

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

**DONALD FRYE**

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO. 19-FP-CC-02054

**ALLSTATE FIRE & CASUALTY INSURANCE CO.**

Respondent.

FINAL ORDER

On a prior day, to-wit, February 22, 2021, 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 Complainant failed to prove the Respondent violated the *West Virginia Code* or the *West Virginia Code of State Rules*, the Consumer Complaint of Complainant is hereby **DISMISSED**.

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

ENTERED this 15<sup>th</sup> day of April, 2021.



JAMES A. DODRILL  
Insurance Commissioner

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

**DONALD FRYE,**

**Complainant,**

**v.**

**ADMINISTRATIVE PROCEEDING NO.:  
19-FP-CC-02054**

**ALLSTATE FIRE & CASUALTY  
INSURANCE COMPANY,**

**Respondent.**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On December 7, 2020, an initial hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Donald Frye appeared by telephone. Ms. Georgia Cisco, Lead Paralegal for the West Virginia Offices of the Insurance Commissioner was present at the hearing. During this hearing no one appeared on behalf of Allstate Fire and Casualty Insurance Company.<sup>1</sup> Prior to the beginning of the hearing, a review was made of the Notice of Hearing that was sent to Allstate Fire and Casualty Insurance Company. It appeared that the Allstate Fire & Casualty Insurance Company was properly noticed. Mr. Frye was advised that an investigation would be conducted to determine the reason, if any, why the Allstate Fire & Casualty Insurance Company failed to make an appearance. Mr. Frye was also told that if the Allstate Fire & Casualty Insurance Company had a valid reason for

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<sup>1</sup>Under West Virginia law, all Insurance companies must be represented by a licensed attorney during the hearing.

not appearing, a follow up hearing would be conducted.

After the hearing it was determined that the West Virginia Offices of the Insurance Commissioner did not have the correct email address for Allstate Insurance Company. The original notice had been sent to an incorrect email address. The Hearing Examiner determined that this was a reasonable excuse why Allstate Insurance Company did not to make an appearance at the original hearing. Therefore, a new hearing was granted.

The Respondent was advised that it would have ten to fourteen days to retain counsel, then a new hearing would be scheduled.

The second hearing was held on January 14, 2021 by telephone at the Offices of the Insurance Commissioner in Charleston, West Virginia. Donald Frye appeared by telephone. Ms. Tanya Kessner, Esquire, Erin Smith and Megan Thompson-McKenna, appeared by telephone, on behalf of Allstate Insurance Company<sup>2</sup> 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. Donald Frye (hereinafter “Complainant”) resides at \_\_\_\_\_, Scott Depot, West Virginia 25560. At all times relevant to the action the Complainant was insured by Allstate Fire & Casualty Insurance Company. (Tr.2 P. 8)<sup>3</sup>

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<sup>2</sup>Due to the Covid 19 pandemic, all West Virginia Offices of the Insurance Commissioner hearings are being held by telephone.

<sup>3</sup>References marked Tr. 1 refer to page numbers from the first hearing transcript. Tr. 2 refer to page numbers from the second hearing transcript.

2. Allstate Fire & Casualty Insurance Company (hereinafter “Respondent”) is based in Charlotte, North Carolina and is licensed to engage in the business of insurance in West Virginia. Ms. Erin Smit is the Claim Services Leader for the Respondent. Ms. Megan Thompson-McKenna is a risk management consultant for the Respondent. (Tr. 2 PP. 21, 38 )

3. On September 12, 2019, at approximately 3:35 p.m., Christian Frye, the son of the Complainant, was driving the Complainant’s vehicle and was involved in a rear-end collision with a vehicle owned by James Hall. The accident occurred on West Virginia Route 817 near Winfield, West Virginia. No one was injured in the accident. There is no dispute that the Complainant’s son was at fault in the accident. (Tr. 1, P. 20, Tr. 2 P. 23 )

4. At approximately 5:00 p.m., on the day of the accident, the Complainant filed a claim with the Respondent. (Tr. 1, P. 9; Tr. 2, P. 7, 22)

