

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

**MARYLAND INSURANCE
ADMINISTRATION
EX. REL. M.W.¹,**

Complainant

v.

Case No. MIA 2022-11-014

**STATE FARM MUTUAL AUTOMOBILE
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 State Farm Mutual Automobile Insurance Company (“Licensee”) did not violate the Insurance Article in its handling of M.W.’s (“Complainant”) auto insurance claim.

STATEMENT OF THE CASE

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (the “MIA”) on May 26, 2022. (MIA Exhibit (“Ex.”) 1.) Complainant brought his Complaint regarding Licensee’s denial of his auto insurance claim for payment of damages to his vehicle and rental car services following a hit and run accident on May 8, 2022. (*Id.*) Specifically, Complainant argued that he is entitled to payment since he took his car to a Licensee approved collision center for repairs and was told that repairs

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.

could take two months, thus requiring Complainant to pay for an extended use of a rental car. (*Id.*) After investigating the Complaint, the MIA determined that Licensee had not violated the Insurance Article and notified the Parties of its findings by letter dated November 10, 2022 (“Determination”). (MIA Ex. 8.) The Determination included a notice of hearing rights for the Parties. (*Id.*) Complainant disagreed with this determination and filed a timely request for a hearing, which was granted. (MIA Exs. 9, 10.)

ISSUE

The issue presented in this case is whether Licensee violated the Insurance Article in its handling of Complainant’s auto insurance claim.

SUMMARY OF THE EVIDENCE

A. Testimony

An in-person hearing was held on March 23, 2023.

Complainant represented himself and provided sworn testimony on his own behalf.

Licensee was represented by Laura Jacobs, Esquire, with Budow and Noble, P.C. Additionally, Licensee called John Martin (“Claims Specialist Martin”), claims specialist with Licensee, and he provided sworn testimony on Licensee’s behalf.

B. Exhibits

MIA Exhibits³ (In Record)

1. Initial Complaint from Complainant to MIA, dated May 26, 2022
2. Letter from MIA to Licensee regarding Complaint, dated June 2, 2022
3. Response from Licensee to MIA and supporting documents, dated June 10, 2022
4. Letter from MIA to Licensee requesting documents, dated September 29, 2022
5. Response from Licensee and supporting documents, dated October 12, 2022
6. Letter from MIA to Licensee requesting documents, dated October 26, 2022

7. Response from Licensee and supporting documents, dated November 2, 2022
8. Determination letter from MIA to Parties, dated November 10, 2022
9. Request for a hearing from Complainant, dated November 11, 2022
10. Letter granting hearing request from MIA to parties, dated November 15, 2022

Licensee's Exhibits (moved into evidence)

- Licensee's Exhibit 1. Letter to Complainant, dated May 9, 2022
- Licensee's Exhibit 2. Licensee's claims log, dated February 10, 2023
- Licensee's Exhibit 5. Photographs of Complainant's damaged vehicle, undated
- Licensee's Exhibit 8. Claim reassignment letter from Licensee, dated June 7, 2022
- Licensee's Exhibit 9. Examination under oath scheduling letter, dated June 20, 2022
- Licensee's Exhibit 10. Claim status letter from Licensee, dated June 22, 2022
- Licensee's Exhibit 11. Examination under oath nonappearance letter, dated July 22, 2022
- Licensee's Exhibit 12. Letter from Licensee regarding Complainant's noncooperation, dated July 26, 2022
- Licensee's Exhibit 13. Claim status letter from Licensee, dated August 1, 2022
- Licensee's Exhibit 14. Letter from Licensee with copies of communications, dated August, 2, 2022
- Licensee's Exhibit 15. Denial letter from Licensee to Complainant, dated September 16, 2022

FINDINGS OF FACT

These findings of fact are based upon a complete and thorough review of the entire record in this case, including the hearing transcript and all exhibits and documentation provided by the Parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. 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.

