

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

M.J. ¹	*	
	*	
Plaintiff,	*	
	*	
v.	*	Case No. 27-1001-23-00032
USAA CASUALTY INSURANCE	*	
COMPANY	*	
	*	
&	*	
	*	
ROBERT PERALTA	*	
	*	
Defendants.	*	
	*	
* * * * *		

DECISION AND ORDER

M. J. (“Plaintiff”) filed a complaint (the “Complaint”) with the Maryland Insurance Administration (the “Administration”) alleging that USAA Casualty Insurance Company (“USAA”) and Robert Peralta, policyholder (collectively “Defendants”) breached the terms of an insurance policy by failing to pay a third-party liability action asserted against them for injuries sustained by Plaintiff on property owned by Mr. Peralta. Plaintiff purports to have filed the Complaint under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

For the reasons set forth below, the Administration concludes that it lacks jurisdiction to decide the Complaint, as the claim at issue is a claim for defense and indemnification for a third-party liability claim rather than a first-party property and casualty claim.

¹ The MIA uses initials to protect the privacy of individuals.

I. STANDARD OF REVIEW

Section 3-1701 of the Courts and Judicial Proceedings Article, Md. Code Ann., Cts. & Jud. Proc § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer breached the insurance contract and failed to act in good faith in denying, in whole or in part, a **first-party property insurance or disability insurance claim**. *Id.* at § 3-1701 (b) and (d).

As a procedural matter, before the insured may seek such special damages in a legal action, the insured must first submit a complaint to the Administration under § 27-1001. The Administration then has ninety (90) days within which to render a decision on the complaint.

The provisions of § 3-1701 and §27-1001 do not apply to claims made by against an individual or an insurer regarding the handling of a third-party coverage claim.

II. PROCEDURAL BACKGROUND

On May 23, 2023, the Administration received the Complaint, in which Plaintiffs alleges that USAA and Mr. Peralta failed to pay a third-party liability action asserted against them for injuries sustained by Plaintiff on property owned by Mr. Peralta.²

III. FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the Complaint and supporting documents submitted by Plaintiff.

1. For the period between November 1, 2019 to November 1, 2020, Defendant (USAA) insured property at 4803-4817 Allentown Road, 4801 Allentown Road, 4827 Allentown Road, 4929 Allentown Road, and 4921 Allentown Road, Suitland, MD 20746.

² Given the Administration's conclusion below as to jurisdiction, the Administration did not request a response from Defendant.

2. On or about August 23, 2020, Plaintiff allegedly sustained injuries on property insured by Defendant. It can not be ascertained from the record on which specific property insured by Defendant the injuries occurred. The exact nature of the hazard is also impossible to determine from the record.

IV. DISCUSSION

Section 3-1701 provides “the statutory claim for failure to act in good faith applies to civil actions in which the insured seeks a determination of whether coverage actually exists under an insurance policy.” *St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 739 (4th Cir. 2016); *citing* Md. Code Ann., Cts. & Jud. Proc § 3-1701 (2020 Repl. Vol.). Section 1701(b) specifically states that it “applies only to **first-party claims** under property and casualty insurance policies or individual disability insurance policies issued, sold, or delivered in the State.” [*Emph. added.*] Clearly and expressly, §§3-1701 and 27-1001 apply only to “**first-party claims under property and casualty insurance policies.**” [*Emph. added.*] *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.),

Liability insurance is “classified as third-party insurance,” 15 Eric Mills Holmes, *Holmes’ Appleman on Insurance* § 111.1(B), at 10 (2d ed. 2000), which “protects the insured against damages which he may be liable to pay to third parties arising out of the insured’s conduct.” (*Id.*) Liability insurance is customarily referred to as third-party insurance because “the liability insurer’s duty to pay runs not directly to the insured but directly (on the insured’s behalf) to a third-party claimant who is injured by the insured’s conduct.” *Id.* at § 111.1(C) at 25 (2d ed. 2000).

In the instant case, Plaintiff asserts a direct action against Defendants as an individual and third party carrier. Plaintiff seeks \$450,000.00 in compensatory damages for pain,

suffering and mental anguish arising from a “slip and fall”. Maryland law does not permit the Plaintiff to proceed by filing a direct action against a liability insurer for the purpose of resolving the Plaintiff’s negligence claims against an insured. Harford Mut. Ins. Co. v. Woodfin Equities Corp., 344 Md. 399, 412, 687 A.2d 652 (1997).

Section 3-1701 does not apply to civil actions to determine indemnification from individuals or third-party liability carriers; therefore, section 27-1001 does not vest the Administration with jurisdiction to review an insurer’s coverage decisions regarding such third-party liability claims.

V. CONCLUSIONS OF LAW

As the Complaint involves third-party liability coverage rather than first-party property and casualty coverage, it does not assert a claim that falls within the scope of §3-1701 of the Courts and Judicial Proceedings Article and § 27-1001 of the Insurance Article, and thus is not within the Administration’s jurisdiction.

ORDER

Based upon the foregoing findings and conclusions, it is the Administration’s Decision and Order on this 3rd day of August 2023, that it is hereby:

ORDERED that the Complaint is DISMISSED; and it is further

ORDERED that pursuant to § 27-1001(f)(3), this Decision and Order shall take effect as a Final Order if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

It is so **ORDERED** this 3rd day of August 2023.

KATHLEEN A BIRRANE
Insurance Commissioner

signature on original

TAMMY R. J. LONGAN
Deputy Commissioner- Office of 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.).