

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

PAUL GOULD

Complainant,

ADMINISTRATIVE PROCEEDING NO. 21-IC-02116
and 21-IC-02220

v.

USAA GENERAL INDEMNITY COMPANY

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DENYING HEARING**

This matter came before the West Virginia Offices of the Insurance Commissioner (hereinafter "OIC") on Complainant's Paul Gould's (hereinafter "Complainant") Motion for a Hearing filed on or about January 31, 2022, pursuant to W.Va. Code §33-2-13 and W.Va. Code R §§114-76-5.3 AND 114-13.3.

FINDINGS OF FACT

1. On or about February 17, 2021, Complainant filed his third-party administrative complaint with the OIC, alleging USAA Indemnity Company (hereinafter, "USAA") did not properly compensate him for the value of his vehicle which was deemed a total loss. Complainant further alleged USAA improperly disposed of his vehicle. A file was created for this complaint and designated as Administrative Proceeding No. 21-IC-02116.

2. Subsequently, Complainant filed a complaint with the West Virginia Attorney General's Office which was forwarded to the OIC on or about August 24, 2021. The complaint was similar to the complaint filed with the OIC on or about February 17, 2021. A file was created for this complaint and designated as Administrative Proceeding No. 21-IC-02220.

3. Specifically, Complainant alleges USAA used improper comparables to determine the value of his vehicle. USAA originally valued Complainant's at Sixteen Thousand Five Hundred Twenty-Eight Dollars (\$16,528.00). Complainant disputed this amount and submitted four comparable vehicles. USAA raised its valuation to Seventeen Thousand Twelve Dollars (\$17,012.00). Complainant disputed this amount.

4. After Complainant disputed the amount of his vehicle, USAA again reran the valuation, using the same model and staying within 4,000 odometer miles of Complainant's vehicle. After doing so, USAA raised the value to Seventeen Thousand Thirty-Five Dollars (\$17,035.00), with a total value of Eighteen Thousand One Hundred Thirty-Three Dollars and Sixty Cents (\$18,133.60), and an owner-retained value of Twelve Thousand Seven Hundred Ninety-Four Dollars and Forty-Four Cents (\$12,794.44). Complainant was advised of these amounts on or about January 27, 2021. Complainant disputed these values but provided no further documentation.

5. On or about March 12, 2021, USAA left Complainant a voice mail message requesting that he advise them of the total loss paperwork he was previously sent, and how he would like to proceed. Complainant was advised USAA would proceed with the No Further Interest process if he did not respond to their request. Complainant did not respond to USAA nor return any of the documents he was asked to return.

6. On or about March 16, 2021, USAA informed Complainant he must contact them by the end of that week on how he wanted to proceed. Prior documents explaining the No Further Interest process were sent to Complainant. The documents were not returned.

7. On or about March 24, 2021, after not having any paperwork returned from Complainant, nor having any communication with him, USAA initiated the No Further Interest process to dispose of Complainant's vehicle. USAA enlisted the services of Insurance Auto Auctions (hereinafter, "IAA") to dispose of the vehicle.

8. On or about July 28, 2021, Complainant contacted USAA and stated he wanted to accept the payout of Eighteen Thousand One Hundred Thirty-Three Dollars and Sixty Cents (\$18,133.60). USAA responded that due to not hearing from Complainant, the vehicle had been disposed, and the only option was for Complainant to accept the owner-retained value of Twelve Thousand Seven Hundred Ninety-Four Dollars and Forty-Four Cents (\$12,794.44). IAA confirmed the vehicle had been disposed.

9. On or about August 5, 2021, USAA issued the owner-retained settlement to Complainant.

10. After filing his third-party administrative complaint, USAA further investigated the matter and discovered that IAA did not properly follow their procedures in disposing of Complainant's vehicle. The Five Thousand Three Hundred Thirty-Nine Dollars and Nineteen Cents (\$5,339.19) difference in the owner-retained salvage and the total value was forwarded to Complainant by IAA on or about August 26, 2021.