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

2. At the time of the accident, Complainant held an auto insurance policy under policy number 443 8787-B23-20A (“Policy”) issued by the Licensee. (MIA Ex. 3, Licensee Exhibit (“Lic. Ex.”).) 1.) This Policy was in effect from April 8, 2022 through August 23, 2022. (*Id.*) The Policy provided as follows regarding insured’s duties:

INSURED’S DUTIES

4. Questioning Under Oath

Under

- a. Liability Coverage, each *insured*;
- b. No-Fault Coverage, Uninsured Motor Vehicle Coverage, or Death, Dismemberment and Loss of Sight Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
- c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other person or organization making claim or seeking payment; must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person’s* or organization’s legal representative, *our* representatives, *any* person or *persons* designated by *us* to record the questions and answers, and no other *person* present.

(Id.)

3. On May 8, 2022, Complainant was involved in an automobile accident. (MIA Ex. 3; Transcript (“Tr.”) at 10, 13.) Complainant claims that his car was struck from behind from an unidentified vehicle that fled the scene of the accident. *(Id.)*

4. On May 9, 2022, Complainant reported the loss to Licensee and a claim was created. (MIA Ex. 3, Lic. Ex. 2.) During the intake of the claim, Complainant told Licensee that he should submit receipts for any rental car services. *(Id.)* Licensee also sent Complainant a letter confirming he reported the loss. (Lic. Ex. 3.)

5. On May 12, 2022, Complainant called Licensee to give an update on the vehicle damage. (MIA Ex. 3, Lic. Ex. 2; Tr. at 20.) Complainant told Licensee that there was also damage to the front of the vehicle in addition to the damage to the back of the vehicle from being struck from behind. *(Id.)*

6. Also on May 12, 2022, Complainant notified Licensee that he would be getting his car repaired at Wes Ben of Maryland Collision Center (“Wes Ben”), which was one of Licensee’s Manual Program Repair Facilities. (MIA Ex. 3, Lic. Ex. 2; Tr. at 22.) Thus, Licensee successfully submitted the estimate assignment to Wes Ben. *(Id.)*

7. On May 18, 2022, Complainant notified Licensee that Wes Ben would not be able to repair his vehicle and that he was sending the vehicle to BMW of Annapolis Collision Center (“BMW”), which was also a Manual Program Repair Facility. (MIA Ex. 3, Lic. Ex. 2; Tr. at 24-26.) Again, Licensee successfully submitted the estimate assignment to BMW. *(Id.)*

8. On May 26, 2022, Complainant called Licensee to get information about the processing of his claim. (MIA Ex. 3, Lic. Ex. 2.) Licensee advised Complainant that once it

received the repair estimate from BMW, an appraiser with the Licensee will review the claim and Licensee would send Complainant the payment. (*Id.*)

9. Also on May 26, 2022, Complainant submitted his initial Complaint to the MIA. (MIA Ex. 1.)

10. On May 31, 2022, in response to Complainant's MIA complaint, Licensee contacted Complainant to discuss the claim. (MIA Ex. 3, Lic. Ex 2.) Complainant advised Licensee that BMW would not be able to repair the vehicle for about two months. (*Id.*) Licensee advised Complainant that he could choose a repair facility he prefers and that his policy would cover a rental car for a reasonable time, but two months may not be considered reasonable. (*Id.*) During this conversation, Complainant noted that the car was still drivable and described, with little detail, the damage to the vehicle. (*Id.*)

11. Also on May 31, 2022, Licensee contacted BMW to confirm that the repairs could not begin for about two months. (MIA Ex. 3, Lic. Ex. 2.) BMW explained that the repair shop was backed up since they are a small dealership shop with limited employees. (*Id.*) Additionally, BMW advised Licensee that they took initial photos of the damage and some notes but did not have the estimate yet. (*Id.*)

12. On June 2, 2022, Complainant contacted Licensee stating that he felt like his vehicle was unsafe to drive and that he got a rental car, which he paid for out of pocket. (MIA Ex. 3, Lic. Ex. 2; Tr. at 28-29.) Licensee advised Complainant that it would only pay for a rental car for a reasonable amount of time once the vehicle is undergoing repairs. (*Id.*) Licensee also reminded Complainant that he could take his vehicle to a different repair shop without a waiting period and that there were 49 shops within a 15-mile radius of his zip code. (*Id.*) Complainant

stated he disagreed with not being reimbursed for a rental car until his vehicle went in for repairs and stated he would contact the Insurance Commissioner again. (*Id.*)

