OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

MARYLAND INSURANCE ADMINISTRATION *EX. REL.* H.B.[1],	*	
Complainant	*	**Case No. MIA 2023-03-006**
v.	*	
GEICO,	*	
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 Geico (hereinafter, "License") did not violate the Insurance Article in its handling of H.B.'s (hereinafter, "Complainant") roadside assistance claim.

STATEMENT OF THE CASE

This matter arose from an administrative complaint ("Complaint") filed by Complainant with the Maryland Insurance Administration (the "MIA") on November 30, 2022. (MIA Exhibit ("Ex.") 1). Complainant alleged that Licensee improperly handled her claim for roadside assistance, and later misreported the claim as a not-at-fault comprehensive claim. (*Id*.) Further, Complainant asserted that Licensee improperly charged Complainant a premium after she terminated the policy with Licensee. (*Id*.) Finally, Complainant asserts that Licensee's mishandling of her roadside assistance claim resulted in an increase in Complainant's automobile

[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 premium. (*Id*.) After investigating the Complaint, the MIA determined that Licensee had noted violated the Insurance Article and notified the Parties of its findings by letter dated February 16, 2023 ("Determination"). (MIA Ex. 10). 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. 10, 11).

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

A hearing was held using remote video technology on August 17, 2023. Complainant represented herself and provided sworn testimony on her own behalf. Licensee was represented by Frank Daily, Esquire, with the Law Offices of Frank F. Daily, P.A. Additionally, Licensee called Debra Decker ("Underwriter Decker"), a trial preparation underwriter for Licensee, as well as Michael DeGruchy ("Supervisor DeGruchy"), an auto damage supervisor for Geico, and they provided sworn testimony on Licensee's behalf.

B. Exhibits

MIA Exhibits[3] *(In Record)*

1. Initial Complaint from Complainant to MIA, received November 30, 2022
2. Letter from MIA to Licensee regarding Complaint, requesting documents, dated December 1, 2022.
3. Response from Licensee to MIA, including documents, dated December 16, 2022
4. Response from MIA to Licensee, requesting additional documents, dated December 16, 2022
5. Response from Licensee to MIA, including additional documents, dated December 27, 2022

[3] At the start of the hearing, the parties stipulated to the admission of all of the MIA exhibits.

6. Response from MIA to Licensee, requesting additional documents, dated December 28, 2022
7. Response from Licensee to MIA, including additional documents, dated January 9, 2023
8. Determination Letter from MIA to Parties, dated February 16, 2023
9. Email request from Complainant to MIA for a printed Determination Letter to be delivered by mail to Complainant, dated February 21, 2023
10. Request for a hearing from Complainant to MIA, received March 3, 2023
11. Letter granting hearing request from MIA to Parties, dated March 7, 2023

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.

2. Licensee issued an automobile insurance policy to Complainant, policy number 60**-**-**-55 ("Policy") with an effective date of May 18, 2022 to November 18, 2022. (MIA Ex. 3.) In relevant part, the policy provided collision, comprehensive, and liability coverage. (*Id*.) With respect to the above referenced coverages, the Policy states:

> **SECTION III - PHYSICAL DAMAGE COVERAGES**
> **Your Protection For Loss Or Damage To Your Auto**
>
> **Section I** apply to **Section III**.
> Under this Section, the following special definitions apply:
> **1.** ***Actual cash value*** is the replacement cost of the auto or property less ***depreciation*** and/or ***betterment***.

2. ***Betterment*** is improvement of the auto or property to a value greater than its pre-loss condition.

3. ***Collision*** means ***loss*** caused by upset of the ***owned auto*** or ***non-owned auto*** or its collision with another object, including an attached vehicle.
Losses caused by the following are comprehensive ***losses***:
(a) missiles; (b) falling objects; (c) fire; (d) lightning; (e) theft; (f) larceny; (g) explosion; (h) earthquake;
(i) windstorm;(j) hail; (k) water; (l) flood; (m) malicious mischief; (n) vandalism; (o) riot; (p) civil commotion; or (q) colliding with a bird or animal.

