

OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

[REDACTED]

Plaintiff

v.

THE BRETHERN MUTUAL
INSURANCE COMPANY

Defendant

* * * * *

Case No. 27-1001-09-00014

DECISION

Pursuant to § 27-1001 of the Insurance Article of the Annotated Code of Maryland, the Maryland Insurance Commissioner finds that The Brethren Mutual Insurance Company (“Brethren”) acted with an absence of good faith in adjusting the first-party uninsured motorist claim filed by Plaintiff, [REDACTED].¹

I. INTRODUCTION

Plaintiff filed a complaint challenging Brethren’s handling of her uninsured motorist (UM) claim for injuries resulting from a serious automobile collision on March 18, 2007. (Compl. ¶ 8, Ex. 15.) There is no dispute that Plaintiff was covered by Brethren insurance policy number PAA0036183, which provided UM coverage up to policy limits of \$300,000. (Compl. ¶ 12; Brethren Resp. at p. 3 and Ex. C-1.) The issue in this case is whether Brethren acted with an absence of good faith in refusing to pay Plaintiff’s first-party claim.

Section 27-1001 requires the Commissioner to conduct an on-the-record review of certain

¹ Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

complaints 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). There is no dispute that the MIA has jurisdiction to consider this matter as the case involves a first-party claim under a property and casualty insurance policy that was issued, sold, or delivered in Maryland. MD. CODE ANN., CTS. & JUD. PROC. ART., § 3-1701 (b).

According to the complaint and the case information sheet submitted to the Maryland Insurance Administration (MIA), Plaintiff is claiming \$200,000.00 in actual damages, \$66,666.00 in attorney's fees and interest in the amount of \$46,500.00. (Compl. ¶¶ 44-46.)

II. STANDARD OF REVIEW

Title 27 of the Insurance Article 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. Section 3-1701 in the Courts and Judicial Proceedings Article and § 27-1001 apply to allegations that an insurer failed to act in good faith in determining coverage or in determining the amount of payment for a first-party claim under property and casualty insurance policies that were issued, sold, or delivered in the State of Maryland. MD. CODE ANN., CTS. & JUD. PROC. ART., § 3-1701 (b) and (d). 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(a).

With some exceptions that are not relevant here, before a first-party insured may file an action in a court, he or she must first file a complaint with the MIA. MD. CODE ANN., CTS. & JUD. PROC. ART., § 3-1701; § 27-1001(a). The insured must submit a written complaint outlining the

basis for the complaint, the damages sought, along with “each document that the insured has submitted to the insurer for proof of loss.” Section 27-1001(d)(2)(i). The insurer must provide a written response, “together with a copy of each document from the insurer’s claim file that enables reconstruction of the insurer’s activities relative to the insured’s claim, including documentation of each pertinent communication, transaction, note, work paper, claim form, bill, and explanation of benefits form relative to the claim.” Section 27-1001(d)(4)(i). The MIA is to make its finding on the basis of the written record and without a hearing. Section 27-1001(e).

The decision of the MIA 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 MIA finds for the insured, it must determine actual damages and the interest and “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)(i) and (ii).

The Plaintiff has the burden of proof and she must meet this burden by a preponderance of the evidence standard. MD. CODE ANN., STATE GOVT. ART., § 10-217; *Md. Bd. of Physicians v. Elliott*, 170 Md. App. 369, 435 cert. denied 396 Md. 12 (2006).

III. FINDING OF FACT

These findings of fact are based upon a complete and thorough review of the parties' briefs and all exhibits and documentation. To the extent that there are any facts in dispute, the following facts are found, by a preponderance of the evidence, to be true. Citations to particular parts of the record are for ease of reference and are not intended to exclude and do not exclude reliance on the entire record.

A. March 18, 2007 Accident

██████████ was involved in a single automobile accident on Sweet Air Road in Baltimore County at just after midnight on March 18, 2007. (Compl. Ex. 1.) She was the passenger in a car driven by ██████████. *Id.* The car veered off of Sweet Air Road, struck a traffic sign and crashed into a concrete wall on the property of the Chestnut Grove Presbyterian Church. (Compl. Exs. 1 and 2.) The collision destroyed the concrete wall. (Compl. Ex. 1.) The police officers on the scene charged ██████████ with operating a motor vehicle while under the influence of alcohol. (Compl. Exs. 1 and 2.)

