

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA

**JACQUES WILLIAMS,**

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO. 19-THP-02081

**UNITED SERVICES AUTOMOBILE ASSOCIATION,**

Respondent.

FINAL ORDER

On a prior day, to-wit, February 13, 2020, the Hearing Examiner in this matter submitted his Recommended Decision, appended hereto, containing findings of fact, discussion, analysis and conclusions of law. After review thereof, it is **ORDERED** that the said Recommended Decision is adopted as the decision of the Commissioner in this matter and is, by this reference, incorporated herein and made a part hereof.

It is further **ORDERED** that, inasmuch as it has been determined that the Respondent violated *W. Va. Code* § 33-11-4(9)(d) and *W. Va. Code R.* § 114-14-6.1, an additional investigation shall be commenced in order to determine whether the aforesaid violations occurred with such frequency as to constitute a general business practice.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted is preserved.

ENTERED this 2<sup>nd</sup> day of March, 2020.



JAMES A. DODRILL  
Insurance Commissioner

**BEFORE JAMES A. DODRILL  
INSURANCE COMMISSIONER  
STATE OF WEST VIRGINIA**

**JACQUES WILLIAMS,**

**Complainant,**

**v.**

**ADMINISTRATIVE PROCEEDING NO.:  
19-THP-02081/19-AP-THP-02081**

**UNITED SERVICES AUTOMOBILE  
ASSOCIATION,**

**Respondent.**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On December 16, 2019, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Marion County Courthouse in Fairmont, West Virginia. Complainant, Jacques Williams, Esquire, appeared in person. Appearing on behalf of United Services Automobile Association were Paul Gwaltney, Jr., Esquire, and Frank McKiddle. 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. Mr. Jacques Williams, Esq. (hereinafter "Complainant") resides at 33 La Vista Drive, Morgantown, West Virginia 26508. The complaint arises out of an automobile accident that occurred on January 20, 2019, on Morgan Hill Road, in Morgantown, West Virginia. (Tr. 8; Ex. 5)

2. The Complainant and his wife were traveling down Morgan Hill Road shortly after

9:00 a.m. on January 20, 2019, when they noticed skid marks on the road. It had been snowing and there was ice on the road. Once seeing the skid marks, the Complainant checked his brakes. As he got further down the hill, he observed a pickup truck that had slid off the road and had ended up in the left side ditch. (Tr. 9)

3. Dr. Grabo was driving the pick up that had lost control due to the ice and snow on the roadway and hit a utility pole. When Dr. Grabo struck the utility pole he caused the pole to land across the road blocking the Complainant's vehicle. The Complainant, seeing the truck and the utility pole, attempted to make a sharp right turn away from both the truck and the utility pole. The Complainant was unable to make the turn and collided with the utility pole. (Tr. 10-11)

4. Shortly after the accident, a Deputy Sheriff from the Monongalia Sheriff's Department arrived at the scene. The Deputy Sheriff wrote two police reports, one for each accident. (Tr. 18; Ex 1, 2)

5. The next day, the Complainant took his car to a body shop to get a repair estimate. He was told that it would cost approximately \$5,500.00 to repair the damage. The Complainant, either that day or the next, sent an email to Dr. Grabo's insurance company, United Services Automobile Association (hereinafter "Respondent"), in order to file a claim. (Tr. 11)

6. In the Complainant's email he provided an explanation of what had happened on January 20, 2019, and attached pictures of the damage to his vehicle and pictures of the accident scene. (Tr. 19, 32; Ex. 3)

7. Also, on January 21, 2019, the Complainant followed up the email to the Respondent with a phone call. He allegedly talked to a woman at the Respondent's office wherein she told him that his claim had been denied. According to the Complainant, he was told that the basis of the

denial was that he had struck a stop sign. (Tr. 12)

8. Mr. Frank McKiddle, claims adjuster for the Respondent, was assigned the Complainant's claim. The first thing that Mr. McKiddle did was to contact his insured to get information about the accident. He then contacted the Complainant but was unable to reach him at the time, so he left a message. On January 24, 2019, Mr. McKiddle talked to the Complainant. The Complainant refused to give a recorded statement unless the Respondent provide him a copy of the statement. The Respondent refused to provide a copy of any recorded statement. The Complainant gave a statement as to the facts surrounding the accident, but it was not recorded. (Tr. 35-36)

9. According to Mr. McKiddle, during his phone conversation with the Complainant, the Complainant allegedly told him that he had struck a stop sign. The Complainant denied ever saying that he had struck a stop sign and pointed to a picture from the scene of the accident which showed his car tracks falling short of where the stop sign was located. The Complainant stated that the cables attached to the utility pole probably bent the stop sign when the utility pole was struck by Dr. Grabo. (Tr. 51; Ex. 4)

10. On January 29, 2019, the Respondent sent the Complainant a letter denying the Complainant's claim. The letter stated that the Respondent had concluded its investigation and had determined that their insured was not legally liable for the accident of the Complainant. It stated that the cause of the accident was Complainant losing control of his vehicle on the ice. There was no mention of hitting a stop sign in the denial letter. (Tr. 12-13; Ex. 5)

