

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

**ALLEN CALE,**

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO.: 20-THP-02096

**ALLSTATE INSURANCE COMPANY,**

Respondent.

FINAL ORDER

On a prior day, to-wit, June 17, 2021, the hearing examiner in this matter submitted his recommended decision containing findings of fact, analysis, and conclusions of law. The recommended decision states that, at the hearing, the respondent insurer testified that it conducted a “Liability Analysis” which indicated its insured was 70% at fault for the collision and the third-party complainant was 30% at fault for the collision. Unfortunately, specific details about the “Liability Analysis” were not produced or discussed at the hearing so that the hearing examiner could determine the manner in which, or the process whereby, the respondent insurer’s apportionment of fault was determined.

Nevertheless, the hearing examiner determined that the respondent’s liability determination “appears plausible” and, therefore, the apportionment of fault between the two vehicle operators was “reasonable...timely, thorough, fair and objective”. All of this led the hearing examiner to conclude that the liability analysis and determination had been conducted and made in good faith and that, as a result, the complainant had failed to meet his burden to prove, by a preponderance of the evidence, that the respondent had violated *West Virginia Code* § 33-11-4(9)(c), 33-11-4(9)(d), and *WVCSR* § 114-14-6.1. While it is hereby **ORDERED** that the said recommended decision of June 17, 2021, is adopted as the decision of the Commissioner in this

matter and is, by this reference, incorporated herein and made a part hereof, the Commissioner does have the following concerns:

1. It appears that the failure of the complainant to meet his burden of proof at the hearing before the hearing examiner was impacted by the fact that he appeared *pro se*, without the benefit of privately retained legal counsel or the Consumer Advocate;

2. As a result of proceeding in this matter without the benefit of either privately retained legal counsel or the Consumer Advocate, cross examination of respondent's witness was limited, the respondent's claim file materials, which contain statements of the involved drivers and other pertinent materials concerning the respondent's investigation and handling of the underlying claim, were not made available to the complainant, reviewed or considered by the hearing examiner, nor made a part of the record of the hearing; and

3. As a result, the hearing examiner did not have before him all the pertinent information which likely would have enabled him to determine how the respondent apportioned 30% of the fault in the collision to the complainant.

Despite the foregoing concerns, the Commissioner is reminded that the Legislature has provided that good faith disputes as to liability (fault) and damages do not and cannot constitute violations of the Unfair Claim Settlement Practices Act (UCSPA). However, based upon the foregoing concerns, the Commissioner is also mindful that it is possible that the parties and the hearing examiner lacked the evidence sufficient for an adequate determination whether, in fact, the liability dispute between the complainant and the respondent was a good faith dispute. That being said, inasmuch as the hearing examiner determined that the complainant failed to prove that the respondent violated the aforementioned provisions of the *West Virginia Code* or the *West Virginia Code of State Rules*, it is **ORDERED** that the consumer complaint of the complainant be,

and it is, hereby, **DISMISSED**.

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

**ENTERED** this 3<sup>rd</sup> day of August, 2021.



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JAMES A. PODRILL  
Insurance Commissioner

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**v.**

**ADMINISTRATIVE PROCEEDING NO.:  
20-THP-02096**

**ALLSTATE  
INSURANCE COMPANY,**

**Respondent.**

**RECOMMENDED DECISION  
OF THE HEARING EXAMINER**

On January 13, 2021, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Allen Cale appeared by telephone. Appearing, also by telephone, on behalf of Allstate Insurance Company, were Tanya Kesner, Esquire, and Christopher Lindsey.<sup>1</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. Mr. Allen Cale, (hereinafter "Complainant") resides at \_\_\_\_\_,  
Morgantown, West Virginia. (Tr. P.21 )

2. Allstate Insurance Company, (hereinafter "Respondent") is an insurance company headquartered in Northbrook, Illinois. The Respondent is authorized to engage in the business of

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<sup>1</sup>Due to the Covid 19 pandemic, all West Virginia Offices of the Insurance Commissioner hearings are being held by telephone.

insurance in West Virginia.

