

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

DON NEACE,

Complainant,

v.

Administrative Proceeding No.: 19-THP-02113

ERIE INSURANCE EXCHANGE,

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 Don Neace’s (hereinafter, “Complainant”) request for a hearing on his third-party administrative complaint filed against Erie Insurance Exchange (hereinafter, “Erie”). Whereupon, the WVOIC makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. The Complainant was involved in a motor vehicle accident on August 2, 2019 on US 119 in Williamson, West Virginia.
2. The accident was investigated by the Williamson Police Department. It shows that the Complainant was traveling on US 119 southbound and crossed on to the turning lane, striking a stationary northbound vehicle awaiting to make a turn across US 119.
3. There were no witnesses to the accident.
4. The accident report does not list either driver at fault, and no citations were issued.

5. On September 12, 2019, Complainant filed his third-party administrative complaint with the WVOIC alleging that he was not at fault for the accident, and that the “The police filed a false accident report to favor the party that caused the accident and their insurer won’t fix my car.”

6. In response to the complaint, Erie responded to the complaint, stating they stood by their denial of the claim as the accident report placed the cause of the accident on the part of the Complainant.

7. By letter dated April 21, 2020, the WVOIC sent the Complainant a “no merit’ letter, stating that there was a good faith dispute as to liability, that it was closing its file on this matter, and notified the Complainant of his right to request a hearing before the WVOIC.

8. Complainant requested a hearing by letter dated May 16, 2020 and received by the WVOIC on June 3, 2020.

9. In his request for a hearing, Complaint states that his statement to the police was not in the accident report, and that he had pictures of the accident supporting his position that he was not at fault. Photos of the scene are contained in the Erie claim file.

10. On August 5, 2020, an investigator with the WVOIC conducted a phone interview with the Complainant. The Complainant did not provide any documents supporting his claim that he was not at fault for the accident. After interviewing the Complainant, the investigator maintained her finding of no merit to the complaint.

CONCLUSIONS OF LAW

1. Regarding third-party 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 regarding 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 a third-party claimant's underlying damages. The authority of the Commissioner is thus 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 (1st Cir. 1990). Erie simply must show that its investigation was done in good faith given its own knowledge at the time of the claim and relevant facts 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. W.Va. Code §33-2-13 and W.Va. Code R. §114-1-3.3 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 in asking him to adjudicate a dispute between Complainant and Erie in Complainant's claim. Therefore, a hearing on the matter would serve no useful purpose.

ORDER

It is, therefore, **ORDERED** that the Complainant's hearing request is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this order to the Circuit Court of Kanawha County, West Virginia within 30 days of his receipt hereof.

ENTERED this the 29th day of September, 2020.



JAMES A. DODRILL
Insurance Commissioner