

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

**P.N.<sup>1</sup>,** \*  
  
**Plaintiff,** \*  
  
**v.** \* **Case No. 27-1001-22-00087**  
  
**STATE FARM MUTUAL** \*  
**AUTOMOBILE INSURANCE,** \*  
**COMPANY** \*  
  
**Defendant.**  
\* \* \* \* \*

**DECISION**

P.N. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that State Farm Mutual Automobile Insurance Company (“Defendant”) breached its contractual obligations to her by failing to fully pay Plaintiff’s first-party claim for damages under the terms of an auto liability policy (the “Policy”) in connection with an automobile accident that occurred in Cecil County on September 5, 2020. (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has failed to demonstrate that Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the loss claimed by Plaintiff.<sup>2</sup>

**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

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<sup>1</sup> The Maryland Insurance Administration (MIA) uses initials to protect Plaintiff’s and other individuals’ privacy.  
<sup>2</sup> Defendant asserts that Plaintiff, in her Complaint, failed to provide “each document that the insured has submitted to the insurer for proof of loss in violation of 27-1001(d)(2)(i). As the Statute does not provide a remedy for the violation, the MIA’s Decision is based on evidence provided by both Parties.

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.”

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).

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. Md. Bd. Of Physicians v. Elliott, 170 Md. App. 369, 435, cert denied, 396 Md. 12 (2006).

## **II. PROCEDURAL BACKGROUND**

On November 30, 2022, the Administration received Complaint No. 27-1001-22-00087 (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 any offers under the Underinsured Motorist Policy (UIM) and failing to deal in good faith with the Plaintiff. Specifically, Plaintiff asserts her counsel sent medical records, bills, and a demand letter to Defendant for Plaintiff’s extensive injuries, treatment and lost wages resulting from the Accident. However, Defendant failed to make an offer to settle Plaintiff’s uninsured motorist claim. Plaintiff seeks \$220,000 in actual damages and \$5,000 in expenses and litigation costs. As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on December 8, 2022. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on January 17, 2023, and acknowledged the 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 she is entitled to additional damages for the Claim, based on the provisions under the Policy, or that the Defendant failed to act in good faith in its handling of the Claim.

On September 5, 2020, Plaintiff’s husband, R.N., reported that Plaintiff and two minor passengers were injured in an automobile accident. According to a statement given by Plaintiff on September 9, 2020, P.N. and another driver (B.T.) were involved in an automobile accident in Cecil County, MD. The police responded to the scene of the accident, and a witness came forward.

On September 10, 2020, Defendant contacted the witness, E.R. (“E.R.”) and took a recorded statement from him. E.R. was traveling behind P.N.’s vehicle. Defendant obtained a copy of the police report, which was consistent with the facts of loss as reported by Plaintiff and the witness.

At the time of the occurrence, Plaintiff was insured by State Farm (“Defendant”) with underinsured motorist bodily limits of \$250,000/\$500,000 (the “Policy”). The Policy also included Personal Injury Protection coverage in the amount of \$2,500.00 per person. B.T. was insured by GEICO Insurance Company (“GEICO”) and carried the minimum limits required of \$30,000 per person, and \$60,000 per occurrence. As calculated, total UIM exposure under the Policy is \$220,000.00.

On September 15, 2020, Defendant received a letter of representation from David Batzer (“Plaintiff’s Attorney”) as to the PIP claim and property damage claim. On the same date, Plaintiff’s Attorney’s office contacted Defendant and advised Plaintiff wanted to pursue a property damage claim under the Policy, as GEICO had not yet made a liability determination. Plaintiff’s Attorney later authorized Defendant to speak directly with Plaintiff’s husband regarding the property damage claim.

On September 17, 2020, Defendant issued a liability denial letter to GEICO based upon Defendant’s investigation.

On September 18, 2020, GEICO contacted Defendant and advised it was accepting liability on B.T.’s behalf.