5. Erin Smith, Claims Service Supervisor for the Respondent, testified that when the Complainant’s claim came in, it was assigned to Amelia Jennings Smith, a member of the Respondent’s express office. (Tr. 2 P. 23)

6. Also on September 13, 2019, the day following the accident, the Ms. Amelia Smith contacted the Complainant to inform him that it was investigating the accident and that there may not be coverage for his son, Christian. (Tr. 2, P. 25)

7. On September 13, 2019, Ms. Amelia Smith sent the Complainant a letter which was a notice of potential denial due to a coverage problem. The Complainant denied ever receiving this letter but admitted that he knew on September 13, 2019, that there might be a problem with coverage on his son, Christian. (Tr. 2 P. 8-9, 23-24; Ex. 6)

8. Following his conversation with the Respondent, the Complainant contacted his

insurance agent, Ms. Liz Underwood. According to the Complainant, Ms. Underwood remembered a conversation that she had with the Complainant about his son becoming sixteen and obtaining his license. The Complainant assumed that after this conversation that Ms. Underwood had added Christian to his policy. The Complainant did not testify that Ms. Underwood had actually told him that Christian had been added to his policy.. (Tr. 1 PP. 10-11)

7. The Complainant testified that he and Ms. Underwood discussed a letter that was allegedly sent by the Respondent. This letter stated that the Respondent was aware that the Complainant's son was sixteen and needed to be added to the Complainant's policy. The letter went on to allegedly say that, unless the Complainant contacted the Respondent, the Complainant's son would automatically be added to the policy after thirty (30) days. Christian obtained his license on or about April 15, 2018, his sixteenth birthday. The same type of letter was received by the Complainant for his two older children. (Tr. 1 P. 15; Tr. 2 PP. 11-12)

8. Both the Complainant and Ms. Underwood agreed to look for the letter in their respective files. Neither the Complainant nor Ms. Underwood were able to locate the letter. (Tr. 1 P. 15)

9. The Complainant testified that sometimes he dealt directly with the agency's office, but typically paid his premium and conducted his business with the Respondent through the Respondent's app. (Tr. 1 P. 13; Tr. 2 P. 16)

10. Ms. Erin Smith stated that exclusion 19 of the Complainant's policy states as follows: "Allstate will not cover loss arising from a collision of your auto if, at the time of the loss, the auto was being operated by a licensed driver who was not listed on your policy Declarations as a driver and who was ...a resident".(Tr. 2 P. 25; Ex. 1 )

11. The policy also has an allowance for a one hundred eighty-five day grace period to allow sufficient time to add a new person to the policy. Christian Frye had his license in excess of the one hundred eighty-five day grace period and did not fall within any of the other exceptions of the policy<sup>4</sup> (Tr. 2 P. 25-26)

12. Once it was determined, by the Respondent, that there was a problem with coverage, the matter was referred to the Respondent's Coverage and Investigation Unit. This matter was assigned to Mr. Marcel St. Pierre of that unit. (Tr. 2 P. 26)

13. On September 23, 2019, Mr. St. Pierre contacted the Complainant. Mr. St. Pierre told the Complainant that he would be investigating the matter. Later, Mr. St. Pierre advised the Complainant that the Respondent, in the past, had sent a letter to their insured similar to the one the Complainant claimed that he received concerning his son, Christian. (Tr.2 PP. 27-28)

14. On September 24, 2019, after talking with the Complainant, Mr. St. Pierre contacted the Complainant's insurance agent, Liz Underwood. Ms. Underwood confirmed that the Complainant's two older children had received letters from the Respondent these letters stated that the Respondent would automatically add the two older children to the Complainant's policy within thirty days, unless the Complainant advised the Respondent differently. (Tr. 2 P.27)

15. The Complainant testified that over the next several weeks the Complainant communicated with Mr. St. Pierre and was told that the investigating was on-going. According to the Complainant, Mr. St. Pierre allegedly told the Complainant that the failure to add his son to his policy was a mis-communication. Mr. St. Pierre said that the final coverage decision would be made

