car. (*Id.*) Complainant told them the keys were in the car and the assailant drove off in Complainant's vehicle. (*Id.*) The vehicle was later found with damage to the right front fender and right side door. (*Id.*)

3. On February 17, 2020, Complainant reported the incident to Licensee and it initiated an investigation into the claim. (MIA Ex. 5; Tr. at 32.) During this initial intake, Licensee asked Complainant questions about the incident and the vehicle damage. (*Id.*) Licensee also sent Complainant a confirmation email that it opened a claim. (*Id.*)

4. On February 18, 2020, Licensee called Complainant and took a recorded statement. (MIA Ex. 5, Lic. Ex. 3; Tr. at 32.) During the recorded statement, Licensee went over the details of the incident with Complainant again. (*Id.*)

5. On February 19, 2020, Licensee sent Complainant a claim denial letter. (MIA Ex. 5, Lic. Ex. 4; Tr. at 7, 39.) In the letter, Licensee advised Complainant that it denied the claim because the loss occurred while Complainant was using the vehicle for food delivery and

Complainant's policy specifically excluded vehicle damage when the vehicle is used to carry persons or property for a fee. (*Id.*)

6. On May 17, 2020, Licensee closed Complainant's claim. (MIA Ex. 5.)

7. On November 21, 2022, Complainant submitted his initial Complaint to the MIA. (MIA Ex. 1; Tr. at 7.)

8. On November 30, 2022, the MIA concluded its investigation into Complainant's Complaint and determined that Licensee had not violated the Insurance Article in its handling of Complainant's claim. (MIA Ex. 6, Lic. Ex. 5, Tr. at 7.)

9. On December 1, 2022, Complainant was not satisfied with the MIA's determination and requested the instant hearing. (MIA Ex. 7.) The hearing was granted in this matter by letter dated December 2, 2022. (MIA Ex. 8.)

## DISCUSSION

### A. Positions of the Parties.

Complainant argues that he is entitled to payment from Licensee for the damage to his vehicle as a result of it being stolen. Specifically, Complainant contends that he has always paid his insurance premiums and that Licensee is obligated to pay for his vehicle damage. Lastly, Complainant avers that the policy exclusion does not apply because he was using the funds from delivering food to fund his charity instead of for personal profit.

Licensee argues that it properly handled Complainant's claim after performing an investigation. Licensee contends that, after reviewing and fully investigating the claim, it determined Complainant's policy explicitly excludes coverage when the vehicle is being used for

delivery services that are for profit. Lastly, Licensee avers that Complainant has failed to meet his burden to show that the claim was improperly handled in this case.

**B. Statutory Framework**

The Notice of Hearing in this case states that specific attention at the Hearing shall be directed to Sections 27-303 and 4-113 of the Insurance Article.

Section 27-303 states in pertinent part:

> It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:
> (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
> (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;
> * * *
> (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim [.]
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> * * * *

(Westlaw 2023.)

In *Berkshire Life Insurance Co. v. Maryland Insurance Administration,* the Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard as articulated in an earlier case. *See* 142 Md. App. 628 (2002). As the Court explained:

> The Commissioner has previously construed [Section] 27-303(2) as requiring a licensee insurer to show that it refused to pay the claim at issue based on: (1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of "all available information." As the Commissioner explained:
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> * * *
>
> > [A] claimant must prove that the insurer acted based on "arbitrary and capricious reasons." The word "arbitrary" means a denial subject to individual judgment or discretion, … and made without adequate determination of principle. …. The word "capricious" is used to describe a

> refusal to pay a claim based on an unpredictable whim…. Thus, under Ins. Art. § 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on "all available information."

*Id.* at 671-72 (*internal citations omitted*).

Section 4-113 states, in pertinent part:

> (b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:
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> * * *
>
> (5) refuses or delays payment of amounts due claimants without just cause [.]
>
> * * * *

(Westlaw 2023.)

The Complainant, as the party asserting the affirmative on the issue before the administrative body, has the burden of proof in this matter. *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.,* 344 Md. 17, 34 (1996). The burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that a violation of the Insurance Article has occurred. Md. Code Ann., State Gov't § 10-217 (LexisNexis 2021); *Berkshire,* 142 Md. App at 672. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n. 16 (2002) (*quoting* Maryland Pattern Jury Instructions) (*internal citations omitted*). Under this Standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id*.

### C. Licensee did not violate §§ 27-303 or 4-113 in its handling of Complainant's automobile insurance claim.

After investigating Complainant's Complaint concerning Licensee's handling of his auto insurance claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm.

Complainant reported this claim to Licensee on February 17, 2020, over a month after the date of loss on January 11, 2020. Licensee immediately began an investigation of the claim by sending confirmation of the reported loss and taking a recorded statement from Complainant on February 18, 2020. Then, on February 19, 2020, Licensee sent Complainant a claim denial letter that explained to him that the claim was being denied because the loss occurred while he was delivering food and his policy specifically excluded vehicle damage when the vehicle is used to carry persons or property for a fee. (MIA Ex. 5, Lic. Ex. 4; Tr. at 7, 39.) (*See* MIA Ex. 3, Lic. Ex. 1 ("SECTION III – PHYSICAL DAMAGE COVERAGES Your Protection For Loss Or Damage To Your Auto.") .)