Plaintiff chose her own repair shop, who prepared an estimate to repair the damages to the insured vehicle in the approximate amount of \$19,000. The insured vehicle was deemed a total loss. Plaintiff accepted Defendant’s total loss offer in the amount of \$14,736.94. After

subtracting the \$500.00 deductible and the balance of the lien on the insured vehicle, a payment in the amount of \$4,771.94 was issued to Plaintiff. Defendant also issued payment to Nissan Financial to pay off the lien.

Defendant made payments to Plaintiff's medical providers, and on September 25, 2020, Defendant sent correspondence to Plaintiff's Attorney advising the PIP benefits were exhausted.

On June 25, 2021, Plaintiff's Attorney advised Defendant that Plaintiff intended to submit a UIM claim as her medical bills exceeded the liability policy limit of \$30,000.00.

On July 6, 2021, Defendant assigned Terri Brockway ("Defendant's Claims Specialist") to Plaintiff's UIM claim. Defendant's Claims Specialist contacted Plaintiff's Attorney, and left a message to discuss Plaintiff's UIM claim.

On September 15, 2021, Defendant's Claims Specialist left a second message for Plaintiff's Attorney, seeking a UIM demand package.

On January 20, 2022, Defendant's Claims specialist left another message for Plaintiff's Attorney.

On January 21, 2022, Plaintiff's Attorney contacted Defendant's Attorney and advised he still intended to present a UIM demand package, but he was waiting for GEICO to make a policy limit offer.

On February 24, 2022, Defendant received correspondence from Plaintiff's Attorney pursuant to Insurance §19-511 notifying it of GEICO's tender of its \$30,000.00 policy limit.

On February 28, 2022, Defendant's Claims Specialist sent correspondence to Plaintiff's Attorney requesting an itemization of Plaintiff's special damages and all medical records and bills for review.

On March 9, 2022, Defendant's Claims Specialist sent another letter to Plaintiff's Attorney requesting the itemization of special damages, and all medical records and bills for review.

On March 20, 2022, Defendant received a letter dated March 24, 2022, from Plaintiff's Attorney enclosing additional medical records and bills from Dr. Faisal Sayeed and Harford County Ambulatory Surgical Center.

On March 22, 2022, Defendant received a letter dated March 17, 2022 from Plaintiff's Attorney containing an itemization of the special damages and Plaintiff's medical records and bills.

On April 12, Plaintiff's Attorney contacted Defendant's Claims Specialist inquiring about whether Defendant consented to Plaintiff's settlement with GEICO for the liability policy limit of \$30,000.00

On April 14, 2022 Defendant sent correspondence via e-mail and regular mail to Defendant's Attorney consenting to Plaintiff's acceptance of GEICO's policy limit tender and waived subrogation.

On May 16, 2022, Defendant received correspondence from Plaintiff's Attorney enclosing a medical record and bill from Dr. Andrew Robinson.

On July 26, 2022, Defendant received correspondence from Plaintiff's Attorney enclosing additional medical records and bills from Med LLC, Multi-Specialty Health Care and ("MSHC").

On July 27, 2022, Plaintiff's Attorney sent an e-mail to State Farm enclosing a completed Wage and Salary Verification form r and itemization of the special damages.

On August 9, 2022 Defendant's Attorney contacted Defendant's Claims Specialist to confirm she received the final package of medical records and bills and Wage and Salary Verification form.

On August 25, 2022, Defendant's Claim Specialist sent correspondence to Plaintiff's Attorney advising Defendant evaluated Plaintiff's medical records and bills, and determined GEICO's \$30,000.00 policy limit fully compensated Defendant for the injuries allegedly sustained in the subject accident. In an email dated November 11, 2022, Defendant's Claims Specialist explained she could not relate any of the medical treatment after a second automobile accident Plaintiff was involved in on December 4, 2020, where Plaintiff denied any injuries. Therefore, Defendant would not be making a UIM offer.

