

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

VINCENT DICHIACCHIO

Complainant,

v.

ADMINISTRATIVE PROCEEDING NO. 20-FP-CC-02029

**STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.,**

Respondent.

FINAL ORDER

On a prior date, to-wit, December 15, 2020, 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 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 14th day of September, 2021.



JAMES A. DODRILL
Insurance Commissioner

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

VINCENT DICHIACCHIO,

Complainant,

v.

**ADMINISTRATIVE PROCEEDING NO.:
20-FP-CC-02027**

**STATE FARM MUTUAL
AUTOMOBILE INSURANCE CO.,**

Respondent.

**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On December 15, 2020, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the Office of the Insurance Commissioner, Charleston, West Virginia. Complainant, Vincent DiChiacchio, appeared by telephone. Appearing, also by telephone, on behalf of State Farm Mutual Automobile Insurance Co., were Sabrina Gillis, Esquire, and Wendy Riggs-Ritchie.¹ 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. Vincent DiChiacchio, (hereinafter "Complainant") resides at [REDACTED], Morgantown, West Virginia, 26508. Prior to moving to West Virginia, the Complainant lived in Florida. (Tr. P. 7-8)

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

2. State Farm Mutual Automobile Insurance Company (hereinafter "Respondent") corporate headquarters is located in Bloomington, Illinois, and is licensed to conduct business of insurance in the State of West Virginia.

3. Prior to moving to West Virginia in 2008, the Complainant lived in Florida and was insured by the Respondent. In 2011, he contacted a local insurance agent, John Christie, in order to transfer his automobile insurance policy from Florida.² When the Complainant moved, he was driving a 2001 Honda Civic with 98,000 miles. (Tr. P. 7, 13)

4. While the Complainant was insured in Florida, he received a low mileage discount on his automobile policy. A low mileage discount in Florida is given when an insured drives his car a small amount of miles a year. It is not clear from the record what the maximum mileage driven qualifies for the low mileage discount in Florida. In West Virginia, in order to qualify for the low mileage discount, the car must be driven less than 7,500 miles a year. (Tr. P. 7; Ex. 3)

5. In 2019, the Complainant discovered that he was not receiving the low mileage discount and had not received it since he had transferred his policy in 2011. The Complainant testified that he assumed that, when his policy was transferred from Florida, his low mileage discount would continue under his transferred policy. (Tr. P. 8)

6. Since 2011, the Respondent has sent the Complainant semiannual premium notices. According to the Complainant, the language in the notice was ambiguous and he could not determine whether he was receiving the low mileage discount based solely on the premium notices. He believed that the language on the premium notice was confusing because it did not clearly state that he was not receiving the low mileage discount. (Tr. P. 8-9)

²There was no evidence presented at the hearing to explain why the Complainant's insurance was not transferred until three years after the Complainant moved to West Virginia.

7. The renewal notice states, in the upper left side, "Ordinary use of vehicle: To and from work or school. Not more than 100 miles weekly. Driven over 75,000 annually." It goes on to state that the national average for a vehicle is 12,000 miles. The Respondent stated that this language indicates that the Complainant drives over 75,000 miles per year, which would place the Complainant into the high mileage classification. (Tr. P. 29; Ex. 3)

8. The renewal notice also states that if any of the information is wrong or incomplete, the insured is to contact his agent. In addition, it states that if the insured has any questions he should speak to his agent. The Complainant did not talk to his agent about the low mileage discount until 2019. This language appeared on every renewal notice from 2011 until 2019. (Tr. P. 27, 30, 36; Ex. 2)

9. The Complainant claims that the Respondent knew the distance between his work place and his home, therefore, should have known that he was a low mileage driver. The Respondent testified that while it would know the Complainant's home address, it does not know his work address. It is not the practice of the Respondent to calculate mileage from an insured's home to his work in order to determine whether the insured is entitled to the low mileage discount. (Tr. P. 12)

10. The Complainant believes that when his policy was transferred from Florida to West Virginia, his low mileage discount should have also been transferred. He went on to testify that if the low mileage discount was not transferred, he should have been told that he no longer was receiving the discount. (Tr. P. 8)

11. Ms. Wendy Riggs-Ritchie, underwriting analyst for the Respondent, testified that car insurance policies are not simply transferred, since the laws governing insurance and underwriting guidelines vary from state to state. While Ms. Ritchie admitted that the use of the word transfer is

not entirely accurate, it is the terminology used in the industry. When a person moves from one state to another, he must get a new policy even though the industry typically refers to it as a transfer. However, some things do transfer, such as a discount for accident free driving. The time you have been accident free in one state will transfer to your new state. (Tr. P. 22-23)

12. The position of the Respondent is that the Complainant had a duty to read his renewal notices and to review what, if any, discounts he was receiving. If the Complainant had any questions, it was his duty to contact his agent or the Respondent to determine whether he was getting the discounts that he believed he was entitled to have. (Tr. P. 27-28; Ex. 2)

