

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

**MARYLAND INSURANCE  
ADMINISTRATION *EX REL.*  
L.D.,<sup>1</sup>**

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**Complainant,**

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**v.**

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**Case No. MIA-2022-06-019**

**ERIE INSURANCE COMPANY**

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**Licensee.**

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**MEMORANDUM AND FINAL ORDER**

Pursuant to §§ 2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,<sup>2</sup> the Undersigned concludes that Erie Insurance Company (“Licensee”) did not violate §§ 11-230(a) and 11-341 in its decision to retroactively add Complainant L.D.’s (“Complainant”) son, E.H., to Complainant’s automobile insurance policy from the date that E.H. obtained his driver’s license, resulting in additional premium due. Further, Licensee did not willfully collect a premium or charge for insurance in violation of § 27-216(b)(1)(i).

**STATEMENT OF THE CASE**

This matter arose from an administrative complaint (“Complaint”) received by the Maryland Insurance Administration (“MIA”) on March 8, 2022. (MIA Exhibit(s) (“MIA Ex.”) 1) In the Complaint, Complainant alleged that Licensee erred in its decision to retroactively add her son to her automobile policy, effective the date he obtained his driver’s license, resulting in additional premium due.

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<sup>1</sup> The MIA uses initials to identify a Complainant to the protect the privacy of the Parties.

<sup>2</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

After investigating the Complaint, the MIA determined that Licensee had not violated the Maryland Insurance Article and notified the Parties of its findings by letter dated May 26, 2022. (MIA Ex. 11) Complainant disagreed with this finding and filed a timely request for a hearing. (MIA Ex. 12)

## **ISSUE**

The issues presented in this case are: 1) whether Licensee violated §§ 11-230(a) and 11-341 by adding Complainant's son, E.H., to Complainant's automobile insurance policy; and 2) whether Licensee willfully collected a premium or charge for insurance in violation of § 27-216(b)(1)(i).

## **SUMMARY OF THE EVIDENCE**

### **A. Testimony**

A video conference hearing was held on November 29, 2022. Complainant provided sworn testimony on her own behalf. Licensee was represented by Leonard Redmond, Esquire. Robert Maxson, Executive Resolution Consultant for Licensee, provided sworn testimony on Licensee's behalf.

### **B. Exhibits**

*MIA Exhibits<sup>3</sup> (in record)*

1. Complaint from Complainant to MIA, received March 8, 2022
2. Correspondence between the MIA and Complainant, dated March 9, 2022
3. Correspondence from MIA to Licensee, dated March 9, 2022
4. Response from Licensee to MIA, dated March 15, 2022
5. Correspondence from MIA to McCabe Insurance Associates, Inc., dated March 16, 2022
6. Correspondence between the MIA and Complainant, dated March 31, 2022
7. Correspondence between the MIA and Complainant, from April 12, 2022 through April 13, 2022

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<sup>3</sup> At the start of the Hearing, the Parties stipulated to the admission of all of the MIA Exhibits.

8. Correspondence from MIA to McCabe Insurance Associates, Inc., dated April 13, 2022
9. Correspondence from McCabe Insurance Associates, Inc. to the MIA, dated April 19, 2022
10. Correspondence from the MIA to Complainant, dated April 28, 2022
11. Determination Letter from MIA to Complainant, dated May 26, 2022
12. Hearing Request from Complainant to MIA, received June 1, 2022
13. Letter from MIA to the Parties Granting Complainant's Hearing Request, dated June 2, 2022

*Complainant's Exhibits (in record)*

1. Pages 1 – 4, Email Correspondence to Yvette Yepez with proof of insurance for E.H., dated January 18, 2022
2. Pages 5 – 7, Email Correspondence from Complainant to Yvette Yepez dated January 27, 2022, with unsigned Driver Questionnaire #32
3. Pages 8 – 10, Email Correspondence from Complainant to Yvette Yepez dated February 4, 2022, with Driver Questionnaire #32 signed by E.H. on February 4, 2022
4. Pages 11 – 18, Email Correspondence from Complainant to Yvette Yepez dated February 28, 2022, with E.H.'s Maryland Driver's License and Paystubs from the Target Corporation

