

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 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 § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a 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. *See* Md. Code Ann., State Gov’t § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physician v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On September 14, 2022, the Administration received Complaint No. 27-1001-22-00064 (the “Complaint”) stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiff alleges that Defendant breached its obligations under the Policy by failing to pay the full amount of insurance benefits required under Policy. Specifically, Plaintiff contends that Defendant failed to conduct an adequate investigation of the Claim and arbitrarily refused to consider the severity of the Plaintiff’s injuries. Further, Plaintiff asserts that Defendant failed to act in good faith by declining to complete a fair and honest evaluation of the Plaintiff’s Claim.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on September 22, 2022. With consent of Plaintiff’s attorney, Defendant’s deadline to file its response to the Complaint was extended for one day until October 25, 2022. On October 25, 2022, Defendant filed a response to the Complaint and accompanying documents as required by §27-1001(d)(4). The Parties then consented to an extension of the deadline to issue a decision in this matter until January 4, 2023.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the Parties, the Administration finds that Plaintiff has not established by a preponderance of the evidence that she is entitled to additional coverage for the Claim under the Policy or that Defendant failed to act in good faith in its handling of the Claim.

On April 14, 2021, at approximately 5:48 P.M., Plaintiff was driving a 2016 Honda Pilot on Sewell Orchard Drive near the intersection of Summercrest Drive in Columbia, Maryland, when another vehicle operated by D.G. failed to stop at the traffic sign and struck Plaintiff’s

vehicle. Plaintiff's vehicle was turned on its side and the vehicle's air bags deployed as a result of the collision ("Accident").

At the time of the Accident, Plaintiff maintained an automobile insurance policy, policy numbered 928519571 ("Policy"), issued by Defendant which provided Uninsured/Underinsured (UM/UIM) coverage with policy limits of \$50,000.00 per person/\$100,000.00 per accident, subject to a \$250 deductible. The Policy also provided Personal Injury Protection (PIP) coverage in the amount of \$2,500.00 per person. D.G. was covered by an automobile insurance policy issued by Erie Insurance Exchange ("Erie Insurance").

On the date of the Accident, Plaintiff was transported to the emergency department of Howard County General Hospital and complained of pain to her neck, left shoulder, and a headache. Plaintiff was treated and examined in the emergency department including a CT scan to her head and cervical spine, and x-ray scans to her thorax, chest and left hand. Plaintiff was diagnosed with a closed head injury without loss of consciousness, neck muscle strain, back strain, contusion to her left hand, and contusion to her left chest wall. On April 14, 2021, Plaintiff was released from the emergency department with instructions to follow-up with her primary care physician and an orthopedist. Plaintiff received a note from her treating physician in the emergency room indicating that she could return to work on April 19, 2021.

On April 20, 2021, Plaintiff was treated at Righttime Medical Care/MedStar Health Urgent Care complaining of dull constant frontal and temporal headaches with intermittent dizziness, fogginess and excessive emotional feelings. Plaintiff was diagnosed with a concussion, without loss of consciousness. Plaintiff was directed to return to the emergency department if her symptoms worsened. Plaintiff also received a note from her treating physician indicating that she could return to work on April 28, 2021.

On or about April 20, 2021, Plaintiff was treated by Melissa Conti, P.A. of Lifebridge Medical Associates, LLC for a dull headache, body pain, lower back, upper back, left hip pain, and pain to her left thumb. Plaintiff was examined and diagnosed with a concussion, left thumb swelling and contusion, pain in her left hand joints, back and neck pain. Plaintiff was also referred to physical therapy for difficulty turning her neck and low back pain. Plaintiff also received a note on that date indicating that it was safe for Plaintiff to return to her normal activities. Plaintiff returned and received follow-up care on June 2, 2021 and August 12, 2021 for treatment following the Accident.

