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

ANTONIO ADAMS,

Complainant,

v. Administrative Proceeding No. 25-IC-180334

GEICO ADVANTAGE INSURANCE COMPANY,

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, "Commissioner" or "OIC"), on Antonio Adam's (hereinafter, "Complainant") request for a hearing on his third-party administrative complaint filed against Geico Advantage Insurance Company, (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. On February 17, 2025, Complainant was involved in a two-vehicle accident with a vehicle insured by Respondent.

2. The accident occurred in a private parking lot.

3. On February 18, 2025, Complainant filed a third-party insurance claim with Respondent.

4. On February 18, 2025, the Respondent obtained statements from Complainant and the other driver.

5. According to those statements, the other driver's car was parked at the end of the parking lot and away from the exit of the parking lot, while Complainant was parked closer to the exit of the parking lot.

6. The other driver was driving the insured vehicle in the direction of the parking lot exit with his headlights on.

7. Complainant had backed his vehicle into the parking space and was facing toward the aisle of the parking lot prior to putting his car into motion.

8. As the other driver neared Complainant's vehicle, Complainant pulled his car out of its parking space.

9. The other driver stated that he attempted to swerve and avoid Complainant's vehicle but could not do so and Complainant's vehicle struck the side of his car.

10. Complainant stated he pulled his vehicle out of the parking space and had already begun to turn towards the parking lot exit. Complainant stated that the other driver did not stop his vehicle and attempted to swerve and go between the side walk and Complainant's vehicle but ultimately struck Complainant's vehicle.

11. Based on corroboration by both parties that the insured vehicle was already in the center aisle of the parking lot and in forward motion at the time of the collision, Respondent found that its insured was not at fault for the accident. Respondent denied Complainant's claim by letter dated February 19, 2025.

12. During discussions with the parties, Respondent was informed that the business operated cameras that recorded the parking lot and a recording of the accident may exist.

13. On February 26, 2025, Respondent obtained and reviewed the video of the accident.

14. The video shows the parking lot and is nearly centered on the space where the impact occurs.

15. It is dark in the video and the headlights of insured vehicle, Complainant's vehicle, and vehicles passing on a nearby roadway appear clearly.

16. Notably, the parking lot has no center line like a state or local roadway and appears to have a rough surface without clearly defined parking spaces.

17. In the video, which is approximately twenty-one seconds long, the insured vehicle is visible driving toward the parking lot exit and in the direction of Complainant's vehicle with its headlights on.

18. In the sixth second of the video, Complainant illuminates the headlights of his vehicle.

19. In the seventh second of the video, Complainant's vehicle pulls out of the parking space.

20. In the eighth second of the video, the two vehicles collide with the Complainant's vehicle striking near the left front wheel of the insured vehicle.

21. Following a review of the video, Respondent maintained its liability decision and informed Complainant of its decision.

22. The Commissioner received Complainant's formal written complainant against Respondent on March 24, 2025.

23. Complainant stated that he disagreed with Respondent's liability decision and that Respondent rendered its liability decision prior to viewing the video.

24. Complainant stated that the insured vehicle was traveling too quickly and too close to the vehicles on the left side of the parking lot.

25. These statements are not conclusively supported by the video.

26. Complainant provided the video of the accident, a recording of the parking lot on a different day, and photographs of the damage to his vehicle.

27. Respondent responded to the complaint on April 4, 2025, which was timely and in accordance to West Virginia law.

28. Respondent maintained its liability decision based on the facts and reasoning recounted above.

29. The Commissioner found no merit to the complaint as it involved a good faith disagreement regarding the liability of the parties.

30. The Commissioner informed Complainant of his decision by letter, dated May 15, 2025.

31. Complainant filed a demand for a hearing, dated June 8, 2025, and received by the Commissioner on June 13, 2025.

32. In his demand, Complainant argued that the two videos show that the other driver was conclusively liable for the accident.

33. However, the Commissioner, upon his review of the material available, determined that the videos do not show clear liability on the part of either party.

34. The Commissioner finds that there exists a good faith dispute over the liability for the claim.

35. Determining which party is at fault is a question of fact that the Commissioner cannot adjudicate.

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:
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> 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. W. Va. Code § 33-11-4a provides procedures for the Commissioner to hear complaints from third-party insurance claimants and provides that "[a] third-party claimant may file an administrative complaint against a person for an alleged unfair claims settlement practice with the Commissioner."

4. However, W. Va. Code § 33-11-4a specifically provides that "[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 settlement practice*." (emphasis added).

5. 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 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)).

6. The Commissioner determined that this matter involves a good faith dispute over the liability of the parties as the evidence available does not establish clear liability for either party.

7. The Commissioner does not have the authority to determine liability; it is a question of fact that must be adjudicated in a court of general jurisdiction.

8. Respondent promptly conducted and diligently pursued a thorough, fair and objective investigation into the facts and circumstances of Complainant's claim. Respondent also reviewed its decision when the investigation uncovered the video of the accident.

9. The Commissioner concludes that the investigation into this third-party claim was reasonable.

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

11. 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 or involve an exercise of authority in excess of what is available to him. Given that a good faith dispute over liability cannot be an unfair claim settlement practice, the Commissioner concludes that a hearing on this matter would serve no useful purpose. To the extent that Complainant desires the Commissioner to determine liability or find that he was not liable for the accident related to this claim, the Commissioner does not have the authority to make such a determination. The Commissioner concludes that this matter was properly closed pursuant to W.Va. Code § 33-1 l-4a.

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 28th day of July, 2025.

ALLAN L. MCVEY CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner