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

ROBERT SWINEY,

Complainant,

v. Administrative Proceeding No. 24-IC-177116

SAFECO INSURANCE COMPANY OF AMERICA,

Respondent.

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

This matter came before the West Virginia Offices of the Insurance Commissioner (hereinafter, "OIC"), on Robert Swiney's (hereinafter, "Complainant") request for a hearing on his third-party administrative complaint filed against Safeco Insurance Company of America, (hereinafter, "Respondent"). After consideration of Complainant's hearing request, the undersigned OIC did proceed to make the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Complainant is the owner of a 1988 Jeep Comanche. The vehicle was parked and unattended when it was struck in the driver-side back panel by a vehicle insured by Respondent. Respondent accepted full liability for the accident on the part of its insured.

2. Complainant alleges he was told he needed to take his vehicle to a repair shop in one of Respondent's Guaranteed Repair Network (hereinafter, "GRN"). Complainant alleges he was never told by Respondent that he could take his vehicle to any shop of his choice instead of a shop in the GRN.

3. Complainant took his vehicle to Collision Specialists, a shop in the GRN. Collision Specialists deemed the vehicle a total loss because the bedside panel was no longer available. The

decision to not replace the bedside panel was made due to pre-existing rust over the wheel opening that is covered by old license plates. Respondent alleges the panel could be repaired if not for the pre-existing condition of the vehicle.

4. Collision Specialists called Respondent's appraiser to review the claim. The estimate and photos were reviewed and another repair shop within the GRN was consulted. This repair shop stated the bed panel could be repaired by removing the license plates, completing the repairs, and re-attaching the license plates.

5. A check in the amount of $1,966.39 was sent to Complainant for the repairs, being the estimate from the second repair shop. Complainant disputed the repair amount with Respondent and stated the photos did not include the inner bed of the vehicle, and did not include the damage to vent pipe and fuel tank. Respondent alleges there is no damage resulting from the accident with its insured to the vent pipe and fuel tank.

6. After disputing the repair quote, Respondent sent the photos (that did not include the inner bed) to Greg Chandler Frame and Body. This body shop gave a repair quote that was less than the one provided by Collision Specialists. Complainant alleges this quote is insufficient because it quotes a conventional repair of pulling the dent and painting the bedside only. Complainant alleges the paint scheme of his vehicle cannot be matched.

7. Approximately two months later, Complainant was contacted by a Senior Consumer Repair Specialist of Respondent who advised Complainant to take the vehicle to a repair facility of his choosing. Complainant took his vehicle to Matt's Custom Auto Body, LLC. Complainant alleges this quote is insufficient because, like Collision Specialists, it quotes total repairs and states the bed can be replaced. Complainant alleges the bed cannot be replaced because the part has been discontinued.

8. On or about October 2, 2024, Complaint filed his third-party administrative complaint with the OIC. Complainant alleges in his complaint that the paint on his vehicle cannot be matched and that Respondent gave him an ultimatum of taking his vehicle to their repair shop which is 1.5 hours from his home.

9. After filing his complaint with the OIC, Respondent reviewed the claim and observed the bedside panel would not be removed for repairs. Respondent decided that the vehicle could be repaired at Greg Chandler's Frame and Body for an additional $378.00 for a total amount of $2,344.39. Complainant has only received a check in the amount of $1,966.39, which represents the undisputed amount of the repairs. That check has not been cashed.

10. After investigating the facts and circumstances surrounding Complainant's complaint, the OIC mailed the Complainant a "no merit" letter dated January 25, 2025, finding that no violations of the West Virginia insurance laws or regulations had been violated in the handling of Complainant's claim, and there existed a good faith dispute over the value of the claim.

11. By letter dated February 3, 3025 and received by the OIC on February 11, 2025, Complainant requested a hearing upon the merits of his third-party administrative complaint.

CONCLUSIONS OF LAW

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

2. 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).

3. Respondent promptly conducted and diligently pursued a thorough, fair and objective investigation into the facts and circumstances of Complainant's claim. The investigation was reasonable.

4. The dispute between the parties over the repairs to Complainant's vehicle is one of good faith. There exists a difference between the repair shops, the Complainant and Respondent over how the vehicle can be repaired and the amount for those repairs. Complainant has been issued a check for the amount of the undisputed repairs.

5. No violations of the West Virginia insurance laws or regulations were found on behalf of Respondent in the handling of Complainant's claim.

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. R §114-1-3.3 affords 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 l-4a(g), and a hearing on the matter would serve no useful purpose.

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 West Virginia Insurance Commissioner are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code §51-11-4(b)(4)2, any person aggrieved by this Order may, within 30 days after the entry of 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 20th day of March, 2025.

Allan L McVey
West Virginia Insurance Commissioner