

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

R. C. <sup>1</sup>,

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**Plaintiff,**

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v.

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**Case No. MIA 27-1001-23-00030**

**ATLANTIC STATES INSURANCE  
COMPANY**

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**Defendant.**

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**DECISION**

R. C. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Atlantic States Insurance Company (“Defendant”) breached its contractual obligations to her by failing to make a good faith offer or payment under the uninsured/underinsured motorists provision of a commercial automobile insurance policy (the “Policy”) in connection with an auto accident that occurred on December 6, 2018 in Montgomery County, Maryland (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has failed to meet her burden to demonstrate that Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the loss claimed by Plaintiff.

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<sup>1</sup> The Maryland Insurance Administration (MIA) uses initials to protect Plaintiff’s and other individuals’ privacy.

## **I. STANDARD OF REVIEW**

Section 3-1701 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 failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in § 27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't Art., section 10-217; *Md. Bd. Of Physician v. Elliott*, Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

## **II. PROCEDURAL BACKGROUND**

On May 17, 2023, the Administration received Complaint No. 27-1001-23-0030 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged Defendant breached its obligations under the Policy by failing to make a good faith offer or payment of the amount sought in the Claim. Plaintiff contends that Defendant, in doing so, breached its duty to act in good faith by failing to make an informed judgement on Plaintiff's claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiff alleges that after receipt of her discovery responses, Defendant has neglected to make any new offers on the Claim despite receiving discovery responses detailing her economic damages, permanent injuries, and projected lifecare plan.

On May 22, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4), acknowledging that the Policy provided uninsured/underinsured motorist coverage for the vehicle operated by Plaintiff with policy limits of \$1,000,000 each accident.

## **III. FINDINGS**

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiff has failed to establish that she is entitled to additional coverage for the Claim under the Policy.

This matter arose from a motor vehicle accident on December 6, 2008 in Montgomery County, MD. On that date, Plaintiff was involved in a motor vehicle accident with a vehicle operated by E.A. Plaintiff asserts that the accident was caused due to the negligence of E.A, who was insured under an automobile policy issued by State Farm Mutual Automobile Insurance Company on the date of the accident. At the time of the accident, Plaintiff was the driver of the vehicle and D.F. was an occupant in Plaintiff's vehicle.<sup>2</sup> At the time of the accident, the Plaintiff was covered under a Commercial Auto Policy issued by Defendant to Ivete's Cleaning, LLC, for the policy period of June 16, 2018 through June 16, 2019. The policy contained a Maryland Uninsured Motorist Coverage limit of insurance of \$1,000,000 per accident. ("Policy")

On December 11, 2018, Plaintiff's counsel notified Defendant that she was representing Plaintiff and Plaintiff's passenger, D. F., for the Claim and provided a copy of the police report. The following day, Defendant sent an acknowledgement letter to Plaintiff's counsel requesting a status of the underlying claim and information regarding Plaintiff's injuries and medical treatment. Defendant also provided a copy of the Policy declarations page and uninsured/underinsured motorist coverage form, and requested the following documentation to complete its investigation of the claim:

- an authorization to obtain Plaintiff's medical benefits claim file
- copies of Plaintiff's medical records
- wage loss documentation
- verification of the underlying policy limits and proof of offer

On January 18, 2019 and February 22, 2019, Defendant contacted Plaintiff's counsel requesting an update on Plaintiff's injuries and treatment. On March 7, 2019, Plaintiff's counsel advised Defendant that the underlying insurer, State Farm, tendered its liability policy limits of \$30,000 in settlement of Plaintiff's claim against its insured, E.A. Plaintiff's counsel further

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<sup>2</sup> D.F. filed a separate complaint was filed with the MIA under MIA 27-1001-23-00034.

requested that Defendant grant Plaintiff permission to accept the settlement and waive its right of subrogation. On March 13, 2019, Defendant advised Plaintiff's counsel that it agreed to waive subrogation and consented to Plaintiff's settlement with State Farm.

From April 1, 2019 through February 24, 2021, Defendant sent numerous letters and made telephone calls to Plaintiff's counsel requesting a status and documentation in support of Plaintiff's underinsured motorist claim. On March 19, 2021 and March 21, 2021, Defendant received a copy of Plaintiff counsel's demand letter and medical records sent to State Farm pertaining to D.F.'s liability claim. On March 23, 2021, Defendant acknowledged receipt of the demand. On April 14, 2021, Plaintiff's counsel advised Defendant that State Farm tendered its \$30,000 bodily injury policy limits in settlement of D. F.'s liability claim against its insured, E.A. On May 4, 2021, Defendant advised Plaintiff's counsel that it agreed to waive subrogation against State Farm's insured. On June 21, 2021, Plaintiff's counsel advised Defendant that D. F. recently completed care and she would work on sending Defendant a demand package. On June 25, 2021, Plaintiff's counsel sent medical records to Defendant pertaining to D. F.'s underinsured motorist claim. On July 9, 2021, Defendant extended a \$12,500 offer to settle D. F.'s underinsured motorist claim. On the same date, Plaintiff's counsel advised the demand to settle D. F.'s claim was \$970,000. On September 10, 2021, Defendant advised Plaintiff's counsel that after a re-review of the claim and Plaintiff counsel's demand, its \$12,500 offer was reasonable in light of the documentation submitted.

