

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

J.D.J.¹,

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Plaintiff,

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v.

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Case No. 27-1001-22-00082

**ALLSTATE INDEMNITY
COMPANY,**

*

Defendant.

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DECISION

J.D.J. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Allstate Indemnity Company (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of an auto insurance policy (the “Policy”), and in connection with an automobile accident that occurred in New Carrollton, Maryland on December 23, 2020 (the “Claim”).

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

¹ The Maryland Insurance Administration (MIA) uses initials to protect the 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 November 22, 2022, the Administration received Complaint No. 27-1001-22-00082 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, the Plaintiff alleged the Defendant breached its obligations under the Policy by neglecting to make any new offers after suit was filed and discovery responses were provided. Further, Plaintiff asserts that Defendant's failure to make a new offer demonstrates that it has failed to make a good faith offer or payment under the Plaintiff's Policy. Plaintiff seeks \$20,000 in actual damages; interest at the legal rate of 10 percent applicable to the actual damages from January 18, 2022 to the date of filing and continuing until paid; attorney's fees in the amount of \$6,666.67; expenses and litigation costs in the amount of \$190.00; and any additional relief that Plaintiff is entitled to receive.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to the Defendant on December 9, 2022. Defendant requested a request for an extension of time to submit its response to the Complaint, with Plaintiff's consent, on January 4, 2023. Defendant submit its response and accompanying documents as required by Section 27-1001(d)(4) on January 17, 2023, and acknowledged its obligation to provide coverage on the Claim.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the Parties, the Administration finds that Plaintiff has failed by a preponderance of the evidence to establish that he is entitled to additional damages for the Claim or that the Defendant failed to act in good faith in its handling of the Claim, based on the provisions of the Policy.

On December 23, 2020, Plaintiff was operating a Nissan Pathfinder traveling on 85th Avenue in New Carrollton, Maryland. While Plaintiff was driving on the roadway, L.T. pulled out onto the roadway directly in front of the Plaintiff, causing Plaintiff to strike L.T.'s vehicle ("Accident"). On the day of the Accident, with the aid of a Spanish-language interpreter, Plaintiff reported the Accident to Defendant and stated that he suffered neck and back pain. Plaintiff also reported that the Nissan Pathfinder was damaged in the Accident.

At the time of the Accident, Plaintiff maintained an automobile insurance policy with Defendant, which insured Plaintiff's Nissan Pathfinder ("Policy"). The Policy provided underinsured and uninsured motorist coverage ("UM/UIM"), with a policy limit of \$50,000.00 per person/\$100,000.00 per accident. The Policy also provides Personal Injury Protection (PIP) coverage with a policy limit in the amount of \$2,500.00 per person. L.T. was also covered under an automobile insurance policy with Defendant, which provided liability coverage for L.T.'s vehicle.

On December 31, 2020, Allstate concluded its investigation and determined that L.T. was at fault for the Accident. On January 5, 2021, Attorney Meliha Perez Halpern notified Defendant that it represented Plaintiff concerning the Claim

The evidence includes Plaintiff's medical records and bills for treatment received from January 6, 2021 through July 1, 2021, for injuries allegedly sustained as a result of the Accident.

As an initial matter, Plaintiff was treated by Dr. Vincent Hayes of Maryland Physicians Associates on January 6, 2021. Based on Plaintiff's initial visit, Dr. Hayes diagnosed Plaintiff with acute ligamentous injury to his left shoulder, hand and knee; acute sprain/strain of the cervical, thoracic, and lumbar spine; acute sprain of the left trapezius muscle; and acute muscular sprain of the left upper arm, forearm, and thigh. Dr. Hayes ordered x-ray examinations of Plaintiff's left hand and shoulder, as well as Plaintiff's cervical, thoracic, and lumbar spine. Dr. Hayes also prescribed a course of treatment including physical therapy and pain medication.

On January 13, 2021, the Plaintiff's x-ray examinations were completed by Maryland Physicians Associates. Based on the examination findings, there was no evidence of an acute fracture of Plaintiff's cervical, lumbar, or thoracic spine, however, there was evidence of spondylosis, degenerative disc disease and anterolisthesis. Thereafter, Plaintiff received physical therapy from Maryland Physicians Associates from January 6, 2021 through February 3, 2021. However, on February 3, 2021, Plaintiff reported that, "his pain is not getting any better despite rest and therapy." Further, Plaintiff's treatment notes indicate that, "[r]ecovery is complicated by advanced degeneration."

