

**Fiscal Year 2014
Report to the
Maryland General Assembly
on
Absence of Good Faith Cases
Filed under
§ 27-1001 of the
Maryland Insurance Article
MSAR # 6587**



Therese M. Goldsmith, Commissioner
December 15, 2014

For further information concerning this document contact:

Michele T. Oshman, Associate Deputy Commissioner
Maryland Insurance Administration
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
410-468-2018

This document is available in alternative format upon request
from a qualified individual with a disability.
TTY 1-800-735-2258

Administration's website address: www.mdinsurance.state.md.us

TABLE OF CONTENTS

| | |
|--|---|
| I. Introduction | 1 |
| II. Overview of Section 27-1001 | 2 |
| III. Analysis of Complaints Filed Under § 27-1001 | 4 |
| A. Number of Complaints | 4 |
| B. Types of Complaints | 5 |
| C. Complaints in which the Administration Found an Absence of Good Faith | 7 |
| D. Judicial Review of § 27-1001 Decisions | 7 |
| E. Regulatory Enforcement Action | 8 |
| IV. Conclusion..... | 8 |

I. Introduction

Section 27-1001 of the Insurance Article of the Annotated Code of Maryland¹ took effect on October 1, 2007, and was passed by the General Assembly as a consumer protection measure to provide an insurance policy holder with greater leverage during the insurance claim adjustment process. Sen. Jud. Proc. Comm., Floor Report, H.B. 425 & S.B. 389, p. 4 (Md. 2007). The law requires the Insurance Commissioner to conduct an on-the-record review of complaints filed by insurance policy holders alleging that an insurer failed to act in good faith when improperly denying coverage or failing to pay the full value of a first-party property and casualty claim. Section 27-1001(e).

The legislative history of § 27-1001 indicates that the bill was designed to address the General Assembly's concern that some insurance companies disregard their established legal obligations to adequately pay claims. "Testimony on [§ 27-1001] indicated that insurance companies often 'lowball' their offers to policy holders because there's no incentive for them to offer the policy limits, even when damages exceed policy limits." Sen. Jud. Proc. Comm., Floor Report, H.B. 425 & S.B. 389, p. 4 (Md. 2007).

This annual report is filed pursuant to § 27-1001(h), which requires the Maryland Insurance Administration ("the Administration") to report: 1) the number and type of complaints filed under § 27-1001; 2) the administrative and judicial disposition of those complaints; and 3) the number and type of regulatory enforcement actions taken by the Administration for unfair claim settlement practices along with the administration and judicial disposition of those enforcement actions.

The Administration has successfully implemented § 27-1001 and continues to process complaints in a timely manner. Section 27-1001 continues to provide consumers with a valuable

¹ Unless otherwise indicated, statutory references are to the Insurance Article of the Annotated Code of Maryland.

tool to assist them in resolving disputes with insurers about their insurance claims. Additionally, the statute gives consumers access to an impartial review of their disputed claim(s), which helps them secure a fair and equitable claim settlement without resorting to filing an action in court.

II. Overview of Section 27-1001

Title 27 of the Insurance Article addresses unfair trade practices and other prohibited business practices. It is designed to “regulate trade practices in the business of insurance...that are unfair methods of competition or unfair or deceptive acts or practices.” Section 27-1001. The law defines “good faith” as “an informed judgment 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.” Section 27-1001(h). This statutory definition of absence of good faith “focuses on the actions taken by the insurer in forming a judgment as to coverage, as well as what the insurer knew or should have known at the time it denied coverage to its insured.” *Cecilia Schwaber Trust Two v. Hartford Accident and Indemnity Co.*, 636 F. Supp.2d 481, 486 (D. Md. 2009).

Section 27-1001 and its corollary § 3-1701 in the Courts and Judicial Proceedings Article apply to claims alleging that an insurance company failed to act in good faith in determining coverage or in determining the amount of payment for claims made under property and casualty insurance policies. Md. Code Ann., Cts. & Jud. Proc. Art., § 3-1701 (b) and (d). The law applies only to “first-party” claims. A first-party claim is one made by a person with insurance coverage for their own person, personal property and/or real property. In contrast, a third-party claim is made by a person who is entitled to receive a benefit payment from another’s insurance policy.

Typically, a first-party insured must first file a complaint with the Administration before bringing an action in court. Section 27-1001(a); Md. Code Ann., Cts. & Jud. Proc. Art., § 3-

1701. The complaining party must submit a written complaint outlining the basis for the complaint and the damages sought, and include “each document that the insured has submitted to the insurer for proof of loss.” Section 27-1001(d)(2)(i). The insurer then files a response to the claim along with the documentation supporting its position. Section 27-1001(d)(4)(i)-(ii). The Administration makes its finding on the basis of the written record and without a hearing. Section 27-1001(e).