4. ***Custom parts or equipment*** means paint, equipment, devices, accessories, enhancements, and changes, other than those which are original manufacturer installed, which:
(a) Are permanently installed or attached; or
(b) Alter the appearance or performance of a vehicle.
This includes any electronic equipment, antennas, and other devices used exclusively to send or receive audio, visual, or data signals, or to play back recorded media, other than those which are original manufacturer installed, that are permanently installed in the ***owned auto***, using bolts or brackets, including slide-out brackets.

* * *

LOSSES WE WILL PAY

Comprehensive Coverage (Excluding Collision)

1. We will pay for each ***loss***, less the applicable deductible, caused other than by ***collision*** to the ***owned auto*** or ***non-owned auto***. This includes glass breakage.
At the option of the ***insured***, breakage of glass caused by ***collision*** may be paid under the Collision coverage, if included in the policy.

2. ***Losses*** arising out of a single occurrence shall be subject to no more than one deductible.

Collision Coverage

1. We will pay for ***collision loss*** to the ***owned auto*** or ***non-owned auto*** for the amount of each ***loss*** less the applicable deductible.

2. ***Losses*** arising out of a single occurrence shall be subject to no more than one deductible.

* * *

ADDITIONAL PAYMENTS WE WILL MAKE UNDER THE PHYSICAL DAMAGE COVERAGES

1. We will reimburse the ***insured*** for transportation expenses incurred during the period beginning 48 hours after a theft of the entire auto covered by Comprehensive coverage under this policy has been reported to us and the police.

Reimbursement ends when the auto is returned to use or we pay the ***loss***. Reimbursement will not exceed $25 per day nor more than $750 per ***loss***.
2. We will pay general average and salvage charges for which the ***insured*** becomes legally liable when the auto is being transported.

* * *

EXCLUSIONS
Section III does not apply:
10. To ***custom parts or equipment***, in excess of $1,000, unless the existence of those ***custom parts or equipment*** has been previously reported to us and an endorsement to the policy has been added.

* * *

Your policy provisions are amended as follows:
SECTION III
PHYSICAL DAMAGE COVERAGES
Emergency Road Service
We will pay reasonable expenses an insured incurs for the owned or non-owned auto, for:
1. mechanical labor up to one hour at the place of breakdown;
2. lockout services up to $100 per lockout if keys to the auto are lost, broken or accidentally locked in the auto;
3. if it will not run, towing to the nearest repair facility where the necessary repairs can be made;
4. towing it out if it is stuck on or immediately next to a public highway;
5. delivery of gas, oil, loaned battery, or change of tire. WE DO NOT PAY FOR THE COST OF THE GAS, OIL, LOANED BATTERY, OR TIRE(S).

* * * *

(MIA Exs. 5, 8).

3. On May 30, 2022, Complainant reported to Licensee that she had a flat tire and required emergency roadside service. (MIA Ex. 3). Licensee sent a tow provider to fix the flat tire. At the hearing, Complainant testified that she, "heard a banging noise, something completely different from what I had ever heard before when someone came out to fix my tire." (Tr. at 12.) Further, Complainant testified that she observed the service provider, "trying to bang a wrench onto the wheels where the bolts are at the beginning of the tire." (*Id.*) Additionally, Complainant testified

that the service provider, "brought the wrong wrench size and he was having to bend them on so he could unloose the bolt screws." (*Id.*)

4. Complainant testified that after the flat tire was fixed, the vehicle was taken to the nearest Toyota dealership. (Tr. at 12.) Complainant testified that as she was driving the vehicle from the location where she received roadside assistance to the Toyota dealership, she noticed that the vehicle was rattling and shaking. (Tr. at 13.) Complainant testified that she purchased a new tire at that time. (*Id.*) Complainant also testified that she was informed by a representative from the initial Toyota dealership that they saw where her rim had been damaged. (Tr. at 13.)

