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December 30, 2015

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: 2015 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 2015 annual report on cases filed pursuant to § 27-1001.

Regards,

Nancy Grodin
Deputy Commissioner

NG/mg

Enclosure

cc: Sarah Albert, DLS Library (5 copies)

**Fiscal Year 2015
Report to the
Maryland General Assembly
on
Absence of Good Faith Cases
Filed under
§ 27-1001 of the
Maryland Insurance Article**



Al Redmer, Jr.,
Insurance Commissioner
December 30, 2015

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This document is available in alternative format upon request
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I. Introduction

Section 27-1001 of the Insurance Article of the Annotated Code of Maryland¹ took effect on October 1, 2007, and was passed by the General Assembly as a consumer protection measure to provide an insurance policy holder with greater leverage during the insurance claim adjustment process. Sen. Jud. Proc. Comm., Floor Report, H.B. 425 & S.B. 389, p. 4 (Md. 2007). The law requires the Insurance Commissioner to conduct an on-the-record review of complaints filed by insurance 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 ("the Administration") 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 Administration for unfair claim settlement practices along with the administration and judicial disposition of those enforcement actions.

The Administration has successfully implemented § 27-1001 and continues to process complaints in a timely manner. Section 27-1001 continues to provide consumers with a valuable

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

tool to assist them in resolving disputes with insurers about their insurance claims. Additionally, the statute gives consumers access to an impartial review of their disputed claim(s), which helps them secure a fair and equitable claim settlement without resorting to filing an action in court.

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 in 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 Administration 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 and the damages sought, and include “each document that the insured has submitted to the insurer for proof of loss.” Section 27-1001(d)(2)(i). The insurer then files a response to the claim along with the documentation supporting its position. Section 27-1001(d)(4)(i)-(ii). The Administration makes its finding on the basis of the written record and without a hearing. Section 27-1001(e).

The decision of the Administration 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 Administration 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 Administration 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 statute gives the Administration ninety (90) days from the day a complaint is filed to render a decision. During the reporting period, the Administration issued a decision in each § 27-1001 complaint within the statutory timeframe. The Administration’s opinions in § 27-1001 complaints are posted to the Administration’s 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 complaints filed in fiscal year (FY) 2015 (July 1, 2014, through June 30, 2015).

A. Number of Complaints

Thirty-one (31) complaints were received in FY 2015, of which thirteen (13) did not meet the requirements to file a complaint under § 27-1001 and were rejected. *See* Table 1. Three (3) cases were withdrawn or settled prior to a decision on the merits. In twelve (12) of the remaining fifteen (15) cases, the insurance company did not violate § 27-1001. *Id.* The insurance company violated §27-1001 in three (3) cases, accounting for 20% of the cases for which a decision on the merits was rendered. *Id.*

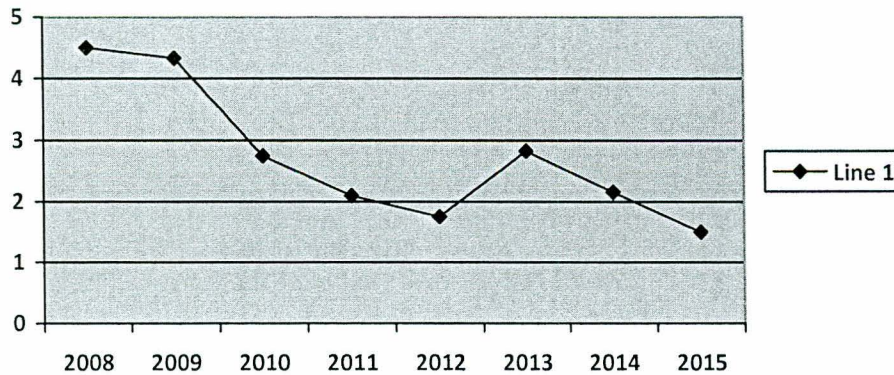
Table 1 – § 27-1001 Complaints Filed with the Administration FY 2010-FY 2015