13. On June 6, 2022, Complainant called Licensee asking about which repair shops were part of Licensee's service program. (MIA Ex. 3, Lic. Ex. 2.) Licensee advised Complainant that the names he provided were not part of its program and explained to him that he could look one Licensee's website for a list of repair shops that are part of the service program. (*Id.*)

14. On June 7, 2022, after Licensee reviewed the claim and Complainant's extensive history with Licensee, including 60 claims, aggressive behavior and failure to appear at an Examination Under Oath ("EUO"), it decided to transfer the claim to its Special Investigative Unit ("SIU") for further investigation. (MIA Ex. 3, Lic. Ex. 2.) The transition of the claim to the SIU was relayed to Complainant via a letter. (Lic. Ex. 8; Tr. at 29.) Licensee also determined that, based on the lack of details from Complainant, it would proceed with an EUO. (MIA Ex. 3, Lic. Ex. 2.)

15. Also on June 7, 2022, Complainant contacted Licensee to advise that he was taking his vehicle to SDR Certified Collision Center ("SDR"), which was a part of Licensee's service program. (MIA Ex. 3, Lic. Ex. 2.) Licensee told Complainant to wait to make any financial commitment in taking his vehicle to SDR since coverage of his claim was not confirmed yet. (*Id.*)

16. On June 20, 2022, Licensee's counsel sent Complainant a letter that stated the EUO is scheduled for July 22, 2022. (MIA Ex. 5, Lic. Ex. 9.)

17. On June 22, 2022, Licensee sent Complainant a claim status update letter. (MIA Ex. 5, Lic. Ex. 10; Tr. at 31.)

18. On July 22, 2022, Complainant failed to appear at the scheduled EUO. (MIA Ex. 5.) In response, Licensee's counsel sent Complainant a letter stating that he had ten days to reschedule the EUO in order to comply with his policy. (MIA Exs. 5, 7, Lic. Ex. 11; Tr. at 31.) Also on this day, Complainant called Licensee's counsel and said that he would no longer cooperate with Licensee's investigation. (MIA Ex. 5.)

19. On August 1, 2022, Licensee sent Complainant a claim status update letter. (MIA Ex. 5, Lic. Ex. 13.)

20. On August 2, 2022, Complainant contacted Licensee to receive copies of all documents it had previously sent him. (MIA Ex. 5, Lic. Ex. 14.) Licensee confirmed it would send Complainant the copies via USPS. (*Id.*)

21. On September 16, 2022, Licensee sent Complainant a claim denial letter that explained to him that he was in breach of his policy by failing to undergo the EUO and failing to cooperate during the claim investigation. (MIA Ex. 5, Lic. Ex. 15; Tr. at 32-33.)

22. On November 10, 2022, the MIA concluded its investigation into Complainant's Complaint and determined that Licensee had not violated the Insurance Article in its handling of Complainant's claim. (MIA Ex. 8.)

23. On November 11, 2022, Complainant was not satisfied with the MIA's determination and requested the instant hearing. (MIA Ex. 9.) The hearing was granted in this matter by letter dated November 15, 2022. (MIA Ex. 10.)

DISCUSSION

A. Positions of the Parties.

Complainant argues that he is entitled to payment from Licensee for the out of pocket expenses he paid for a rental car. Specifically, Complainant contends that his policy includes coverage for rental car services, which he used since his car was not drivable. Lastly, Complainant avers that Licensee improperly denied his claim since the rental car services were included under his policy and he had been paying his insurance premiums for years.

Licensee argues that it properly handled Complainant's claim after performing an investigation. Licensee contends that, after reviewing the claim and attempting to fully investigate, it determined that Complainant breached the policy by failing to cooperate in the investigation and to participate in an EUO. Lastly, Licensee avers that Complainant has failed to meet his burden to show that the claim was improperly handled in this case.

B. Statutory Framework

The Notice of Hearing in this case states that specific attention at the hearing shall be directed to §§ 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 [.]

* * * *

(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:

(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 [.]

