

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

**MARYLAND INSURANCE
ADMINISTRATION
EX REL. O.A.¹,**

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Complainant

v.

Case No. MIA 2022-11-013

**THE CINCINNATI 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,² the Undersigned concludes that The Cincinnati Insurance Company (“Licensees”) did not violate Maryland insurance law reaching an at fault determination against Complainant’s claim, or by increasing the Complainant’s auto insurance premium to reflect this determination.. The Undersigned also concludes, however, that Licensee did violate 27-614 (C)(1) of the Insurance Article by failing to send a Notice of Premium Increase letter to Complainant.

STATEMENT OF THE CASE

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (“MIA”) on February 2, 2022 (MIA Exhibit (“Ex.”))

1) In her Complaint to the MIA, Complainant alleged that Licensee violated the Maryland Insurance Code in its handling of the Complainant’s automobile insurance claim, when it

¹ The MIA uses initials to identify a Complainant and to protect the privacy of the Parties.

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

determined that Complainant was the at-fault driver for an automobile accident that occurred on May 4, 2021. Complainant further alleged that she had been surprised to learn that this determination resulted in an increase in her automobile premium. (MIA Ex. 1) After investigating the Complaint, the MIA's Property and Casualty Complaints Unit determined that Licensee had not violated the Maryland Insurance Article with respect to its handling of the Complainant's automobile insurance claim. Further, the MIA's Property and Casualty Complaints Unit found that, although Licensee failed to issue a notice of increase of Complainant's premium, in violation of Section 27-614 of the Insurance Article, Complainant had cancelled her automobile insurance policy with Licensee prior to the effective date of the premium increase. The parties were notified of the MIA's findings by letter dated November 2, 2022 (the "determination letter"). (MIA Ex. 13.) The determination letter notified the Parties of their rights to request a hearing. (*Id.*) The Complainant disagreed with the MIA's determination and timely requested a hearing, which request was granted on November 3, 2022. (MIA Ex. 15.)

ISSUE

The issues presented in this case are whether Licensee violated the Insurance Article in its handling of Complainant's automobile insurance claim, and whether Licensee violated the Insurance Article in its decision to increase the Complainant's automobile insurance premium due to the existence of an at-fault claim.

SUMMARY OF THE EVIDENCE

A. Testimony

The MIA held a virtual evidentiary hearing on June 20, 2023. Kerrie Kitts, Assistant Vice President of Casualty Claims, and Wynona Smith, Personal Lines Underwriter, testified for the Licensee at the hearing. Complainant and her husband, D.A. testified on behalf of Complainant.

B. Exhibits

MIA Exhibits³ (In Record)

1. Complaint from Complainant to MIA, received February 2, 2022
2. Correspondence from MIA to Licensee, dated February 3, 2022
3. Response from Licensee to MIA received February 10, 2022
4. Response from Licensee to MIA, including the claim log/file, recorded statements, medical records, rental car invoice, photographs and estimates, received on February 16, 2022
5. Response from Licensee to MIA, providing an explanation for the rate increase and copies of correspondence provided to CLUE, received on February 16, 2022
6. Correspondence from MIA to Licensee, dated May 3, 2022
7. Response from Licensee to MIA, dated May 9, 2022
8. Correspondence from MIA to Licensee, dated August 23, 2022
9. Response from Licensee to MIA, dated September 2, 2022
10. Response from Licensee to MIA, dated September 15, 2022
11. Correspondence from MIA to Licensee, dated October 6, 2022
12. Response from Licensee to MIA, received on October 20, 2022
13. Determination Letter from MIA to Parties, dated November 2, 2022
14. Hearing request from Complainant received on November 2, 2022
15. Correspondence from MIA granting hearing request, dated November 3, 2022

FINDINGS OF FACT

The findings of fact contained herein are based upon a complete and thorough review of the entire record in this case. The record includes the above referenced exhibits and the transcript of the June 20, 2023 evidentiary hearing. 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 and do not exclude reliance on the entire record.

DISCUSSION

A. Positions of the Parties.

Complainant asserts that Licensee failed to properly handle her automobile insurance claim. By contrast, Licensee asserts that it completed a proper and thorough investigation of the Complainant's claim in compliance with Maryland law.