*Licensee's Exhibits (in record)*

1. MD Rules – Private Passenger Auto; Rule 21, 22, and 23

**FINDINGS OF FACT**

These findings of fact are based upon a complete and thorough review of the entire record in this case, including the hearing transcript and all exhibits and documentation provided by the Parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. To the extent that there are any facts in dispute, the following facts are found to be true by a preponderance of the evidence. Citations to particular parts of the record are for ease of reference and are not intended to exclude, and do not exclude, reliance on the entire record.

1. At all relevant times, Licensee held, and currently holds, a Certificate of Authority from the State of Maryland to act as a property and casualty insurer.

2. On September 4, 2021, Licensee issued an automobile insurance policy to Complainant and D.D. under policy number Q095407100, for a 2015 Kia Optima (“Policy”). (MIA Ex. 4) The Policy was in force on or about December 5, 2021. (*Id.*) For the policy period September 4, 2021 through September 4, 2022, under General Policy Definitions, the Policy stated:

“Resident” means a person who physically lives with “you” in “your” household on a regular basis. “Your” unmarried, unemancipated children attending school full time, living away from home, will be considered “residents” of “your” household.

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## **RIGHTS AND DUTIES—GENERAL POLICY CONDITIONS**

### **HOW YOUR POLICY MAY BE CHANGED**

#### **Changes To Your Policy**

This policy conforms to the laws of the state in which “you” reside at the time it is issued. If the laws of the state change, this policy will comply with those changes. “We” will give “you” the benefit of any change made by “us” if it does not require additional premium. This change will be effective as of the date “we” implement the change in “your “You” may change this policy by asking “us.” Asking “our” Agent is the same as asking “us.” “Your” request must contain enough information to identify “you.” If “we” agree with “your request, “we” will then issue a “Declarations.” If there is a change in the information used to develop the policy premium, “we” may adjust “your” premium during the policy period effective as of the date the change occurred. Premium adjustments will be made using the rules and rates in effect for “our” use. Changes that may result in a premium increase or decrease during the policy period include, but are not limited to:

\* \* \*

7. addition or deletion of a licensed driver in “your” household regardless of whether they have their own “auto” and insurance;

\* \* \*

#### **Your Duty To Notify Us Of Changes**

“You” agree to promptly notify “us” if “you” have made any material changes, including, but not limited to, those listed above. Changes may result in an increased premium, an adjustment in the coverage available under this policy, or cancellation or nonrenewal as permitted by law.

(MIA Ex. 4)

3. On December 14, 2021, Licensee was notified of an accident which occurred on December 5, 2021, in Baltimore City, involving the 2015 Kia Optima insured under the Policy. (MIA Ex. 4) At the time of the accident, the vehicle was operated by Complainant's son, E.H. (*Id.*) The attorney representing the second vehicle ("Claimant") involved in the accident reported that E.H. rear ended Claimant's vehicle while stopped at a red light. (*Id.*)

4. Licensee contacted Complainant on December 14, 2021. (*Id.*) Complainant confirmed that she was the owner of the 2015 Kia Optima and that she had permitted her son, E.H., to drive the vehicle at the time of the accident. (*Id.*)

5. On December 17, 2021, Licensee contacted E.H. (*Id.*) E.H. stated that his father, D.D., was the owner of the 2015 Kia Optima and that he was using the vehicle to go to work. (*Id.*) E.H. reported that he was unable to see, due to sun glare, and that he hit the rear of the Claimant's vehicle. (*Id.*) The Baltimore City Police were called to the scene of the accident. (*Id.*) Based on the investigation of the accident, Licensee determined that E.H. was liable for the accident. (*Id.*)