* * * *

(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*). Complainant bears the burden of proof. The Court explained a Complainant's burden of proof as follows:

[A] claimant must prove that the insurer acted based on "arbitrary and capricious reasons." The word "arbitrary" means a denial subject to individual judgment or discretion, ... and made without adequate determination of principle. The word "capricious" is used to describe a refusal to pay a claim based on an unpredictable whim. Thus, under Ins. Art. § 27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on "all available information."

Id. at 671-72 (*citations omitted*).

Therefore, "[t]he claimant must... prove by a preponderance of the evidence that the insurer acted arbitrarily and capriciously." *Id.* at 672. In other words, the burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that Licensee acted without adequate factual support, in a "'nonrational' and '[w]illful and unreasoning... [manner] without consideration and regard for facts and circumstances presented' . . .," *Hurl v. Board of*

Educ. of Howard Co., 107 Md.App. 286, 306 [667 A.2d 970] (1995) (quoting Black’s Law Dictionary, 6th Ed.). *See also Comm’r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996); Md. Code Ann., State Gov’t § 10-217 (Westlaw 2023); and *Berkshire*, *supra*, 142 Md. App at 672. To prove something by a “preponderance of the evidence” means “to 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 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 §§ 4-113 or 27-303 in its handling of Complainant’s auto damage claim.

After investigating Complainant’s Complaint concerning Licensee’s handling of his auto insurance claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm.

Complainant reported this claim to Licensee on May 9, 2022, a day after the date of loss on May 8, 2022. That Licensee immediately began an investigation of the claim by sending confirmation of the reported loss and telling Complainant he could submit receipts for any rental car services.

On May 12, 2022, Licensee updated the vehicle damage based on Complainant’s description. Licensee also submitted the estimate assignment to Wes Ben based on Complainant’s statement that he would use Wes Ben for the repairs.

Similarly, on May 18, 2022, Licensee submitted the estimate assignment to BMW when Complainant could not get the repairs at Wes Ben and decided to take his car to BMW instead.

On May 31, 2022, Complainant told Licensee that BMW could not do the repairs for another two months due to a backlog. In response, Licensee advised Complainant that he could choose a repair facility he prefers and that his policy would cover a rental car for a reasonable time, but two months may not be considered reasonable.

On June 7, 2022, Licensee advised Complainant that the claim would be transitioned to the SIU unit for further investigation and that it would proceed with an EUO.

On June 20, 2022, Licensee's counsel sent Complainant a letter that stated the EUO is scheduled for July 22, 2022.

On July 22, 2022, in response to Complainant failing to appear to the EUO, Licensee's counsel sent Complainant a letter stating that he had ten days to reschedule the EUO in order to comply with his policy.

Lastly, on September 16, 2022, Licensee sent Complainant a claim denial letter that explained to him that he was in breach of his policy by failing to undergo the EUO and failing to cooperate during the claim investigation.

In this instance, my determination in this matter is based on whether the Licensee had a reasonable basis for its refusal to pay Complainant's claim. Here, Complainant initiated a claim with Licensee so that it could investigate the damages to his vehicle and eventually cover the cost of the damage as well as rental car services. Initially, Licensee investigated this claim on May 9, 2022 by taking Complainant's statement and requesting that he submit any receipts for rental car services. Similarly, on May 12, 2022, Licensee took another statement from Complainant that further explained the damage to the vehicle. Also on this date, Licensee submitted an estimate assignment to Wes Ben after Complainant stated he would be sending his car there for repairs. On May 18, 2022, Licensee again submitted an estimate assignment, but to BMW, after

Complainant notified Licensee that he would have the repairs done at BMW since Wes Ben would not be able to do the repairs. Additionally, when Complainant advised Licensee on May 31, 2022 that the repairs could not start for two months, Licensee advised Complainant that he could choose a repair facility he prefers and that his policy would cover a rental car for a reasonable time, but two months may not be considered reasonable. Licensee also reminded Complainant of the rental car services provision in the policy and that he could take his car to another repair shop for quicker repair on June 2, 2022.

