

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

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

Complainant

v.

Case No. MIA 2022-07-031

ARCH INSURANCE COMPANY,

Licensee.

* * * * *

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 Arch Insurance Company (“Licensee”) did not commit an unfair claim settlement practice in violation of § 27-303 or refuse or delay payment of amounts due without just cause in violation of § 4-113 in its denial of J.A.’s (“Complainant”) travel insurance claim.

STATEMENT OF THE CASE

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (“MIA”) and received on April 5, 2022. (MIA Exhibit (“Ex.”) 1.) In his Complaint to the MIA, Complainant alleged that Licensee erred in the denial of Complainant travel insurance claim. (MIA Ex. 1.) After investigating the Complaint, the MIA’s Property and Casualty Complaints Unit determined that Licensee had not violated the

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.

Insurance Article, and notified the Parties of its findings by letter dated July 12, 2022. (MIA Ex. 9.) The determination letter gave the Parties the right to request a hearing. (*Id.*) The Complainant disagreed with the MIA's determination and timely requested a hearing, which was granted on July 21, 2022. (MIA Ex. 10.)

ISSUE

The issue presented in this case is whether Licensee violated the Insurance Article in its denial of Complainant's travel insurance claim.

SUMMARY OF THE EVIDENCE

A. Testimony

A virtual hearing was held on November 1, 2022. Complainant provided sworn testimony on his own behalf. Licensee was represented by Craig Roswell, Esquire, of Niles, Barton & Wilmer, LLP. Darnell Phillips, Esq., Vice President, Travel & Accident Claims, Arch Insurance Group, provided sworn testimony for Licensee.

B. Exhibits

*MIA Exhibits*³ (*In Record*)

1. Complaint from Complainant to MIA, received April 5, 2022
2. Correspondence from MIA to Licensee, dated April 5, 2022
3. Correspondence from Complainant to MIA, dated April 13, 2022
4. Correspondence from Licensee to MIA, received April 26, 2022
5. Correspondence from MIA to Licensee, dated May 3, 2022
6. Correspondence from Licensee to MIA, received May 6, 2022

³ At the start of the Hearing, the Parties stipulated to the admission of all of the MIA exhibits. Following the Hearing, the Undersigned became aware of two recordings - a phone call between Complainant and representative on behalf of Licensee and a phone call hang up - that were not previously sent to the Parties. The recordings were provided to the Parties, by email, on November 18, 2022. At that time, the Parties were advised that the hearing would remain open until December 6, 2022, to afford both Parties an opportunity to listen to the recordings and to raise any objections to including the recordings in the record of evidence in this matter. To the extent that either of the Parties had any objections to the recordings becoming part of the evidence, they were directed to notify the Clerk for the Office of Hearings by December 6, 2022. Neither Complainant nor the Licensee, objected to the recordings by the deadline provided.

7. Correspondence from Complainant to MIA, dated May 31, 2022
8. Correspondence between the MIA to Complainant, dated May 31, 2022 through June 27, 2022
9. Determination letter from the MIA to Complainant and Licensee, dated July 12, 2022
- 9a. Hearing Request from Complainant to MIA, dated July 19, 2022
10. Letter Granting Hearing Request from MIA to Parties, dated July 21, 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 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 exclude, and do not exclude, reliance on the entire record.

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. In 2019, Complainant purchased a hunting trip to Nicaragua through Trek International Safaris, which was scheduled to take place from November 30, 2021 through December 4, 2021. (MIA Ex. 6.)

3. Complainant learned of the travel insurance plans offered by Licensee, due to a brochure from Trek International Safaris. (Transcript (“Tr.”) at 14; MIA Ex. 1.) The lower right hand corner of the brochure provided a web address to “[v]iew a full description of coverage online ...” (MIA Ex. 1.)

4. On November 4, 2021, Complainant purchased a travel insurance policy (“Policy”) for the hunting trip. (MIA Ex. 6.) The Policy was underwritten by Licensee, and

disseminated by Trek International Safaris, with an effective date of coverage beginning on November 5, 2021. (*Id.*) Complainant testified at the Hearing that he did not visit the web address to view the Policy online before or after he purchased the Policy. (Tr. at 19.)

