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February 15, 2012

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: REVISED 2011 Report on Absence of Good Faith Cases filed pursuant to MD. CODE ANN., INS. ART., § 27-1001

Dear Sirs:

Upon reviewing the data reported in the 2011 Report on §27-1001 filings, the Maryland Insurance Administration has noted a discrepancy in the types of filings made in the 2011 fiscal year. This error occurred due to a miscalculation in the Administration's database. This database has been corrected and this Revised Report is submitted to replace the report filed on December 13, 2011.

The corrections are located on pages 4-6. Specifically, the total number of cases reviewed on the merits is nineteen (19) rather than eighteen (18) as noted in the original report. Of this number, there were four (4) homeowners cases and fifteen (15) uninsured motorist cases. Additionally, in FY 2011 there was only one (1) case, not two (2), in which the Administration found that an insurer had acted with an absence of good faith. The second case noted in the original report, *J.L. v. State Farm Fire and Casualty Company*, was decided on August 2, 2011 and will be included in the FY 2012 report.

Very truly yours,

Karen Stakem Hornig
Deputy Commissioner

KSH:mmh
Enclosure
cc: Sarah Albert, DLS Library (5 copies)
Susan Cohen, Peoples Insurance Counsel Division

FISCAL YEAR 2011
REVISED REPORT TO THE
MARYLAND GENERAL ASSEMBLY
ON
ABSENCE OF GOOD FAITH CASES
FILED UNDER
§ 27-1001 OF THE
MARYLAND INSURANCE ARTICLE

MARYLAND
INSURANCE
ADMINISTRATION

Revised Report Filed
February 15, 2012

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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 Maryland[1] 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 revised annual report[2] 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

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

[2] This Revised Report is submitted to replace and correct the report filed on December 13, 2011. The corrections are located on pages 4-6. The total number of cases reviewed on the merits is nineteen (19) rather than eighteen (18) as noted in the original report. There were four (4) homeowners cases and fifteen (15) uninsured motorist cases. Additionally, in only one (1) case, not two (2), was there a finding that an insurer had acted with an absence of good faith. The second case noted in the original report, *J.L. v. State Farm Fire and Casualty Company*, is properly included in the FY 2012 report.

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 cases in a timely manner. Section 27-1001 continues to provide consumers with a valuable 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 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" 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, 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 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 has successfully issued its decision in all § 27-1001 cases within the statutory timeframe or within an altered time period agreed upon by the parties. The Administration's opinions in § 27-1001 cases 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 cases filed in fiscal year (FY) 2011 (July 1, 2010 through June 30, 2011).

A. Number of Complaints

Twenty-six (26) § 27-1001 cases were filed in FY 2011 and of this total number nineteen (19) were reviewed and decided on the merits. *See* Table 1. Seven (7) of these cases, or twenty-seven percent (27%), were settled, withdrawn, or dismissed because of lack of jurisdiction. *Id.*

The overall number of cases filed in FY 2011 declined by twenty-one percent (21%) from those filed in FY 2010. *See* Table 1. In the nine (9) months of FY 2008 in which § 27-1001 was in effect, cases were filed at a rate of 4.4 cases per month. In FY 2009, cases were filed at a rate of 4.3 cases per month, which decreased to a rate of 2.75 cases per month in FY 2010. In FY 2011, cases were filed at a rate of only 2.1 cases per month.

TABLE 1 – § 27-1001 CASES FILED WITH THE ADMINISTRATION FY 2009-2011

	FY 2009		*FY 2010*		*FY 2011*	
	Number	***Percentage***	***Number***	***Percentage***	***Number***	***Percentage***
Total	52	100%	33	100%	26	100%
Settled, Withdrawn or Dismissed	21	40%	14	42%	7	27%
Found Absence of Good Faith	3	6%	1	3%	1	4%
Cases Finding Good Faith	28	54%	18	55%	18	69%

B. Types of Complaints

Following the trend of prior years, most of the cases filed pursuant to § 27-1001 involve issues of uninsured or under insured motorist ("UM") coverage. Of the nineteen (19) cases reviewed by the Administration on the merits, fifteen (15) of those cases, or seventy-nine percent (79%), involved UM coverage. *See* Table 2. Homeowners insurance was involved in four (4) of the cases decided on the merits. *Id.*

TABLE 2 – § 27-1001 CASES FILED IN FY 2011 BY TYPE OF INSURANCE

	Number	***Percentage***
Cases Reviewed on the Merits	19	100%
UM Cases	15	79%
Homeowners	4	21%

Like prior years, the majority of the § 27-1001 cases involve a 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 resulting from UM claims in which the insured believes that the insurance company made an unsatisfactory settlement offer.

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

Of the nineteen (19) cases decided on the merits, the Administration found an absence of good faith in only one case, which is the same number as in FY 2010. *S.C. & V.C. v. Liberty Mutual Insurance Company*, Case No. 27-1001-10-00028 (January 3, 2011) involved a homeowners claim involving hail damage. The Administration ruled against the insurer because it failed to comply with the statutory mandate to produce all of the documents related to the disputed claim.

D. Judicial Review of § 27-1001 Decisions

In FY 2011, two (2) cases resulted in three (3) appeals to either the Office of Administrative Hearing ("OAH") or to one of Maryland's circuit courts. *See* Table 3. *Clifton v. Erie Insurance Exchange*, Case No. 27-1001-10-00030, was filed with OAH and OAH agreed with the determination of the Administration. The same case was then appealed to, and is currently pending in, the Circuit Court for Montgomery County. One other case, *Lizzio v. State Farm Mutual Automobile Insurance Company*, Case No. 27-1001-10-00032, is currently pending in the Circuit Court for Baltimore City. *See* Table 3.

TABLE 3 – § 27-1001 CASES ON APPEAL

FY 2011 (07/01/10 – 6/30/11)		
	Appeals to OAH	Appeals to Circuit Court
Total	1	2
Withdrawn	0	0
Pending	0	2
Affirmed Administration	1	0
Reversed Administration	0	0

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 cases in an effort to identify regulatory trends or problems. The cases brought to date have not required any regulatory enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

The number of § 27-1001 cases has declined over time. There were twice as many cases filed in FY 2009 as were filed in FY 2011. While the statute has not generated the number of cases anticipated at the time the law was passed, the addition of the absence of good faith provision to the Maryland Insurance Article provides insurance policy holders with a valuable consumer protection, which encourages insurance companies to value and adjust claims in a fair and timely manner. Section 27-1001 deters insurance companies from making offers below policy limits when the damages incurred clearly meet or exceed those limits and it serves to ensure that companies carefully and honestly consider all available information in the claims adjustment process.