There was no further communication between Defendant and Plaintiff's Attorney until the instant lack of good faith complaint received in November 30, 2022.

#### **IV. DISCUSSION**

Plaintiff asserts that Defendant breached its duty under the Policy by failing to offer the UIM policy exposure limit, and that Defendant's evaluation and adjustment of the bodily injury claim lacked good faith. Specifically, Plaintiff asserts that Defendant violated §19-511 by failing to timely evaluate the policy limits demand and based on the amount of medical bills, the severity of injury, Defendant has also grossly undervalued this claim without a justified basis. However, Plaintiff did not prove entitlement.

Ann. Md. Code, Insurance, §27-1001(e)(1)(l) provides for the Maryland Insurance Administration to determine whether an insurer is obligated to cover the first-party claim at issue and, if so, whether the insurer failed to act in good faith. "Good faith" for purposes of this statute

has been defined as, “an informed judgement based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim. Under §27-1001 of the Maryland Insurance Code, Plaintiff has the burden to prove by a preponderance of the evidence they are entitled to benefits under the subject insurance policy. (Md. Code Ann., State Gov’t§ 10-217); Md. Bd. Of Physicians v. Elliott, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006). Under Insurance 27-1001(d)(2)(i) Plaintiff is required to attach “each document that the insured has submitted to the insurer for proof of loss.”

Here, Plaintiff attached an itemization of her special damages which included medical treatment received from MSHC, Union Fire Company, Union Hospital (Christina Care), Fair Hill Family Medicine, Nova Interventional Pain, MEP Health, MED LLC, Global Anesthesia Service, Delaware Imaging Network, and Harford County Ambulatory Surgery Center. The total medical bill was \$55,866.29. The itemization also referenced a lost wage claim. The total lost wages alleged was \$19,654.08.

Plaintiff also submitted medical records and bills from MSHC and Fair Hill Family Medicine records from Union Hospital and Delaware Imaging Network.

On September 5, 2020, Plaintiff was transported by ambulance to Union Hospital. Plaintiff arrived with pain over her right hand and substernal chest pain that was worse with deep breaths and palpation. Plaintiff denied lightheadedness, changes in vision, confusion, loss of balance, weakness, numbness or tingling in her extremities. Importantly, Plaintiff denied any back or neck pain. The physical examination revealed full range of motion in the neck and back with no tenderness. X-rays of the chest and right hand were normal with no evidence of acute fractures. An ECG was also performed which was normal. Plaintiff preferred to manage her pain



with over-the-counter Ibuprofen and Tylenol. Plaintiff was discharged from the hospital the same day.

Three days after the subject accident, on September 8, 2020, Plaintiff presented to her primary care physician, Bonnie Roberts, D. O., complaining of left shoulder pain only following an automobile accident. Importantly, Dr. Roberts' office note indicated a prior history of right elbow pain and acute left shoulder pain. Also, Dr. Roberts' physical examination did not reveal any back pain, and Plaintiff had full range of motion without pain in her right and left upper and lower extremities. Dr. Roberts prescribed Tramadol for the left shoulder pain, and to follow-up as needed.

On September 11, 2020, Plaintiff visited MSHC and was seen by Dr. Najji Haroun, an internist. It is unclear who referred Plaintiff to MSHC since Plaintiff's primary care physician only prescribed Tramadol and recommended she return if needed. For the first time, Plaintiff complained of pain in her upper back, along with continued pain in her left shoulder, left ribs and her right hand. Plaintiff denied pain radiation, weakness and paresthesia. The physical examination revealed no pain or tenderness in P.N.'s neck with full range of motion, and no pain or tenderness in the lumbosacral spine with full range of motion. Pain and tenderness were noted in the thoracic spine from T5 to T7, suprascapular tenderness of the left shoulder with, and tenderness over Plaintiff's fourth finger on her right hand. Dr. Haroun diagnosed Muscoligamentous sprain/strain thoracic spine with facet injury, contusion and strain of the left shoulder, and contusion of the right hand and left ribs. Dr. Haroun ordered an x-ray of the thoracic spine and left shoulder, and prescribed chiropractic and physical therapy for the thoracic spine, left shoulder, right hand, and left ribs. Dr. Haroun indicated P.N. should be off from work as a Harford County courtroom clerk for the next three weeks.