The decision of the Administration must contain five (5) findings:

1. whether the insurer is obligated under the applicable policy to cover the underlying first-party claim;
2. the amount the insured was entitled to receive from the insurer under the applicable policy on the underlying covered first-party claim;
3. whether the insurer breached its obligation under the applicable policy to cover and pay the underlying covered first-party claim, as determined by the Administration;
4. whether an insurer that breached its obligation failed to act in good faith; and
5. the amount of damages, expenses, litigation costs, and interest, as applicable and as authorized under paragraph (2) of this subsection.

Section 27-1001(e)(1)(i).

If the Administration finds in favor of the insured, it must determine actual damages and the interest on actual damages. Section 27-1001(e)(2)(i). Furthermore, if the Administration finds that the insurer failed to act in good faith, it must “determine the obligation of the insurer to pay: 1. expenses and litigation costs incurred by the insured, including reasonable attorney’s fees, in pursuing recovery under this subtitle; and 2. interest on all expenses and litigation costs incurred by the insured.” Section 27-1001(e)(2)(ii).

The statute gives the Administration ninety (90) days from the day a complaint is filed to render a decision. During the reporting period, the Administration has successfully issued its decision in all § 27-1001 complaints within the statutory timeframe or within an altered time period agreed upon by the parties. The Administration’s opinions in § 27-1001 complaints are posted to the Administration’s website.

III. Analysis of Complaints Filed under § 27-1001

Section 27-1001(h) directs that the report to the General Assembly be based upon the prior fiscal year’s activity. This report contains information about the disposition of those complaints filed in fiscal year (FY) 2014 (July 1, 2013, through June 30, 2014).

A. Number of Complaints

Forty (40) complaints were filed under § 27-1001 in FY 2014, of which fourteen (14) did not meet the requirements to file a complaint under § 27-1001 and were rejected. *See* Table 1. Sixteen (16) of the remaining twenty-six (26) cases were reviewed and decided on the merits. In thirteen (13) of the remaining twenty-six (26), or 50%, no violation of § 27-1001 was found. *Id.* A violation was found to have occurred in each of the other three (3) cases, or 12% of the cases where decisions were rendered. *Id.* The remaining ten (10) complaints, or 38%, were settled prior to a decision on the merits, withdrawn or dismissed. *Id.*

Table 1 – § 27-1001 Complaints Filed with the Administration FY 2009-FY 2014

| | <i>FY 2009</i> | | <i>FY 2010</i> | | <i>FY 2011</i> | | <i>FY 2012</i> | | <i>FY 2013</i> | | <i>FY 2014</i> | |
|--|----------------|------|----------------|------|----------------|------|----------------|------|-----------------|------|----------------|------|
| | # | % | # | % | # | % | # | % | # | % | # | % |
| Settled, Withdrawn or Dismissed | 21 | 40% | 14 | 42% | 7 | 27% | 9 | 45% | 14 | 41% | 10 | 38% |
| § 27-1001 violation | 3 | 6% | 1 | 3% | 1 | 4% | 3 | 14% | 4 ² | 12% | 3 | 12% |
| No Violation | 28 | 54% | 18 | 55% | 18 | 69% | 8 ³ | 38% | 16 ⁴ | 47% | 13 | 50% |
| Total | 52 | 100% | 33 | 100% | 26 | 100% | 20 | 100% | 34 | 100% | 26 | 100% |

From FY 2013 to FY 2014, the total number of complaints, other than those rejected for non-compliance with § 27-1001, went down from thirty-four (34) to twenty-six (26), a decrease

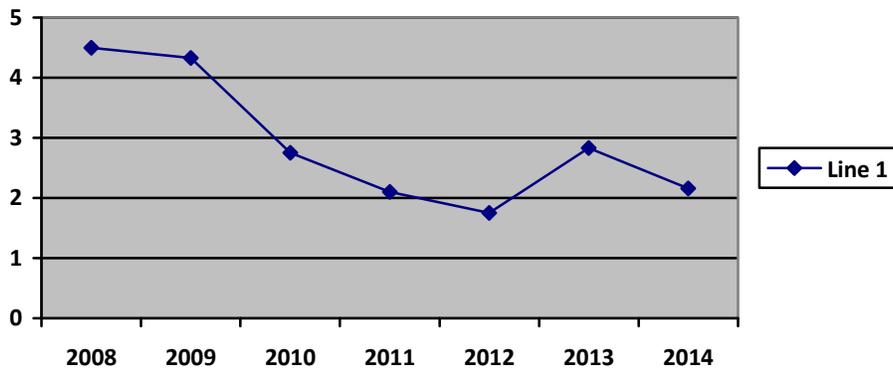
² In one case there were two separate claims. The insurer breached its obligation to pay the claim and failed to act in good faith on one claim. On the other claim, the insurer breached its obligation to pay the claim, but did not fail to act in good faith.

³ In one case the insurer breached its obligation to pay the claim, but did not fail to act in good faith.