5. The Policy provides in pertinent part the following coverage:

We will reimburse You, up to the Maximum Benefit Amount shown in the Schedule of Benefits, for the amount of the unused non-refundable prepaid Payments or Deposits for the Travel Arrangements You purchased for Your Trip, when You cancel Your Trip prior to departure for a covered Unforeseen reason. Trip Cancellation must be due to one of the following Unforeseen reasons:

...

3. for Other Covered Events, as defined; provided any such covered Unforeseen reason occur while coverage is in effect for You.

...

“Other Covered Events” means:

...

m. the US State Department issues a defer travel recommendation or travel warning for Your destination after Your Effective Date of coverage;

...

Trip Cancellation:

Coverage begins at 12:01 a.m. at Your location on the day after the date the required premium for this Certificate to cover Your Trip is received Trek International Safaris. This is Your “Effective Date” and time for Trip Cancellation.

....

(MIA Ex. 4.)

6. Prior to the effective date of the Policy, the State Department listed Nicaragua with a level 4 travel warning. (MIA Ex. 4 and 6.)

7. On February 17, 2022, Complainant filed a claim in the amount \$5,305.59 for lost costs (“Claim”) with Licensee under the Trip Cancellation coverage of the Policy. (MIA Ex. 1 and 4.) Complainant claimed the following expenses – \$382.60 for airfare, \$4,599.00 for tour expenses, \$148.99 for local transportation expenses, and \$175 for other expenses. (*Id.*)

Complainant also provided the following reasons for cancellation in the form:

“Airline mess up, at MIA and said my name was not on the list for Nicaragua and had Covid requirements, passport in order with tickets. The airline had changed my flight without my knowledge or notice. I think info was lost with change. Refused boarding.”

(MIA Ex. 4.)

8. Complainant later submitted additional documentation to Licensee pertaining to the Claim, including the trip invoice from Trek International Safaris showing an initial trip deposit in the amount of \$1500 on February 12, 2020, and an invoice showing an additional payment of \$3,099 on November 8, 2021. (MIA Ex. 4.)

9. On March 4, 2022, Licensee denied Complainant’s Claim under the Trip Cancellation provisions of the Policy, on the grounds that denied boarding or airline booking error is not a covered event. (MIA Ex. 1 and 4.) Specifically, Licensee sent an Explanation of Benefits to Complainant by email notifying him that,

Trip Cancellation must be due to one of the following Unforeseen reasons:

...

f. Strike that causes complete cessation of services for at least 24 consecutive hours of the Common Carrier on which You or Your Traveling Companion are scheduled to travel;

g. Inclement Weather that causes complete cessation of services for at least 24 hours of the Common Carrier on which You or Your Traveling Companion are scheduled to travel;

h. mechanical breakdown of the aircraft on which You are scheduled to travel that causes a cancellation or delay or [sic] Your or Your Traveling Companion's flight for at least 24 consecutive hours provided no alternative flights are available;

....

(MIA Ex. 1.)

10. On March 16, 2022, Complainant sent an email to Trek International Safaris stating that he received a full refund for the cost of his airline ticket. (MIA Ex. 4.)

11. Complainant filed a Complaint with the Administration stating that Licensee improperly denied his travel insurance Claim, which was received on April 5, 2022. (MIA Ex. 1.)

12. In his Complaint, Complainant asserted that he did not receive a copy of the policy prior to the trip. (MIA Ex. 1.) Complainant also stated that the Claim should have been covered because he was denied boarding by the airline, he did not receive a copy of the Policy with adequate time to review its terms, and the trip cancellation coverage applies due to the State Department's level 4 travel alert warning against travel to Nicaragua. (MIA Ex. 1.)

13. On July 12, 2022, the Administration's Property and Casualty Complaints Unit issued a determination letter finding that Licensee had not violated Maryland's insurance laws in its denial of the Complainant's Claim. (MIA Ex. 9.)