On September 14, 2020, x-rays of the thoracic spine and left shoulder were normal with no fractures or dislocations seen. On the same date, Plaintiff began the course of physical/chiropractic therapy.

On September 21, 2020 Plaintiff reported increased pain after doing laundry the previous day.

On October 6, 2020, one month after the subject accident, Plaintiff visited an orthopedic doctor, Dr. Andrew Robinson, at MSHC. For the first time, Plaintiff reported pain in her mid and low back areas, her neck, and right lower extremities in addition to continued pain in her left shoulder. Specifically, Plaintiff reported her main issue was pain in the mid-back area, but over the past several days Plaintiff noticed pain in the lower portion of her back on the right side with radiation down the outer aspect of the right thigh to the knee. After performing a physical examination, Dr. Robinson diagnosed thoracic, lumbar and cervical myofascial injuries likely aggravation of lumbar and cervical DJD/DDD; posttraumatic SI joint arthralgia and trochanteric bursitis right hip/hemipelvis; mild, improving left shoulder impingement, posttraumatic. Dr. Robinson recommended Plaintiff continue with her physical therapy and opined Plaintiff should continue to be off for the next two weeks.

Beginning October 22, 2020, the physical therapist noted Plaintiff complaints of soreness in the lumbar spine and, now reported numbness in the right hip.

On October 26, 2020, the physical therapist noted soreness in the right side of the lumbar spine, and numbness which radiated into her right thigh. There were no complaints regarding the left shoulder, thoracic spine area or right hand.

On November 3, 2020, Plaintiff returned to Dr. Robinson and reported she returned to work and was doing reasonably well. Plaintiff continued to experience mild night pain in the left

improvement in her low back symptoms. The physical examination of the cervical region was normal with no tenderness or spasm, and full range of motion. Also, the thoracic spine physical examination was “essentially benign.” Plaintiff was working four hours per day but wanted to return to regular duty, which Dr. Robinson approved beginning November 9, 2020.

On December 4, 2020, Plaintiff was involved in a single car automobile accident and sought medical attention at the emergency room. Plaintiff presented to Union Hospital at which time she reported she was driving with a friend riding as a front seat passenger when she passed out without warning, and her vehicle hit a fence post. Plaintiff’s friend drove her home and the paramedics were called. Plaintiff reported feeling lightheaded and had a headache after the accident. She denied “any injuries” or “injuries from the episode”.

Plaintiff was admitted to the hospital for observation from December 4, 2020 to December 6, 2020. An MRI of the brain revealed an old right cerebellar lacunar infarction. A physical examination revealed full range of motion in the extremities.. There was no tenderness noted in the neck, and Plaintiff had full range of motion. Plaintiff was also referred to a neurologist. The hospital directed Plaintiff not to drive until an EEG was performed and to follow-up with her primary care physician.

On December 22, 2020, Plaintiff was seen by Dr. Robinson, who discharged her from active care. Plaintiff reported marked improvement in her neck, upper back and shoulder symptoms. Plaintiff had a Holter monitor and was under observation by a cardiologist. The physical examination revealed mild tenderness to the left paraspinal muscles in the lumbar spine, interspinous tenderness at L5-S1, and mild right SI joint tenderness. The cervical spine had full range of motion and the left shoulder had full range of motion with only mild AC joint tenderness. Dr. Robinson recommended no further physical therapy until after her cardiologist

cleared her. Dr. Robinson recommended an inversion table as a more cost effective method of managing Plaintiff's orthopedic symptoms.