As a threshold matter, I find that the Policy exclusion does not violate the Insurance Article. The Maryland Supreme Court has held that an exclusion in an automobile insurance policy is enforceable so long as it does not reduce coverage below the statutory minimum liability limits. *Stearman v. State Farm Mut. Auto. Ins. Co.,* 381 Md. 436, 438, 849 A.2d 539, 541 (2004). In this case, the exclusion in question applies only to the complainant's first party property damage claim and therefore would not reduce the limits of liability below the statutory minimum liability limits set out in Section 17-103 of the Transportation Article of the Annotated Code of Maryland. Thus, I find that the exclusion does not violate the Insurance Article.

My determination now turns to whether Licensee acted in violation of Section 27-303(2) in denying the claim. Applying the legal standard established by the *Berkshire* Court, I find that the Licensee acted reasonably, based upon all available information, and on a lawful principle

which it applies across the board to all claimants in denying the claim. Here, Complainant initiated a claim with Licensee so that it could investigate the damages to his vehicle and determine if the loss was covered under the Policy. Licensee initiated its investigation on February 17, 2020 by taking Complainant's statement on the incident and opening a claim. Then, on February 18, 2020 Licensee took a recorded statement from the Complainant. During this recorded statement, Complainant said that he was delivering food for Uber Eats when his vehicle was stolen and eventually damaged. After reviewing the claim, Licensee noted that Complainant's policy specifically excludes coverage for any damage that occurs while the vehicle is being used to transport persons or property for compensation or a fee. Based on this Policy language and the fact that Complainant was delivering food for Uber Eats at the time his car was stolen and damaged, Licensee issued a denial letter on February 19, 2020. While Complainant contends that this exclusion does not apply because he donated the proceeds to a charity, I do not agree.

Under Maryland law, the plain language rule governs construction of the language of an insurance contract. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 695, 114 A.3d 676, 681 (2015). Under the plain language rule, "[w]hen the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *Id.*, *quoting*, *Sy-Lene of Wash., Inc. v Starwood Urban Retail II, LLC*, 376 Md. 157, 166, 829 A.2d 540, 546 (2003). Notably, Merriam Webster Dictionary defines "compensation" to mean "payment" or "remuneration", and "fee" as a "fixed charge" or "a sum paid or charged for a service." https://www.merriam-webster.com/dictionary (July 31, 2023). Notably, neither definition refers to profit. Thus, under the plain language of the Policy, the exclusion applies whenever property is being delivered for a fixed charge or payment,

regardless of whether the delivery is made for personal profit or for charitable purposes. The Parties do not dispute that Complainant received a payment for the food delivery. Therefore, I find that Licensee had a reasonable basis for its denial of Complainant's claim and did not act in an arbitrary or capricious manner. Thus, I find that Licensee did not violate Section 27-303(2).

I also find that Licensee did not fail to promptly provide, on request, a reasonable explanation of the basis for handling of the claim in violation of Section 27-303(6) of the Insurance Article. The record before me demonstrates that Licensee communicated with Complainant an explanation of its decision to deny Complainant's claim as evidenced by. the denial letter it sent to Complainant on February 19, 2020. Specifically, by citing to appropriate policy language, Licensee advised that it was denying the claim because Complainant's policy explicitly excluded coverage for vehicle damage that occurs during the carrying of persons or property for a fee. Licensee further explained that it reached this decision because Complainant noted during his recorded statement that he was delivering for Uber Eats when his car was stolen and damaged, which would be fall under the policy exclusion. Therefore, I find that Licensee did not violate Section 27-303(6).

I further find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim in violation of Section 27-303(1). The language of the Policy in this case reads, in pertinent part:

> **SECTION III – PHYSICAL DAMAGE COVERAGES**
> ***Your* Protection For *Loss* Or Damage To *Your* Auto**
> * * *
>
> **Exclusions**
>
> **Section III** does not apply:

1. To an auto used to carry persons or property for compensation for a fee, including but not limited to the delivery of food or any other products. However, a vehicle used in an ordinary carpool on a ride sharing or cost sharing basis is covered.

* * * *

(MIA Ex. 3, Lic. Ex. 1.)

Here, the Policy specifically states that Licensee will not provide coverage if the vehicle is being used as a delivery service for compensation or a fee. In this case, Complainant was using his vehicle to deliver food for Uber Eats when it was stolen and subsequently damaged, which fell within an exclusion in his policy. Thus, Licensee acted according to the Policy and properly denied Complainant's claim. Therefore, I find that there was no misrepresentation of the Policy provisions related to the claim, and Licensee did not violate Section 27-303(1).

Finally, I find that Licensee did not refuse or delay payment of amounts due to the Complainant without just cause in violation of Section 4-113(b)(5). As discussed above, Licensee acted reasonably in denying the claim based on the Policy exclusion for damages when the vehicle is being used to transport people or property- in this case, food- for compensation or a fee. Therefore, I find that Licensee did not violate Section 4-113(b)(5).

## CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee did not improperly handle Complainant's auto insurance claim in violation of Sections 27-303 or 4-113, or otherwise violate the Insurance Article.

## FINAL ORDER

**IT IS HEREBY ORDERED** that the determination issued by the Maryland Insurance Administration is AFFIRMED; and it is further

**ORDERED** that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 3rd, 2023.

**KATHLEEN A. BIRRANE**
Insurance Commissioner

signature on original
TAMMY R.J. LONGAN
Acting Deputy Commissioner