

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

BETH SAMMIS
KAREN STAKEM HORNIG
Deputy Commissioners

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2010 Fax: 410-468-2020
Email: khornig@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

December 23, 2009

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: 2009 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 first annual report on cases filed pursuant to § 27-1001.

Very truly yours,

Karen Stakem Hornig
Deputy Commissioner

KSH/mmh
Enclosure

cc: Sarah Albert, DLS Library (5 copies)

**2009 REPORT TO THE
MARYLAND GENERAL ASSEMBLY ON
ABSENCE OF GOOD FAITH CASES
FILED UNDER
§ 27-1001 OF THE
MARYLAND INSURANCE ARTICLE**



December, 2009

For further information concerning this document contact:

Karen Stakem Hornig, Deputy Commissioner
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
410-468-2010

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from a qualified individual with a disability.
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).

This annual report is filed pursuant to § 27-1001(h), which requires the Maryland Insurance Administration ("MIA") 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 MIA for unfair claim settlement practices along with the administration and judicial disposition of those enforcement actions.

The MIA has successfully implemented § 27-1001, processing the cases in a timely manner. Section 27-1001 gives consumers assistance in resolving disputes about their insurance claims and it provides consumers with a full and fair assessment of their

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

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. 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).

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 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” as opposed to “third-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 someone else’s insurance policy.

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 review and determination of all cases is handled in-house at the MIA. The law gives the MIA ninety (90) days from the day a complaint is filed to render a decision. During the reporting period the MIA has successfully rendered its decision in all § 27-1001 within the statutory timeframe or within an altered time period agreed upon by the parties. The MIA’s opinions in § 27-1001 cases are posted to the MIA 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 cases filed with the MIA in FY 2009 (July 1, 2008 – June 30, 2009).

A. Number of Complaints

In total, fifty-two (52) § 27-1001 cases were filed in FY 2009. *See* Table 1. Approximately twenty-one (21), or forty percent (40%), of those cases were settled, withdrawn, or dismissed because of lack of jurisdiction. *Id.* In comparison, the percentage of cases settled, withdrawn or dismissed in FY 2008 was thirty-five (35%). Typically, a case is dismissed for lack of jurisdiction when it does not involve a first-party complaint. Of the total number of cases filed in FY 2009, thirty-one (31) were reviewed and decided on the merits. *See* Appendix, Chart 1.

In FY 2009 cases were filed at about the same rate as in FY 2008. In the nine (9) months of FY 2008 in which § 27-1001 was in effect, cases were being filed at a rate of 4.4 cases per month. In FY 2009, cases were being filed at a rate of 4.3 cases per month.

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

	<i>Number</i>	<i>Percentage</i>
Total	52	100%
Settled or Withdrawn	7	13%
No Jurisdiction by MIA	14	27%
Absence of Good Faith	3	6%
Cases Finding Good Faith	28	54%

B. Types of Complaints

Like last year, most of the cases filed pursuant to § 27-1001 involve issues of uninsured or under insured motorist (“UM”) coverage.² Of the thirty-one (31) cases reviewed by the MIA on the merits, twenty-four (24) of those cases, or seventy-seven percent (77%), involved automobile UM coverage. *See* Table 2. Homeowners’ insurance was involved in only four of the cases decided on the merits and commercial insurance was involved in only three cases. *Id.*

TABLE 2 – § 27-1001 CASES BY TYPE OF INSURANCE

	<i>Number</i>	<i>Percentage</i>
Cases Reviewed on the Merits	31	100%
UM Cases	24	77%
Homeowners	4	13%
Commercial	3	10%

Also like last year, most of the § 27-1001 cases involve disagreement between the policy holder and the insurance company about the settlement value of the claim. Most of the cases involve claims for soft tissue injuries that resulted from UM claims where the insured believes that the insurance company made an unsatisfactory settlement offer. *See* Table 3. More than two-thirds of the cases involve a dispute between the insurance company and the insured regarding the value of the claim. Twenty-one (21) cases or sixty seven percent (67%) of the thirty-one (31) cases decided on the merits involved settlement valuation disputes. *Id.*

² The term “uninsured motorist” includes within its meaning the concept of the “under insured motorist.” Section 19-509(a); *Waters v. U.S. Fidelity & Guar. Co.*, 328 Md. 700, 713 (1992); *Aetna Casualty & Surety Co. v. Souras*, 78 Md. App. 71, 75 (1989).

