BEFORE ALAN MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

SCOTT HUNTER,

Complainant,

v. **ADMINISTRATIVE PROCEEDING NO.:25-IC-181131**

ERIE INSURANCE PROPERTY & CASUALTY COMPANY,

Respondent.

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopts and approves the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. Complainant failed to prove that the Respondent violated West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1. Therefore, the Complainant's complaint should be dismissed.

THEREFORE, it is **HEREBY ORDERED** that the Complaint by Scott Hunter is denied.

The Commissioner's final orders 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 of the entry of the judgment being appealed**, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

ENTERED this 14th day of October, 2025.

Allan L. McVey

ALLAN L. MCVEY, CPCU, ARM, AAI, AAM, AIS.
INSURANCE COMMISSIONER

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RECOMMENDED DECISION OF THE HEARING EXAMINER

On August 7, 2025, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Babcock Room in the Marion County Courthouse, Fairmont, West Virginia. Scott Hunter (hereinafter "Complainant") did not make an appearance. Christopher Jacobs, Esquire, appeared on behalf of Erie Insurance Property & Casualty Company (hereinafter "Respondent") Following the hearing, the matter was deemed submitted for recommended decision.

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Complainant did not appear at the hearing; however, the evidence was that the Complainant was properly sent a Notice of Hearing. Prior to the beginning of the hearing, the Hearing Examiner attempted to contact the Complainant. A message was left informing the Complainant that the hearing was about to begin. The message requested that the Complainant contact the Hearing Examiner. As of the date of this decision, no response was received from the

Complainant.

2. The Respondent insured an individual named Jerry Stark. On March 29, 2025, Mr. Stark entered a parking lot but misjudged his turn and impacted a parked vehicle owned by the Complainant. (Tr. P. 5; Ex; 1, 5)[1]

3. Mr. Stark struck the Complainant's vehicle on the rear passenger side. (Tr. P. 5-6; Ex. 1)

4. On April 11, 2025, the Complainant contacted the Respondent and filed a claim for property damage to his vehicle. In his claim, the Complainant stated that the accident caused damage to the rear bumper and the exhaust pipe. (Tr. P. 6; Ex. 1, 3)

5. On the same day the claim was filed, the Respondent informed the Complainant that the Respondent would have to make a liability determination. Later that day, the Respondent contacted Mr. Stark to discuss the facts surrounding the accident. (Tr. P. 6; Ex: 1)

6. On April 17, 2025, the Respondent interviewed Mr. Stark. Mr. Stark admitted that he was liable for the accident. Later that same day, the Respondent assigned an adjuster to the matter. The adjuster contacted the Complainant and scheduled a vehicle inspection. (Tr. P. 6; Ex. 1,3)

7. On April 21, 2025, the adjuster examined the Complainant's vehicle. While examining the vehicle, the adjuster took twenty-three pictures from various angles. The adjuster noted minor damage to the right side of the Complainant's vehicle at the point of impact. (Tr. P. 6; Ex. 2)

8. During the inspection, the adjuster noted that the exhaust pipe on the vehicle was

[1] In the Complaint filed by the Complainant, he alleged that Mr. Stark was intoxicated at the time of the accident. He stated that Mr. Stark was arrested and charged with a DUI. No proof of this allegation was presented at the hearing.

rusted and detached from the muffler. The rusted exhaust pipe was located on the left side of the vehicle, not on the right side where the collision occurred. (Tr. P. 7; Ex. 4)

9. It was the conclusion of the adjuster, based on his experience, that the damage to the exhaust pipe was not a result of the collision between Mr. Stark's vehicle and the Complainant's vehicle. (Tr. P. 5-6; Ex. 4)

10. On April 21, 2025, the adjuster prepared a damage estimate for the right side of the Complainant's vehicle. The Respondent issued a check for $1,220.95 to the Complainant. The Complainant cashed the check. (Tr. P. 7-8; Ex. 1, 4,6)

11. On April 23, 2025, the Complainant filed a Complaint with the West Virginia Offices of the Insurance Commissioner. (Ex. 5)

12. On June 12, 2025, the West Virginia Offices of the Insurance Commissioner issued a merit letter. In the merit letter, West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1 were cited as possible violations. (Tr. P. 8)

13. The Complainant did not make an appearance by the end of the hearing, so the hearing was called concluded at 11:01 a.m. (Tr. P. 11)

Issue

Whether the Respondent violated West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1. If so, what is the remedy?