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 May 4, 2021, Complainant was insured under an automobile insurance policy, Policy Number: A01****220 ("Policy"), issued by Licensee. (MIA Ex. 3.) In relevant part, the Policy states,

INSURING AGREEMENT

When a "covered person" becomes legally responsible because of an auto accident or for physical damage to a "nonowned auto", "we" will pay for:

- A. "Bodily injury";
- B. "Property damage";
- C. "Property damage" to a "nonowned auto":

1. When there is a written contract, "we" will pay for damage according to the terms of the contract;

2. In the absence of a written contract, "we" will pay in excess of any other applicable coverage.

Prejudgment interest awarded against a "covered person" on that part of any judgment "we" become obligated to pay and which falls within the applicable limit of insurance shown in the Declarations. If "we" make an offer to pay the applicable limit of insurance, "we" will not pay any prejudgment interest that is based on the period of time after the offer. "We" will settle or defend, as "we" consider appropriate, any claim or suit asking for these damages. In addition to "our" limit of insurance, "we" will pay all defense costs "we" incur. "Our" duty to settle or defend ends when "our" limit of insurance for this coverage has been tendered for settlement or payment of judgment. "We" have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

³ At the start of the Hearing, the Parties stipulated to the admission of all of the MIA exhibits.

(MIA Ex. 3.)

3. On May 4, 2021, Complainant was involved in an automobile accident on McClean Boulevard in Baltimore, MD, with a second vehicle operated by S.A. (MIA Ex. 3.) Complainant reported the accident to Licensee later on May 4, 2021 at approximately 2:36 P.M. (Id.)

4. A representative acting on behalf of Licensee, Senior Claims Specialist Theresa Brennerman, CPCU, AIC (“Adjuster Brennerman”), contacted S.A. and Complainant on May 4, 2021 to obtain their statements concerning the accident. (MIA Ex. 3.)

5. S.A. informed Adjuster Brennerman that at the time of the accident, she was operating a 2017 Honda Accord and that she was alone in the car. (MIA Ex. 3.) S.A. stated that her neck and lower back were injured in the accident, but that she did not seek medical treatment. (Id.) S.A. further stated that Complainant was operating a silver truck and was “speeding up.” (Id.) S.A. further stated that Complainant tried to cut off S.A. by coming over to the lane in which S.A. was traveling without signaling. (Id.)

6. As a result of the accident, S.A. informed Adjuster Brennerman that the front of her vehicle was damaged and that her front bumper was knocked off her vehicle. (Id.)

7. S.A. informed Adjuster Brennerman that the right rear bumper of the Complainant’s vehicle was also damaged during the accident. (MIA Ex. 3.)

8. S.A. informed Adjuster Brennerman that the police were called to the accident scene, but that they did not prepare an accident report, nor did they issue any citations (MIA Ex. 3.)

9. S.A. also informed Adjuster Brennerman that before the police arrived at the scene of the accident, two witnesses stopped at the scene and gave S.A. their contact information. (MIA Ex. 3.)

10. During Complainant's statement, she informed Adjuster Brennerman that at the time of the accident, she was operating a Toyota and that she was alone in her car. (MIA Ex. 3.) Complainant also informed Adjuster Brennerman that on the date of the accident, her back was injured and she planned to seek medical treatment. (Id.)

11. Complainant then informed Adjuster Brennerman that the vehicle in front of her had slowed down and that the vehicle operated by S.A. struck her from behind. (MIA Ex. 3.)

12. Complainant informed Adjuster Brennerman that the Baltimore City police responded to the scene of the accident and prepared a police report. (MIA Ex. 3.) Complainant also informed Adjuster Brennerman that no other witnesses stopped at the scene of the accident to provide their information. (Id.) While the Baltimore City police were at the scene, they prepared a document entitled, "Baltimore City Police Department, Motor Vehicle Collision Information Exchange Form". (MIA Ex. 1.)

13. Adjuster Brennerman d,noted that the statements made by S.A. and Complainant concerning the facts of the accident were inconsistent with each other. (MIA Ex. 3.)

14. Two days later, on May 6, 2022, Adjuster Brennerman inspected the Toyota operated by Complainant ("Complainant's Vehicle"). (MIA Ex. 3.) Adjuster Brennerman noted damage to the right side rear bumper of the Complainant's Vehicle. (Id.) Adjuster Brennerman took photographs of the Complainant's Vehicle. (Id.)

15. On May 6, 2022, Adjuster Brennerman inspected the scene of the accident and noted that McClean Boulevard is a two-way residential street and there is no centerline. (MIA Ex. 3.) Adjuster Brennerman took photographs of the scene. (Id.)