⁴ In two cases, the insurer breached its obligation to pay the claim, but did not fail to act in good faith.

in FY 2014 of 21% from the prior year. *See* Table 1. In the nine (9) months of FY 2008 in which § 27-1001 was in effect, complaints were filed at an average rate of 4.4 per month. Since that time, the average number of complaints filed per month continued to decrease until FY 2013, when the number rose. In FY 2014, the number fell again and complaints were filed at an average rate of 2.2 cases per month. *See* Table 2.

Table 2 – § 27-1001 Complaints Filed Per Month FY 2008-2013



B. Types of Complaints

Of the sixteen (16) complaints reviewed on the merits, eleven (11) involved issues of uninsured or underinsured motorist coverage and five (5) involved homeowners insurance.

Table 3 – § 27-1001 Complaints Filed in FY 2014 by Type of Insurance

| | <i>Number</i> | <i>Percentage</i> |
|--|---------------|-------------------|
| Complaints Reviewed on the Merits | 16 | 100% |
| UM | 11 | 69% |
| Homeowners | 5 | 31% |
| Renters | 0 | 0% |
| Commercial | 0 | 0% |

C. Cases in which the Administration Found an Absence of Good Faith

Of the sixteen (16) complaints filed with the Administration during FY 2014 and decided on the merits, the insurer failed to act in good faith in three (3) instances. The case of *D.C. and G.C. v. Nationwide Mutual Insurance Company*, 27-1001-13-00017 (Sept 27, 2013), involved the valuation of the Plaintiffs' medical expenses subsequent to an automobile accident.⁵ In *A.W. v. Encompass Home & Auto Insurance Company*, 27-1001-14-00007 (May 27, 2014), the issue was the payment and valuation of a claim under the Plaintiff's underinsured motorists insurance after an auto accident.⁶ The case of *N.E.R. v. State Farm Insurance Company*, 27-1001-14-00025 (September 29, 2014), involved the payment of the Plaintiff's uninsured motorists claim after an auto accident.⁷

D. Judicial Review of § 27-1001 Decisions

In FY 2014, nine (9) cases were appealed to either the Office of Administrative Hearings ("OAH") or to one of Maryland's circuit courts for a *de novo* review. See Table 4. Of those nine cases, three settled or were dismissed, one was affirmed by the OAH with no further appeal and five are pending as of the date of this report. *Id.* For example, in *L.A. and T.M. v. Zurich American Insurance Company*, 27-1001-14-00009 (Nov. 8, 2013), the Plaintiffs directly appealed the Administration's decision that the insurer breached its obligation to pay the underlying covered uninsured / underinsured motorists claim and the valuation of that claim, but did not fail to act in good faith to the Circuit Court. In contrast, the Plaintiff in *V.W. v. Government Employees Insurance Company*, 27-1001-13-00021 (May 29, 2014), first appealed the Administration's decision that the insurer did not breach its obligation to pay the underlying

⁵ A hearing in this case was requested and it was referred to the Office of Administrative Hearings under § 27-1001(f). The matter settled before the hearing.

⁶ A hearing in this case was requested and it was referred to the Office of Administrative Hearings under § 27-1001(f). The matter settled before the hearing.

⁷ A hearing in this case was requested and it was referred to the Office of Administrative Hearings under § 27-1001(f). That decision is pending at the time of the filing of this Report.

covered underinsured motorists claim and did not fail to act in good faith to the OAH and then further appealed the OAH's affirmation of that decision to the Circuit Court.

Table 4 – § 27-1001 Cases on Appeal

| <i>FY 2014 (07/01/13 – 6/30/14)</i> | | |
|---|----------------|--------------------------|
| | Appeals to OAH | Appeals to Circuit Court |
| Total | 8 | 2 ⁸ |
| Dismissed / Settled | 3 | 0 |
| Pending | 3 | 2 |
| Affirmed Administration | 2 ⁹ | 0 |
| Reversed Administration | 0 | 0 |

E. Regulatory Enforcement Action

The Administration tracks and reviews the data from § 27-1001 complaints in an effort to identify regulatory trends or problems. During FY 2014, the complaints did not require additional regulatory enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

Notwithstanding that the statute has not generated the number of complaints anticipated at the time the law was enacted, the addition of the absence of good faith provision to the Maryland Insurance Article provides insurance policy holders with a valuable consumer protection. Further, the existence of § 27-1001 actions encourages insurance companies to value and adjust claims in a fair and timely manner. Section 27-1001 deters insurance companies from

⁸ One case involved a direct appeal to the Circuit Court. The other case was first appealed to OAH and was then further appealed to Circuit Court, so the case is listed in both the Appeals to OAH column and the Appeals to Circuit Court column.

⁹ One of these cases was appealed to and affirmed by the OAH and then appealed further to the Circuit Court. That case is listed as pending in the Appeals to Circuit Court column.

making offers below policy limits when the damages incurred clearly meet or exceed those limits and it serves to ensure that companies carefully and honestly consider all available information in the claims adjustment process.