On January 18, 2021, Plaintiff was again treated by Dr. Hayes, as his pain symptoms were not showing improvement. On that date, Dr. Hayes modified Plaintiff's treatment plan to hold physical therapy, pending an orthopedic consultation. On January 26, 2021, Plaintiff was treated by Dr. Michael Paul of Maryland Physicians Associates for an initial orthopedic consultation. Based on his examination of Plaintiff, Dr. Paul then noted the following impressions from the visit:

1. Cervical spine strain with trigger points in the left paracervical muscles and the left trapezius muscle.
2. Left greater occipital nerve neuritis.
3. Left spinal accessory nerve neuritis.

4. Left shoulder contusion with subacromial bursitis.
5. Thoracic spine strain.
6. Lumbosacral spine strain with trigger points
7. Contusion to the left sacroiliac joint.

* * * *

Dr. Paul then recommended a course of treatment including trigger point injections, medication for pain relief, and a continuation of physical therapy.

On February 4, 2021, Plaintiff was again treated by Dr. Hayes for a follow-up visit. Dr. Hayes modified the treatment plan to stop further physical therapy. Instead, Dr. Hayes prescribed medication to treat Plaintiff's pain and referred Plaintiff to an orthopedic consultation to treat his left knee. Approximately two weeks later, on February 16, 2021, Plaintiff was again treated by Dr. Paul for pain to his left knee, shoulder, headaches, and low back pain. Dr. Paul administered injections to Plaintiff's left knee. The notes from the February 16, 2021 visit indicate that the knee injections appeared to alleviate the Plaintiff's pain.

On March 9, 2021, Plaintiff was again treated by Dr. Paul. Plaintiff complained of pain to his left shoulder, headaches, and low back pain. Dr. Paul administered injections to Plaintiff's left trapezius muscle and left sacroiliac joint and ordered an x-ray examination and ordered an MRI to Plaintiff's left knee. Plaintiff received the x-ray examination to his left knee on April 1, 2021, which indicated that there was no fracture. However, the x-ray found mild osteoarthritis patellofemoral joint.

On April 23, 2021, Plaintiff was treated by Dr. Joel Fechter of Drs. Mininberg & Fechter for pain to his left shoulder, knee, leg, as well as numbness and tingling to his left foot. Based on his examination findings, Dr. Fechter made the following diagnosis,

Cervical and lumbosacral spine strain injuries with neck and low back pain radiating symptoms into the bilateral trapezius muscles and into the left lower extremity along with a left knee contusion with patellofemoral pain and joint line tenderness and left shoulder

sprain/strain involving the rotator cuff and AC joint with impingement and AC joint pain; secondary to the patient's motor vehicle accident 12-22-20.

* * * *

Dr. Fechter also prescribed a treatment plan including limited physical activity, physical therapy for pain, spasms, and limited range of motion, as well as MRI scans, "for further evaluation of the patient's ongoing significant pain in the cervical and lumbar spine as well as the left shoulder..."

On May 7, 2021, Plaintiff returned for a follow-up visit to Dr. Fechter. At that time, Plaintiff had not seen the physical therapist, as indicated in the April 23, 2021 treatment plan.

From Plaintiff's May 7, 2021 visit with Dr. Fechter, Plaintiff was diagnosed as follows,

Cervical and lumbosacral spine strain injuries with neck and low back pain, left knee contusion with patellofemoral pain and jointline tenderness. Left shoulder sprain/strain involving rotator cuff and AC joint with impingement and AC joint pain and degenerative changes with disc protrusions in the cervical and lumbar spine and degenerative changes with cuff tendinosis and AC joint degenerative changes in the shoulder.

* * * *

Dr. Fechter referred Plaintiff to a neurosurgical consultation to treat Plaintiff's ongoing difficulties, as well as physical therapy for pain, increased range of motion and function.

On May 20, 2021, Plaintiff was treated by Dr. Joshua Wind of Washington Neurosurgical, P.C. for pain to his neck, shoulder, hand, back, leg and foot. Based on his examination of Plaintiff, Dr. Wind diagnosed Plaintiff as follows,

His MRI of the cervical spine demonstrates cervical spinal disc disease at the C5-6 and C6-7 levels. We discussed the likely contribution of this to his clinical symptoms consistent with cervical myeloradiculopathy. In addition, he has what appears to be an L5 spondylolysis with L5-S1 spondylolistesis continuing to back pain as well as L5 nerve root compression consistent with his radicular symptoms

* * * *

Based on Dr. Wind's diagnosis of Plaintiff, he recommended epidural steroid injections, as well as surgical management. Thereafter, Plaintiff's medical records indicate that he received physical therapy on May 24, 2021 and May 26, 2021. Plaintiff also received treatment from Pain Management Institute on June 17, 2021 and was scheduled to return and receive epidural injections following the visit. On July 1, 2021, Plaintiff received pain management treatment from Pain Management Institute for cervical radicular pain. At that time, Plaintiff reported pain that was "constant, burning, sharp, shooting, aching, throbbing, tingling, and numbness." However, there are no further records of medical treatment received by Plaintiff after July 1, 2021.