5. Complainant testified that she later drove to Fitzgerald Toyota Scion for further assistance. (MIA Exs. 3, 5, 8). On the same day, Complainant informed Licensee that her vehicle sustained damage while the roadside assistance provider was replacing Complainant's tire and Licensee initiated a second claim, this time under Complainant's comprehensive coverage due to the tow providers not being affiliated with Licensee. (MIA Ex. 3).

6. On June 14, 2022, Claims Adjuster, Diego Saucedo, ("Adjuster Saucedo") inspected Complainant's vehicle at Fitzgerald Toyota ("Fitzgerald"), but did not observe any outward signs of damage to the wheel. (MIA Ex. 5).

7. The towing provider denied damaging the wheel of the Complainant's vehicle. (MIA Ex. 8).

8. Mr. Michael DeGruchy, Auto Damage Supervisor for Licensee, ("Supervisor DeGruchy") testified at the evidentiary hearing that he has been employed with Licensee for over ten years. (Tr. at 41.) Supervisor DeGruchy testified that he personally participated in the handling of Complainant's claim. (*Id.*)

9. Supervisor DeGruchy testified that Adjuster Saucedo spoke with Gil Griggs, a manager employed with Fitzgerald. (Tr. at 42.) Supervisor DeGruchy testified that the rim of the Complainant's vehicle would not balance and they were unable to determine the cause. (*Id.*) Supervisor DeGruchy explained that the rim of the Complainant's vehicle was an "aftermarket Chrome rim," and could not be replaced. (Tr. at 43.) Supervisor DeGruchy testified that Complainant was given four brand-new matching rims to assist the Complainant, as she was "under a lot of pressure and ….was upset by the whole situation. (Tr. at 44-45.)

10. Supervisor DeGruchy testified that an emergency road service claim was initially presented. (Tr. at 45.)

11. Supervisor DeGruchy also testified that the actions of the emergency road service did not cause the rim to be unbalanced. (Tr. at 45 – 46.) Specifically, Supervisor DeGruchy testified that the, "lug nuts don't go onto the actual rim. They go into something called a hub and bearing portion of the vehicle." (Tr. at 46.) Supervisor De Gruchy testified that there was no damage or the damage was not to the hub and bearing portion of the vehicle. (Id.) Instead, Supervisor De Gruchy testified that the, "rim simply was just either warped and just would not balance, unfortunately." (*Id.*) Further, Supervisor DeGruchy testified that the lug nuts on the damaged tire of Complainant's vehicle had been stripped on the outside. (Tr. at 58.) However, the inside portion, which attaches to the car, were not damaged. (*Id.*) Supervisor DeGruchy also explained that, after reviewing the photos of the rim, he did not see any physical damage to the area surrounding the lug nuts. (*Id*.)

12. Supervisor DeGruchy testified that he had conversations with Complainant on June 14, 2022. (Tr. at 46.) Specifically, Supervisor DeGruchy testified that he explained to Complainant

that her policy did not cover the replacement of her aftermarket rims and that he presented her with options to fix the damaged rim and wheel. (Tr. at 47.)

13. Supervisor DeGruchy testified that Complainant, "became upset with some of the options, but I said that I would reach out to Gil and see if he is able to, you know, if we were able to find rims for the same amount that we would be able to find the brand-new Toyota wheel for, and we were able to do that." (Tr. at 47.)

14. Ms. Debra Decker, Trial Preparation Underwriter, testified on behalf of Licensee at the virtual evidentiary hearing. Specifically, Ms. Decker testified that Complainant contacted Licensee because she was concerned about the increase in the premium on her Policy at the time of renewal on November 18, 2022. (Tr. at 62.)

