

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

M.J.¹

*

*

Plaintiff,

*

v.

*

Case No. 27-1001-23-00033

**PROGRESSIVE INSURANCE
COMPANY**

*

*

&

*

GEICO

*

Defendants

*

*

* * * * *

DECISION AND ORDER

M. J. (“Plaintiff”) filed a complaint (the “Complaint”) with the Maryland Insurance Administration (the “Administration”) alleging that Progressive Insurance Company (“Progressive”) and GEICO failed to indemnify Plaintiff for injuries sustained after a car accident in Prince George’s County, MD with M.H. (a third party driver). Plaintiff purports to have filed the Complaint under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

For the reasons set forth below, the Administration concludes that it lacks jurisdiction to decide the Complaint.

¹ The MIA uses initials to protect the privacy of individuals.

I. STANDARD OF REVIEW

Section 27-1001 requires (d) (2) states:

The complaint shall:

- (i) be accompanied by each document that the insured has submitted to the insurer for proof of loss
- (ii) specify the applicable insurance coverage and the amount of the claim under the applicable coverage; and
- (iii) state the amount of actual damages, and the claim for expenses and litigation costs described under subsection (e)(2) of this section.

Further, Section 3-1701 of the Courts and Judicial Proceedings Article, 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 breached the insurance contract and failed to act in good faith in denying, in whole or in part, a **first-party property insurance or disability insurance claim**. *Id.* at § 3-1701 (b) and (d).

As a procedural matter, before the insured may seek such special damages in a legal action, the insured must first submit a complaint to the Administration under § 27-1001. The Administration then has ninety (90) days within which to render a decision on the complaint.

The provisions of § 3-1701 and §27-1001 do not apply to claims made by an insured against an insurer regarding the handling of a third-party coverage claim.

II. PROCEDURAL BACKGROUND

On May 23, 2023, the Administration received the Complaint, in which Plaintiff alleges Progressive and GEICO failed to indemnify Plaintiff for Plaintiff's injuries after a car accident with M.H.²

² Given the Administration's conclusion below as to jurisdiction, the Administration did not request a response from Defendants Progressive or GEICO.

III. FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the Complaint and supporting documents submitted by Plaintiff.

1. On September 15, 2022, Plaintiff allegedly sustained injuries during a car accident with a driver who was insured by Progressive.
2. On April 5, 2023, GEICO notified Plaintiff that Plaintiff's Uninsured Motorist (UIM) coverage matched the liability coverage under the M.H.'s automobile policy with Progressive, which was \$50,000, and the UIM claim would be closed.

IV. DISCUSSION

Plaintiff has named GEICO as a party to the claim. Plaintiff has failed to identify what documents, if any, have been submitted to GEICO to show proof of loss or to specify the applicable insurance coverage and the amount of the claim under the applicable coverage as required by Section 27-1001(d)(2)(i) and (ii). Thus, Plaintiff has failed meet the requirements against GEICO for a 27-1001 complaint.

Additionally, Section 3-1701 provides “the statutory claim for failure to act in good faith applies to civil actions in which the insured seeks a determination of whether coverage actually exists under an insurance policy.” *St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 739 (4th Cir. 2016); *citing* Md. Code Ann., Cts. & Jud. Proc § 3-1701 (2020 Repl. Vol.). Section 1701(b) specifically states that it “applies only to **first-party claims** under property and casualty insurance policies or individual disability insurance policies issued, sold, or delivered in the State.” [*Emph. added.*] Clearly and expressly, §§3-1701 and 27-1001 apply only to “**first-party claims under property and casualty insurance policies.**” [*Emph. added.*] *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.),

Liability insurance is “classified as third-party insurance,” 15 Eric Mills Holmes, *Holmes’ Appleman on Insurance* § 111.1(B), at 10 (2d ed. 2000), which “protects the insured against damages which he may be liable to pay to third parties arising out of the insured’s conduct.” (*Id.*) Liability insurance is customarily referred to as third-party insurance because “the liability insurer’s duty to pay runs not directly to the insured but directly (on the insured’s behalf) to a third-party claimant who is injured by the insured’s conduct.” *Id.* at § 111.1(C) at 25 (2d ed. 2000).

In the instant case, Plaintiff asserts a direct action against Progressive as the insurance company for M.H. and seeks \$450,000.00 in compensatory damages for pain, suffering and mental anguish arising from a car accident. Maryland law does not permit the Plaintiff to proceed by filing a direct action against a liability insurer for the purpose of resolving the Plaintiff’s negligence claims against an insured. Harford Mut. Ins. Co. v. Woodfin Equities Corp., 344 Md. 399, 412, 687 A.2d 652 (1997).

Section 3-1701 does not apply to civil actions to determine coverage for third-party liability claims; therefore, section 27-1001 does not vest the Administration with jurisdiction to review an insurer’s coverage decisions regarding such third-party liability claims.

V. CONCLUSIONS OF LAW

First, Plaintiff has failed to demonstrate what, if any, documents have been submitted to GEICO for proof of loss or to specify the applicable coverage against GEICO to support a claim against it as Plaintiff’s carrier.

Second, as the Complaint involves third-party liability coverage against Progressive rather than first-party property and casualty coverage, it does not assert a claim that falls

within the scope of §3-1701 of the Courts and Judicial Proceedings Article and § 27-1001 of the Insurance Article, and thus is not within the Administration's jurisdiction.

ORDER

Based upon the foregoing findings and conclusions, it is the Administration's Decision and Order on this 4th day of August 2023, that it is hereby:

ORDERED that the Complaint is DISMISSED; and it is further

ORDERED that pursuant to § 27-1001(f)(3), this Decision and Order shall take effect as a Final Order if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

KATHLEEN A BIRRANE
Insurance Commissioner

signature on original

TAMMY R. J. LONGAN
Deputy Commissioner- Office of 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.).