3. On August 15, 2020, the Complainant turned onto Mon Health Drive from Route 705 in Morgantown, West Virginia. The Complainant was driving North on Mon Health Drive. He was driving a 2007 Ford Explorer Sport Trac. The Complainant slowed down to ten to fifteen miles an hour at the intersection of Mon Health Drive and Maple Drive in order to allow a transit bus who was going to Route 705 to pull onto Mon Health Drive from Maple Drive. The transit bus would be to the Complainant's right as it entered Mon Health Drive. (Tr. P. 7, 13)

4. The Respondent's insured, Elizabeth Staley, driving a 2012 Honda Pilot, was stopped at the corner of Mon Health Drive and Maple Drive. Ms. Staley was on the opposite side of Mon Health Drive from the transit bus. (Tr. P. 15, 31)

5. Once the bus cleared the intersection, the Complainant proceeded north on Mon Health Drive. At approximately the same time, Ms. Staley proceeded into the intersection on Mon Health Drive and Maple Drive with the intent of continuing on Maple Drive. According to the Respondent, Ms. Staley was unable to see the vehicle driven by the Complainant due to the position of the transit bus. The Complainant also testified that he was unable to see Ms. Staley's vehicle until she was three to four feet away from him, because his view was blocked by the transit bus prior to that. (Tr. P. 16, 31)

6. When Ms. Staley entered the intersection, the two vehicles collided. Neither driver was injured in the crash. After the accident someone called 911. According to the police report, Sargent Ruscello, of the Monongalia Sheriff's Department, showed up at the scene. (Tr. P. 7; Ex. 1)

7. Neither party was given a citation, however, according to the Complainant, Ms. Staley

was given a warning. The police report states that Ms. Staley failed to yield the right-of-way, but there is no record of her receiving a warning. (Tr. 9; Ex. 1)

8. According to the testimony of Christopher Lindsey, an Allstate Senior Claims Analyst, the accident was reported to the Respondent by its insured, Ms. Staley, on August 16, 2020. The Respondent took Ms. Staley's statement on August 17, 2020, and inspected her car on August 19, 2020. (Tr. 26-27)

9. The Respondent took a statement from the Complainant on August 24, 2020, and obtained a Google Map of the intersection. (Tr. P. 28; Ex. 3)

10. The Respondent conducted a Liability Analysis on August 25, 2020. As a result of that Analysis, the Respondent determined that its insured was seventy percent responsible for the accident and the Complainant was thirty percent responsible. Based on this determination, the Respondent reduced any recovery that the Complainant could receive by thirty percent. For instance if his car was totaled and was worth \$10,000.00, he would only be reimbursed for seventy per cent of the value of the car or \$7,000.00. (Tr. 29, 32)

10. The Complainant believes that, since Ms. Staley was allegedly given a warning at the scene of the accident and the police report stated that she failed to yield the right-of-way, she should have been found to be one hundred percent responsible for the accident. (Tr. P. 20)

11. The Respondent inspected the Complainant's vehicle on August 26, 2020, the day after the Liability Analysis.

12. The Complainant filed a complaint with the West Virginia Offices of the Insurance Commissioner on September 17, 2020. (See Complaint)

**Issue**

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

### **Jurisdiction**

The West Virginia Offices of the Insurance Commissioner has jurisdiction over this Complaint under West Virginia Code § 33-2-3

### **Analysis**

The West Virginia Offices of the Insurance Commissioner has issued a merit letter in this case indicating there may have been violations of West Virginia Code § 33-11-4(9)(c), 33-11-4(9)(d), West Virginia Code of State Rules § 114-14-6.1.

The first issue to address is whether there is a violation of West Virginia Code § 33-11-4(9)(c), and § 33-11-4(d), which state 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;

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

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

§14-14-6. 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.

