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

ROBERT JOHNSON,

Complainant,

v. Administrative Proceeding No. 24-IC-174040

PROGRESSIVE MAX INSURANCE COMPANY,

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 Robert Johnson's (hereinafter, "Complainant") request for a hearing on his third-party administrative complaint filed against Progressive Max Insurance Company, (hereinafter, "Respondent"). After consideration of Complainant's hearing request, the undersigned Commissioner proceeded to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. On January 19, 2017, the Complainant was injured in a two-vehicle accident.
2. The accident occurred in Buffalo, New York.
3. The Respondent insured the driver of the other vehicle ("the insured").
4. The insured was determined to be one hundred percent (100%) liable for the accident.
5. Both the Complainant and the insured were residents of the State of New York.
6. On May 16, 2024, the Complainant filed a third-party administrative complaint against Respondent with the Commissioner by email, alleging that the Respondent based its claim

determination upon fraudulent facts. The Complainant requested that federal charges be brought against a federal judge, several attorneys, and Respondent.

7. The Complainant copied this complaint to dozens of other state insurance commissioners, along with several PDF attachments related to the Complainant's federal court filings and a response from the Ohio Department of Insurance, which was made in June of 2019, regarding the incident.

8. On May 24, 2024, the Commissioner sent a letter to Complainant, informing him that the complaint would be closed. The letter informed the Complainant that the Commissioner did not have jurisdiction to hear the complaint because the accident occurred in New York, involved New York residents, and was based on an insurance policy approved in New York. In sum, the complaint had no connection to West Virginia.

9. On May 24, 2024, the Commissioner received the Complainant's Request for a Hearing. In his request, the Complainant asserts that he is subject to "ongoing discrimination practices and ponzi scheme crimes." He further "reserves all rights for appeals and exhaustion of administrative remedies made available." The Complainant did not explain why the Commissioner has jurisdiction over this matter or assert any information not previously provided.

10. During a discussion with the Complainant, he insisted that he was a resident of West Virginia. Later, the Complainant provided the address of his alleged West Virginia residence to the Commissioner.

11. The Complainant's alleged West Virginia address is contradicted by years of correspondence between the Respondent and the Complainant, and the address the Complainant provided on court filings in various jurisdictions.

12. Throughout the correspondence, the Complainant or the Respondent listed a Buffalo, New York address as the Complainant's mailing address. The address remained the same until, in 2023, the Respondent mailed the final settlement check to Complainant at a different address in Buffalo, New York.

13. The Commissioner's independent investigation revealed the Complainant had only two known addresses since 2017, which were both included in the Complainant's correspondence with the Respondent. Both addresses were in Buffalo, New York.

14. The Commissioner's investigation did not find that the Complainant was a resident of the state of West Virginia at any point.

15. Further, the Commissioner discovered that the Complainant signed a notarized "general release" in August of 2023. In this release, the Complainant "released, and forever discharged" the Respondent in relation to claim number 195155567 "of and from all, and the manner of action and actions, cause and causes of actions, suits" and so on "from the beginning of the world to the day of the date of these presents."

16. The facts and circumstances surrounding the Complainant's complaint are directly related to the claim number 195155567, which he released the Respondent from all claims and causes of action in August of 2023.

CONCLUSIONS OF LAW

1. 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."

2. 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.

3. The Commissioner must first determine whether it is proper to exercise jurisdiction over this matter.

4. "'The standard of jurisdictional due process is that a foreign corporation must have such minimum contacts with the state of the forum that the maintenance of an action in the forum does not offend traditional notions of fair play and substantial justice.' Syllabus Point 1, *Hodge v. Sands Manufacturing Company*, 151 W. Va. 133, 150 S.E.2d 793 (1966)." *Pries v. Watt*, 186 W. Va. 49, 51-52, 410 S.E.2d 285, 287-288, (1991).

5. "To what extent the defendant has minimum contacts depends upon the facts of the individual case. In determining whether the exercise of personal jurisdiction is reasonable, a court should consider the burden on the defendant, the interests of the forum state, and the plaintiff's interest in obtaining relief. Finally, consideration should be given to the interstate judicial system's interest in obtaining the most efficient resolution of controversies and the shared interest of the several states in furthering fundamental substantive social policies." *Id*, 186 W. Va. at 52, 410 S.E.2d at 288.

6. Neither the Complainant nor the insured is a resident of this state.

7. The incident giving rise to this claim did not occur in this state.

8. Any alleged misconduct on the part of the Respondent that harmed the Complainant occurred in the state where the Complainant resided at the time of the conduct or otherwise felt the harm of the violation. The evidence indicated this to be the state of New York.

9. Despite the Complainant's allegation that he resides in this state, all other relevant information indicates that he has lived in New York from the time of the incident until now.

10. The Respondent is a foreign corporation and is licensed to do business in this state.

11. The Respondent actively markets insurance products in this state.

12. However, the insurance policy at issue is a policy approved and regulated by the state of New York.

13. The Commissioner has no interest in regulating the actions of the Respondent that occurred in another state between residents of that state.

14. Neither the incident nor the parties involved have a connection to West Virginia, except for the Respondent holding a license to do business in this state, which is an insufficient factor alone to give the Commissioner jurisdiction over this matter.

15. Upon consideration of these factors, the Commissioner concludes that exercising jurisdiction over this complaint would involve an exercise of authority in excess of what is available to him under the law.

16. Furthermore, the Complainant signed a general release in August of 2023 that released the Respondent from any further action related to the claim at issue.

17. Accordingly, the Complainant cannot pursue this complaint without violating said release.

18. Therefore, the Commissioner further concludes that a hearing on this matter would serve no useful purpose because the Complainant has released the Respondent from any further action on this matter.

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**. 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 2nd day of July, 2024.

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