16. Also on May 6, 2022, Adjuster Brennerman obtained a statement from a witness named L.A. (MIA Ex. 3.) L.A. informed Adjuster Brennerman that she was walking down the street and saw a silver car speeding. (MIA Ex. 3.) L.A. also informed Adjuster Brennerman that as the silver vehicle sped up; it appeared that it was going to run in the back of a black vehicle. (MIA Ex. 3.) L.A. also stated that it appeared that the silver vehicle tried to cut the black car off. (Id.) L.A. also informed Adjuster Brennerman that she did not know either of the drivers involved in the accident. (Id.)

17. Also on May 6, 2022, Adjuster Brennerman sent Complainant an estimate of the repairs for Complainant's Vehicle. (MIA Ex. 3.) Adjuster Brennerman also issued an electronic payment in the amount of \$1,559.47 to Complainant for the vehicle repairs less the \$500 deductible.. (MIA Ex. 3.)

18. Also on May 6, 2022, Adjuster Brennerman sent Complainant necessary forms for claiming Personal Injury Protection ("PIP") coverage. (MIA Ex. 3.)

19. The following day, on May 7, 2022, Adjuster Brennerman spoke with A.J. (MIA Ex. 3.) A.J. informed Adjuster Brennerman that on May 4, 2022, he was walking down the street near the scene of the accident. (Id.) A.J. said that he had observed a grey car moving at a high speed and attempting to change lanes. (Id.) A.J. stated that he did not know either of the individuals involved in the accident. (Id.)

20. In conducting the Licensee's investigation, Adjuster Brennerman had identified a prior claim made by S.A., on May 7, 2022. In order to determine whether there was a connection

between S.A. and the above witnesses, she referred the instant claim to the National Insurance Crime Bureau (“NICB”) for further investigation... (MIA Ex. 3.) Licensee’s Special Investigation Unit (“SIU”) also conducted an investigation of the accident. (MIA Ex. 3.) Neither confirmed a connection between S.A. and either of the witnesses. (MIA Ex. 7.)

21. On May 7, 2022, Adjuster Brennerman determined that Complainant was at fault for the accident based on the statements from the parties to the accident, and the statements from the witnesses, her visual inspection of the Complainant’s vehicle, and her inspection of the accident scene. (MIA Ex. 3.) Adjuster Brennerman prepared a claim log note stating, “Accepting liability based on statements.” (MIA Ex. 3.) Specifically, Adjuster Brennerman found that the witnesses’ statements supported the facts of loss provided by S.A., as did the points of impact to the vehicles. (Id.)

22. On May 7, 2022, Adjuster Brennerman contacted Complainant and explained to her that the Licensee had determined that Complainant was at fault for the accident. (MIA Ex. 3.) Complainant responded that she had been treated for injuries to her neck and back, allegedly resulting from the accident. (Id.) Additionally, Complainant said that she had been out of work as a housing coordinator for a rehabilitation facility since the accident. (Id.)

23. Licensee reported to the LexisNexis CLUE Database that Complainant was the at-fault driver for a claim dated May 4, 2021. (MIA Ex. 5.)

24. On February 2, 2022, Complainant filed a complaint with the MIA’s Property and Casualty Complaints Unit asserting that Licensee erred in its handling of the Complainant’s automobile insurance claim, based on its determination that Complainant was the at-fault driver for the accident. (MIA Ex. 1.) Complainant further alleged that she had been surprised to learn of the increase in her automobile premium due to Licensee’s finding that she was at-fault for the

May 4, 2021 automobile accident. (Id.) Based on Complainant's complaint, the MIA opened an investigation.

25. In response to the MIA Property & Casualty Unit's request for relevant documents Licensee on February 18, 2022 provided records showing that the Complainant's premium amount was increased due to an on August 24, 2020 speeding citation and to the Licensee's finding that Complainant was the at-fault driver for the May 4, 2021 accident. (MIA Ex. 5.)

26. In Licensee's September 15, 2022 response to the MIA Property & Casualty Unit's investigation, Licensee acknowledged that it had not sent a required Notice of Premium Increase Letter for the renewal of the February 12, 2022 policy term. (MIA Ex. 10.) Licensee stated, "In review of the account, the Notice of Premium Increase Letter was not completed for the renewal of 2/12/22 term." (MIA Ex. 10.)