15. Ms. Decker testified that in response to Complainant's request, the Policy was reviewed. (Tr. at 63) Complainant was advised that the increase was due to a scheduled rate increase for all of the GEICO Casualty policies in Maryland. (*Id.*)

16. Ms. Decker explained the rate increase as follows:

> we will evaluate our rates and rating rules. And in this case with the increase in cost for repairs, hospital visits, anything that may impact a policy on a claim is -- is filed, or anything that impacts what we pay out to cover claims, if our rates are inadequate, we will re-evaluate our filings and take an increase in rate to adjust our rates.
>
> * * * *

(Tr. at 63.)

17. Complainant testified that she received a letter from Licensee dated November 3, 2022, and titled, *Federal Fair Credit Reporting Act Disclosure Notice,* (MIA Ex. 1), which states,

> The price we are quoting you is based in part on information provided to us by the consumer reporting agency listed below.
>
> * * *

We are sending you this notice, as required by the Fair Credit Reporting Act, because you received a higher price and/or limited payment plan options based on your credit information.

* * *

The consumer reporting agency provided the following description of the credit factors that had the most influence on the price we quoted you:

- Average number of months trades on file too short (-)
- Too many non-bank revolving trades in last 5 years (-)
- Time since most recent trade opened too recent (-)
- There are no auto trades on file (-)

* * * *

(MIA Ex. 10; Tr. at 24).

18. Ms. Decker testified that the Complainant's policy renewed on November 18, 2022 with the rate increase. (Tr. at 64.) Specifically, Licensee sent Complainant a policy renewal quote to renew Complainant's current policy starting on November 18, 2022. (MIA Ex. 3). The policy renewal included a general rate increase in premium from $533.66 to $632.61. (*Id*.) Licensee contends Complainant accepted the quote and was issued the renewal on November 18, 2022. (*Id*.)

18. Complainant asserts no such acceptance was made and that Complainant informed Licensee to not renew the policy after its end date of November 18, 2022. (MIA Ex. 1).

19. On November 21, 2022, Complainant asked Licensee to cancel the Policy, noting she informed Licensee prior to November 21, 2022. (MIA Ex. 3). Licensee sent a letter confirming the cancellation as of 12:01 A.M. on November 21, 2022. (*Id*.)

20. Licensee sent Complainant a bill for $9.07 due as the earned premium cost for when the Policy renewed on November 18, 2022, until it was cancelled on November 21, 2022. (MIA Ex. 3).

21. Complainant contacted Licensee on December 19, 2022 and requested the cancellation of her policy retroactively to November 18, 2022. (MIA Ex. 7). Complainant's request was reviewed by s supervisor. (*Id.*) On December 21, 2022, Licensee backdated the date of policy cancellation to November 18, 2022 and cancelled Complainant's amount owed for $9.07. (*Id*.). Licensee sent a letter to Complainant on December 21, 2022 confirming that Complainant's cancellation request was approved. (*Id.*)

22. On February 16, 2023, 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 February 27, 2023, the Complainant was not satisfied with the MIA's determination and requested the instant hearing. (MIA Ex. 10). The hearing was granted in this matter by a letter dated March 7, 2023. (MIA Ex. 11).

DISCUSSION

A. Positions of the Parties.

Complainant argues that Licensee improperly reported her roadside assistance claim as a comprehensive claim. Specifically, Complainant asserts that since her vehicle was damaged as a result of the actions of Licensee's vendor, while handling her request for roadside assistance to change a flat tire, Licensee had the obligation to cover the damages under the roadside assistance coverage of her policy. Second, Complainant contends that she was improperly charged for earned premium in the amount of $9.07 after she had cancelled her policy with Licensee. Lastly, Complainant maintains that her premium increased due to Licensee's dependence on Complainant's credit score and their inaccurate understanding of Complainant's score.

Licensee argues that it covered Complainant's claim under the comprehensive coverage of the policy and that it correctly reported the claim to LexisNexis, as required under the terms of the policy and the Automobile Policy Amendment form A115 ERS (MIA Ex. 8). Second, with respect to the earned premium, Licensee maintains that they retroactively applied the end date of the policy as November 18, 2022, and thus, did not charge Complainant the earned premium of $9.07. Finally, Licensee argues that the premium increase on Complainant's insurance policy was a general rate increase, and not due Complainant's credit score.