On April 21, 2021, Plaintiff received an initial physical therapy examination from Revive Physical Therapy. As part of her treatment plan, Plaintiff's short term goal was to decrease pain by 25% for her activities of daily living. Plaintiff's long term goals were to complete job duties without increased pain, drive and turn head without pain, and the ability to walk community distances without increased pain. Plaintiff's treatment plan included the following therapy occurring two to three times per week; therapeutic exercises, therapeutic activity, neuromuscular rehabilitation, manual therapy, patient education and self-care. Plaintiff's treatment plan also included the following modalities; electrical stimulation, cryotherapy, and hot packs. Plaintiff continued treatment with Revive Physical Therapy from April 21, 2021 through September 1, 2021.

On April 21, 2021, Plaintiff's attorney reported the Accident to Defendant. Plaintiff also contacted Defendant directly to provide the details concerning the Accident. Thereafter, on April 21, 2021, a PIP claim was opened. Lastly, on April 21, 2021, Defendant contacted Erie Insurance and was advised that the company accepted liability on behalf of its insured, D.G.

By letter dated April 22, 2021, Marisol Wilkinson (“Adjuster Wilkinson”) provided Plaintiff’s attorney with a PIP application and requested that Plaintiff sign medical and wage authorizations. Adjuster Wilkinson also requested specific information, including diagnosis and procedure codes, itemized charges for procedure codes, medical records, provider name, and a detailed description for unspecified procedure codes, to allow faster claim review and processing.

On April 22, 2021, Plaintiff was treated by Dr. Brian Janz of the Centers for Advanced Orthopedics for pain to her thumb. An examination and x-ray of the Plaintiff’s left hand was taken. Plaintiff was treated with a thumb spica brace, medication to treat pain, and ice to treat swelling.

On April 28, 2021, Plaintiff received virtual treatment from Mary Spare, NP-C, of Righttime Medical Care for headaches, nausea, fatigue, dizziness, sensitivity to light, difficulty concentrating, mental foginess, trouble falling asleep, feeling more emotional, and drowsiness. Plaintiff was diagnosed with a concussion, without loss of consciousness. Plaintiff was directed to follow protocols associated with “Brain Rest,” including high protein snacks every few hours, hydration, eight to nine hours of sleep, light physical activity, rest breaks, and limited screen time. Plaintiff’s attorney later sent to correspondence to Erie Insurance stating that Plaintiff also received virtual follow-up care on May 12, 2021, June 9, 2021 and July 2, 2021 for similar symptoms.

On May 7, 2021, Plaintiff was again treated by Dr. Brian Janz of the Centers for Advanced Orthopedics, and complained of continued dull and aching pain to her left hand. Based on the examination performed by Dr. Janz of Plaintiff’s left hand, there was normal

alignment, no deformity, no tenderness, no warmth, and no masses. Dr. Janz noted the following observations based on his examination of Plaintiff,

The patient has a history of thumb pain involving the left side from the accident. Within a reasonable degree of medical certainty, I can relate the patient's pain and discomfort to her accident which occurred in April 2021. At this point she is doing well enough that she can be placed at maximal medical improvement but she does have some waxing and waning discomfort involving the thumb. She may require treatment in the future depending if she has exacerbations of her pain. At this point, will put her at maximal medical improvement and she has no restrictions.

....

Plaintiff later returned to Dr. Janz for follow-up care on August 2, 2021, at which time, Plaintiff had reached maximum medical improvement and was discharged from care.

On May 28, 2021, Defendant received Plaintiff's completed PIP application from Plaintiff's attorney. (AS097-AS101). By June 9, 2021, Adjuster Wilkinson notified Plaintiff's attorney that Defendant had already paid \$2,003.96 for PIP coverage.

On June 10, 2021, Plaintiff's attorney informed Adjuster Wilkinson that Plaintiff was still receiving medical treatment for her injuries resulting from the Accident and on June 11, 2021, Adjuster Wilkinson notified Plaintiff's attorney that the PIP coverage limit was \$2,500.00. On July 19, 2021, Adjuster Wilkinson notified Plaintiff's attorney that the PIP coverage was exhausted. A payment ledger was sent on July 21, 2021.

Six months later, on January 12, 2022, Plaintiff's attorney requested the UM policy limit and another copy of the PIP payment ledger. Adjuster Wilkinson responded by email on the same date and provided another copy of the ledger of payments.