6. On January 17, 2022, Licensee's underwriting department notified McCabe Insurance Agency ("McCabe"), Complainant's producer, that a driver that was not listed on the Policy was operating the 2015 Kia Optima at the time of the accident on December 5, 2021. (*Id.*) That same day, a representative of McCabe contacted Complainant and asked her to complete an Added Driver Questionnaire for E.H. ("Questionnaire"). (MIA Ex. 8) Complainant later submitted the completed Questionnaire signed by E.H., a copy of E.H.'s Maryland driver's license, and copies of pay stubs from E.H.'s employer to Yvette Yopez of McCabe. (Complainant's Exhibits ("Compl. Ex.") 1 – 4; MIA Ex. 8) E.H.'s Maryland driver's license had an effective date of licensing of November 5, 2020. (Compl. Ex. 4; MIA Ex. 8) Complainant informed McCabe

that E.H. was not a listed driver on the Policy. (MIA Ex. 4) Additionally, Complainant informed McCabe that E.H. stayed with her on occasion, but did not reside at her residence. (*Id.*)

7. At the evidentiary hearing, Complainant testified that E.H. has resided with his father since the 6<sup>th</sup> grade and that E.H. is a college student. (Transcript (“Tr.”) at 15)

8. Complainant was notified that as of January 18, 2022, since E.H. was not insured under any automobile insurance policy and had access to the Complainant’s 2015 Kia Optima, E.H. could either be added to the Policy, or obtain other automobile insurance coverage from that date forward. (MIA Ex. 4) From the date E.H. obtained his Maryland driver’s license to January 18, 2022, however, Licensee determined that under the Policy, “coverage is automatically provided to all licensed resident relatives as of their date of licensing.” (*Id.*) As a result, Licensee amended the Policy adding E.H. as a covered driver, with an effective date of November 5, 2020. (*Id.*)

9. Robert Maxson, Executive Resolution Consultant for Licensee, testified at the hearing that he has been employed with Licensee for the past 39 years and that he presently investigates and responds to consumer complainants. (Tr. at 26) Specifically, Mr. Maxson confirmed during his testimony that Licensee has a filed rating plan with the Maryland Insurance Administration that addresses changes in the information used to develop the policy premium. (Tr. at 29) Mr. Maxson testified that Rule 22, pertaining to Private Passenger Auto Classes provides that, "A permanent driver will not be added to the policy until they obtained a driver's license." (Tr. at 32) Rule 22 also states that, "Young driver classes will be assigned based on driver's age as of the effective date of the policy period or renewal, regardless when the driver is added to the policy." (*Id.*) Finally, Mr. Maxson testified that Rule 22 provides the criteria used to develop the premium amount that was charged to Complainant when E.H. was added to the Policy. (Tr. at 33)

10. Mr. Maxson also testified that the Policy allows Licensee to charge additional premium under Rights and Duties – General Policy Conditions – How Your Policy May be Changed – Changes To Your Policy, which states,

If there is a change in the information used to develop the policy premium, “we” may adjust “your” premium during the policy period effective as of the date the change occurred. Premium adjustments will be made using the rules and rates in effect for “our” use. Changes that may result in a premium increase or decrease during the policy period include, but are not limited to: ...

\* \* \*

7. addition or deletion of a licensed driver in “your” household regardless of whether they have their own “auto” and insurance;

(Tr. at 35; MIA Ex. 4)

11. Mr. Maxson also testified that the Policy contains a Maryland – Notice to Policyholders, which notifies policyholders that Licensee may increase the premium owned for various reasons. (Tr. at 36) Specifically, the notice states:

Why Your Policy Premium May Increase or Decrease

\* \* \*

Please notify your Agent within 60 days if there have been additional changes that may increase or decrease your premium, such as:

\* \* \*

- a member of your household obtains a driver's license;
- a licensed driver becomes a member of your household, even if they have their own auto and insurance;

(MIA Ex. 4)

12. After Licensee was notified of the December 5, 2021 accident, Mr. Maxson testified that since Complainant had given E.H. permission to drive the 2015 Kia Optima and he would drive the vehicle on occasion, E.H. was an additional exposure, even if he was not living with Complainant. (Tr. at 38) Licensee decided to pay the liability claim. (Tr. at 37) Mr. Maxson testified that Licensee also added E.H. to the Policy as a part – time driver, “because there was an exposure presented to us that we didn’t know about. So we only went back to her current policy period plus one, back to when he was licensed.” (Tr. at 50)