14. On July 19, 2022, Complainant made a timely request for a hearing, which was granted on July 21, 2022. (MIA Ex. 10.)

DISCUSSION

A. Positions of the Parties.

Complainant contends that Licensee improperly denied the Claim. Specifically, Complainant asserts that his name was not on the passenger list and he was not permitted by the airline to board the plane to Nicaragua. Complainant asserts that his inability to board the plane is a covered occurrence under the Trip Cancellation provision of the Policy. Moreover, Complainant asserts that the Trip Cancellation provision of the Policy covers cancellation due to travel advisories or warnings issued by the United States Department of State. Additionally, Complainant maintains that he never received a copy of the Policy and that he did not have an opportunity to review the Policy prior to accepting its terms. Instead, Complainant contends that he only had the information contained in the brochures disseminated by Trek International Safaris.

Licensee asserts that Complainant had a duty to read the Policy and that the brochures disseminated by Trek International Safaris contained a website address providing a copy of the Policy. Moreover, Licensee contends that the Policy language contains a “cooling off period,” which allows an insured to cancel the Policy within a set period of time. Finally, Licensee contends that the travel advisories or warnings issued by the United States Department of State were in effect well before Complainant purchased the Policy and that Complainant’s Trip Cancellation Claim is not based on a covered occurrence under the Policy.

B. Statutory Framework

In the Notice of Virtual Hearing sent to the parties on September 9, 2022, the parties were notified that specific attention at the Hearing would be directed to Sections 4-113 and 27-303 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[.]

* * * *

(LexisNexis 2022.)

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:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(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[.]

* * * *

(LexisNexis 2022.)

In addition, Section 19-1004 of the Insurance Article provides guidelines for persons offering and selling travel insurance and became effective October 1, 2018. It provides as follows:

Applicability of Title 27 of this article

(a) Except as otherwise provided in this section, a person offering travel insurance to residents of the State is subject to Title 27 of this article.

Unfair trade practice

(b) It is an unfair trade practice under Title 27 of this article for a person to offer or sell a travel insurance policy that could never result in payment of any claim for any insured under the policy.

Document requirements

(c)(1) Documents provided to a consumer before the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

(2) If a travel insurance policy or certificate contains a preexisting condition exclusion, information and an opportunity to learn more about the preexisting condition exclusion shall be provided any time before the time of purchase and in the travel protection plan's fulfillment material.

(3)(i) An insurer shall provide a policyholder or certificate holder at least 10 days after the later of the date of purchase of a travel protection plan or the policyholder's or certificate holder's receipt, either by physical or electronic means, of the travel protection plan's fulfillment material to review and, if desired, cancel the policy or certificate.

(ii) If the policyholder or certificate holder cancels the policy or certificate within the time period under subparagraph (i) of this paragraph, the insurer shall provide the policyholder or certificate holder a full refund of the travel protection plan price unless the insured has started the covered trip or filed a claim under the travel insurance coverage.

(4)(i) The fulfillment material shall disclose whether the travel insurance is primary or secondary to other applicable coverage.

(ii) Travel insurance is not subject to coordination of benefits for health insurance coverage.

(5) Subject to § 10-122 of this article, an action may not be deemed an unfair trade practice in violation of Title 27 of this article or other violation of law if:

(i) travel insurance is marketed directly to a consumer through an insurer's website or by another person through an aggregator site;

(ii) the insurer's website or aggregator site provides an accurate summary or short description of travel insurance coverage; and

(iii) the consumer has access to the full provisions of the travel insurance policy through electronic means.

Negative option, opt out provision, affirmative action to refuse coverage; prohibited

(d) A person offering or selling travel insurance or a travel protection plan may not offer or sell the travel insurance or travel protection plan on an individual or group basis by using a negative option or an opt out provision that requires a consumer to take an affirmative action to refuse coverage, including unchecking a box on an electronic form, when the consumer purchases a trip.

Blanket travel insurance offered with purchase of a trip

(e) It is not an unfair trade practice under Title 27 of this article for a person to include blanket travel insurance with the purchase of a trip if the blanket travel insurance is not marketed as free of charge.

Md. Code Ann., Ins. Art., § 19-1004.