There was no further treatment until three months later when Plaintiff returned to Dr. Robinson on March 25, 2021 for follow-up of her axial spine and left shoulder symptoms. The physical examination revealed full range of motion with minimal AC joint tenderness in the left shoulder. The physical examination of the lumbar spine only revealed mild tenderness. Dr. Robinson diagnosed persistent low back pain with improved cervical, thoracic, and left shoulder symptoms. Plaintiff reported she tried using an inversion table owned by one of her friends, but she became dizzy and could not tolerate it. Plain x-rays of the lumbar spine revealed significant disc space narrowing in the upper lumbar regions and facet joint arthropathy in the lower lumbar spine. Dr. Robinson prescribed physical therapy for four weeks. If the physical therapy did not resolve Plaintiff's symptoms, Dr. Robinson indicated he would order an MRI of the lumbar spine.

On April 22, 2021, Plaintiff was seen by a nurse practitioner at MSHC for pain in the right lumbar area which radiated into her buttocks, and numbness radiating into her right knee, but no numbness or tingling in the foot. Dr. Robinson diagnosed lumbar myofascial injuries, right SI joint arthralgia, and right trochanteric bursitis. An MRI of the lumbar spine was ordered, and Plaintiff continued physical therapy for another four weeks until the MRI results were reviewed.

On May 12, 2021, approximately one and a half years after the subject accident, Plaintiff underwent an MRI of the lumbar spine without contrast. The impression was mild central canal stenosis at L2-L3 and L3-L4; multilevel disc bulges and posterior element hypertrophy and broad-based central disc herniation at L1-L2; broad-based left foraminal/extra foraminal disc

herniation at L2-L3 abuts the exiting left L2 nerve root; mild lumbar levoscoliosis; and mild bilateral foraminal narrowing at L4-L5 and L3-L4. These findings were indicative of disc degeneration at multiple levels, and there were no prior MRI scans of the lumbar spine available for comparison.

On June 3, 2021, Plaintiff was seen by Dr. Robinson still complaining of low back pain, and numbness and tingling into both thighs, slightly more prominent on the right side. Dr. Robinson referred Plaintiff to a pain management specialist within MSHC for epidural steroid injections since physical therapy had little to no lasting improvement in her back pain symptoms.

On July 7, 2021, Plaintiff was first seen by Dr. Faisal Sayeed with a chief complaint of low back pain. Importantly, Dr. Sayed lists “back problems” in the prior medical history. After examining Plaintiff and reviewing the prior MRI scan, Dr. Sayeed reported the low back pain was secondary to radicular pain at L2 distribution, disc herniation at L2-L3, post traumatic posterior facet syndrome, and degenerative changes. Dr. Sayeed went on to say, the low back pain was causally related to the injuries sustained in the subject accident, despite the fact that Plaintiff did not report pain in her low back until one month after the accident. Also, it is unclear whether Dr. Sayeed was informed of Plaintiff’s subsequent accident on December 4, 2020. Dr. Sayeed discussed undergoing two bilateral facet injections to attempt to alleviate the low back pain, and prescribed Mobic and Robaxin.

On September 21, 2021, Plaintiff underwent a bilateral lumbar facet joint injection but only reported 20% improvement in her back pain.

On October 6, 2021, Plaintiff was seen by a nurse practitioner at MSHC and reported some pain relief for a few days after the injection, but the pain returned. The nurse practitioner

recommended Plaintiff continue taking the Mobic and Robaxin medications prescribed by Dr. Sayeed.

Plaintiff received additional injections on October 26, 2021 and January 11, 2022 with little pain relief. Significantly, operative reports after the injections performed by Dr. Sayeed indicate chronic low back pain, lumbar degenerative disc disease, lumbar post feet arthrosis, and lumbar spondylosis. Plaintiff continued follow-up visits with either a nurse practitioner or Dr. Sayeed on a monthly basis until March 2, 2022. After the January 11, 2022 injection, Plaintiff reported vomiting five hours later. After undergoing a colonoscopy and endoscopy, Plaintiff discontinued use of anti-inflammatory medication including Ibuprofen and Meloxicam. Additionally, Plaintiff declined further injections, therefore, she was discharged from active care back to her treating orthopedic doctor.