	<i>FY 2010</i>		<i>FY 2011</i>		<i>FY 2012</i>		<i>FY 2013</i>		<i>FY 2014</i>		<i>FY2015</i>	
	#	%	#	%	#	%	#	%	#	%	#	%
Settled, Withdrawn or Dismissed	14	42%	7	27%	9	45%	14	41%	10	38%	3	17%
§ 27-1001 violation	1	3%	1	4%	3	14%	4	12%	3	12%	3	17%
No Violation	18	55%	18	69%	8	38%	16	47%	13	50%	12	66%
Total	33	100%	26	100%	20	100%	34	100%	26	100%	18	100%

From FY 2014 to FY 2015, the total number of complaints, other than those rejected for non-compliance with § 27-1001, decreased from twenty-six (26) to eighteen (18), a decrease in FY 2015 of 31% from the prior year. *See* Table 1. In the nine (9) months of FY 2008 in which § 27-1001 was in effect, complaints were filed at an average rate of 4.4 per month. Since that time, the average number of complaints filed per month continued to decrease until FY 2013,

when the number rose. In FY 2014, the number fell again and complaints were filed at an average rate of 2.2 cases per month. In FY 2015, the number fell again and complaints were filed at an average rate of 1.5 cases per month. See Table 2.

Table 2 – § 27-1001 Complaints Filed Per Month FY 2008-2015



B. Types of Complaints

Of the fifteen (15) complaints reviewed on the merits, seven (7) involved issues of uninsured or underinsured motorist coverage and three (3) involved homeowners insurance.

Table 3 – § 27-1001 Complaints Filed in FY 2015 by Type of Insurance

	<i>Number</i>	<i>Percentage</i>
Complaints Reviewed on the Merits	15	100%
UM	7	47%
Homeowners	3	20%
Renters	0	0%
Commercial	5	33%

C. Cases in which the Administration Found an Absence of Good Faith

Of the fifteen (15) complaints filed with the Administration during FY 2015 and decided on the merits, the insurer failed to act in good faith in violation of §27-1001 in three (3) instances. In

M.S. v. Allstate, 27-1001-14-00033, the MIA determined that there was no evidence that the defendant made any effort to investigate the loss, ever reached a conclusion regarding coverage, there was nothing to show that it responded to the plaintiff's UIM claim, and nothing to prove that the defendant notified its insured of any decision it may have made on her UIM claim. *RJL Holdings v. Penn America Insurance Company, 27-1001-14-00020*, involved a commercial policy. Here, the defendant did not undertake any effort to obtain reasonably obtainable information and, instead, ignored Plaintiff's offer of evidence and continued to disclaim coverage. In *N.E.R. v. State Farm Insurance Company, 27-1001-14-00025*, the insurance company failed to undertake a concise, well-paced investigation and instead sought to avoid paying the claim.

D. Judicial Review of § 27-1001 Decisions

In FY 2015, three (3) cases were appealed to the Office of Administrative Hearings (OAH). Of those three cases, two were withdrawn and the MIA's determination in the third was affirmed. In *RJL Holdings vs. Penn America, 27-1001-14-00020*, the MIA determined that the insurance company violated §27-1001 when it failed to adequately investigate a leak coming through the foundation of a commercial rental property and failed to honestly and accurately assess the information it had. *N.E.R. v. State Farm Insurance Company, 27-1001-14-00025* and *C.A. and S.M. v. State Farm Fire and Casualty Company, 27-1001-14-00028* were withdrawn.

Table 4 – § 27-1001 Cases on Appeal

FY 2015		
	Appeals to OAH	Appeals to Circuit Court
Total	3	0
Dismissed / Settled / Withdrawn	2	0
Pending		0

Affirmed Administration	1	0
Reversed Administration		0

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints in an effort to identify regulatory trends or problems. During FY 2015, the complaints did not require additional regulatory enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

The statute has not generated the number of complaints anticipated at the time the law was enacted. The addition of the absence of good faith provision to the Maryland Insurance Article, however, provides insurance policy holders with some consumer protection. The fact that the number of complaints has continued to decline suggests that the existence of § 27-1001 actions encourages insurance companies to value and adjust claims in a fair and timely manner.