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 (1), (2) or (6), Section 19-1004 or Section 4-113(b)(5) in its denial of Complainant's Claim.

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

The evidence in this case demonstrates that on November 4, 2021, Complainant purchased a travel insurance policy for a hunting trip in Nicaragua, with an effective date of November 5, 2021. (MIA Ex. 4.) Complainant purchased the Policy based on a brochure from Trek International Safaris, the company that sold him the trip, describing insurance benefits available under a travel protection plan insured by Licensee. Therefore, pursuant to §19-1004(a), Licensee is subject to Title 27 of the Insurance Article. While Complainant testified that he purchased the Policy without viewing the Policy language and he never received confirmation or a copy of the Policy, the brochure provides a web address to “[v]iew a full description of coverage online ...” in the lower right hand corner of the brochure. (MIA Ex. 1.) While Complainant asserts that the language in the brochure was insufficient to apprise him of the Policy terms, and he did not otherwise receive a copy after he purchased the Policy, the web address providing the Policy language was stated in the brochure and the Policy language was available on the website. Indeed, this satisfies §19-1004(c)(5)(iii). Upon examination of the Licensee’s policy provisions, and the circumstances surrounding its purchase by Complainant, I find that Licensee has met the requirements of §19-1004. Therefore, the rest of this discussion focuses on §§ 27-303(1), (3), (6) and 4-113(b)(5).

As the basis for the Complainant’s trip cancellation claim, Complainant stated:

“Airline mess up, at MIA and said my name was not on the list for Nicaragua and had Covid requirements, passport in order with tickets. The airline had changed my flight without my knowledge or notice. I think info was lost with change. Refused boarding.”

(MIA Ex. 4.)

While Complainant has repeatedly asserted that he was not on the passenger list, due to an error by the airline, airline error is not a covered basis for trip cancellation coverage under the Policy.

After the Licensee's decision to deny the Claim on March 4, 2022, based on Complainant's Claim submitted on February 17, 2022, Complainant later asserted an alternative basis for the Claim. Specifically, Complainant argues that there was a travel advisory warning of travel to Nicaragua at the time the trip was scheduled. Notwithstanding the fact that Complainant was unaware of the State Department travel warning to Nicaragua, the warning was in effect prior to the effective date of the Policy and is therefore, not an unforeseen circumstance permitting trip cancellation coverage under the Policy.

As the record reflects that denied boarding or an airline booking error is not a covered event, I find that Licensee did not act in an arbitrary or capricious manner in its handling and denial of the Claim, based on all available information, and therefore, did not violate § 27-303(2) of the Insurance Article. I also find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the Claim in violation of § 27-303(1). Specifically, in Licensee's denial of the Claim and explanation of benefits dated March 4, 2022, Licensee advised Complainant that coverage was denied because denied boarding or airline booking error is not a covered event. Licensee also identified and cited to the specific language in the Policy supporting its decision to deny the Claim. As Complainant received notice of the Licensee's decision to deny the Claim and the specific provisions under the Policy supporting Licensee's decision, I find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue. Lastly, Complainant initiated the Claim on February 17, 2022 and Licensee issued a denial letter approximately two weeks later on March 4, 2022. As a result, I find that Licensee did not violate § 27-303(6) of the Insurance Article.

Finally, for the reasons stated above, Licensee did not refuse or delay payment without just cause. In response to the February 17, 2022 Claim submitted by the Complainant, Licensee

notified Complainant of its denial of the Claim on March 4, 2022. Licensee sent an explanation of benefits to Complainant by email, stating that denied boarding or an airline booking error is not a covered event. Licensee also cited to the specific provisions of the Policy supporting its decision to deny the Claim. Accordingly, I find that Licensee did not violate § 4-113(b)(5).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee in this matter was compliant with § 19-1004, has not committed an unfair claim settlement practice in violation of § 27-303, did not delay or deny payment of amounts due without just cause in violation of § 4-113, or otherwise violate the Insurance Article.

FINAL ORDER

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

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

It is so **ORDERED** this 6th day of January, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

ERICA J. BAILEY
Associate Commissioner
Office of Hearings