11. On February 5, 2019, the Complainant sent a letter to the Respondent asking several questions. The Complainant asked what the Respondent considered in its investigation, whether it had obtained the police reports and whether it had taken pictures of the scene. The Respondent

claimed that it did not receive the February 5, 2019 letter. (Tr. 12, 48 ; Ex. 5)

12. On March 5, 2019, the Complainant sent another letter to the Respondent. In this letter, the Complainant asked for information relating to the Dr. Grabo's insurance policy in effect at the time of the accident. In addition, the Complainant attached copies of the two police reports completed at the time of the accident. (Tr. 12; Ex. 7)

13. On March 15, 2019, the Respondent sent a letter to the Complainant again denying the Complainant's claim. The Respondent did not provide any of the information that the Complainant had requested in either his February 5, 2019, letter or his March 5, 2019, letter. Mr. McKiddle, claimed that he was told by his supervisor that he was not allowed to release any insurance policy information.<sup>1</sup> (Tr. 59-60; Ex. 12)

14. According to the testimony of Mr. McKiddle, the Respondent did not put the police reports into its file until May 13, 2019. However, it was the testimony of the Complainant that he sent copies of the police reports as attachments to his March 5, 2019 letter. Both of these dates are after the January 29, 2019, initial denial. (Tr. 51; Ex. 1,2)

15. The deputy sheriff prepared two accident reports. The first report dealt only with Mr Grabo's accident. According to the police report, the accident occurred at 9:42 a.m.<sup>2</sup> It also indicated that Dr. Grabo lost control of his vehicle and hit a utility pole, causing it to land on Morgan Hill Road. The accident was due to ice and snow on the roadway. (Tr. 18; Ex. 1)

16. The second police report dealt with the Complainant's accident. According to the

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<sup>1</sup>The failure to provide the requested insurance policy information may be a violation of West Virginia Code § 33-6F-2. However, that statute was not cited in the merit letter and this issue is usually addressed between the parties.

<sup>2</sup>The police officer did not arrive at the scene until 10:11 a.m.

police report, the accident occurred at 9:49 a.m. It indicated that the Complainant was coming down Morgan Hill Road and saw that a utility pole was partially blocking the road. The Complainant tried to turn, but was unable to do so and struck the top of the utility pole which was in the road. (Tr. 18; Ex. 2)

17. On October 28, 2019, the West Virginia Offices of the Insurance Commissioner sent a merit letter to both parties. The merit letter stated that there was reasonable violations of West Virginia Code §§ 33-11-4(9)(c), West Virginia Code § 33-11-4(9)(d), and West Virginia Code of State Rules §§ 114-14-6.1., 114-14-6.2(a) and 114-14-6.7.

18. The West Virginia Offices of the Insurance Commissioner set a hearing in this matter for December 16, 2019, in Marion County, West Virginia.

#### **Issue**

Whether the Respondent violated West Virginia Code §§ 33-11-4(9)(c), West Virginia Code § 33-11-4(9)(d), and West Virginia Code of State Rules §§ 114-14-6.1, 114-14-6.2(a) and 114-14-6.7.

#### **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 Complaint pursuant to West Virginia Code § 33.

## Analysis

The Merit letter issued by the West Virginia Offices of the Insurance Commissioner stated that the Respondent may have violated West Virginia Code §§ 33-11-4(9)(c), 33-11-4(9)(d), and West Virginia Code of State Rules §§ 114-14-6.1., 114-14-6.2(a), and 114-14-6.7. Each of these sections deal with the type and quality of the investigation conducted by the Respondent.

The general requirements for an investigation are found in West Virginia Code §§ 33-11-4(9)(c) and 33-11-4(9)(d), which state as follows:

(9) *Unfair claim settlement practice.* - - No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

Under these Code sections the Respondent is required to conduct a reasonable investigation whenever a claim is filed. The requirements for a reasonable investigation are defined in West Virginia Code of State Rules §§ 114-14-6.1, 114-14-6.2(a), and 114-14-6.7.

The first Rule to analyze is West Virginia Code of State Rules § 114-14-6.1 which states as follows:

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.

This Rule requires that the investigation be timely, thorough, fair and objective in order to be reasonable.

There can be no question that the Respondent's investigation was timely. The claim was filed on January 20, 2019, and was denied on January 29, 2019, nine days later. However, an investigation may be timely, but that does not necessarily mean the investigation is thorough, fair and objective.

The Respondent, after receiving the claim, first contacted its insured to get its version of the facts. On January 21, 2019, the Complainant testified that he called the Respondent and talked to a woman. He did not write down the name of the woman. Allegedly, during this conversation, the woman told the Complainant that his claim was being denied because the Complainant had hit a stop sign.

Mr. McKiddle talked to the Complainant on January 24, 2019, in order to obtain the Complainant's version of the facts. Mr. McKiddle testified that during this conversation, the Complainant stated that he struck a stop sign. The Complainant denies saying that. There is no recording of the conversation because the Complainant refused to be recorded unless he was given a copy of his statement. The Respondent refused to provide a copy of the statement to the Complainant claiming that the recording is work product.<sup>3</sup>

There does not appear to be any more investigation conducted prior to the denial by the Respondent, with the exception of reviewing the pictures provided by the Complainant.