These Code sections and Rule require that the Respondent conduct a reasonable investigation. In order for an investigation to be reasonable, it must be timely, thorough, fair and objective. In addition, the Respondent cannot refuse to pay a claim unless its investigation is reasonable.

Based on the evidence presented at the hearing, it appears that the investigation conducted by the Respondent was timely. The accident occurred on August 15, 2020, and was reported to the Respondent by its insured on August 16, 2020. The Respondent interviewed its insured on August 17, 2020, her car was inspected by the Respondent on August 19, 2020. The Respondent interviewed the Complainant on August 24, 2020. It was unclear from the evidence whether, and if so, when, the Respondent obtained the police report.

After interviewing both the parties and inspecting Ms. Staley's car, the Respondent conducted a Liability Analysis on August 25, 2020. The Liability Analysis found that the Complainant was thirty percent at fault for the accident and Ms. Staley was seventy percent at fault. The investigation began on August 16, 2020, and concluded on August 24, 2020, making the investigation approximately nine days long, which makes the investigation timely.

The next issue to address is whether the investigation was thorough. Prior to the Liability



Analysis, the Respondent interviewed both parties, took pictures of Ms. Staley's vehicle and obtained a Google map of the intersection. It was not apparent whether the Respondent obtained the police report prior to making its decision on liability. The Respondent did not inspect the vehicle of the Complainant until after making its decision as to liability.

The Complainant has the burden to prove that the investigation was not thorough and he did not present any evidence to indicate that it was not thorough.

The only criticism of the investigation's thoroughness is the failure of the Respondent to inspect the Complainant's car prior to making its decision as to liability. There was no evidence that would indicate that an inspection of Complainant's vehicle would have impacted the liability decision. That fact alone is not sufficient to indicate that the investigation was not thorough.

The next issue is to determine whether the investigation was fair and objective. As stated above, the only criticism of the investigation was that the Respondent did not inspect the Complainant's vehicle until after the percentage of liability of the parties had been determined. The Complainant did not produce any evidence that if the inspection had occurred prior to the determination of liability there would be a different conclusion. Therefore, the investigation was fair and objective.

Finally, since the investigation was reasonable and the Respondent made an offer after the investigation was complete, there was no violation of West Virginia Code § 33-11-4(d).

The Complainant's main complaint is that he believes it was unfair for the Respondent to find that he was thirty percent at fault for the accident.

It is well established that a decision of liability by the Respondent is given great deference as long as there is a good faith disagreement as to liability. W. Va. Code § 33-11-4a(g). During the

hearing, the Respondent testified that it conducted a Liability Analysis which determined that the Respondent's insured was seventy percent at fault. This analysis indicates that the Respondent made a good faith effort to determine liability. Since the Respondent's liability determination appears plausible, the Respondent's conclusion of the split of liability was made in good faith. The investigation conducted by the Respondent was reasonable. It was timely, thorough, fair and objective. The Complainant failed to meet its burden of proof to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c), 33-11-4(9)(d), West Virginia Code of State Rules § 114-14-6.1.

#### Conclusions of Law

The following are made as conclusions of law:

1. The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c), 33-11-4(9)(d), West Virginia Code of State Rules § 114-14-6.1.
2. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c), and 33-11-4(9)(d), by failing to prove that the investigation undertaken by the Respondent was not reasonable.
3. 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, by failing to prove that the Respondent's investigation was not timely, thorough, fair or objective.
4. The Complainant failed to prove that the decision by the Respondent to assign the Complainant thirty percent liability was not in good faith, which is a requirement under West Virginia Code § 33-11-4a(g).

Recommended Decision

It is recommended that the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c), 33-11-4(9)(d), West Virginia Code of State Rules § 114-14-6.1. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,



MARK W. CARBONE  
HEARING EXAMINER

Date: June 17, 2021