On March 24, 2022, Plaintiff returned to Dr. Robinson for a final visit. Plaintiff reported “very little” improvement in her back pain symptoms after the injections. The physical examination revealed tenderness in the low back but no spasm. the left shoulder had full range of motion. Dr. Robinson recommended ultrasound-guided superior SI ligament injection, but Plaintiff was reluctant given her reaction to the last injection. Dr. Robinson provided Plaintiff with a prescription for aquatic therapy and to follow-up with him in 4-6 weeks. Plaintiff stated she was considering applying for medical marijuana use and to talk to friends and neighbors about using an inversion table.

On May 19, 2022, Dr. Robinson provided Plaintiff’s Attorney with a written report summarizing Plaintiff’s treatment with MSHC for litigation purposes. Dr. Robinson reported that Plaintiff sustained residual low back pain from “likely “posttraumatic L1-L2 and L2-L3 herniation, aggravation of multilevel lumbar degenerative disc disease, posttraumatic right SI

joint arthralgia, nearly resolved cervical myofascial injuries and aggravation of mild cervical DJD/DDD, and nearly resolved left shoulder impingement syndrome. Despite the foregoing opinions, Dr. Robinson still recommended an ultrasound-guided injection of the right SI joint ligaments to help her symptoms, and also to identify the likely a primary cause of her continued low back symptoms.

Plaintiff provided no further medical records and bills after the March 24, 2022 visit with Dr. Robinson. .

§27-1001(e)(1)(l) of the Maryland Insurance Code defines, “Good faith” as, “an informed judgement based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim.” Additionally, the Administration has previously affirmed that “disagreement over “the extent of payment to which the insured is entitled” cannot itself serve as the sole basis for a lack of good faith claim. Barry v. Nationwide Mut. Ins. Co., 298 F.Supp.3d 826, 829 (D. Md. 2018).

In Cecilia Schwaber Trust Two v. Hartford Accident & Indemnity, Co., 636 F. Supp. 2d 481 (D. Md. 2009), the Maryland court identified three factors to consider when assessing whether an insurer made an informed judgement as defined by §27-1001:

- The efforts made by the insurer to obtain information related to the loss;
- Whether the insurer made an accurate and honest assessment of this information;  
and
- Whether this information supports the insurer’s “conclusion regarding coverage with evidence obtained or reasonably available.”

As set forth above, Plaintiff failed to attach all of their medical records and bills to the Complaint. Accordingly, Plaintiff has failed to meet the burden of proof that by a preponderance

of the evidence Defendant breached its contractual obligation by failing to pay UIM benefits above the tortfeasor's liability limits.

Plaintiff also fails to meet the burden of proof based on the preponderance of the submitted evidence. Plaintiff has failed to provide all related medical bills and records. Plaintiff has failed to substantiate her claim for lost wages. The Defendant's investigation establishes Defendant had a reasonable basis to determine the medical expenses incurred from December 2020 to March 2022 were not causally related to the subject accident.

After the September 5, 2020 accident, the record indicates Plaintiff only reported pain to her right hand, chest and left shoulder at the emergency room. Three days later, Plaintiff denied neck or back pain when she was seen by her primary care physician. Dr. Robinson prescribed Tramadol to treat the pain in Plaintiff's left shoulder.

Six days after the accident, Plaintiff reported to MSHC with a first time complaint of pain in her upper back, along with continued pain in her left shoulder, left ribs, and her right hand. Despite her upper back pain complaints, the physical examination revealed full range of motion in her neck and back with no pain or tenderness. Plaintiff reported pain and tenderness from T5-T7. A course of physical therapy was prescribed to address the thoracic spine, left shoulder, right hand, and left ribs only.