13. With respect to the premium amount owed on the Policy due to the addition of E.H., Mr. Maxson testified that the premium was calculated in accordance with Rule 22. (*Id.*)

14. On January 26, 2022, Complainant provided McCabe with a copy of an automobile insurance policy issued by Geico Insurance Company to Complainant and D.D., which listed E.H. as an Additional Driver for the 2015 Kia Optima, with an effective date of January 18, 2022. (MIA Ex. 4) Complainant also testified that she provided McCabe with proof of E.H.’s address, indicating that E.H. did not reside with her. (Tr. at 21)

15. Thereafter, Licensee issued an amended policy effective on January 18, 2022, removing coverage for E.H. and the 2015 Kia Optima. (MIA Ex. 4)

16. Mr. Maxson testified at the hearing that, “once [Complainant] provided us with evidence that her son was now listed on a Geico policy, then we removed him on that date, and then the premium calculation was calculated based on him being covered under an Erie policy only up to January 18, 2022.” (Tr. at 50)

17. Mr. Maxson testified that no other documentation was provided of any other automobile policy for E.H. (Tr. at 51)



18. On July 20, 2022, Complainant filed a Complaint with the MIA. (MIA Ex. 1) In her Complaint, Complainant averred that she had allowed E.H. to use her vehicle to go to work. Complainant also stated that E.H. had not resided with her since he was in the 6<sup>th</sup> grade and that he was a college student. (*Id.*) Complainant protested Licensee’s decision to retroactively add E.H. to her Policy. (*Id.*)

19. On September 22, 2022, the MIA issued a determination letter to Complainant, with a copy to Licensee, stating that the MIA determined that Licensee did not violate Maryland’s insurance laws. (MIA Ex. 11)

20. Complainant requested a hearing (MIA Ex. 12) and the hearing request was granted in this matter by letter dated October 15, 2021. (MIA Ex. 13)

## **DISCUSSION**

### **A. Positions of the Parties**

Complainant asserts that Licensee improperly added E.H. to her Policy because he is not a member of her household. Specifically, Complainant asserts that E.H. resides with his father and is a college student. Complainant asserts that adding E.H. to her Policy as a “household member” and backdating the premium owed on the Policy was improper. Finally, Complainant asserts that she should have been able to sign an exclusion for E.H., in lieu of adding him to the Policy.

Licensee counters that its actions were proper in retroactively adding E.H. to the Policy based on the date that E.H. obtained his provisional driver’s license. Further, Licensee contends that the Policy allows Licensee to adjust the premium owed on the Policy from the effective date

that the change occurred. Finally, Licensee asserts that it charged the rates on file with the MIA in compliance with §§ 11-230(a), 11-341, and 27-216(b)(1)(i) and that there is no evidence that it violated the Insurance Article.

**B. Statutory Framework**

Section 27–216 (b)(1)(i) of the Insurance Article states, in pertinent part:

(b)(1) A person may not willfully collect a premium or charge for insurance that:

- (i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved by the Commissioner;

(LexisNexis 2022.)

Section 11-230 of the Insurance Article states, in pertinent part:

(a) An insurer or officer, insurance producer, or representative of an insurer may not knowingly issue or deliver or knowingly allow the issuance or delivery of a policy or endorsement, certificate, or addition to the policy, except in accordance with the filings that are in effect for the insurer as provided in this subtitle.

(LexisNexis 2022.)

Section 11-341 of the Insurance Article states:

An insurer may not make or issue an insurance contract or policy of insurance of a kind to which this subtitle applies, except in accordance with the filings that are in effect for the insurer as provided in this subtitle.

(LexisNexis 2022.)