27. In Licensee's October 20, 2022 response to the MIA, Licensee stated, "In reviewing the account, the letter was not completed and was not sent to the insured at the renewal. The reason for not sending is simply human error. The insured should have received a NOPI." (MIA Ex. 12.)

28. In Licensee's September 2, 2022 response to the MIA, Licensee stated that the Policy was cancelled at the Complainant's request on January 24, 2022. (MIA Ex. 9.)

29. On November 2, 2022, the MIA Property & Casualty Unit issued a determination letter finding that Licensee had not violated Maryland insurance law in its handling of the Complainant's claim resulting from the May 4, 2021 accident. (MIA Ex. 13.) The Complainant timely requested a hearing on her protest of the finding that Complainant was at fault for the May 4, 2021 accident. (MIA Ex. 14.) The case was transferred to the Office of Hearings to conduct an evidentiary hearing. (MIA Ex. 14, 15.)

B. Statutory Framework

The Parties were notified in the Notice of Virtual Hearing that specific attention at the Hearing would be directed to Sections 4-113 and 27-303 of the Insurance Article. Further, based on the allegations contained in the Complaint; the Licensee’s responses to the MIA Property and Casualty Unit contained in the record; the MIA’s findings in the November 2, 2022 determination letter; and the Complainant’s hearing request, I also considered Section 27-614 of the Insurance Article.

Section 4-113 states, in pertinent part:

(b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

* * *

(5) refuses or delays payment of amounts due claimants without just cause[.]

* * * *

(Westlaw 2023.)

Section 27-303 states in pertinent part:

It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:

* * *

(2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

* * *

(6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim[.]

* * * *

(Westlaw 2023.)

Section 27-216 states, in pertinent part:

Private passenger motor vehicle liability insurance policies – Premium increase

(c) Notice of proposed increase

(1) Except as provided in paragraph (2) of this subsection, at least 45 days before the effective date of an increase in the total premium for a policy of private passenger motor vehicle liability insurance, the insurer shall send written notice of the premium increase to the insured at the last known address of the insured by a first-class mail tracking method.

* * * *

(Westlaw 2023.)

In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard as articulated in an earlier case. *See* 142 Md. App. 628 (2002). As the Court explained:

The Commissioner has previously construed [Section] 27-303(2) as requiring a licensee insurer to show that it refused to pay the claim at issue based on: (1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of “all available information.”

Id. at 671. (*internal citations omitted*).

The Complainant has the burden of persuasion to demonstrate by a preponderance of the evidence that Licensee violated the Insurance Article in its handling and denial of the Claim. Md. Code Ann., State Gov't § 10-217 (LexisNexis 2022); *Berkshire*, 142 Md. App at 672. To satisfy its burden of persuasion in this case by a preponderance of the evidence, Complainant must “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 the 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. Licensee did not violate Section 27-303 (2) or (6) or Section 4-113(b)(5) in its handling of Complainant's Claim

After investigating the Complaint concerning Licensee's handling of Complainant's Claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm, in part, and reverse, in part.

I find that there is ample support in the record that Licensee conducted a thorough investigation of the Claim, and that Licensee's final decision to deny the Claim was based on the language of the Policy and reasonably based on all of the information that it knew or should have known at the time it denied the Claim. The record shows that the loss was reported on the day of the accident. (MIA Ex. 3.) Also on that day, Adjuster Brennerman obtained statements from the Complainant and S.A. (*Id.*) Moreover, within three days of the accident, Adjuster Brennerman obtained statements from two additional witness to the accident, A.J., and L.A. (*Id.*) Further Adjuster Brennerman conducted an investigation of the scene of the accident and investigated the damage to the Complainant's vehicle. (*Id.*) Based on the above investigation findings, Adjuster Brennerman determined that Complainant was at fault for the accident. (*Id.*)

The applicable Policy says:

INSURING AGREEMENT

When a "covered person" becomes legally responsible because of an auto accident or for physical damage to a "nonowned auto", "we" will pay for:

- A. "Bodily injury";
- B. "Property damage";
- C. "Property damage" to a "nonowned auto":

1. When there is a written contract, "we" will pay for damage according to the terms of the contract;

2. In the absence of a written contract, "we" will pay in excess of any other applicable coverage.

Prejudgment interest awarded against a "covered person" on that part of any judgment "we" become obligated to pay and which falls within the applicable limit of insurance shown in the Declarations. If "we" make an offer to pay the applicable limit of insurance, "we" will not pay any prejudgment interest that is based on the period of time after the offer. "We" will settle or defend, as "we" consider appropriate, any claim or suit asking for these damages. In addition to "our" limit of insurance, "we" will pay all defense costs "we" incur. "Our" duty to settle or defend ends when "our" limit of insurance for this coverage has been tendered for settlement or payment of judgment. "We" have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

(MIA Ex. 3.)