B. Medical Treatment

The impact of the accident caused ██████████, then aged 65, immediately to experience numbness in her lower and upper extremities. (Compl. Ex. 5.) She was transported from the scene to the University of Maryland Shock Trauma Unit (Shock Trauma) by Medivac helicopter. (Compl. Ex. 1.) She was diagnosed with a left subarachnoid (brain) hemorrhage, central cord syndrome, and various orthopedic fractures. (Compl. Ex. 4.) She had several surgeries, the first of which was on March 19, 2007, when ██████████ underwent an anterior cervical discectomy of the spine with

internal fixation and fusion of discs C3-C5. (Compl. Ex. 5.) That next day, she was operated on for an intertrochanteric femur/hip fracture. (Compl. Ex. 9.)

Prior to her discharge from Shock Trauma, [REDACTED] complained of foot pain and it was discovered that she had a fracture of the left hallux (big toe) and talus (ankle joint). (Compl. Exs. 7 and 8.) She had surgery on March 28, 2007 to repair both the fractures. *Id.*

[REDACTED] was discharged from Shock Trauma on March 30, 2007 and transferred to Kernan Hospital, a rehabilitation center, where she remained until her discharge on May 25, 2007. (Compl. Exs. 4 and 12.)

Plaintiff has incurred medical bills totaling \$213,251.80, an amount not disputed by Brethren. (Compl. ¶ 16.) [REDACTED] continues to undergo medical treatment a result of the accident-related injuries. *Id.* Plaintiff asserts, and Brethren does not dispute, that [REDACTED] causally-related past and future medical bills exceeds \$200,000.00. (Compl. ¶¶ 16, 18, 19, 27, 44.) Taking into account Plaintiff's pain and suffering, in addition to her medical expenses, this is clearly a policy limits case.

C. Settlement Negotiations

The driver of the vehicle involved in the accident was insured by GEICO with policy limits of \$100,000.00. (Compl. ¶¶ 17-18.) Plaintiff was insured by Brethren for UM coverage up to \$300,00.00. (Compl. ¶ 8, Ex. 15.) By letter dated August 16, 2007, Plaintiff put Brethren on notice that she intended to pursue a UM claim. (Compl. Ex. 16.)

GEICO offered its policy limits to [REDACTED] on August 8, 2007. (Compl. Ex. 17.) On August 29, 2007, counsel for [REDACTED] wrote to Brethren, pursuant to § 19-511, and requested assent to accept the settlement offer and to release [REDACTED] from any further liability and

subrogation. *Id.* On October 30, 2007, Brethren wrote to counsel for [REDACTED] and stated that, “we will waive any subrogation action against [REDACTED].” (Compl. Ex. 19.)²

Plaintiff settled with GEICO for \$100,000.00 and executed a release and hold harmless agreement as to [REDACTED] and GEICO on December 6, 2007. (Compl. ¶ 26, Ex. 21.) As a result of the settlement, Plaintiff sought to recover the balance of her UM policy limits (i.e. \$200,000.00) from Brethren. (Compl. ¶ 27.) By letter dated July 2, 2008, Brethren refused to pay the claim, “based on an assumption of risk on the part of [REDACTED] for riding in her vehicle with an impaired driver.” (Compl. Ex. 22.) Plaintiff filed a complaint in the Circuit Court for Baltimore County on August 15, 2008. (Compl. ¶ 29, Ex. 23.) Brethren in its answer to the complaint on September 10, 2008 and amended answer on November 12, 2008, pled contributory negligence, assumption of risk, and the defense of release. (Compl. ¶¶ 30-31, Exs. 24-25.) Plaintiff filed the instant action with the MIA on April 1, 2009.

IV. DISCUSSION

A. Positions of the Parties

Plaintiff asserts that she is entitled to recover from Brethren \$200,000.00 in UM coverage due to the extent of her injuries and the cost of her past and ongoing medical care. (Compl. ¶ 16.) Plaintiff further asserts that Brethren has acted with an absence of good faith by failing to follow Maryland law on the assertion of tort defenses after waiving subrogation; by interpreting the release

² Pursuant to § 19-511(b), an insurer has sixty (60) days from receipt of a claimant’s notice to consent to acceptance of a settlement offer with a UM motorist. The record is not clear as to whether that sixty (60) day deadline was met because the “received” date on Brethren’s copy of Plaintiff’s August 29, 2007 is illegible. As Plaintiff does not raise this issue, it will be assumed that Brethren did meet the statutory deadline.

executed for the benefit of [REDACTED] and GEICO to cover Brethren; and by making certain statements during court ordered mediation. (Compl. ¶ 38.)