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<sup>4</sup>Christian would have been covered if there had been an emergency or if the only other drivers available were intoxicated.

by others in Respondent's organization. (Tr. 1 P. 20)

16. After conducting his investigation, Mr. St. Pierre referred the Complainant's claim to a consultant for the Respondent. The consultant is located in the Error and Omission Department. The Error and Omission Department reviewed the Complainant's claim and relevant evidence prior to October 8, 2019. After conducting its investigation, it determined that an undisclosed driver letter had not been sent to the Complainant which would have added Christian to his policy automatically. Ms. Thompson-McKenna testified that the Respondent contracts with a third party to determine whether its insureds have a licensed driver living in the home but not listed on the insured's policy. Not every insured is reviewed by this third party. (Tr. 2 PP. 42-43).

17. The Error and Omission Department found that there had been renewal notices sent on July 2018, January 2019 and July 2019 and that Christian was not listed as a authorized driver on any of the renewal notices. Therefore, the Consultant did not find any issue with the handling of the claim, as to coverage.. (Tr. 2 P.28-29; Ex. 2,3,4)

18. On October 8, 2019, Mr. St. Pierre called the Complainant and told him that the Respondent determined that the Complainant's claim should be denied. On October 12, 2019, the Complainant received a letter from the Respondent denying his claim. (Tr. 1 P. 14; Ex. 5)

19. The Complainant claimed that he had been fully insured by the Respondent for over thirty-two years. (Tr. 1 P. 17)

20. According to the Complainant, following the accident, his car was totaled with a loss to him of \$6,900.00. In addition to the loss of the vehicle, the Complainant testified that the storage bill for the vehicle was \$1,050.00. (Tr. 1 P.13)

21. Following the accident, the Complainant found out that the Respondent had paid

\$10,800 to pay for the damage to the other's person involved in the accident. (Tr. 1 P. 13)

22. On October 15, 2019, 2020, the Complainant filed a complaint with the West Virginia Offices of the Insurance Commissioner.

### **Issue**

Whether the Respondent committed unfair trade practices, violated West Virginia Code §§ 33-11-4(9)(c), 33-6-31 and West Virginia Code of State Rules § 114-14-6.1.

### **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 under West Virginia Code § 33-3-2 .

### **Analysis**

On October 15, 2019, the Complainant filed a complaint with the West Virginia Offices of The Insurance Commissioner, alleging that the Respondent had wrongly denied coverage for an accident involving his son, Christian.

The basis of the Complainant's claim is that he believe that his son Christian had insurance coverage under the Complainant's policy. This belief was based on two issues. The first issue was



that, around the time of his son obtaining his driver's license, he had a conversation with his agent, Ms. Underwood, about their children and their ages and he assumed that Ms. Underwood had added Christian to his policy.

The other basis of the Complainant's claim was that his two previous children had received a letter from the Respondent advising the Complainant that his children would be automatically added to his policy within thirty days unless the Complainant advised the Respondent otherwise. The Complainant testified that he received a similar letter concerning his son, Christian. Based on the content of the letter, the Complainant did not take any action and assumed that his son had been added to his policy. Neither the Complainant nor his insurance agent, Ms. Underwood, were able to locate the letter about Christian in their files.

As to the conversation that the Complainant had with Ms. Underwood, she does remember that they discussed their children but did not remember any discussion about adding Christian to the Complainant's policy. The Complainant testified that he did not remember asking Ms. Underwood to add Christian to his policy, but believed they did discuss that Christian was getting his license.

While there is no doubt that the Complainant and Ms. Underwood had a conversation about their children, and the Complainant may even have mentioned the age of his son, these facts alone simply are not enough to require Ms. Underwood to add Christian to the Complainant's policy. There is no requirement, under this scenario, for Ms Underwood to add Christian to the Complainant's policy at that time.