Approximately one month after the subject accident, for the first time, Plaintiff reported low back pain, and pain in her neck and right lower extremities. Dr. Robinson diagnosed a likely aggravation of pre-existing cervical and lumbar disc degeneration even though no diagnostic testing was performed. Plaintiff's low back pain worsened to the point that Plaintiff began experiencing numbness and tingling in her right hip and thigh as she continued therapy. There is no apparent explanation for Plaintiff's sudden onset low back pain. The hospital records



after the December 4, 2020 accident do not reflect any complaints of pain in the neck or lower back.

Plaintiff, in fact, was discharged from therapy on December 22, 2020 and did not return until three months later in March 2021. Plaintiff continued physical therapy until July 6, 2021, and the physical therapy notes show little to no improvement. The MRI of the lumbar spine performed in May 2021 revealed multi-level degeneration. Dr. Sayeed characterized Plaintiff's lower back pain as chronic in nature in his pain management operative reports and records for the injections received. Moreover, Dr. Robinson recommended Plaintiff undergo an ultrasound guided injection of the right SI joint ligaments to help determine the primary cause of her continued lower back symptoms. There are no prior diagnostic films to compare the MRI of the lumbar spine to determine whether there were any changes, and the first plain x-rays of the lumbar spine were not performed until several months after the accident.

The Policy is clear on the extent of what conditions trigger the parties' relative responsibilities with regard to claims under the Uninsured Motor Vehicle Coverage:

#### INSURING AGREEMENT – Consent to Settlement

The insured must send us by certified mail, a copy of the settlement offer for the full amount of all available limits proposed by or on behalf of the owner or driver for the uninsured motor vehicle, and the insured must request our written consent to accept such settlement offer.

If within 60 days after the date we receive the settlement offer we:

- a. Either consent in writing or fail to provide a written response to the insured's request to accept the settlement offer; then
  - i. the insured may settle with the party liable for the damages without losing the right to make an Uninsured Motor Vehicle Coverage claim under this policy; and
  - ii. we waive our right to recover our payments from the liable party; or
- b. Send the insured a written refusal to accept the settlement offer, then we will pay the insured the amount of the settlement offer within 30 days after the written refusal is sent. This payment shall preserve our

subrogation rights against the liability insurer and its insured. Receipt by the insured of the payment shall constitute the assignment, up to the amount of the payment, of any recovery on behalf of the insured that is subsequently paid from the applicable liability insurance policies, bonds, and securities.

\* \* \* \*

The record further shows Defendant made diligent attempts to promptly contact Plaintiff regarding the claim, and properly calculate the total amount of Plaintiff's coverable expenses. Plaintiff's lost wage claim had not been sufficiently documented to demonstrate the amount of work missed. Defendant's best estimate totaled the amount of coverable expenses to total \$11,243.00. Accordingly, Defendant was well within their rights after thorough investigation to refuse the settlement offer under the UIM coverage.

The Complaint further alleges Defendant failed to timely evaluate the policy limits demand. The Complaint acknowledges the final medical records and bills were submitted to Defendant on August 5, 2022. The Complaint affirms Defendant notified Plaintiff's Attorney that it completed its evaluation of the UIM demand on August 25, 2022, twenty days later. As previously stated, the fact that Defendant did not make a settlement offer does not equate to a failure to timely evaluate the UIM demand. Other than alleging Defendant undervalued Plaintiff's UIM claim, no other allegations or evidence was submitted by Plaintiff to establish Defendant's evaluation lacked good faith. Again, it is well settled within the Maryland Insurance Code that a value dispute in and of itself is insufficient to establish a lack of good faith on the part of the Defendant.

Accordingly, I find that Plaintiff has not demonstrated that 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 UIM 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.

**ORDER**

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

**ORDERED** on this \_\_\_ day of March, 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**

\_\_\_\_\_  
Tammy R. J. Longan  
Acting Deputy 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).**