On October 8, 2021, Plaintiff's counsel filed suit on behalf of Plaintiff and D. F. against Defendant in the Circuit Court for Montgomery County alleging Defendant breached the uninsured/underinsured portion of the Policy by refusing to pay for the damages caused by the negligence of the underinsured driver, E.A.

During the discovery phase of the lawsuit, Defendant continued to evaluate Plaintiff's claim upon receipt of additional medical records, medical bills, and past medical history. During its review of Plaintiff's medical history, Defendant determined that Plaintiff sustained similar injuries to those alleged in the present claim in prior and subsequent motor vehicle accidents. Defendant also retained an orthopedic surgeon, Dr. Richard Conant, who opined that Plaintiff primarily sustained soft tissue injuries of her neck, shoulders, and left hip, with no spinal, neurological or pelvic involvement. Dr. Conant further determined that Plaintiff would have been reasonably expected to resolve naturally within six to eight weeks and there was no need for subsequent treatment and with no resultant permanent impairment of function. Defendant also retained orthopedic surgeon, Dr. Bradley Moatz, who opined that Plaintiff sustained an injury consistent with that of a cervicothoracic strain as a result of the accident that should have resolved within six to eight weeks, and any treatment after her initial course of physical therapy was excessive and not related to the accident. He further determined that Plaintiff did not sustain any injury to her lower back or any permanent injury to her neck or lower back,

During a February 2, 2023 settlement conference, Plaintiff made a demand of \$970,000 to settle her underinsured motorist claim in excess of the \$940,000 underinsured motorist limit available under the Policy coverage. In response to Plaintiff's subsequent \$950,000 demand, Defendant extended an offer of \$30,000 to settle Plaintiff's underinsured motorist claim, which was rejected by Plaintiff. On May 4, 2023, Plaintiff filed supplemental discovery responses that included updated billing documentation for treatment received in December 2022.

#### **IV. DISCUSSION**

In the complaint, Plaintiff alleges Defendant breached its contractual obligations to her by failing to make a good faith offer or payment under the uninsured/underinsured motorist

provision of the Policy. Plaintiff further alleges after receipt of her discovery responses, Defendant neglected to make any new offers on the Claim despite receiving discovery responses detailing her economic damages, permanent injuries, and projected lifecare plan.

The evidence demonstrates that Defendant promptly acknowledged receipt of Plaintiff's potential uninsured/underinsured motorist claim on December 12, 2018, and made several subsequent requests for medical records, billing records, and other documentation in support of Plaintiff's claim. After receipt of Plaintiff's lawsuit, Defendant commenced a review and evaluation of Plaintiff's claim that included a review of Plaintiff's medical treatment and records incurred after the accident, as well as her records for medical treatment received as a result of motor vehicle accidents prior to and after the Claim. Defendant's evaluation of the claim also included a review by independent medical experts to determine the extent of Plaintiff's injuries sustained in the accident and the extent of any permanent injuries or impairment.

Despite the allegations in the complaint, other than citing the injury documentation and amount of economic damages submitted during discovery, Plaintiff offers no evidence that Defendant failed to consider or evaluate the documentation Plaintiff produced during discovery or that it failed to make a good faith offer to settle based on its evaluation of Plaintiff's claim. Furthermore, although Plaintiff alleges Defendant breached its contractual obligations to her by failing to make a good faith offer or payment under the uninsured/underinsured motorists provision of the Policy, the relief sought by plaintiff of \$970,000 is in excess of the available uninsured/underinsured motorist policy limits after the settlement of Plaintiff's and D. F.'s liability claims.

Based on these findings, Plaintiff has failed to meet her burden to prove that Defendant breached any obligation owed to her under the Policy or that she is entitled to any additional payment under the policy.

**V. CONCLUSIONS OF LAW**

In accordance with Section 27-1001, the Administration concludes:

1. Plaintiff established by a preponderance of the evidence that Defendant issued an automobile policy obligating Defendant to provide uninsured/underinsured motorist coverage to Plaintiff for injuries arising out of the Claim.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that she is entitled to additional damages as a result of the claim.
4. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.
6. Plaintiff is not entitled to expenses and litigation costs.

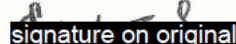
**ORDER**

Based on the foregoing findings of fact and conclusions of law, it is

**ORDERED** on this 11<sup>th</sup> day of September, 2023 that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

**ORDERED** that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

**KATHLEEN A. BIRRANE**  
Insurance Commissioner

  
signature on original

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Erica J. Bailey  
Associate Commissioner



**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 under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).**