

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

David Tabb,
Complainant,

and

Administrative Proceeding No. 23-IC-157614

Erie Insurance Property and Casualty Company,
Respondent

ORDER DISMISSING COMPLAINT

This matter came before the West Virginia Insurance Commissioner on David Tabb's Complaint filed against Erie Insurance Property and Casualty Company (hereafter, "Erie"). After reviewing this matter, the Insurance Commissioner makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Complainant, David Tabb, filed a complaint against Erie in the Consumer Services Division of the Offices of the Insurance Commissioner on or about September 19, 2023.
2. The action arises from an automobile accident that occurred on or about May 17, 2019 wherein a vehicle carrying Complainant's wife, Nadine Tabb, was struck by another vehicle in Maryland.
3. The Tabbs settled with the insurance company of the owner of the vehicle that struck the vehicle carrying Ms. Tabb and settled with the insurance company of the driver of the at fault vehicle.

4. Erie provides insurance coverage to the Tabbs and the Tabbs have filed a claim under the underinsurance portion of the Erie policy. According to Erie, the policy provides underinsured motorist coverage in the amount of \$1,000,000.00 per accident.

5. After reviewing Ms. Tabb's medical records and discovering that she had a history of medical issues prior to the accident, Erie had Ms. Tabb undergo a medical examination to assist in determining what injuries were causally related to the motor vehicle accident.

6. After receiving the medical examination report, Erie issued a letter to the Tabbs denying the underinsured motorist claim for Ms. Tabb. The basis for the denial was that the tortfeasor's vehicle did not meet the definition of an underinsured motor vehicle because the limits of available insurance coverage at the time of the accident were sufficient to pay Ms. Tabb for losses or damages that resulted from the motor vehicle accident.

7. The Complainant, David Tabb, disagrees with Erie's conclusion that the insurance proceeds which have been paid by the at fault parties' insurance companies have covered all the related damages.

8. Mr. Tabb also alleges in his complaint filed with the Insurance Commissioner that Ms. Tabb was injured during the course of the medical examination required by Erie. Erie has opened a separate claim related to this allegation and is investigating.

9. After receiving numerous documents from the Complainant and a response from Erie, the Consumer Services Division of the Offices of the Insurance Commissioner referred this matter to the Legal Division to conduct an additional investigation.

CONCLUSIONS OF LAW

1. The Complainant, David Tabb, lives in Jefferson County, West Virginia and has pursued many allegations, claims or administrative actions against the County and County officials. The Complainant's actions lead to the Circuit Court of Jefferson County entering an Order dated December 30, 2016 which granted a motion for sanctions against Mr. Tabb. See *David C. Tabb v. Jefferson County Comm'n, et. al.*, Case No. CC-19-2016-AA-2 (December 30, 2016) affirmed *Tabb v. Jefferson Cty. Comm'n*, 2018 W.Va. LEXIS 224 (W.Va., March 23, 2018).

2. In *Tabb*, the West Virginia Supreme Court affirmed the Jefferson County Circuit Court's Order granting the Jefferson County Commission's Motion for Sanctions. The West Virginia Supreme Court concluded that the circuit court did not abuse its discretion in limiting Mr. Tabb's right to initiate proceedings on his own behalf. The Court stated, "we hereby adopt and incorporate the circuit court's well-reasoned findings and conclusions which we find clearly show that the petitioner has engaged in a course of conduct which demonstrates a clear intention to obstruct the administration of justice...."

3. In *David C. Tabb v. Jefferson County Comm'n, et. al.*, Case No. CC-19-2016-AA-2 (December 30, 2016) Judge Sanders of the Circuit Court of Jefferson County issued sanctions against Mr. Tabb because of his many meritless suits, allegations, claims and administrative actions against the county and county officials. The Judge stated, "Tabb has pursued many allegations, claims or administrative actions against the County and County officials which appear to be 'presented for [an] improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation' within the meaning of W.Va. R. Civ. P. 11(b)."