The Complainant, as the party asserting the affirmative on the issue before an administrative body, has the burden of proof in this matter. *Comm'r of Labor & Indus. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996). The burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that a violation of the Insurance Article has occurred. Md. Code Ann., State Gov't § 10-217 (LexisNexis 2022); *Berkshire*, 142 Md. App

at 672. To prove something by a “preponderance of the evidence” means “to prove that something is more likely so than not so” when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep’t*, 369 Md. 108, 125 n. 16 (2002) (quoting Maryland Pattern Jury Instructions) (*internal citations omitted*). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. (*Id.*)

**C. Complainant has not shown that Licensee violated §§ 11-230(a), 11-341, or 27-216(b)(1)(i) in its renewal of Complainant’s Policy.**

Complainant avers that Licensee violated the Insurance Article with respect to the changes to the Policy resulting from adding E.H. Complainant also asserts that Licensee should have afforded her the ability to sign an exclusion for E.H., in lieu of adding him to the Policy. I find that E.H. was properly added to the Policy.

The Policy states under Rights and Duties – General Policy Conditions – How Your Policy May be Changed – Changes To Your Policy,

If there is a change in the information used to develop the policy premium, “we” may adjust “your” premium during the policy period effective as of the date the change occurred. Premium adjustments will be made using the rules and rates in effect for “our” use. Changes that may result in a premium increase or decrease during the policy period include, but are not limited to: ...

\* \* \*

7. addition or deletion of a licensed driver in “your” household regardless of whether they have their own “auto” and insurance;

(MIA Ex. 4). The Policy further places an affirmative obligation on the policyholder to “notify your Agent within 60 days if there have been additional changes that may increase or decrease your premium, such as . . . a member of your household obtains a driver's license; • a

licensed driver becomes a member of your household, even if they have their own auto and insurance.” (MIA Ex. 4)

As the Maryland Court of Appeals has held, insureds have a duty to read and understand the terms of their policies. *Twelve Knotts Ltd. Partnership v. Fireman's Fund Ins. Co.*, 87 Md. App. 88, 103-04 (1991). Pursuant to the Policy conditions, Complainant was obligated to inform Licensee within 60 days when E.H. obtained his driver’s license. As Mr. Maxson testified, Complainant had given E.H. permission to drive the 2015 Kia Optima and he would drive the vehicle on occasion, so E.H. was an additional exposure, even if he was not living with Complainant. (Tr. at 38.)

Regarding Complainant’s argument that she should have been permitted to sign a document excluding E.H. from the Policy, the evidence shows that she was afforded the opportunity to exclude E.H. from the Policy, and indeed did as of January 18, 2022, when he obtained a different policy; however, she could not apply that exclusion retroactively, because that would have left E.H. uninsured for that time period. (MIA Ex. 4). I find that E.H. was properly added to the Policy pursuant to the terms of the Policy.

I also find that Licensee did not charge Complainant a premium in excess of or less than the rate filing, or knowingly issue or deliver an insurance policy that did not comply with its rate filings. I find that Ms. Maxson testified credibly, based on his 35 years of experience and employment with Licensee, that he reviewed the documentation submitted to McCabe for E.H. and determined that E.H. was properly added to the Policy as a part – time driver, consistent with Rule 22. I also find that there was no testimony presented at the Hearing to oppose this finding, and no documents in the record demonstrating that the amount of the premium increase was inconsistent with the filed rates. Complainant did not meet her burden of proof that Licensee

violated the Insurance Article. I, therefore, find that Licensee did not violate §§ 11-230(a), 11-341, and 27-216(b)(1)(i) of the Insurance Article.

**CONCLUSION OF LAW**

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee issued the Policy and collected premium in accordance with its rate filings with the MIA, and therefore, did not violate §§ 11-230(a), 11-341, and 27-216(b)(1)(i).

**FINAL ORDER**

**IT IS HEREBY ORDERED** that the determination issued by the Maryland Insurance Administration is **AFFIRMED**; and it is further

**ORDERED** that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** on this 18<sup>th</sup> day of September 2023.

**KATHLEEN A. BIRRANE**  
Insurance Commissioner

signature on original

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Erica J. Bailey  
Associate Commissioner, Office of Hearings