

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

DAVID TABB and NADINE TABB,

Complainants,

v. Administrative Proceeding No. 19-THP-02149

GEICO CASUALTY INSURANCE COMPANY,

Respondent.

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

This matter came before the Insurance Commissioner (hereinafter, "Commissioner") on David Tabb's and Nadine Tabb's (hereinafter, "Complainants") request for a hearing on their third-party administrative complaint filed against GEICO Casualty Insurance Company (hereinafter, "GEICO"). Whereupon, the Commissioner did make the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. While operating a vehicle owned by Complainant David Tabb, her father, Complainant Nadine Tabb was involved in a motor vehicle collision with a vehicle insured by GEICO on May 17, 2019, in the State of Maryland.
2. The Complainants are West Virginia residents. The GEICO insured is a Maryland resident. The individual driving the GEICO insured vehicle at the time of the accident is a Texas resident.
3. GEICO acknowledged that its insured driver was at fault for the accident, accepted liability, and paid for the repairs to the Complainants' vehicle.

4. Complainants filed their third-party *Unfair Claims Settlement Practices Act* (UCSPA) administrative complaint with the WVOIC on July 26, 2019, alleging the cost of repairs to their automobile exceeded the estimate. The Complainants alleged diminished value to their vehicle as a result of the accident. In their subsequent request for a hearing, Complainants also alleged that GEICO altered documents and photos.

5. Complainants admitted in their complaint that the accident occurred in Maryland, but they believed that, as West Virginia residents, they should not be required to have “proceedings” in Maryland.

6. Complainants filed a duplicate complaint addressed to the “Maryland Insurance Division [sic]. Attn: Consumer Complaint Division.” It appears the Maryland Insurance Administration (MIA) is investigating the matter, taking jurisdiction, and has scheduled a hearing on Complainants’ Maryland complaint.

7. In response to the Complainants’ third-party UCSPA administrative complaint here, GEICO stated that all repairs to Complainants’ vehicle were made in accordance with the estimates provided and that no evidence had been submitted, as of the time of its response, substantiating a diminished value claim. No response was provided to Complainants’ allegations of altered photos and documents, as those allegations were not made in the original complaint.

8. On or about December 10, 2019, the Commissioner sent the Complainants a letter closing their third-party UCSPA administrative complaint. As stated in the letter, the Commissioner had no jurisdiction over the issues raised in the complaint as the motor vehicle accident occurred in Maryland.

9. Thereafter, Complainant David Tabb sent a letter to the Commissioner requesting a hearing on “only whether Geico violated any laws by filing altered photos and misrepresenting the date of a check.”

CONCLUSIONS OF LAW

1. Regarding third-party UCSPA complaints, the Commissioner 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 Commissioner is tasked with resolving third-party complaints of unfair claims settlement practices against an insurance company. However, W.Va. Code §33-11-4a does not give the Commissioner the authority to order an insurance company to pay third-party claimant’s underlying damages. The authority of the Commissioner is thus limited by statute.

2. The Complainants admit that the accident occurred in Maryland and they filed an administrative complaint against GEICO there. The alleged violations raised in the third-party UCSPA administrative complaint filed in West Virginia with the Commissioner stem from that Maryland accident and, therefore, jurisdiction regarding those alleged violations is with the MIA, not with the Commissioner. A violation of one state’s insurance laws may be a violation in another, but that fact alone does not automatically instill jurisdiction on another state where the accident did not occur.

3. In his request for a hearing, Complainant David Tabb stated, “I did not ask within the complaint whether West Virginia had jurisdiction on damages, only whether the Geico representative violated any laws by filing altered photos without stating he had done so. Two, writing that Geico sent a payment to me of which did finally showed up on November 30, 2019

and was dated November 26, 2019. The check is not dated May 24, 2019 as the Geico representative stated.”

4. The allegations of altered photos and when a check was issued or received were not raised in the Complainants’ original third-party UCSPA administrative complaint and, as a result, GEICO has not been afforded the opportunity to respond to the allegations. Therefore, the Commissioner will not address these allegations herein.

5. 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.” 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 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.

6. W.Va. Code §33-2-13 and W.Va. Code 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 Commissioner under the law since jurisdiction in this matter lies with the MIA. As a result, this matter was properly closed pursuant to W.Va. Code §33-11-4a(g), and a hearing, therefore, would serve no useful purpose.

ORDER

It is, therefore, **ORDERED** that the Complainants' request for a hearing is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainants have the right to appeal this order to the Circuit Court of Kanawha County within 30 days of their receipt hereof.

ENTERED this the 9th day of September, 2020.



JAMES A. DODRILL
Insurance Commissioner