Brethren counters that it is within its legal rights to raise the assumption of risk, contributory negligence, and release defenses. (Brethren's Resp. ¶¶ 4-8.) Furthermore, Brethren asserts that Plaintiff is barred from relying on any statement made during mediation as those statements are intended to be confidential and a party, "may not disclose or be compelled to disclose mediation communications in any judicial, administrative or other proceeding." (Brethren's Resp. ¶ 12.) Alternatively, Brethren argues that the MIA's action in this matter should be stayed pending the outcome of the case pending in the Circuit Court for Baltimore County. (Brethren's Resp. ¶ 21.)

B. Analysis

1. Brethren's response fails to comply with the requirements of § 27-1001.

The §27-1001 process is an on-the-record review and, therefore, the written record provided to the MIA is critical. This is reflected in the statute, which enumerates in detail the insurer's obligation to file a written response. The Insurance Article states that an insurer "shall" file with the MIA, "a written response together with a copy of each document from the insurer's claim file that enables reconstruction of the insurer's activities relative to the insured's claim, including documentation of each pertinent communication, transaction, note, work paper, claim form, bill, and explanation of benefits form relative to the claim." Section 27-1001(d)(4)(i).³

The written response filed by Brethren fails to meet the § 27-1001(d)(4)(i) requirements. Brethren provided the MIA with only pleadings and discovery material from the pending Circuit

³ Regulations adopted pursuant to § 27-1001 provide a process for insurers to, for good cause, submit certain documents for *in camera* inspection and withhold them from the claimant. COMAR 31.08.11.05.

Court case and a variety of correspondence between the parties. (Brethren Resp. Exs. A-M.)

Brethren's claim file was not submitted to the MIA as required by § 27-1001.

As a result of Brethren's failure to properly respond to the mandatory requirements of § 27-1001, the MIA could find in favor of Plaintiff on this ground alone. Nonetheless, even if the MIA fully considers Brethren's filing, Plaintiff is entitled to a decision in her favor for the reasons discussed below.

2. A stay of this case is not required.

Brethren asks the MIA to stay action on this § 27-1001 claim pending a determination of the case currently pending in the Circuit Court for Baltimore County. (Brethren Resp. ¶ 21.) However, the issue of Brethren's absence of good faith was not raised in the case currently pending in Circuit Court. (Brethren Resp. Ex. A.) Additionally, the statutory scheme developed by Maryland's General Assembly in § 27-1001 explicitly provides that the issue of absence of good faith must first be explored administratively by the MIA before a person may bring or pursue an action in Circuit Court. Section 27-1001(c)(1). Therefore, a stay of the current matter is not warranted.

3. Brethren acted in the absence of good faith.

Determining whether an insurer failed to make "an informed judgment based on honesty and diligence supported by evidence" is highly fact specific and must be made on a case by case basis. Section § 27-1001(a). Undoubtedly, there is a fine line between a responsible insurer legitimately defending a claim and an insurer whose sole aim is to avoid the payment of a valid claim. The record of the instant case demonstrates that Brethren's goal was to avoid paying the policy limit of \$200,000.00 on a claim that clearly warrants the payment of policy limits as the

claimant had serious injuries, legitimate medical expenses of over \$200,000.00, ongoing medical issues, as well as pain and suffering. (Compl. ¶16.)

An insurer fails to make an informed decision based on honesty and diligence when it denies payment of a claim for reasons that are contrary to the clear dictates of Maryland law. Here, Brethren based its denial of [REDACTED] claim on reasons that it knew, or should have known, were inconsistent with Maryland law. For the reason outlined below, it is found that Plaintiff has met her burden of proving an absence of good faith.⁴

- i. *Maryland law prevents Brethren from raising tort defenses against a UM policy holder after consenting to settlement with the tortfeasor.*

One reason that Brethren gives for denying [REDACTED] UM claim is that it had the right to assert various tort defenses against [REDACTED], even though it had consented to [REDACTED] settlement with [REDACTED] GEICO and waived subrogation. Brethren's position is not supported by Maryland law and Brethren is charged with the duty to know the law of Maryland.