Furthermore, on June 7, 2022, after Licensee reviewed the claim and Complainant's extensive history with Licensee, including 60 claims, aggressive behavior and failure to appear an EUO, it decided to transfer the claim to the SIU for further investigation, which was relayed to Complainant via a letter. Lastly, on September 16, 2022, Licensee sent Complainant a claim denial letter that explained to him that he was in breach of his policy by failing to undergo the scheduled EUO, even after having notice, and by failing to cooperate during the claim investigation. Therefore, I find that Licensee had a reasonable basis for its denial of Complainant's claim and did not act in an arbitrary or capricious manner, and therefore did not violate § 27-303(2).

I also find that Licensee did not fail to promptly provide on request a reasonable explanation of the basis for handling of the claim in violation of § 27-303(6) of the Insurance Article. The record before me demonstrates that Licensee communicated with Complainant multiple times over the course of the claim. Part of this communication included an explanation of the rental car provision of the policy. Specifically, on May 31, 2022. Licensee explained that the policy might not cover a rental for the two months prior to his car getting repaired at BMW because the policy only covers rental car services for a reasonable time and two months may not

be considered reasonable. Additionally, on June 2, 2022, Licensee advised Complainant that it would only pay for a rental car for a reasonable amount of time once the vehicle is undergoing repairs.

Furthermore, Licensee provided a clear explanation for denying Complainant's claim in the denial letter that was sent to Complainant on September 16, 2022. Specifically, by citing to appropriate policy language, Licensee explained that it was denying the claim because Complainant breached the policy when he failed to appear at the EUO and failed to cooperate in the investigation. Therefore, I find that Licensee did not violate § 27-303(6).

I also find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim in violation of § 27-303(1). The language of the Policy in this case reads:

INSURED'S DUTIES

4. Questioning Under Oath

Under

- a. Liability Coverage, each *insured*;
- b. No-Fault Coverage, Uninsured Motor Vehicle Coverage, or Death, Dismemberment and Loss of Sight Coverage, each *insured*, or any other *person* or organization making claim or seeking payment; and
- c. Physical Damage Coverages, each *insured* or owner of a *covered vehicle*, or any other person or organization making claim or seeking payment; must, at *our* option, submit to an examination under oath, provide a statement under oath, or do both, as reasonably often as *we* require. Such *person* or organization must answer questions under oath, asked by anyone *we* name, and

sign copies of the answers. *We* may require each *person* or organization answering questions under oath to answer the questions with only that *person's* or organization's legal representative, *our* representatives, *any* person or *persons* designated by *us* to record the questions and answers, and no other *person* present.

Here, the Policy specifically states that Complainant had a duty to cooperate in the investigation by submitting to question via an EUO. In this case, Complainant did not appear for the scheduled EUO and did not contact Licensee's counsel to reschedule the EUO. Instead, Complainant advised Licensee's counsel that he would not cooperate with the investigation. Thus, Licensee acted according to the Policy and properly denied Complainant's claim. Therefore, I find that there was no misrepresentation of the Policy provisions related to the claim, and Licensee did not violate § 27-303(1).

Finally, I find that Licensee did not refuse or delay payment of amounts due to the Complainant without just cause in violation of § 4-113(b)(5). In this case, Licensee clearly explained to Complainant multiple times that the policy only covered rental car services for a reasonable amount of time. Licensee first explained via a phone conversation on May 31, 2022. Licensee explained that the policy might not cover a rental for the two months prior to his car being repaired at BMW because the policy only covers rental car services for a reasonable time and two months may not be considered reasonable. Similarly, on June 2, 2022, when Complainant called stating his car was unsafe to drive, Licensee advised Complainant that it would only pay for a rental car for a reasonable amount of time once the vehicle is undergoing repairs. Lastly, Licensee clearly stated in its denial letter, with appropriate policy language, that it

was denying the claim because Complainant breached the policy when he failed to appear at the EUO and failed to cooperate in the investigation. While the Parties might not agree on the outcome of the claim, Licensee had a reasonable basis for not issuing payment to Complainant as requested in this case. Therefore, 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 did not improperly handle Complainant’s auto insurance claim in violation of §§ 4-113 or 27-303, 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 26th day of July, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

TAMMY LONGAN
Acting Deputy Commissioner