



**INSURANCE
ADMINISTRATION**

**FY 2017
Report to the
Maryland General Assembly
on
Absence of Good Faith Cases**

MSAR # 6587

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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 policyholder 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 policyholders 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.² Section 27-1001(e).

According to the legislative history of § 27-1001, 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 policyholders 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

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

² In FY 2017, effective October 1, 2016, Md. Code Ann., Cts. & Jud. Proc. Art., § 3-1701 was amended to include individual disability insurance policies. The FY 2017 Report to the General Assembly on Absence of Good Faith Cases Filed Under §27-1001 of the Maryland Insurance Article will report on claims filed for individual disability insurance policies.

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 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.. Effective October 1, 2016, individual disability insurance policies were added to the scope of § 3-1701. In contrast, a third-party claim is made by a person who is entitled to receive a benefit payment from another’s insurance policy.

With some exceptions, 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. If, however, the Administration does not issue a decision within the time period specified it shall be considered a determination that the insurer did not breach any obligation to the insured. The Administration’s opinions on § 27-1001 complaints are posted to the Administration’s website (www.mdinsurance.state.md.us).

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) 2016 (July 1, 2015 through June 30, 2016).

A. Number of Complaints

Thirty-two (32) complaints were received in FY 2017, of which four (4) did not meet the requirements to file a complaint under § 27-1001 and were rejected. *See* Table 1. Six (6) cases were withdrawn or settled prior to a decision on the merits. In twenty-one (21) of the remaining twenty-two (22) cases, the insurance company did not violate § 27-1001. *Id.* The insurance

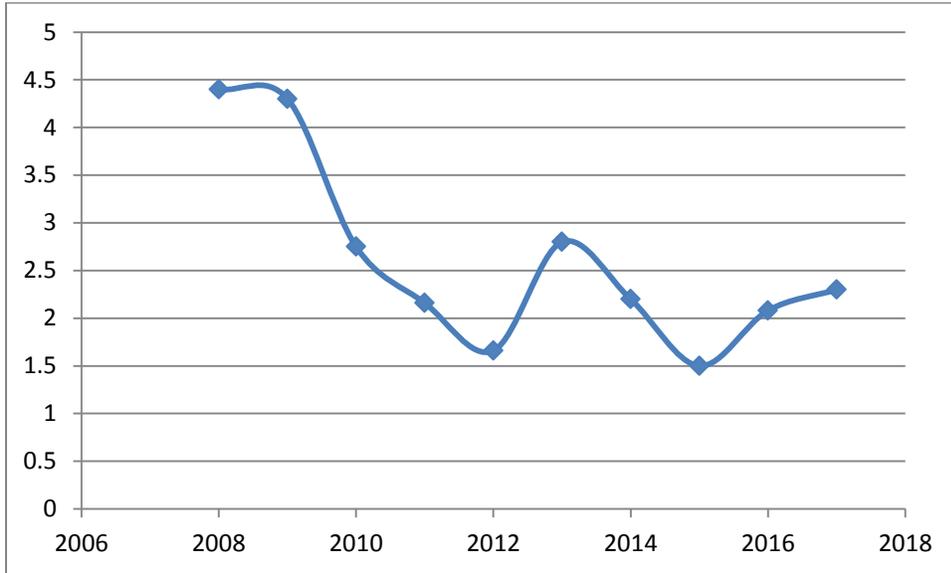
company violated §27-1001 in one (1) case, accounting for 5% of the cases for which a decision on the merits was rendered and 4% of all cases received. *Id.*

Table 1 – § 27-1001 Complaints Filed with the Administration FY 2012-FY 2017

	<i>FY 2012</i>		<i>FY 2013</i>		<i>FY 2014</i>		<i>FY 2015</i>		<i>FY 2016</i>		<i>FY 2017</i>	
	#	%	#	%	#	%	#	%	#	%	#	%
Settled, Withdrawn or Dismissed	9	45%	14	41%	10	38%	3	17%	10	40%	6	21%
§ 27-1001 violation	3	14%	4	12%	3	12%	3	17%	1	4%	1	4%
No Violation	8	38%	16	47%	13	50%	12	60%	14	56%	21	75%
Total	20	100%	34	100%	26	100%	18	100%	25	100%	28	100%