Maryland law requires insurance companies to include UM coverage in its policies so that the insured can recover damages for "bodily injuries sustained in a motor vehicle accident" with an uninsured or underinsured motorist. MD. CODE ANN., INS. ART., § 19-509(c)(1). The purpose of UM coverage is to assure financial compensation to victims of motor vehicle accidents who are unable to recover for their injuries from financially irresponsible uninsured motorists. *Wilson v. Nationwide Mut. Ins. Co.*, 395 Md. 524, 531-532 (2006); *State Farm Mut. Auto. Ins. Co. v. Maryland Auto. Ins. Fund*, 277 Md. 602, 605 (1976).

⁴ In reaching the decision in this case, it was not necessary to consider any of Plaintiff's arguments regarding statements allegedly made during mediation. Therefore, it was not necessary to reach the issue raised by Brethren that Plaintiff breached the mediation agreement entered into by the parties.

Maryland's UM statute is designed to expedite and simplify recovery by persons injured by a UM motorist. The statute is to be liberally construed to effectuate its purpose, which is to compensate injured victims of UM motorists. *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Gartelman*, 288 Md. 151, 156 (1980). Maryland courts have consistently struck down various attempts by insurers to limit their duty to policy holders under the UM statute. The Court of Appeals has said,

This Court has consistently rejected attempts...to circumvent the plain language of the required coverage provisions of the statutes dealing with automobile insurance. *Yarmuth v. Gov't Employees Ins. Co.*, 286 Md. 256, 407 A.2d 315 (1979); *Reese v. State Farm Mut. Auto. Ins.*, 285 Md. 548, 403 A.2d 1229 (1979); *State Farm Mut. v. Ins. Comm'r*, 283 Md. 663, 670-674, 392 A.2d 1114 (1978); *Government Employees Ins. v. Harvey*, 278 Md. 548, 366 A.2d 13 (1976); *Travelers Ins. Co. v. Benton*, 278 Md. 542, 365 A.2d 1000 (1976); *State Farm v. Md. Auto Ins. Fund*, 277 Md. 602, 356 A.2d 560 (1976); *Maryland Auto Ins. Fund v. Stith*, 277 Md. 595, 356 A.2d 272 (1976)...[C]onditions or limitations in an uninsured motorist endorsement, which provide less than the coverage required by the statute, are void. This uniformly recognized principle was well-stated by a Kansas Court as follows: "(A)ny provisions of the insurance policy which purport to condition, limit or dilute the unqualified uninsured motorist coverage mandated by the statute are void and unenforceable." *Barnett v. Crosby*, 5 Kan.App.2d 98, 612 P.2d 1250, 1252 (1980).

Nationwide Mut. Ins. Co. v. Webb, 291 Md. 721, 730 (1981)(consent to sue clause in UM policy in UM policy was void); *Langston v. Allstate Ins. Co.*, 40 Md. App. 414, 432 (1978) (arbitration clauses in policy prohibited).

Additionally, Maryland courts have been clear that a UM insurer is bound by the judgment or settlement of a tort action between the tortfeasor and the UM policy holder. *Waters v. U.S. Fidelity & Guar. Co.*, 328 Md. 700, 717-718 (1992); *Nationwide Mutual Ins. v. Webb*, 291 Md. 721, 732-739 (1981). Following this line of case, in 2007 the Court of Appeals specifically held that an insurer who consents to settlement with the tortfeasor cannot thereafter contest the issue of liability in the breach of contract action. *Maurer v. Pennsylvania Mut. Cas. Ins. Co.*, 404 Md. 60,

73 (2007). This rule protects UM policy holders from being unable to collect on their UM policy after they have settled with an underinsured motorist, with the consent of their own carrier. The UM insurer is able to protect itself by refusing to consent to settlement and refusing to waive subrogation against the alleged tortfeasor. However, once consent has been given by the UM carrier and settlement has been entered into, the UM carrier cannot resurrect tort defenses that it could have exerted in a trial on liability. *Id.* at 73. (“Maryland law is clear that an uninsured/underinsured motorist carrier, which consents to the settlement of its insured's tort claim against an uninsured/underinsured tortfeasor, is bound by the settlement. The uninsured/ underinsured carrier cannot thereafter contest tort liability and, under some circumstances, the amount of damages.”)

