

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

**JOEL JONES,**

Complainant,

v.

Administrative Proceeding No.: 20-THP-02043

**ERIE INSURANCE PROPERTY & CASUALTY COMPANY,**

Respondent.

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

This matter came before the Insurance Commissioner (hereinafter, “Commissioner” or “WVOIC”), on Joel James’ (hereinafter, “Complainant”) request for a hearing on his third-party administrative complaint filed against Erie Insurance Property & Casualty Company (hereinafter, “Erie”). Whereupon, the WVOIC makes the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. The Complainant is a resident of Jackson Mill, West Virginia.
2. In January, 2020, sewer line installation work was being performed by Pro Contracting near Complainant’s residence for the town of Weston, West Virginia.
3. Complainant alleges that the construction work being performed during the sewer line installation caused cracks in the foundation of his house, causing water and raw sewage to enter his home.

4. Water and sewage in Complainant's home pre-existed the beginning of the sewer line installation work. However, Complainant claimed the sewer line installation work caused additional water and sewage to enter his home.

5. On or about January 23, 2020, Complainant filed a claim with Erie for the damage to his home. Erie contacted Complainant and arranged for an inspection of the damages to his home.

6. On or about February 25, 2020, J. Casey Consulting performed the inspection of Complainant's home. The investigation involved physical inspection of Complainant's home and inspection of the machinery used in the sewer line installation.

7. The inspection resulted in the conclusion by J. Casey Consulting and Erie that the home was in a state of disrepair, and any damage to Complainant's home was the result of standing water around the home, age of the home, and construction materials used in the home.

8. Erie denied Complainant's claim for damages to his home, stating they were not related to the sewer line installation work. Erie timely notified Complainant of the denial.

9. On or about April 8, 2020, Complainant filed a third-party administrative complaint with the WVOIC, alleging that the sewer line installation work worsened the condition of his home and allowed water to enter his home.

10. On or about April 30, 2020, Erie responded to the third-party administrative complaint. Erie stated that the inspection performed on Complainant's home showed that the sewer line installation did not cause the damage to Complainant's home and stood by its original denial of Complainant's claim.

11. On or about June 23, 2020, the WVOIC sent Complainant a “no merit” letter stating that the factual dispute between the parties was one of good faith, and no unfair claims or settlement practices were found on the part of Erie.

12. On or about July 5, 2020, Complainant requested a hearing before the WVOIC on the merits of his third-party administrative complaint.

### CONCLUSIONS OF LAW

1. Regarding third-party complaints, the WVOIC 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 WVOIC 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 WVOIC the authority to order an insurance company to pay third-party claimant’s underlying damages. The authority of the WVOIC is limited by statute.

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 (1<sup>st</sup> Cir. 1990). Erie 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).

3. 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.”

4. 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.

5. Erie enlisted an independent party to inspect the damage to Complainant’s home. The report of that inspection concluded the damage to Complainant’s home was unrelated to the sewer line installation work. Thus, the factual dispute between the parties is one of good faith.

6. W.Va. Code §33-2-13 and W.Va. R §114-1-3.3 give the Commissioner (WVOIC) 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 WVOIC under the law in that it would be asking the WVOIC to adjudicate a good faith liability dispute regarding the Complainant’s underlying claim. The WVOIC properly closed this matter pursuant to W.Va. Code § 33-11-4a(g), and a hearing on the matter would serve no useful purpose.

ORDER

Wherefore, inasmuch as a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to the WVOIC under the law, it is **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 1<sup>st</sup> day of September, 2020.

A handwritten signature in black ink, appearing to read 'J. Dodrill', written over a horizontal line.

JAMES A. DODRILL  
Insurance Commissioner