The Respondent admitted that he did not receive the police reports until after the decision to deny the claim was made. It is unclear whether the Respondent's insured or the Complainant told the Respondent that a deputy sheriff had been at the scene and had written a police report. If neither

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<sup>3</sup>It is not clear to the undersigned why a recorded statement by the Complainant would be considered work product. However, that fact is not relevant to this decision.



the insured nor the Complainant informed the Respondent that there were police reports, it would seem an obvious question for the Respondent to ask. Whatever the facts were, there cannot be a thorough investigation without first obtaining and reviewing the police reports.

In addition to not being thorough, the investigation does not appear to have been fair to the Complainant. The denial letter does not mention the allegations that the Complainant hit a stop sign. The Complainant was told by a representative of the Respondent that the claim was denied because he hit a stop sign. There was no evidence presented that the Complainant actually struck the stop sign, however, Mr. McKiddle testified that the Complainant told him that he had struck the stop sign. The Complainant denied striking the sign and, in fact, based on the pictures provided by the Complainant, the Complainant's vehicle stopped well short of the stop sign.

It also was not fair on the part of the Respondent not to consider the police reports prior to making its decision. While the Respondent testified that the police reports were not filed into the Respondent's system until May 23, 2019, the Complainant provided copies to the Respondent on March 5, 2019. The failure on the part of the Respondent not to consider the police reports before making a decision is not only unfair, but indicates that the Respondent did not look at the claim objectively.

Therefore, for the reasons stated above, the Respondent's investigation was timely, but was not thorough, fair or objective. Therefore, the Respondent violated West Virginia Code of State Rules § 114-14-6.1.

The next Rule to review is West Virginia Code of State Rules § 114-14-6.2(a), which states;

6.2. Establishment of investigatory procedures. - -

Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within fifteen (15) working days of receipt of notice of claim.

This Rule requires an insurance company to have established procedures to deal with investigations and must start the investigation within fifteen days of receiving the claim. In this case, the Respondent began its investigation the same day that it received the claim. Mr. McKiddle explained, during his testimony, his normal procedures for handling claims. The first thing Mr. McKiddle does is contact his insured and then the claimant. His next step would be to review any other evidence available. It appears that the Respondent had established investigatory procedures and in this matter they began the investigation of the Complainant's claim well within the required fifteen days.

Based on the actions of the Respondent, it did not violate West Virginia Code of State Rules § 114-14-6.2(a).

The final Rule to review is West Virginia Code of State Rules § 114-14-6.7, which states as follows:

Notice of necessary delay in investigation claims. - - If the insurer needs more than thirty (30) calendar days from the date that a proof of loss from a first-party claimant or notice of claim from a third-party claimant is received to determine whether a claim should be accepted or denied, it shall so notify the claimant in writing within fifteen (15) working days after the thirty-day period expires. If the investigation remains incomplete, the insurer shall provide written notification of the delay to the claimant every forty-five (45) calendar days thereafter until the investigation is complete. All such notifications must set forth the reason(s) additional time is needed for investigation. Where there is a reasonable basis supported by specific information available for review by the Commissioner that a claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection: *Provided*, That the insurer shall notify the claimant of the acceptance or denial of the claim within a reasonable time allowing for full investigation. Nothing contained in this subsection requires an insurer to disclose any information that could reasonably be expected to alert a claimant to the fact that the subject claim is being investigated as a suspected fraudulent claim.

This Rule is only applicable in situations when there is a delay in the insurance company's investigation. When that occurs, the insurance company must inform the claimant of the delay every

forty-five days until the investigation is complete. In this matter, there was no need for any forty-five day letter, since the investigation ended on January 29, 2019, when the denial letter was issued. There was additional conversations between the parties, however, at no point did the Respondent reopen the investigation.

Since the Respondent was not required to send the Complainant forty-five day letters, there was no violation of West Virginia Code of State Rules § 114-14.6.7.

### Conclusions of Law

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commission has jurisdiction over this matter by virtue of West Virginia Code § 33-11-4a.
2. The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated the West Virginia Unfair Trade Practices Act.
3. The Complainant proved, by a preponderance of the evidence, that the Respondent did not conduct a reasonable investigation, therefore, violated West Virginia Code § 33-11-4(9)(d).
4. The Complainant proved, by a preponderance of the evidence, that the Respondent did not perform a thorough, fair and objective investigation, thus, proved a violation of West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1.
5. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-14-6.2(a), since the Respondent began its investigation within fifteen days.
6. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-14-6.7, since at no time was the

Respondent required to send a forty-five day letter to the Complainant.

**Recommended Decision**

It is recommended that the consumer complaint of Jacques Williams against United Services Automobile Association be denied in part and upheld in part.

Respectfully recommended,



MARK W. CARBONE  
HEARING EXAMINER

Date: Feb 13, 2020