Although during the claims process Brethren maintained that *Maurer* is not controlling, it does not attempt to distinguish *Maurer* from the instant case. Rather, in its response Brethren argues that *Maurer* was decided after the settlement was entered into between [REDACTED] and [REDACTED] GEICO and that there have been bills introduced in the Maryland legislature “to overrule the ‘waiver’ aspect of *Maurer* legislatively, so that Brethren needs to assert and maintain those defenses in order to preserve them...” (Brethren Resp. ¶ 4, fn. 4.)

While it is true that *Maurer* was decided after the settlement, it was the natural extension of a long line of cases that have consistently found that an insurer with notice of a tort action against an uninsured motorist and with ample opportunity to intervene is bound by the result of that judgment. *Nationwide Mut. Ins. Co. v. Webb*, 291 Md. 721, 737-738 (1981); *Zelinski v. Townsend*, 163 Md.App. 211, 219 (2005) *rev'd on other grounds*, *Harleysville Mut. Ins. Co. v. Zelinski*, 393 Md. 83 (2006). But even if *Maurer* changed the law, once it was decided Brethren had the duty to follow the law as articulated by the Court of Appeals regardless of whether or not bills were

introduced in the Maryland General Assembly. Failure to follow the law, once *Maurer* was decided, was a failure to act honestly and diligently.

- ii. *A tortfeasor release executed pursuant to § 19-511 preserves an injured person's rights against the uninsured motorist insurer.*

Brethren makes the argument that the release that [REDACTED] executed when she settled with [REDACTED] and GEICO extended to Brethren as well. (Brethren Resp. ¶¶ 4-10.) It is Brethren's position that the phrase in the release stating that it was a "release in full of all claims" as to "all other persons, firms or corporations" must be read to release Brethren from its obligation under its UM policy with [REDACTED] (Brethren Resp. ¶ 20.) This position is inconsistent with the plain language of § 19-511(e).

Section 19-511 provides that, before accepting a settlement offer from a tortfeasor, an injured person must first secure the permission of the UM insurer. Section 19-511(a) and (b). If authorized to accept a tortfeasor's settlement, the injured party may, "execute releases in favor of the liability insurer and its insured *without prejudice to any claim the injured person may have against the uninsured motorist insurer.*" Section 19-511(e). (Emphasis added.)

Here, the release was executed within this clear statutory framework, which defines the permissible scope of a release when UM insurance is involved. Brethren cites a number of Cases to support its position that the release must be read to release Brethren. (Brethren Resp. ¶¶ 16-18.) However, none of the cases cited involve releases executed pursuant to the statutory requirements of § 19-511 and they are, therefore, inapposite.

Section 19-511 governs UM settlement procedures and must be read within the context of Maryland's strong public policy favoring compensation of those injured by UM drivers. *Forbes v.*

Harleysville Mut. Ins. Co., 322 Md. 689, 697 (1991). Section 19-511(e) dictates that a release in a UM case cannot prejudice any claim that the injured person may have against the UM insurer. Therefore, the release in the instant case, like provision of an insurance policy, must be viewed as having been drafted and signed consistently with the enabling statute. See, *Parsons v. Erie Ins. Group*, 569 F. Supp 572, 579 (D. Md. 1983) (provision of policy that conflicts with requirements of UM statute is invalid); *Forbes v. Harleysville Mut. Ins. Co.* 322 Md. 689, 698 (1991) (policy limitations on coverage or exclusions inconsistent with purpose of UM statutory provisions, are unenforceable); *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Gartelman*, 288 Md. 151, 156 (1980).

In fact, Brethren concedes that the release was executed “[a]s per the terms of § 19-511(e).” (Brethren Resp. ¶ 20.) The record clearly indicates that all parties, including Brethren, intended that the release be limited to claims between [REDACTED] and [REDACTED]/GEICO. The release document, its attached hold harmless agreement, and the correspondence between the parties reference a release only as to [REDACTED] and [REDACTED]/GEICO. (Compl. Exs. 17, 18, 19, 21). Additionally, Brethren’s initial denial of [REDACTED] UM claim on July 2, 2008 did not mention the release, but cited a tort defense as the reason for the denial of the claim. (Compl. Ex. 22.)

Brethren is responsible for knowing and abiding by the provisions of the Insurance Article, including § 19-511(e). To take a position that is so clearly at odds with the plain terms of the statute rises to the level of absence of good faith.

