

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

SHARON TASKER,  
Complainant,

v. Administrative Proceeding No.: 22-IC-02378

AGENCY INSURANCE COMPANY,  
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER DENYING REQUEST FOR HEARING

This matter came before the West Virginia Insurance Commissioner (hereinafter, “Commissioner” or “OIC”) on Sharon Tasker’s (hereinafter, “Complainant”) request for a hearing on her third-party administrative complaint filed against Agency Insurance Company (hereinafter, “Agency”). Whereupon, the OIC makes the following findings of fact, conclusions of law, and order.

1. The Complainant was involved in motor vehicle accident with another vehicle on December 16, 2021, at an intersection controlled by a traffic light in Martinsburg, West Virginia.
2. The other vehicle was operated by Vanessa Feiser and insured by Agency.
3. The accident was investigated by Deputy Dunigan of the Berkely County Sheriff’s Office. The Uniform Traffic Crash Report indicates that Complainant had a green light and the Feiser vehicle failed to obey a red light and struck Complainant’s vehicle. The determination of

fault in the accident report appears to be based upon the statement of a witness to the accident. There is no contact information on the report for the witness.

4. Ms. Feiser and her passenger were hospitalized as a result of the motor vehicle accident. Ms. Feiser was knocked unconscious in the accident and has no memory of it.

5. Agency received a notice of claim from Complainant who stated she had a green light and their insured failed to stop at a red light, causing the damage to her vehicle.

6. Agency began its investigation into the facts of the accident. Although Ms. Feiser was rendered unconscious in the accident and had no memory of it, she subsequently learned that an individual named Nicole Fox witnessed the accident.

7. Agency interviewed Ms. Fox who stated that Complainant entered the intersection at a high rate of speed, failed to stop at a red light and struck the Feiser vehicle. Ms. Cox further stated that Ms. Feiser and not Complainant had a green light.

8. Agency's attempts to contact Rose Williams, a passenger in the Feiser vehicle, were unsuccessful.

9. There was no contact for the witness contained in the uniform crash report. Consequently, Agency was unable to contact that witness.

10. Agency interviewed Complainant regarding the facts of the accident. Complainant stated she had the green light, but admitted she sped up to make it through the light.

11. Based upon the statements of Complainant, Ms. Feiser and Ms. Fox, Agency denied Complainant's claim. A denial letter was sent to Complainant on December 1, 2022.

12. Complainant's insurer accepted liability for the accident for the bodily injury claim of Ms. Feiser and her passenger.

13. On or about June 10, 2021, Complainant filed her third-party administrative complaint with the OIC against Agency. Complainant alleges she was not responsible for the accident and disputed Agency's denial of her claim.

14. The OIC investigated Complainant's complaint and did not find any violations of West Virginia insurance laws or regulations on the part of Agency. A "no merit" letter was mailed to Complainant on or about November 22, 2022, indicating that no violations of the West Virginia Unfair Trade Practices Act were found, and that there existed a good faith dispute over the issue of liability.

15. On December 14, 2022, Complainant filed with the OIC a request for a hearing upon the merits of her third-party administrative complaint.

#### CONCLUSIONS OF LAW

1. Regarding third-party complaints, the WVOIC Commissioner does not have the general authority to adjudicate the merits of an underlying claim involving a good faith dispute over liability or value. Pursuant to W.Va. Code §33-11-4a, the WVOIC Commissioner is tasked with resolving third-party complaints regarding unfair claims settlement practices against an insurance company. However, W.Va. Code §33-11-4a does not give the WVOIC Commissioner the authority to order an insurance company to pay a third-party claimant's underlying damages.

2. The authority of the WVOIC Commissioner is thus limited by statute.

3. A disagreement regarding liability or value for an underlying claim does not alone signal an unfair claims settlement practice. “So long as the insurer acts in good faith, the insurer is not held to standards of omniscience or perfection; it has leeway to use and should consistently employ its honest business judgment.” *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W.Va. 634, 600 SE2d 346 (2004), quoting *Peckham v. Continental Cas. Ins. Co.*, 895 F2d 830, 835 (1 st Cir. 1990). Agency simply must show that its investigation was done in good faith given its own knowledge at the time of the claim and relevant facts and claim concerning the underlying claim. See *Jackson supra*, at 642, quoting *Bolden v. O’Connor Café of Worchester, Inc.*, 50 Mass App Ct. 56, 734 N.E.2d 726 (2000).

4. Moreover, W.Va. Code §33-11-4a(g) states “a good faith disagreement over the value of an action or claim or the liability of any party to any action or claim is not an unfair claims practice.”

5. Agency conducted a fair, thorough and reasonable investigation into Complainant’s claim for loss. The dispute between the parties regarding the issue of liability is one of good faith.

6. W.Va. Code §33-2-13 states, in pertinent part, “the commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties.” 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 the 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.

7. W.Va. Code §33-2-13 and W.Va. Code R. §114-13-3.3 give the Commissioner discretion in deciding whether a hearing would serve a useful purpose. Holding a hearing in this matter would involve an exercise of authority in excess of that available to the Commissioner under the law in asking him to adjudicate a dispute between Complainant and Erie in Complainant's claim. Therefore, a hearing on the matter would serve no useful purpose.

#### ORDER

Inasmuch as a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the WVOIC under the law it is, therefore, ORDERED that the Complainant's hearing request is DENIED. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this Order of the Insurance Commissioner to the Circuit Court of Kanawha County, West Virginia within 30 days of his receipt hereof.

ENTERED this the 11<sup>th</sup> day of January 2023.

  
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Allan L. McVey, CPCU, ARM, AAI, AAM, AIS  
Insurance Commissioner  
State of West Virginia