TABLE 3 – § 27-1001 CASES BY TYPE OF DISPUTE

	<i>Number</i>	<i>Percentage</i>
Cases Reviewed on the Merits	31	100%
Settlement Value Dispute	21	68%
Denial of Claim/Coverage Dispute	7	23%
Worker's Comp Issue	2	6%
Other	1	3%

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

Of the thirty-one (31) cases decided on the merits, the MIA found an absence of good faith in three cases (ten percent (10%)). All three of these cases involved UM claims. Two of the three cases involved a dispute regarding settlement value and the third case involved the legal issue of whether in a UM case an insurance company is bound by a prior settlement with the tortfeasor.

While disputes about the settlement value of a claim usually do not rise to the level of an absence of good faith, these cases are not, *per se*, immune from a § 27-1001 challenge. In FY 2009, two of the three cases where the MIA found that the insurer had acted with an absence of good faith involved cases that can fairly be described as claim settlement valuation disputes. *See e.g. C.H. v. MAIF*, MIA Case No. 27-1001-2009-00028 (October 7, 2009); *A.M.F. v. Progressive*, MIA Case No. 27-1001-2008-00053 (March 4, 2009).³ The *C.H.* and *A.M.F.* cases are distinguishable from the many other valuation cases, because in these cases the insurers failed to take into account all

³ In response to privacy concerns, particularly concerns about the privacy of complaints' medical information, the MIA has begun using initials to identify complainants.

available information when they made their valuation determination in an effort to avoid paying policy limits in cases where the value of the case clearly exceed policy limits.

The third case, *E.L.B. v. The Brethren Mutual Insurance Co.*, MIA Case No. 27-1001-2009-00014 (June 30, 2009), involved a case in which the UM insurer was bound by the judgment or settlement of a tort action between the tortfeasor and the UM policy holder. Pursuant to rulings by the Maryland Court of Appeals, the MIA found that the insurer could not resurrect tort defenses that it could have exerted in a trial on liability. *See Waters v. U.S. Fidelity & Guar. Co.*, 328 Md. 700, 717-718 (1992); *Nationwide Mutual Ins. v. Webb*, 291 Md. 721, 732-739 (1981).

D. Section 27-1001 Decisions on Appeal

In FY 2009, twelve (12) § 27-1001 cases have been appealed to the Office of Administrative Hearing (“OAH”) or to one of Maryland’s circuit courts. *See* Table 4. The twelve (12) appeals are split evenly between OAH and Maryland’s circuit courts. Of the cases filed in Maryland’s circuit courts, two were filed in Baltimore City, two in Prince George’s County, one in Montgomery County and one in St. Mary’s County. To date, the cases heard in circuit courts have affirmed the determinations made by the MIA. *See* Table 4.

Only one case has resulted in a partial reversal of an MIA determination and that was in the case of *S.S. & D.S. v. United Services Automobile Association*, MIA Case No. 27-1001-08-00034 (July 10, 2008). This case involved a denial of a homeowner’s house fire claim because the insurance company determined that the homeowners had caused the fire. The MIA found that while it was a difficult case, the record did not support a finding of absence of good faith by the insurer. OAH affirmed in part and reversed in part, agreeing that the record did not support a finding of absence of good faith, but

finding that USAA had violated its contract with the policy holders. *S.S. & D.S. v. United Services Automobile Association*, OAH Case No. MIA-CBC-37-08-42357 (April 13, 2009). The parties resolved the claim without further appeal.

The case was appealed to the Circuit Court for Baltimore City, which affirmed OAH's decision on November 2, 2009. *United Services Automobile Association v. S.S. & D.S.*, Civil Case No. 29C09003161 (November 2, 2009). No appeal was taken from the Circuit Court's decision.

TABLE 4 – § 27-1001 CASES ON APPEAL

FY 2009 (07/01/08 – 6/30/09)		
	Appeals to OAH	Appeals to Circuit Court
Total	6	6
Withdrawn	1	0
Pending	3	4
Affirmed MIA	1	2
Reversed MIA	1	0

E. Regulatory Enforcement Action

The Commissioner's Office tracks the data from § 27-1001 cases looking for trends or problems. The cases are distributed among carriers in percentages that correspond to the carrier's market share. See Appendix, Chart 1. The cases brought to date 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 not generated the number of cases anticipated at the time the law was passed. Nonetheless, the addition of the absence of good faith provision to the Maryland Insurance Article does provide insurance policy holders with a valuable consumer protection, which encourages insurance companies to value and adjust claims in a fair and timely manner. Not only does § 27-1001 deter insurance companies from making offers below policy limits when the damages incurred clearly meet or exceed those limits, but it serves to insure that companies carefully and honestly consider all information available to them in the claims adjustment process.