C. Calculation of Interest and Attorneys Fees

Plaintiff asserts \$200,000.00 in actual damages and \$66,666.00 in attorney’s fees. (Compl. ¶¶ 44-45.) The request for \$66,666.00 in attorney’s fees represents one third of demanded actual damages. However, § 27-1001 does not provide an automatic award of attorney’s fees at a rate of

one third of the award. Section 27-1001(e)(2)(ii) allows the award of “expenses and litigation costs incurred by the insured, including attorney’s fees, in pursuing recovery under this subtitle.”

(Hereinafter “costs and fees.”) Section 27-1001(e)(4) provides that “[t]he amount of the attorney’s fees determined to be payable to an insured under paragraph (2) of this subsection *may not exceed* one-third of the actual damages payable to the insured.” (Emphasis added.)

Plaintiff has failed to demonstrate that the requested attorney’s fees were incurred and that they were incurred in pursuit of a § 27-1001 action. An award is limited to those fees and costs incurred pursuing recovery under § 27-1001, i.e. the preparation and filing of the § 27-1001 complaint and related consultation and review. Therefore, it is left to the undersigned to determine a fee award. In light of the nature of the case, the legal issues involved, and Plaintiff’s thorough filing submitted to the MIA, it is concluded that a reasonable fee and cost award, under § 27-1001 in this case is \$25,000.00.

Plaintiff is entitled to interest on all actual damages incurred by the insured, computed at the rate of 10% per annum as provided in § 11-107(a) of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. Section 27-1001(e)(2)(i). Interest is calculated “from the date on which the insured’s claim should have been paid.” Section 27-1001(e)(2)(i). Plaintiff asks that the calculation of interest should begin on July 2, 2007, “when Plaintiff’s claim would have been paid, had the Defendant acted in good faith.” (Compl. ¶ 46.) The complaint references the date of July 2, 2007, which is clearly a typographical error as Brethren refused to pay [REDACTED] claim by letter dated July 2, 2008. (Compl., Ex. 22.)

Plaintiff's claim should have been paid on July 2, 2008 and interest on Plaintiff's actual damages of \$200,000.00 will be calculated from that date. At the rate of 10% per annum, Brethren must pay Plaintiff interest on Plaintiff's actual damages in the amount of \$20,000.00.

Additionally, Plaintiff is entitled to interest on all, "expenses and litigation costs incurred by the insured computed at the rate allowed under § 11-107(a) of the Court Article; and from the applicable date or dates on which the insured's expenses and costs were incurred." Section 27-1001(e)(2)(ii).2. It is found that the applicable date on which the insured's expenses and litigations costs for this § 27-1001 action were incurred is January 1, 2009. (*See* Compl. ¶¶ 32-35.) This date takes into sufficient account the amount of time needed to contemplate and prepare the § 27-1001 filing made on April 1, 2009. At the rate of 10% per annum, Brethren must pay Plaintiff interest on Plaintiff's expenses and litigation costs in the amount of \$1,250.00, representing six (6) months of interest computed at 10% per annum on \$25,000.00.

V. CONCLUSIONS OF LAW

1. Brethren is obligated under automobile insurance policy number PAA0036183 to cover Plaintiff's first-party claim as a result of the accident on March 18, 2007;
2. Plaintiff is entitled to receive a benefit from the insurer under policy number PAA0036183 on the underlying first-party claim in the amount of \$200,000.00;
3. Brethren breached its obligation under policy PAA0036183 to cover and pay the underlying covered first-party claim;
4. Brethren breached its obligation to act in good faith; and
5. Plaintiff is entitled to expenses, litigation costs, and attorney's fees in the amount of \$25,000.00 and total interest in the amount of \$21,250.00.
6. The total amount of Plaintiff's award is \$246,250.00.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is **ORDERED** on this 30th day of June, 2009 that:

1. The Brethren Mutual Insurance Company violated § 27-1001 of the Maryland Insurance Article of the Annotated Code of Maryland Code;
2. The Brethren Mutual Insurance Company must pay [REDACTED] \$200,000.00 in actual damages; and
3. The Brethren Mutual Insurance Company must pay [REDACTED] expenses, litigation costs and attorney's fees in the amount of \$25,000.00 and interest in the amount of \$21,500.00 for a total award of \$246,250.00.

RALPH S. TYLER
Commissioner

Signature on file with original

KAREN STAKEM HORNIG
Associate 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.