The next issue raised by the Complainant was that he believed that he received a letter from the Respondent concerning adding Christian automatically to his policy. This letter allegedly advised the Complainant that since his son was now sixteen years old, the Respondent would

automatically add Christian to the Complainant's policy at the end of a thirty day period unless advised by the Complainant otherwise.

The Complainant testified that he had been unable to locate the letter about Christian in his files. In addition, he stated that Ms. Underwood was also unable to find a copy of the letter. The Respondent's representative testified that the Respondent reviewed it files in an attempt to locate this letter. The Respondent failed to find a letter concerning Christian and concluded that the letter did not exist.

The Respondent admitted that, in the past, they have engaged a third party to review its insureds to determine whether any member of the household was a licensed driver and was not currently on the insured's policy. Evidently, the Complainant's two older children did receive a similar letter. Even though the Complainant's older children received a letter, the system used by the Respondent's consultant, was not designed to notify every insured but was set up to review as many insured as possible.

Since the Complainant could not prove that he received a letter automatically adding Christian to his policy, he did not meet his burden of proof to prove that Christian should have automatically be added to the Complainant's policy.

To give further support to the Respondent's position that Christian was not added to the policy, can be found on the premium statements sent to the Complainant. Premium statements were sent to the Complainant on July 18, 2018, January 1, 2019 and July 19, 2019. At no point in these premiums was it indicated that Christian was listed as an authorized driver. The Complainant tried to explain this by testifying that he mostly used the Respondent's app when conducting his insurance business. While this may be true, it does not relieve the Complainant of his duty to review his

policy. If the Complainant had simply reviewed any of his premium notices, he would have known that Christian was not listed as an authorized driver.

The only possible unfair trade practice violation was whether the Respondent failed to conduct a reasonable investigation. This issue is addressed in West Virginia Code § 33-11-4(9)© and West Virginia Code of State Rules § 114-14-6.1 which states as follows.

(9) Unfair claim settlement practices. -- 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;

This code section must be read in conjunction with West Virginia Code of State Rules § 114-14-6.1, which states as follows:

§114-14-6. Standards For Prompt Investigations And Fair And Equitable Settlements  
Applicable To All Insurers.

6.1. 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.

According to this statute and this rule, In order for an investigation to be reasonable, it must be timely, thorough, fair and objective.

In this case, the Complainant filed a claim on September 12, 2019, the same day that the accident occurred. The very next day, the Respondent advised the Complainant that there was an issue with coverage for Christian.

Once it was determined that there was a problem with coverage, the matter was referred to Mr. St. Pierre of the Respondent's Coverage and Investigation Unit. Mr. St. Pierre talked with the

Complainant on September 23, 2019. On September 24, 2029, Mr. St. Pierre contacted Ms. Underwood to discuss the matter. Mr. St. Pierre determined that the Complainant's older children had received a letter about being added to the policy automatically but there was no proof that a similar letter had been sent about Christian. Mr. St. Pierre informed the Complainant that there may have been a mis-communication, but referred the matter to the Error and Omissions Department.

The Error and Omissions Department searched for a copy of the alleged letter and then reviewed the renewal notices sent to the Complainant. On October 8, 2019, after determining that the letter concerning Christian did not exist and that the renewal notices did not list Christian as a covered driver, the Errors and Omission Department determined that there was no coverage.

The accident occurred September 12, 2019, and the Respondent concluded its investigation by October 8, 2019, a time period of twenty-six calendar days, thus making the investigation timely,

The investigation was also thorough. The Respondent interviewed the Complainant and Ms Underwood. The Respondent referred the matter to the Coverage and Investigation Unit, where an additional investigation was conducted. The next step was that the Complainant's claim was referred to the Errors and Omission Department. By taking all of these steps, one can only conclude that the investigation conducted by the Respondent was thorough.

Finally, we can only conclude that the Respondent's investigation was fair and objective since the Respondent did not make a decision as to coverage until it had taken several steps in its investigation. The Respondent talked with the Complainant, Ms. Underwood and searched its records. All of these actions can only indicate that the investigation by the Respondent was fair and objective.