On January 13, 2022, Plaintiff's attorney sent a letter to Erie Insurance. Plaintiff's attorney demanded D.G.'s liability policy limit, in light of Plaintiff's injuries, pain, aggravation,

and suffering as a result of D.G.'s negligence. This amount included \$11,735.86 for medical costs and \$16,043.41 for lost wages.

Approximately eight months later, on August 2, 2022, Kelly Morris, a claims adjuster employed by Defendant, ("Adjuster Morris") contacted Plaintiff's attorney to request the status of Plaintiff's liability claim with Erie Insurance. Plaintiff's attorney responded on the same day indicating that Erie Insurance tendered the liability policy limit, in the amount of \$50,000. Plaintiff's attorney then forwarded the demand package and supporting documents to Adjuster Morris with supporting documents. On August 3, 2022, Adjuster Morris acknowledged receipt of the correspondence from Plaintiff's attorney.

On August 16, 2022, Adjuster Morris sent a letter to Plaintiff's attorney stating that Plaintiff had been fully compensated by the settlement with Erie Insurance. Specifically, Adjuster Morris stated,

Please let this letter serve as confirmation that we have evaluated [Plaintiff's] underinsured motorist bodily injury claim. We feel she was fully compensated by her settlement with the tort carrier of \$50,000. Therefore, we have this claim evaluated at \$0 for the underinsured motorist. If you have any questions or wish to discuss further, please let me know.

....

In response, Plaintiff's attorney contacted Adjuster Morris by email requesting clarification as to why Defendant denied to make a settlement offer. Specifically, Adjuster Morris stated,

As you are aware from the pictures she was hit so hard her car flipped over onto the drivers side. She had to be assisted out of her vehicle through the rear hatch door and was taken by ambulance to the hospital. Her diagnoses included a closed head injury at the hospital. She was treated for the head injury as well as physical injuries through August of 2021 and was discharged with continuing pain. With the nature of the collision and the treatment course she went through I find your position to be difficult to understand.

....

On August 17, 2022, Adjuster Morris notified Plaintiff's attorney that Allstate drafted a formal letter waiving its subrogation rights. Moreover, Adjuster Morris explained that Plaintiff was treated for less than five months, made progress with treatment, and was then discharged. Additionally, Plaintiffs' treatment records indicate that she was able to engage in physical activity after the accident including jogging, lacrosse, and gardening. Plaintiff's attorney responded to Adjuster Morris on the same date indicating that the discharge reports from "the Centers for Advanced Orthopedics and HealthMark note improvements but continued complaints." The following day, on August 18, 2022, Adjuster Morris responded to Plaintiff's attorney by email indicating that Plaintiff's treatment records suggest minimal pain levels and that Plaintiff was generally feeling better at the end of five months of treatment. Additionally, Adjuster Morris noted that Plaintiff had not received further treatment for almost a year. As a result, Adjuster Morris valued Plaintiff's UIM Claim at \$0.

On September 14, 2022, the Administration received the Complaint stating a cause of action in accordance with § 27-1001.

IV. DISCUSSION

Plaintiff asserts that Defendant breached its duty owed to the Plaintiff, by failing to consider the severity of Plaintiff's injuries, which arbitrarily and directly conflicts with the medical evidence in this case. Further, Plaintiff asserts that Defendant failed to act in good faith in its valuation of the Claim. Plaintiff asserts that she is entitled to an additional \$50,000, as the policy limit for the UIM Claim, as Erie Insurance paid \$50,000 to the Plaintiff in satisfaction of the liability claim.

I find that Plaintiff did not prove that she is entitled to receive any additional payment under the UIM coverage of the Policy, as Plaintiff has produced insufficient evidence in support of her demand for an additional \$50,000 to satisfy the Claim. While the evidence clearly demonstrates that Plaintiff was involved in a severe Accident, which caused the airbags of Plaintiff's vehicle to deploy and Plaintiff's vehicle was turned on its side, Plaintiff's medical records reflect that Plaintiff was successfully treated with improved symptoms through the end of September 2021 and has not received medical treatment since that time.