Based on the foregoing, I find that Licensee acted quickly to investigation the claim, contact the witnesses to the accident, inspect the Complainant's Vehicle, and investigate the scene of the accident. Further, within two days of the accident, Adjuster Brennerman prepared an estimate of the repairs to Complainant's Vehicle and issued a payment in the amount of \$1,559.47. (MIA Ex. 3.)

Therefore, based on my evaluation of the evidence in this case, I find that Licensee's handling and denial of the Claim was not arbitrary or capricious, and thus, not in violation of Section 27-303(2).

I further find that Licensee provided a reasonable explanation for its finding that Complainant was at fault for the accident. The increase is supported by the Policy language, and therefore, did not violate Section 27-303(6) of the Insurance Article. The record shows that within three days of the accident, Adjuster Brennerman notified Complainant of her

determination that Complainant was at fault for the May 4, 2021 accident. Specifically, after speaking with the witnesses to the accident, and based on her investigation of the Complainant's vehicle, Adjuster Brennerman found that the loss facts supported S.A.'s statement concerning how the accident occurred. Because the record clearly demonstrates the basis for the Licensee's finding that Complainant was at fault for the accident, I find that Licensee did not violate Section 27-303(6).

I also find that Licensee did not refuse or delay payment of amounts due to the Claimant without just cause in violation of Section 4-113(b)(5). In this case, the facts clearly demonstrate that on May 6, 2022, Adjuster Brennerman sent Complainant an estimate of the repairs for Complainant's Vehicle. (MIA Ex. 3.) Further, Adjuster Brennerman issued an electronic payment to Complainant for the vehicle repairs, less the \$500 deductible, in the amount of \$1,559.47. (MIA Ex. 3.) As Licensee promptly made a payment to Complainant for the damage to Complainant's Vehicle, I find that Licensee did not violate Section 4-113(b)(5).

D. Licensee did violate Section 27-216 (C) (1)

Lastly, I find that Licensee increased Complainant's premium amount due to a speeding citation on August 24, 2020 and Licensee's finding that Complainant was the at-fault driver for the May 4, 2021 accident. (MIA Ex. 5.) In Licensee's September 15, 2022 response to the MIA Property & Casualty Unit's investigation, Licensee acknowledged that a Notice of Premium Increase Letter was not completed for the renewal of the February 12, 2022 term. (MIA Ex. 10.) Licensee stated, "In review of the account, the Notice of Premium Increase Letter was not completed for the renewal of 2/12/22 term." (MIA Ex. 10.) Further, in Licensee's October 20, 2022 response to the MIA, Licensee stated, "In reviewing the account, the letter was not completed and was not sent to the insured at the renewal. The reason for not sending is simply

human error. The insured should have received a NOPI.” (MIA Ex. 12.) As Licensee failed to send a Notice of Premium Increase Letter to Complainant, I therefore find that Licensee violated Section 27-614 (c)(1).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I find, as a matter of law, that Licensee has neither committed an unfair claim settlement practice in violation of Section 27-303, nor delayed or denied payment of amounts due without just cause in violation of Section 4-113, nor otherwise violated the Insurance Article in its handling of Complainant’s claim. I also find, as a matter of law, that Licensee did violate Section 27-216 of the Insurance Article.

FINAL ORDER

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

ORDERED that Licensee shall pay a monetary penalty of \$250 within thirty days of the date of this Final Order. Payment shall be made by immediately payable funds and shall identify the case number (Case No. MIA 2022-11-013) and case name (MIA ex rel. O.A. v. The Cincinnati Insurance Company). Payment of the administrative penalty shall be sent to the attention of the Clerk – Office of Hearings, Maryland Insurance Administration, 200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202. Unpaid penalties will be referred to the Central Collections Unit for collection; and

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

It is so **ORDERED** this 15th day of September, 2023.

KATHLEEN A. BIRRANE

Insurance Commissioner

signature on original

ERICA J. BAILEY

Chief Hearing Officer/ Associate Commissioner

Office of Hearings