11. On or about July 7, 2021, the OIC sent Complainant a "no violations letter" stating the dispute between the parties was a good faith dispute over the value of the claim, and no unfair claim settlement practices were found. The file number 21-IC-02116 was closed.

12. On or about November 19, 2021, the OIC sent Complainant a "no violations letter" finding the second, third-party administrative complaint filed by Complainant involved a good

faith dispute over the value of the claim, and no unfair claims settlement practices were found. The file number 21-IC-02220 was closed.

13. Complainant requested both files be reopened so the facts of his complaints could be reviewed. The files were reopened and reviewed again.

14. By letter dated January 25, 2022, the OIC explained that USAA accepted liability for the accident caused by its insured; that USAA conducted a prompt and reasonable investigation; that USAA maintained adequate contact with Complainant; that USAA considered information submitted by Complainant regarding the vehicle's value and used an approved used car guide to arrive at the value of Complainant's truck; that USAA did not commit any unfair claims settlement practices violations in the handling of Complainant's complaints; and that, by statute, a good faith dispute over the value of the vehicle cannot be an unfair claims settlement practice.

15. The OIC's January 23, 2022 letter further explained that with respect to IAA and the manner in which the vehicle was disposed, IAA is not an insurance company and is not regulated by the OIC. IAA is a salvage yard and/or auto auction company and its regulation is not within the jurisdiction of the OIC.

16. By letter dated January 31, 2022, Complainant requested a hearing on the merits of his third-party administrative complaints.

CONCLUSIONS OF LAW

1. W.Va. Code §33-2-13 states, in pertinent part, "[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties."

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

4. 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). USAA 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. Ct. 56, 734 N.E.2d 726 (2000).

5. Moreover, W.Va. Code §33-11-4a(g) states “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 practice.”

6. Regarding the manner in which Complainant’s vehicle was disposed, IAA is not an insurance company, but rather a salvage yard or auction company, and therefore, not regulated by the OIC. Further, W.Va. Code §17A-4-10(q) provides steps to be taken by an automobile action company when an insurance company has decided not to take ownership of the vehicle in question. The section states, in relevant part,

At any time after the automobile auction has had possession of the motor vehicle for forty-five days, it may apply to the division for a salvage certificate or a nonrepairable motor vehicle certificate without surrendering the certificate of title for the motor vehicle. The application shall be accompanied by a copy of a written request, on the automobile auction’s letterhead, requesting that, upon payment of applicable charges, the vehicle be removed from the automobile auction’s facility, proof that the request was delivered by a nationally-recognized courier service or by certified mail to the vehicle owner and any known lienholder at least fifteen days before the date of the application, and the requested fee, if applicable. Upon receipt of the properly completed application, the division shall issue a salvage certificate or a nonrepairable motor vehicle certificate, as applicable, in the name of the automobile auction. Such salvage certificate or nonrepairable motor vehicle certificate shall be issued free and clear of all liens and claims of ownership.

The OIC does not have the authority to regulate IAA and any violation of law allegedly committed by IAA is not within the jurisdiction of the OIC.

7. USAA conducted a reasonable investigation of the claim and made a reasonable settlement offer. USAA used an approved used car price guide and considered information provided by Complainant when determining the value of the vehicle. Although Complainant disagrees with the value, the OIC does

not have the authority to determine damages and order a certain sum paid. The OIC is limited to reviewing whether USAA committed an unfair claims settlement practice. A good faith dispute over the value of a claim is not considered an unfair claims settlement practice.

8. W.Va. Code §33-2-13 and W.Va. R §114-13-3.3 give 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 OIC under the law in that it would be asking the OIC to adjudicate a good faith dispute regarding the value of the claim. The OIC properly closed this matter pursuant to W.Va. Code § 33-11-4a(g), and a hearing on the matter would serve no useful purpose.

Wherefore, a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the OIC under the law.

ORDER

It is therefore **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 25th day of February, 2022.


ALLAN L. MCVEY