The Complainant failed to prove, by a preponderance of the evidence that the Respondent

violated West Virginia Code § 33-11-4(9)(c) and West Virginia Code of State Rules § 114-14-6.1

The last issue to address is whether the Respondent violated West Virginia Code § 33-6-31, which states as follows:

**§33-6-31. Motor vehicle policy; omnibus clause; uninsured and under insured motorists' coverage; conditions for recovery under endorsement; rights and liabilities of insurer.**

(a) No policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle, may be issued or delivered in this state to the owner of such vehicle, or may be issued or delivered by any insurer licensed in this state upon any motor vehicle for which a certificate of title has been issued by the Division of Motor Vehicles of this state, unless it contains a provision insuring the named insured and any other person, except a bailee for hire and any persons specifically excluded by any restrictive endorsement attached to the policy, responsible for the use of or using the motor vehicle with the consent, expressed or implied, of the named insured or his or her spouse against liability for death or bodily injury sustained or loss or damage occasioned within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle by the named insured or by such person: Provided, That in any such automobile liability insurance policy or contract, or endorsement thereto, if coverage resulting from the use of a nonowner automobile is conditioned upon the consent of the owner of such motor vehicle, the word "owner" shall be construed to include the custodian of such nonowner motor vehicles. Notwithstanding any other provision of this code, if the owner of a policy receives a notice of cancellation pursuant to article six-a of this chapter and the reason for the cancellation is a violation of law by a person insured under the policy, said owner may by restrictive endorsement specifically exclude the person who violated the law and the restrictive endorsement shall be effective in regard to the total liability coverage provided under the policy, including coverage provided pursuant to the mandatory liability requirements of section two, article four, chapter seventeen-d of this code, but nothing in such restrictive endorsement may be construed to abrogate the "family purpose doctrine".

This statute requires an insurance company to provide coverage for liability damage when an insured vehicle is involved in a collision with another vehicle, even if the driver of the insured vehicle is not a named insured on the policy. This Code section, or any other Code section, does not require that the insurance company provide first party liability coverage under the same circumstances.

The Complainant testified that the Respondent paid \$10,800.00 to cover the damages incurred by the owner of the car struck by Christian Frye. The Respondent refused to pay the \$6,900.00 damage to the Complainant's vehicle, as well as the \$1,050.00 cost for storage. Under West Virginia law, the Respondent is not required to cover the damages to the Complainant's vehicle or for the storage costs, since Christian Frye was not an authorized insured and was living with the Complainant at the time of the accident.

### Conclusions of Law

The following are made as conclusions of law:

1. The West Virginia Offices of the Insurance Commissioner has the burden to prove, by a preponderance of the evidence, that the Respondent committed unfair trade practices, violated West Virginia Code §§ 33-11-4(9)(c), 33-6-31 and West Virginia Code of State Rules § 114-14-6.1.
2. The Respondent did not commit an unfair trade practice when it determined that the conversation between the Complainant's and Ms. Underwood did not result in the addition of the Complainant's son to the Complainant's automobile insurance policy.
3. The Respondent did not commit an unfair trade practice when it did not send the Complainant a letter that indicated that his son, Christian, would be automatically added to the Complainant's policy, since there is no requirement to automatically add an insured under state law.
4. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c). The investigation conducted by the Respondent was reasonable.
5. The Respondent's investigation was timely, thorough, fair and objective. Therefore,

the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-14-6.1.

6. The Complainant failed to prove, by a preponderance of the evidence that the Respondent violated West Virginia Code § 33-6-31, since this statute only requires that an insurance company provide liability coverage when an unauthorized driver is involved in a collision while driving an insured vehicle. There is no West Virginia law that would require an insurance company to cover damage for the insured's own vehicle.

*Recommended Decision*

It is recommended that Donald Frye failed to prove that the Respondent violated the laws of the State of West Virginia and the Complainant's claim be denied.

Respectfully recommended,



MARK W. CARBONS  
HEARING EXAMINER

Date: 2/22/2021