B. Statutory Framework

The Parties were notified in the Notice of Virtual Hearing that specific attention at the Hearing shall be directed to §§ 4-113, 11-230, 11-341, 27-216, 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 11-230 states in pertinent part:

> (a) An insurer or officer, insurance producer, or representative of an insurer may not knowingly issue or deliver or knowingly allow the issuance or delivery of a policy or endorsement, certificate, or addition to the policy, except in accordance with the filings that are in effect for the insurer as provided in this subtitle.
>
> * * * *

(Westlaw 2023.)

Section 11-341 states in pertinent part:

> An insurer may not make or issue an insurance contract or policy of insurance of a kind to which this subtitle applies, except in accordance with the filings that are in effect for the insurer as provided in this subtitle.
>
> * * * *

(Westlaw 2023.)

Section 27-216 states in pertinent part:

> (b)(1) A person may not willfully collect a premium or charge for insurance that:
>
> (i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates as filed with and approved by the Commissioner; or
>
> (ii) if classifications, premiums, or rates are not required by this article to be filed with and approved by the Commissioner, exceeds or is less than the premium or charge specified in the policy and set by the insurer.
>
> * * * *

(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.)

The Complainant, as the party asserting the affirmative on the issue before the administrative body, has the burden of proof in this matter. *Comm'r of Labor & Indus. v.*

Bethlehem Steel Corp., 344 Md. 17, 34 (1996). The burden of proof rests with Complainant to demonstrate by a preponderance of the evidence that a violation of the Insurance Article has occurred. Md. Code Ann., State Gov't § 10-217 (Westlaw 2023); *Berkshire Life Ins. Co. v. Maryland Insurance Administration*, 142 Md. App 628, 672 (2002). 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*.

In *Berkshire*, the Court of Special Appeals of Maryland defined the terms, "arbitrary" and "capricious" as they relate to § 27-303 of the Insurance Article. 142 Md. App. 628 (2002). The term, "'arbitrary,' means a denial subject to individual judgement or discretion…[t]he word 'capricious' is used to describe a refusal to pay a claim based on an unpredictable whim." *Berkshire*, at 671 (*internal citations omitted*). The Court further noted that under § 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*.

In *Chicago Title Ins. Co. v. Jen*, the Court of Special Appeals of Maryland decided on whether the Maryland Insurance Commissioner's determination that the Chicago Title Insurance Company did not violate § 4-113(b)(5) and § 27-216(a) and did violate § 27-303 of the Insurance Article was legally correct and supported by substantial evidence. 249 Md. App. 246, 251 (2021). The Court cited to *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, to note that, "'[u]nder Maryland law, when deciding the issue of coverage under an insurance policy, the primary principle of

construction is to apply the terms of the insurance contract itself.'" *Chicago Title*, 249 Md. App. 246, 251 (2021) (quoting 330 Md. 758, 779 (1993)).

C. Licensee did not violate §§ 4-113 or 27-303 in its handling of Complainant's auto insurance claim.

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

I find that Licensee conducted a thorough inspection of the damage to the Complainant's vehicle. Specifically, Complainant contacted Licensee on May 30, 2022, and requested roadside assistance for a flat tire. (MIA Ex. 3.) A vendor on behalf of Licensee responded on the same date to assist with the claim. (*Id.*) During the process of changing the tire, Complainant asserts that the towing company employee was banging on her tire rim and caused further damage to the wheel where the bolts are located. (Tr. at 12). Further, Complainant testified that she asked the tow repair person to explain what he was doing, and that he responded that he had brought the wrong wrench size and he was having to bend them on so he could unlooses the bolt screw. (Tr. at 12). While the Complainant maintains that she informed the tow repair person that she had special rims on her vehicle, the tow repair person was dismissive of her concerns.