On July 21, 2021, Plaintiff's Attorney submitted documentation to the adjuster assigned by Defendant to handle Plaintiff's liability claim under L.T.'s policy. In the documents, Plaintiff's Attorney indicated that Plaintiff had sustained injuries from the Accident resulting in medical bills in the amount of \$17,218.00.

With respect to Plaintiff's UM/UIM claim, Plaintiff's Attorney submitted correspondence to Defendant stating that the liability policy limit in the amount of \$30,000.00 had been tendered on September 13, 2021. On September 28, 2021, Claim Adjuster Zac Cullop ("Adjuster Cullop") was assigned to handle Plaintiff's UM/UIM claim and requested that Plaintiff's Attorney submit their settlement demand. On October 7, 2021, Adjuster Cullop sent a letter to Plaintiff's Attorney stating,

Per your request, this letter confirms that Allstate will waive its subrogated right of recovery against [L.T.] for payments made from the Uninsured/Underinsured Motorist Benefits of the Allstate Auto policy.

* * * *

On October 7, 2021, Adjuster Collup also received the settlement demand from Plaintiff's Attorney seeking a settlement of the Plaintiff's UM/UIM claim in the amount of \$30,000. From October 7, 2021 through November 1, 2021, Adjuster Collup spoke with Plaintiff's Attorney and evaluated the documentation provided by Plaintiff's Attorney. Then, on November 1, 2021, Adjuster Cullop spoke with Plaintiff's Attorney and extended an offer to settle the Plaintiff's UM/UIM claim for \$2,500.00. On November 5, 2021, Adjuster Cullop spoke with Plaintiff's Attorney again. Concerning the basis for the settlement offer, Adjuster Cullop explained that there was a two-week gap following the Accident and the time that Plaintiff initially sought medical records. Adjuster Cullop also explained that Plaintiff's medical records indicate excessive medical treatment. Further, Adjuster Collup explained that Plaintiff did not show up for an injection treatment that was recommended by his physician. Adjuster Cullop then advised that at most, the settlement offer was increased to \$5,947.00. However, Plaintiff's Attorney rejected the settlement offer and informed Adjuster Cullop of Plaintiff's intention to file a civil action. There was no further communication between the parties until Plaintiff filed a civil action in the Circuit Court for Prince George's County on February 15, 2022.

On November 22, 2022, the Administration received Plaintiff's Complaint under Section 27-1001.

IV. DISCUSSION

Plaintiff asserts that the Defendant breached its duty under the Policy by neglecting to make any new offers after the lawsuit was filed and discovery responses were provided. Further, Plaintiff asserts that Defendant's failure to make a new offer demonstrates that it has failed to

make a good faith offer or payment under the Plaintiff's Policy. However, the evidence demonstrates that the Defendant promptly and diligently investigated Plaintiff's Claim and made an informed determination based on the information it knew or should have known at the time.

With respect to Plaintiff's UM/UIM claim, the medical records reflect that Plaintiff did not seek initial treatment for his injuries until two weeks after the Accident. Moreover, there is insufficient evidence indicating whether Plaintiff complied with the treatment recommended by his physicians. Specifically, on May 20, 2021, Dr. Wind recommended epidural steroid injections, as well as surgical management. However, there is insufficient evidence in the Plaintiff's medical records indicating whether he complied with Dr. Wind's treatment plan recommendations concerning the injections, or any surgical interventions. Finally, while Plaintiff complained of pain that was "constant, burning, sharp, shooting, aching, throbbing, tingling, and numbness," Defendant did not receive any further records of medical treatment received by Plaintiff after July 1, 2021. Lastly, while Plaintiff asserts that the actual damages amount to \$20,000.00, Plaintiff's medical records reflect that his medical bills amount to \$17,218.00. Finally, there are no records in evidence demonstrating any lost wages. Beyond conclusory language in Plaintiff's Complaint, Plaintiff has produced insufficient evidence, medical records, or bills to support this assertion that Defendant breached its obligations under the Policy, as to the amount of damages Plaintiff sustained resulting from the Accident.

Accordingly, I find that the Plaintiff has not demonstrated that the Defendant breached its obligations under the Policy or failed to act in good faith in connection with the Claim.

V. CONCLUSIONS OF LAW

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

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover 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 he 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.

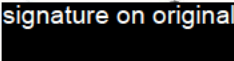
VI. DECISION

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

ORDERED on this 21st day of February, 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, 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).