From FY 2016 to FY 2017, the total number of complaints, other than those rejected for non-compliance with § 27-1001, increased from twenty-five (25) to twenty-eight (28), an increase in FY 2017 of 1% 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 has fluctuated. The number of complaints decreased until FY 2013, when it rose again to 2.8 cases per month. In FY 2014, the number fell to 2.2 cases per month and in FY 2015, the number fell again to 1.5 cases per month. Complaints increased slightly in FY 2016 to approximately 2 cases filed per month. *See Table 2.* The FY 2017 number increased again to approximately 2.3 cases filed on average per month.

Table 2 – § 27-1001 Average # of Complaints Filed Per Month FY 2008-2017



B. Types of Complaints

Of the twenty-two (22) complaints reviewed on the merits, eight (8) involved issues of uninsured or underinsured motorist coverage and eleven (11) involved homeowners insurance. See Table 3.

Table 3 – § 27-1001 Complaints Filed in FY 2017 by Type of Insurance

	<i>Number</i>	<i>Percentage</i>
Complaints Reviewed on the Merits	22	100%
Auto- Uninsured Motorist	8	37%
Homeowners	11	50%
Renters	1	4%
Commercial	2	9%

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

Of the twenty-two (22) complaints filed with the Administration during FY 2017 and decided on the merits, the insurer failed to act in good faith in violation of §27-1001 in one (1) instance. In that case the MIA determined that the insurer breached its obligation to cover and pay a claim for a boat that was partially submerged. The insurer disclaimed coverage as they indicated that the boat had slowly started sinking over time, rather than as a result of a sudden or direct loss. The MIA determined that the insurer had not expended the necessary effort to obtain information to adequately determine the cause of the loss and held that in denying the claim the insurer failed to act in good faith.

D. Judicial Review of § 27-1001 Decisions

In FY 2017, in seven (7) cases the aggrieved party appealed the Commissioner's determination to the Office of Administrative Hearings (OAH). Of those cases, four were dismissed, settled or withdrawn, the MIA's determination was affirmed in one case, the MIA's determination was reversed in another, and one is pending. In *JK v. State Farm Fire and Casualty, 27-1001-17-00003*, the MIA's determination that there was no coverage under the homeowner's insurance policy and that the insurance company did not violate §27-1001 was affirmed. In *East of the Bay, LLC v. Daily Underwriters of America, 27-1001-16-000038*, the MIA determined that the insurer should pay \$10,024.48 for a commercial trucking claim, but that the insurer did not violate section 27-1001 in the handling of the claim based on a review of the pleadings filed. On appeal and after a *de novo* evidentiary hearing, the OAH agreed that the insurer breached its obligations under the policy, but determined that, in addition, the insurer

failed to exercise due diligence in its investigation, in violation of § 27-1001 and awarded damages in the amount of \$21,894.80.

In FY2017, three (3) cases were appealed to the courts, two (2) to the Circuit Court for Baltimore City and one (1) in the Circuit Court for Harford County. Two of the appeals were subsequently dismissed with prejudice by the parties on 12/20/2016 and 7/31/2017. In the other case, the MIA’s determination that the insurer should provide coverage and had a duty to defend, but that the insurer did not fail to act in good faith was affirmed on 6/23/2017.

Table 4 – § 27-1001 Cases on Appeal

<i>FY 2017</i>		
	Appeals to OAH	Appeals to Circuit Court
Total	7	3
Dismissed / Settled / Withdrawn	4	2
Pending	1	0
Affirmed Administration	1	1
Reversed Administration	1	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 2017, none of the complaints received required a referral to another MIA Unit for additional regulatory investigation and enforcement actions for unfair claim settlement practices. Section 27-1001(h)(3).

IV. Conclusion

While 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 policyholders with an added layer of consumer protection.