

**BEFORE MICHAEL D. RILEY
INSURANCE COMMISSIONER OF WEST VIRGINIA**

13-AP-FP-02018

In Re:

**Joseph McCutcheon
Complainant,**

vs.

**American Modern Select Insurance Company
Respondent**

ORDER DENYING COMPLAINANT'S REQUEST FOR A HEARING

On December 5, 2012, the Complainant, Joseph McCutcheon (hereinafter "Complainant"), requested that the Legal Division of the West Virginia Offices of the Insurance Commissioner ("OIC") review his complaint filed against American Modern Select Insurance Company (hereinafter "American Modern"), the Respondent. After receiving a letter from the OIC stating that it did not appear that a hearing would serve any useful purpose, Complainant made a written request for a hearing.

Statement of the Case

The Complainant's home suffered fire damage on November 30, 2011. On December 5, 2011 a claims adjuster inspected the Complainant's home, at the request of American Modern. As a result of said inspection, on December 8, 2011 American Modern presented a damage estimate for the structural damage, in the amount of sixty-one thousand, three hundred, thirty-two dollars and twenty-two cents (\$61,332.22) to the Complainant and issued payment for fifty-eight thousand, eight hundred, thirty-two dollars and twenty-two cents (\$58,832.22), which was the full structural damage, less the two thousand, five hundred dollar (\$2,500.00) deductible. This payment was issued to the Complainant and his mortgage company. In addition, on the same day, payment was also issued to the Complainant for the contents loss in the amount of five thousand, two hundred, fifty-one dollars and twenty cents (5,251.20). A one-thousand dollar

(\$1,000.00) advance payment had already been made on November 30, 2011. Therefore, the total payment which had been made to and on behalf of the Complainant was sixty-five thousand, eighty-three dollars and forty-two cents (\$65,083.42).

On August 20, 2012 American Modern received a mold remediation estimate from ASTAR and an estimate from Coiner Builders for certain repair work to the Complainant's home and replacement of certain contents. These estimates were made at the request of the Complainant. The Coiner estimate included the replacement of the AC and furnace unit and associated ductwork.

On August 22, 2012 the claims adjuster contacted the Complainant by telephone and discussed the new estimates. During said telephone conversation the Complainant agreed that the Coiner estimate included the replacement of several content items which American Modern had already paid money to have the items cleaned, as they were cleanable. Also, American Modern had also paid for cleaning of the ductwork and furnace, as they also were cleanable. On October 15, 2012 the claims adjuster discussed the estimates with Coiner and they agreed that the American Modern estimate was in line with the repairs that needed to be done.

American Modern determined that the mold was a direct result of Complainant not repairing the roof in a timely manner, but rather only placing a tarp over the damaged part of the roof and leaving the tarp in place from November 30, 2011 until the end of April, 2012 and resulting leakage from said tarp.

On September 27, 2012 Complainant filed a consumer complaint with the Offices of the Insurance Commissioner, Consumer Services division, alleging that more damages were done to his home than what the American Modern provided payment for.

On October 23, 2012 CIS, Commercial, Property and Auto Claims Solutions inspected Complainant's furnace and ductwork, at the request of American Modern, to determine if it was

in fact damaged and had mold in it. The inspected determined that the furnace and ductwork was not only working properly but also, there was no evidence of mold in the furnace or ductwork.

On November 3, 2012 American Modern reached an agreement with the Complainant and made a supplemental payment of twelve thousand, two hundred, ninety-eight dollars and twelve cents (\$12,298.12) and informed the Offices of the Insurance Commissioner, Consumer Services division, of their agreement.

On December 5, 2012 Complainant requested a legal review based on his belief that his home was now toxic with carbon monoxide.

On January 9, 2013 Offices of the Insurance Commissioner, Legal Division, mailed a certified letter to the Complainant informing him that the legal review had been completed and, based on the information in the possession of the Offices of the Insurance Commissioner, it did not appear that any violation of the insurance laws or regulations of the State of West Virginia had occurred.

On January 11, 2013 the Offices of the Insurance Commissioner received Complainant's written demand for a hearing, based on the allegations that American Modern did not pay any money for mold abatement, more window damage than what was paid for, the furnace was rusted, repairs to the deck and the need to move the electrical breaker box due to the current electrical codes.

Findings of Fact

The following are made as findings of fact:

1. Joseph McCutcheon purchased a homeowners policy, policy number 0046951822, from American Modern Insurance Company.
2. On November 30, 2011 Complainant's home suffered structural damage due to a fire.

3. Upon being notified of the claim, American Modern Insurance Company undertook an investigation of the matter, which consisted of two inspections, the first by a neutral claims adjuster, Jeffrey Morehouse, and the second by CIS, Commercial, Property and Auto Claims Solutions.
4. The first inspection by the claims adjuster took place on December 5, 2011 and resulted in a payment to the Complainant in the amount of sixty-five thousand, eighty-three dollars and forty-two cents (\$65,083.42), for both structural and contents damages. American Modern believed that this payment resolved all claims by the Complainant.
5. In response to the Consumer Complaint filed by the Complainant, on October 23, 2012, CIS Commercial Property and Auto Claims Solutions inspected Complainant's furnace and ductwork, at the request of American Modern, to determine if it was in fact damaged and had mold in it. The inspection determined that the furnace and ductwork was not only working properly but also, there was no evidence of mold in the furnace or ductwork.
6. On November 3, 2012 American Modern reached an agreement with the Complainant and made a supplemental payment of twelve thousand, two hundred, ninety-eight dollars and twelve cents (\$12,298.12) and informed the Offices of the Insurance Commissioner, Consumer Services Division, of their agreement. Again, American Modern believed that this second payment had resolved all outstanding issues.
7. Based upon the file provided to it, the Legal Division of the OIC issued a letter to the Complainant indicating that, in its opinion, there was no merit to the case, but giving the Complainant an opportunity to file a written demand for either a

hearing or an appealable denial order. That demand was made on January 11, 2013. The demand further alleged that American Modern did not pay any money for mold abatement, there was more window damage than what was paid for, the furnace was rusted, there was damage to the deck and the need to move the electrical breaker box due to the current electrical codes.

Conclusions of Law

The following are made as conclusions of law:

1. The Offices of the Insurance Commissioner does not have the authority to issue a ruling or hold a hearing regarding the liability of any party in the underlying incident when it appears to be a good faith disagreement.
2. The Offices of the Insurance Commissioner's authority is limited to addressing the insurance company's claim handling procedures. There does not appear to be an improper claim handling practice committed by American Modern in this case which would justify an administrative hearing before the Offices of the Insurance Commissioner. American Modern made a reasonable investigation of the matter and made reasonable attempts to settle the claim.
3. West Virginia Code of State Rules 114-13-3.3, states the following:

3.3 Hearing on written demand -- When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

- a. Would involve an exercise of authority in excess of that available to him or her under law; or

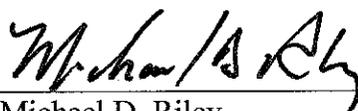
- b. Would serve no useful purpose, the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

Therefore, the Commissioner finds and **ORDERS** that a hearing on this matter by the Complainant would serve no useful purpose and therefore **DENIES** any hearing for the above referenced matter.

Pursuant to W. Va. Code §33-2-14, the Complainant has the right to appeal this Order of the Insurance Commissioner of West Virginia to the Circuit Court of Kanawha County within 30 days of receipt of this Order.

The objections of any party aggrieved by this **ORDER** are herein preserved.

Entered this 22 day of February, 2013



Michael D. Riley
Insurance Commissioner
State of West Virginia