4. Because of Mr. Tabb's history of filing frivolous actions, Judge Sanders of the Circuit Court of Jefferson County granted the Motion for Sanctions and stated, "this Court GRANTS the underlying Motion and ORDERS that Mr. Tabb is **prohibited from bringing** new civil or

administrative actions or appeals **in any** court, commission, administrative body, **agency** or other tribunal, without first noticing the opposing parties and obtaining leave from the Court, or without obtaining a review and signature from a licensed, practicing, West Virginia attorney who certifies the new civil or administrative actions or appeal is not filed in violation of Rule 11 of the West Virginia Rules of Civil Procedure.”(emphasis added).

5. The Circuit Court of Jefferson County had the jurisdiction and the authority to sanction Mr. Tabb and limit his ability to file actions as evidenced by the West Virginia Supreme Court decision affirming the Circuit Court’s Order. Mr. Tabb argued that the Circuit Court lacked the authority to enter such an order because it involved a tax assessment appeal rather than a civil action. The West Virginia Supreme Court disagreed and stated, “A court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction.” The West Virginia Supreme Court also adopted and incorporated the “well-reasoned findings and conclusions” of the Circuit Court.

6. The West Virginia Offices of the Insurance Commissioner is a state agency that conducts administrative proceedings on actions filed by complainants. Therefore, the Insurance Commissioner falls under the types of proceedings described by the Jefferson County Circuit Court as stated in paragraph number four (4) above.

7. Mr. Tabb did not follow the mandate of the Jefferson County Circuit Court prior to filing his Administrative Complaint with the West Virginia Offices of the Insurance Commissioner. There is no evidence that, prior to filing the present Administrative Complaint, Mr. Tabb provided notice to the opposing parties and obtained leave from the Court, or obtained a review and signature from a licensed, practicing, West Virginia attorney who certified the new administrative action was not being filed in violation of Rule 11 of the West Virginia Rules of Civil Procedure.

8. Therefore, the Insurance Commissioner finds that the Complainant, David Tabb, is precluded from bringing the present matter before the Insurance Commissioner because he did not comply with the aforementioned Order of the Jefferson County Circuit Court.

9. Of note, the Insurance Commissioner discovered that the West Virginia Public Service Commission issued an Order dated December 16, 2019 dismissing an action filed by Mr. Tabb because he failed to comply with the Jefferson County Circuit Court prior to filing his cause of action with the Public Service Commission. See *Tabb v. Mountaineer Gas Co.*, 19-1057-G-C, Public Service Commission of West Virginia, Charleston. 2019 W.Va. PUC LEXIS 2692.

10. The Insurance Commissioner has discretion when it comes to setting a hearing regarding a complaint that has been filed with the Offices of the Insurance Commissioner. W.Va. Code R. § 114-13-3.1 states:

The commissioner may call and hold hearings for any purpose deemed necessary by him or her for the performance of his or her duties. The commissioner shall hold hearings when required by law or upon a written demand therefore by a person claiming to be aggrieved by any act or failure to act by the commissioner or by any rule or order of the commissioner.

Further, W.Va. Code R. § 114-13-3.3 states:

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.

Although a specific demand for a hearing has not been presented, the Insurance Commissioner has determined that holding a hearing on this administrative complaint based upon the aforementioned facts and circumstances would serve no useful purpose.

ORDER

IT IS THEREFORE ORDERED that the Insurance Commissioner takes administrative notice of the aforementioned Jefferson County Circuit Order and finds that the Complainant, David Tabb, did not comply with said Order. IT IS FURTHER ORDERED that, for the foregoing reasons, the Administrative Complaint filed by the Complainant, David Tabb, is HEREBY DISMISSED. The Complainant, David Tabb, may refile his complaint with the Offices of the Insurance Commissioner if he complies with the previously mentioned Jefferson County Circuit Court Order when refiling.

Inasmuch as orders entered by the Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4), any person aggrieved by this Order may, within 30 days after the entry of the judgment being appealed, file an appeal as set forth in W.Va. Code §33-2-14 and W.Va. R.A.P., Rule 5(b).

ENTERED this the 1ST day of April, 2024.


ALLAN L. MCVEY
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner