

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

D. F. ¹,

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Plaintiff,

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v.

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Case No. 27-1001-23-00034

**ATLANTIC STATES INSURANCE
COMPANY**

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Defendant.

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DECISION

D. F. (“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.

¹ 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. 27-1001-23-0034 (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 another 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 an occupant of a vehicle operated by R.C.² 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 the driver of the vehicle, R. C., 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 R. C.'s claim against its insured, E.A. Plaintiff's counsel further

² R.C. filed a separate complaint was filed with the MIA under MIA 27-1001-23-00030.

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 R. C.'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 Plaintiff'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 Plaintiff'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 Plaintiff 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 Plaintiff's underinsured motorist claim. On July 9, 2021, Defendant extended a \$12,500 offer to settle Plaintiff's underinsured motorist claim. On the same date, Plaintiff's counsel advised the demand to settle Plaintiff'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 R. C. 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 supplemental medical records and bills. During its review of Plaintiff's medical history, Defendant identified inconsistencies in Plaintiff's complaints regarding the nature and location of her injuries. Defendant also retained a hand surgeon, Dr. Christopher Forthman, who opined, "she was examined by multiple physicians and orthopedists and was never found to have any thumb instability or major underlying structural injury. Nonetheless, she reports ongoing pain and dysfunction so much so that her livelihood has been affected. The medical records indicate a diagnosis of sprain/strain/contusion by multiple providers over several years. However, the medical records do not indicate a major structural failure that would significantly alter one's quality of life, ability to perform heavy labor tasks, or cause significant pain." Specifically, in the medical records prepared by Dr. Forthman, his evaluation did not indicate a diagnosis that would justify the level of complaints, the numerous episodes of care, and the claims regarding alterations in future potential earnings. He further concluded that the motor vehicle injury did not result in a permanent condition that would require further or future care.

Defendant also retained a vocational rehabilitation expert, Dr. Scott Beveridge, who opined that Plaintiff's work in cleaning and janitorial positions since arriving in the United States was below her potential vocational capacity based on her prior educational and work history in Honduras. He further indicated that following the accident, Plaintiff started her own company, was self-employed and performed managerial and entrepreneurial duties in addition to cleaning

duties. Dr. Beveridge also provided a Job Analysis on a housekeeper position to Dr. Forthman who approved the Job Analysis and indicated Plaintiff could work full time in this occupation.

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.

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. Defendant's evaluation of the claim also included a review by independent medical and vocational rehabilitation experts to determine the extent of Plaintiff's injuries sustained in the accident and the extent of any loss of earning capacity.

Despite the allegations in the complaint, 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 R.C.'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 11th 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

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