After the tire was replaced, Complainant testified that she began to drive to the nearest Toyota dealership, but her vehicle started to rattle and shake. (Tr. at 12-13). Complainant further stated that when she arrived at the first dealership, she purchased a tire. (Tr. at 13). Complainant also testified that she was informed by a representative from the initial dealership that they saw where her rim had been damaged. (Tr. at 13.) Complainant testified that she later had her vehicle serviced by Fitzgerald Toyota. (Tr. at 13).

At the evidentiary hearing, Supervisor DeGruchy testified that Adjuster Saucedo could not see any physical damage on the rim of the damaged tire, but the tire would not balance. (Tr. at 42). Supervisor DeGruchy testified that they were unable to determine the cause of the unbalanced rim. (*Id*.) Supervisor DeGruchy further testified that "if [the rim] was…damaged at the point where the lug nuts went on, it would have been easy to – you would have been able to see the damage because they are chrome." (Tr. at 54). Supervisor DeGruchy did identify that the lug nuts of Complainant's vehicle had been stripped, but only the outside, not the inside portion which attaches to the car. (Tr. at 58). Supervisor DeGruchy explained that, after reviewing the photos of the rim, he still did not see any physical damage to the area surrounding the lug nuts. (*Id*.)

Supervisor DeGruchy testified that he remained in contact with Gil Briggs, a manager with Fitzgerald Toyota's Collision, during the investigation. (Tr. at 42.) While the tire rim would not balance, no physical damage was observed to the rim of the vehicle (*Id.*) Further, there were no outward signs of damage to the vehicle. (*Id.*)

The evidence also reflects that Licensee contacted the towing company and the towing company denied causing any damage to the Complainant's vehicle. As the cause of the damage could not be determined, Supervisor DeGruchy testified that a separate claim was opened and the repairs for the damaged tire were covered under the comprehensive coverage provision of the Policy. (Tr. at 45.) Further, the evidence also demonstrates that Supervisor DeGruchy contacted Complainant on a couple of occasions on June 14, 2022 and presented her with options to repair and replace the rims of the damaged tire. (Tr. at 46-47.)

The Policy covers the following five conditions under a claim for emergency road services:

> SECTION III
> PHYSICAL DAMAGE COVERAGES
> Emergency Road Service

We will pay reasonable expenses an insured incurs for the owned or non-owned auto, for:

1. mechanical labor up to one hour at the place of breakdown;
2. lockout services up to $100 per lockout if keys to the auto are lost, broken or accidentally locked in the auto;
3. if it will not run, towing to the nearest repair facility where the necessary repairs can be made;
4. towing it out if it is stuck on or immediately next to a public highway;
5. delivery of gas, oil, loaned battery, or change of tire. WE DO NOT PAY FOR THE COST OF THE GAS, OIL, LOANED BATTERY, OR TIRE(S).

* * * *

(MIA Ex. 5).

"'Under Maryland law, when deciding the issue of coverage under an insurance policy, the primary principle of construction is to apply the terms of the insurance contract itself.'" *Chicago Title*, 249 Md. App. 246, 251 (2021) (quoting 330 Md. 758, 779 (1993)). Further, "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.'" *Berkshire*, at 671 (*internal citations omitted*).

Here, the Licensee applied the terms of its policy to provide Complainant with coverage for replacing the four, chrome tires. Licensee's investigation did not find that Complainant's second claim for the tires could be covered under any of the five coverages of emergency roadside service. Furthermore, Supervisor DeGruchy testified that the Licensee had no record of Complainant's aftermarket tire rims on the policy and noted that the policy allowed $1,000 to be added for aftermarket equipment. (Tr. at 44, 51). Complainant's insurance policy with Licensee stated, in part:

EXCLUSIONS
Section III does not apply:
10. To ***custom parts or equipment***, in excess of $1,000, unless the existence of those ***custom parts or equipment*** has been previously reported to us and an endorsement to the policy has been added.

