

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

JAMES E. BENNETT,

Complainant,

v.

Administrative Proceeding No. 22-IC-02151

TRUMBULL INSURANCE COMPANY, THE HARTFORD,

Respondent.

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

This matter came before the Insurance Commissioner of West Virginia (hereinafter, "Commissioner"), on Complainant James. E. Bennett's (hereinafter, "Complainant") request for a hearing on his first-party administrative complaint filed against Respondent Trumbull Insurance Company, The Hartford, (hereinafter, "Respondent"). After consideration of Complainant's hearing request, the undersigned Commissioner did proceed to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant was involved in a motor vehicle accident on September 29, 2021, in Charles Town, West Virginia. Complainant's vehicle is insured by Respondent.
2. Complainant was backing from a parking space when he struck another vehicle. Respondent's vehicle had come to a stop when Complainant's vehicle struck it. Complainant alleges the driver of the vehicle cursed at him and threatened him at the accident scene.
3. Both Complainant and the other driver contacted Respondent about the accident shortly after the accident. Both gave statements about the accident. Complainant admitted to not

seeing the other vehicle while backing out of his parking space and hitting it while the other driver stated he was a complete stop when Complainant struck his vehicle.

4. Respondent accepted full liability for the accident and repaired the other vehicle at a cost of \$2,835.82.

5. On or about March 1, 2022, Complainant filed his first-party administrative complaint with the Commissioner. Complainant alleged that the accident was “staged” by the driver of the other vehicle, and further alleged Respondent did not timely respond to his calls to them.

6. On or about April 8, 2022, Respondent responded to the complaint filed by Complainant. Respondent stated that they fully investigated the accident and found no evidence to support Complainant’s allegation that the accident was staged. Respondent further stated that the accident was a reason for a pricing change in Complainant’s policy. Respondent also stated they attempted to contact Complainant by phone regarding their findings but was not successful.

7. On or about September 23, 2022, Commissioner sent Complainant a “no violations letter” stating their investigation into his complaint did not uncover any violations of the state of West Virginia insurance laws or regulations.

8. On October 11, 2022, Commissioner received a letter from Complainant, requesting a hearing upon the merits of his first-party administrative complaint.

CONCLUSIONS OF LAW

1. 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 (1st Cir. 1990). Respondent simply must show that its investigation was done in good faith given its own knowledge at the time of the 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 577; 34 N.E.2d 726 (2000).

2. Complainant admitted to Respondent to striking the other vehicle. He also admitted in his request for a hearing to striking the other vehicle. Respondent investigated accident and found Complaint to be responsible for the damages to the other vehicle. Their investigation found did not uncover anything to substantiate Complainant’s allegation that the accident was staged. Respondent’s investigation was thorough, fair and objective.

3. There is no evidence to support Complaint’s allegation that Respondent failed to contact Complainant in a timely manner. Respondent timely investigated and notified Complainant of their liability decision. Respondent additionally attempted to contact Complaint by phone and was unsuccessful.

4. 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.

5. W.Va. Code §33-2-13 and W.Va. R §114-1-3.3 afford 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 that it would be asking him to adjudicate a good faith dispute regarding the Complainant's underlying claim. This matter was properly closed pursuant to W.Va. Code § 33-1 1-4a(g), and a hearing on the matter would serve no useful purpose. Respondent conducted a reasonable investigation and, based upon the information it gathered, determined that the claim was excluded under the policy. There is no evidence that Respondent's decision was improper.

ORDER

Wherefore, since a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the Commissioner under the law, it is ORDERED that the Complainant's request for a hearing 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 within 30 days of receipt.

ENTERED this the 14th day of November, 2022.


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