Burden of Proof

The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of the State of West Virginia.

Jurisdiction

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this matter under West Virginia Code § 33-11-1, et. seq.

Analysis

The West Virginia Offices of the Insurance Commissioner identified two different potential violations by the Respondent, West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1. When a Merit Letter is issued, the hearing examiner is limited to the potential violations alleged in the Merit Letter to determine whether the Respondent violated the Unfair Trade Practices Act in making his decision.

As was stated above, the Complainant has the burden of proof to prove that the Respondent violated those West Virginia State Code or State Rule identified in the Merit Letter. For some unknown reason, the Complainant chose not to make an appearance at the hearing. The Respondent was then allowed to present any evidence that it may have to indicate that it did not violate the Code Section or State Rule contained in the Merit Letter

The Merit Letter cites West Virginia Code § 33-11-4(9)(d) which states as follows:

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

> The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:
> (9) Unfair claim settlement practices. -- No person shall commit or perform with such frequency as to indicate a general business practice any of the following:
> (d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

The evidence was that the accident occurred on March 29, 2025. The Complainant did not contact the Respondent until April 11, 2025. Six days later, April 17, 2025, the Respondent interviewed its insured, Mr. Stark. During the interview, Mr. Stark admitted that he had been at

fault for the accident. On that same day, the Respondent assigned an adjuster.

On April 21, 2025, the adjuster examined the Complainant's vehicle and took twenty-three pictures of the vehicle from various angles. Consistent with the information provided to the Respondent by Mr. Stark and the adjuster's experience, the adjuster determined that the impact occurred on the rear passenger side of the Complainant's car.

On the same day that the adjuster inspected the Complainant's vehicle, the Respondent issued a check for $1,220.95. The Complainant accepted the check and cashed it.

The fact that the Respondent inspected the vehicle and issued a check for the damage that the adjuster assigned to the collision was sufficient to prove that the Respondent conducted a reasonable investigation and did not refuse to pay the claim. Therefore, the Respondent did not violate West Virginia Code § 33-11-4(9)(d) .

The next issue, which is closely related to West Virginia Code § 33-11-4(9)(d), is whether the Respondent violated West Virginia Code of State Rules § 114-14-6.1. This Rule states as follows:

> §114-14-6. Standards For Prompt Investigations And Fair And Equitable Settlements Applicable To All Insurers.
> 6.1. Investigation of claims. -- Every insurer shall promptly conduct and diligently pursue a thorough, fair and objective investigation and may not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of a claim dispute. This section is not intended to conflict with the statutory requirements of the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11, as the same relate to the assertion and investigation of medical professional liability claims.

To prove a violation of this Rule, the Complainant must prove that the investigation by the Respondent was not timely, thorough, fair, or objective. As far as timeliness of the investigation is concerned, the evidence was that the Respondent interviewed its insured within six days of the filing of the claim. The Respondent then inspected the Complainant's vehicle four days later with

a check being issued the very same day. The claim was investigated, and the claim was paid within ten days. Thus, it was timely.

The next issue under West Virginia Code of State Rules § 114-14-6.1 is whether the investigation was fair, thorough, and objective. As stated above, the Respondent assigned an adjuster who inspected the Complainant's vehicle. The adjuster took twenty-three pictures of the vehicle and based on his experience made a fair offer. There was no proof offered to indicate that the investigation was not fair, thorough, or objective. Therefore, there was no violation of West Virginia Code of State Rules § 114-14-6.1 proven.

When reviewing the Complaint filed by the Complainant, his main complaint was that the collision damaged his exhaust system. The evidence presented by the Respondent was that the collision occurred on the opposite side of the vehicle from the exhaust system. It was also stated that the exhaust pipe was rusted. This decision can only be based on the evidence presented at the hearing and cannot be based on an allegation in the Complaint. Since the Complainant chose not to appear at the hearing, there was no proof offered that the damage to the Complainant's exhaust system was related to the accident.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commission have jurisdiction over this matter by virtue of West Virginia Code § 33-11-1, et. seq.

2. The Complainant has the burden of proof to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1.

3. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(d) when there was no evidence that the

Respondent denied the claim without conducting a proper investigation.

4 The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-14-6.1. There was no evidence that the investigation by the Respondent was not timely, fair, thorough or objective.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Complainant failed to prove that the Respondent violated West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,

MARK W. CARBONE