* * * *

(MIA Ex. 5).

Supervisor DeGruchy informed that Licensee worked with Gil Briggs, the manager at Fitzgerald Toyota, to find the appropriate tire rims for the Complainant and Licensee paid the costs to the subsequent replacement. (Tr. at 43-45). Licensee thus provided the claim response to comply with policy requirements.

Accordingly, I find that Licensee is not found to be in violation of Sections 4-113 or 27-303 of the Insurance Article, based on the Licensee's inspection of the vehicle, the Licensee's investigation of Complainant's claim, and the Policy language which provides that replacement of the rims is not considered mechanical labor, lockout services, towing service to the nearest repair facility, towing due to the vehicle being stuck, nor a delivery of gas, oil, loaned battery, or change of tire. (MIA Ex. 3).

D. Licensee did not violate §§ 11-230, 11-341 or 27-216 in its handling of Complainant's auto insurance policy.

With respect to Complainant's claim that she was improperly charged an earned premium of $9.07, the evidence demonstrates that Complainant contacted Licensee on December 19, 2022 and requested the cancellation of her policy retroactively to November 18, 2022. (MIA Ex. 7). Complainant's request was reviewed by a supervisor. (*Id.*) On December 21, 2022, Licensee backdated the date of policy cancellation to November 18, 2022 and cancelled Complainant's amount owed for $9.07. (*Id*.) Licensee sent a letter to Complainant on December 21, 2022 confirming that Complainant's cancellation request was approved. (*Id.*)

Finally, Complainant contends that her premium increase was due to the Licensee's improper reliance on Complainant's credit score. Complainant testified that she received a letter from the Licensee indicating that her credit was bad, however, Complainant knew her credit was high. (Tr. at 24). Complainant also cited to a letter from Licensee dated November 3, 2022, and titled, *Federal Fair Credit Reporting Act Disclosure Notice,* (MIA Ex. 1), which states,

> The price we are quoting you is based in part on information provided to us by the consumer reporting agency listed below.
>
> * * *
>
> We are sending you this notice, as required by the Fair Credit Reporting Act, because you received a higher price and/or limited payment plan options based on your credit information.
>
> * * *
>
> The consumer reporting agency provided the following description of the credit factors that had the most influence on the price we quoted you:
>
> - Average number of months trades on file too short (-)
> - Too many non-bank revolving trades in last 5 years (-)
> - Time since most recent trade opened too recent (-)
> - There are no auto trades on file (-)
>
> * * * *
>
> (MIA Ex. 10; Tr. at 24).

I further find that Ms. Decker testified credibly as to the reasoning and business purposes for the premium increase. In response to Complainant's assertion, Ms. Decker testified that the Licensee had advised Complainant that "the increase was due to a scheduled rate increase for all the GEICO Casualty policies in Maryland." (Tr. at 63). When asked by the Undersigned whether the Complainant's credit played any role with respect to the renewal policy that was offered to the Complainant, Underwriter Decker replied, "[y]our Honor, no. This FCRA [Federal Fair Credit Reporting Act Disclosure Notice] was issued as a result of quoting for [Complainant's] new

GEICO Secure policy." (Tr. at 72). Underwriter Decker testified that the Complainant was not charged a higher premium due to Complainant's credit score or any other condition outside of the statewide rate revision filed under SERFF GECC-133256757. (Tr. at 71-73).

Accordingly, I find, based on the Licensee's explanation for its general premium rate increase for all Maryland policies, the rate increase was not arbitrary, capricious, or discriminatory. Instead, as Ms. Decker testified, the rate increase was reasonably related to the Licensee's economic and business purposes.

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 claim in violation of Sections 4-113 or 27-303, nor did Licensee improperly charge a premium in violation of Sections 11-230, 11-341, 27-216, 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 12th day of October, 2023.

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

Erica J. Bailey
Chief Hearing Officer/Associate
Commissioner Office of Hearings