As an initial matter, on the date of the Accident, Plaintiff was transported to the emergency department of Howard County General Hospital and complained of pain to her neck, left shoulder, and a headache. Plaintiff was treated and released from the emergency department on the date of the Accident, with instructions to follow-up with her primary care physician and an orthopedist. Plaintiff also received a note from her treating physician in the emergency room indicating that she could return to work on April 19, 2021.

Approximately one week after the Accident, on April 20, 2021, Plaintiff was treated at Righttime Medical Care/MedStar Health Urgent Care complaining of dull constant frontal and temporal headaches with intermittent dizziness, and foginess. Plaintiff was diagnosed with a concussion, without loss of consciousness. At that time, Plaintiff was directed to return to the emergency department if her symptoms worsened. Plaintiff also received a note from her treating physician indicating that she could return to work on April 28, 2021.

Also on April 20, 2021, Plaintiff was treated by Melissa Conti, P.A. of Lifebridge Medical Associates, LLC for dull headache, body pain, lower back, upper back, left hip pain, and pain to her left thumb. Based on Dr. Conti's examination, Plaintiff was referred to physical

therapy for difficulty turning her neck and low back pain. Dr. Conti also prepared a note indicating that it was safe for Plaintiff to return to her normal activities.

The following day, on April 21, 2021, Plaintiff began receiving physical therapy from Revive Physical Therapy, where Plaintiff continued treatment until September 1, 2021, with no further medical treatment occurring after that time.

On April 22, 2021, Plaintiff began treatment with Dr. Brian Janz of the Centers for Advanced Orthopedics for pain to her thumb. Based on an examination conducted on May 7, 2021, Dr. Janz found that Plaintiff's left hand showed normal alignment, no deformity, no tenderness, no warmth, and no masses. Dr. Janz also noted that "At this point she is doing well enough that she can be placed at maximal medical improvement but she does have some waxing and waning discomfort involving the thumb. She may require treatment in the future depending if she has exacerbations of her pain. At this point will put her at maximal medical improvement and she has no restrictions." Plaintiff was discharged from care on August 2, 2021, and there are no records indicating further treatment.

Plaintiff also received virtual treatment beginning on April 28, 2021, from Mary Spare, NP-C, of Righttime Medical Care for headaches, nausea, fatigue, dizziness, sensitivity to light, difficulty concentrating, mental foggy, trouble falling asleep, feeling more emotional, and drowsiness. At that time, Plaintiff was diagnosed with a concussion, without loss of consciousness. Plaintiff received virtual follow-up care on May 12, 2021, June 9, 2021 and July 2, 2021 for similar symptoms, but the evidence does not indicate that Plaintiff received any further treatment since that time.

On January 17, 2022, Plaintiff's attorney sent a letter to Defendant providing an itemized list of medical expenses incurred by the Plaintiff in the amount of \$8,615.00. Plaintiff has not submitted evidence in this case demonstrating medical treatment after September, 2021.

Plaintiff has not satisfied her burden of demonstrating that Defendant breached its obligations under the Policy. While Plaintiff asserts that Defendant failed to evaluate the Claim in good faith, the evidence demonstrates that Adjuster Wilkinson responded promptly to Plaintiff's UIM Claim. Additionally, on August 16, 2022 and August 18, 2022, Adjuster Morris responded to Plaintiff's attorney's request for further clarification and provided the specific reasons supporting Defendant's determination that Plaintiff had been fully compensated for her injuries resulting from the Accident. While Plaintiff asserts that Defendant acted arbitrarily, the evidence in this case demonstrates that Defendant provided specific examples from Plaintiff's medical records to support its determination and the dispute between the Parties is based solely on Defendant's valuation of the Claim.

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 § 27-1001, the Administration concludes:

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover her UIM Claim.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the Policy.
3. Plaintiff did not establish by a preponderance of the evidence that she 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. Since Plaintiff did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address special damages.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration's Decision on this 4th day of January, 2023, that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

This Decision shall take effect as a Final Decision if no administrative hearing is requested in accordance with § 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

ERICA J. BAILEY
Associate Commissioner, Hearings

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, or to appeal the decision to the Circuit Court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. § 27-1001(f) and (g) (2017 Repl. Vol.).