APPENDIX

CHART 1

ANALYSIS OF § 27-1001 CASES BY DECIDED ON THE MERITS IN FY 2009

Case #	Defendant	Issued	Claim Type	Loss	Issues
2008-32	Churchill	9/29/2008	Business	Hand Injury	No jurisdiction; no 1 st party claim
2008-33	State Farm	9/30/2008	UM	Soft Tissue	Valuation dispute; found GF
2008-34	USAA	10/8/2008	Home	House Fire	Claim denial; found GF; rev'd in part OAH; aff'd CC
2008-35	GEICO	10/14/2008	UM	Soft Tissue	Valuation dispute; found GF
2008-37	State Farm	10/27/2008	UM	Serious Injury	Claim denial; negligence by insured; found GF
2008-38	Allstate	10/31/2008	UM	Soft Tissue	Claim denial; lack of UM coverage; found GF
2008-39	State Farm	11/12/2008	UM	Neck Surgery	Valuation dispute; ripeness; found GF
2008-40	Am. Skyline	10/31/2008	Auto	Soft Tissue	No Jurisdiction; no 1 st party claim
2008-42	Farmers	12/1/2008	UM	Soft Tissue	Valuation Dispute; found GF; ripeness
2008-43	State Farm	12/3/2008	UM	Soft Tissue	Valuation dispute; found GF
2008-44	MAIF	12/19/2008	UM	Soft Tissue	Claim denial, fail to cooperate; found GF
2008-45	Selective	12/23/2008	Business	Comm. Fire	Valuation dispute; ripeness; found GF
2008-46	Standard	1/16/2008	Home	House Fire	Valuation dispute; failure to provide documents; found GF
2008-47	MAIF	1/21/2008	UM	Soft Tissue	Valuation dispute; found GF
2008-49	Selective	2/10/2009	Home	Water Damage	Coverage Dispute; found GF
2008-51	Travelers	2/17/2009	Home	House Fire	Valuation dispute; found GF
2008-53	Progressive	3/4/2009	UM	Permanent BI	Absence of GF; valuation dispute
2008-54	Nationwide	3/11/2009	Business	Lost Profits	Coverage dispute; found GF
2008-55	NW Fire	3/12/2009	UM	Hip Surgery	Valuation dispute; found GF
2009-01	State Farm	4/4/2009	UM	Soft Tissue	Valuation dispute; found GF; ripeness
2009-02	GEICO	4/14/2009	UM	Soft Tissue	Valuation dispute; found GF
2009-03	Farmers	4/21/2009	UM	Soft Tissue	Valuation dispute; found GF
2009-04	Nationwide	4/30/2009	Business	Lost Profits	Coverage dispute; found GF
2009-05	GEICO	4/24/2009	UM	Surgery	WC Lien; found GF
2009-06	USAA	3/13/2009	UM	Soft Tissue	No Jurisdiction; policy not issued/sold in MD
2009-14	Brethren Mutual	6/30/2009	UM	Serious Inj.	Absence of GF; insurer bound by settlement w/ tortfeasor
2009-19	Progressive	7/10/2009	UM	Econ. Injury	No Jurisdiction; no 1 st party claim
2009-20	State Farm	7/20/2009	UM	Serious Injury	Valuation dispute; timeliness; found GF
2009-21	Safeco	8/6/2009	UM	Knee Fracture	Valuation dispute; found GF
2009-22	Progressive	7/24/2009	UM	Soft Tissue	Valuation dispute; found GF
2009-23	MAIF	8/4/2009	UM	Soft Tissue	Valuation dispute; found GF; prior case
2009-25	State Farm	8/19/2009	UM	Back surgery	Workers Comp issue; found GF
2009-26	Nationwide	9/2/2009	UM	Serious Injury	Valuation dispute; found GF
2009-27	State Farm	9/16/2009	UM	Soft tissue	Valuation dispute; found GF
2009-28	MAIF	10/7/2009	UM	Back surgery	Absence of GF; valuation dispute