13. It is the Complainant's position that since the Respondent did not inform him that he was no longer receiving the low mileage discount as of 2011, he is entitled to a refund for his overpayment. The Complainant determined that he was no longer was receiving the low mileage discount in 2019, therefore, he believes that he is entitled to a refund for the policy years of 2011 through 2018. (Tr. P. 8-10)

14. In 2019, when the Complainant discovered the fact that he was not receiving the low mileage discount, he brought that fact to the attention of the Respondent. From that point forward he was given the low mileage discount. The Respondent refused to refund the overpayment of the low mileage discount for the years of 2011 to 2018. (Tr. P. 68)

15. The Respondent explained that the policy premiums are based on anticipated annual mileage. The insured can change his mileage classification at any time, but the change would not be enacted retroactively, but only from the date of the change forward. (Tr. P. 68)

16. The Complainant did not sign the application when he changed his policy from Florida to West Virginia. It is his position that since he did not sign the application, he did not have

an opportunity to review the policy to ascertain whether he was receiving the low mileage discount.

17. Following the hearing the parties agreed to submit briefs. The Complainant then contacted the Consumer Advocate of the West Virginia Offices of the Insurance Commissioner to submit a brief on his behalf. Counsel for the Respondent agreed to this arrangement.

18. On April 20, 2020, after the receipt of the denial for a refund, the Complainant filed a complaint with the West Virginia Offices of the Insurance Commissioner.

Issue

Whether the Respondent violated the insurance laws of the State of West Virginia when it failed to adjust the Complainant's premium to reflect the Complainant's alleged overpayment. The alleged overpayment occurred because the Respondent failed to automatically apply the low mileage discount when the Complainant transferred his automobile insurance policy from Florida to West Virginia.

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 § 33-2-3.

Analysis

Prior to the start of the hearing, counsel for the Respondent filed a Motion to Dismiss. At the hearing Respondent's counsel had an opportunity to argue the Motion. The basis of the Motion was that the Complainant had not made any allegations that could be considered a violation of the

unfair claims settlement practice act. Since no allegations were made by the Complainant in his complaint that violated the insurance laws of West Virginia, the Respondent asserted that a hearing in front of the West Virginia Offices of the Insurance Commissioner was not a proper forum to address the Complainant's concerns. Counsel for the Respondent also argued that the Complainant's complaint is barred under the Doctrine of Laches.

The Complainant appeared *pro se* at the hearing. Since the Complainant was *pro se*, the undersigned determined that the Complainant should have an opportunity to address the Respondent's arguments contained in its Motion to Dismiss. Therefore, the Motion to Dismiss was denied pending the production of evidence at the hearing to determine whether the Complainant's evidence would sustain an unfair claims settlement violation.

Based on the complaint and the testimony at the hearing, the Complainant's main issue is that the low mileage discount on his automobile policy did not transfer when he moved his policy with the Respondent from Florida to West Virginia. As a result of this failure the Complainant believes that he is entitled to a refund for the difference between what he actually paid in premiums and what he would have paid if he had received the low mileage discount for the period of 2011 to 2019.

In his brief, the Complainant argues that the Respondent violated West Virginia Code § 33-11-4(9)(a) by allegedly misrepresenting the provisions of the renewal notices sent to the Complainant. In addition, the Complainant argues that the Respondent also violated West Virginia Code § 33-11-4(9)(d) by failing to pay the Complainant's claim without conducting a reasonable investigation.

The Respondent's position is that, even though some things may be transferred from state to state, the low mileage discount did not transfer. The Respondent stated that while the industry

refers to a move from one state to another as a transfer, it is technically not a transfer because each state's underwriting standards are different from every other state.

The Respondent also argues that the Complainant was put on notice that he was not receiving the low mileage discount every time he received a premium notice. In response, the Complainant stated that the form was confusing and that because of the language on the premium notices, there was no way for him to determine that he was not getting the discount simply from the premium notice.

Finally, the Respondent argues that the Complainant has a duty to read his policy. If he had, he would have determined that he was not receiving the low mileage discount.

We must first address the issues raised by the Complainant in his brief. The Complainant argues that the Respondent misrepresented the renewal notices in that there was no time limit when the Complainant needed to notify the Respondent that he was not receiving the low mileage discount. The argument seems to be that the Respondent either had a duty to inform the Complainant that he must notify it within a certain amount of time about the failure to receive the low mileage discount or run the risk of losing the discount. The converse of that argument is that Respondent's failure to inform the Complainant that there was a time limit means that there was no time limit and the Complainant could wait eight years before asking for the discount and get it for all eight years.

The Complainant cites West Virginia Code § 33-11-4(9)(a) 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:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

The Respondent does have a duty not to misrepresent any of the policy provisions to the

Complainant. Merriam-Webster dictionary defines misrepresentation as “an intentionally or sometimes negligently false representation made verbally, by conduct, or sometimes by nondisclosure or concealment and often for the purpose of deceiving, defrauding, or causing another to rely on it detrimentally.”

Under this definition, the misrepresentation does not have to be intentional but can be done negligently. Since there was no evidence presented that would have indicated that the misrepresentation was intentional, then we should examine whether there is any negligence involved. To determine whether there is a negligent misrepresentation we must look at the language of the renewal notices.

One of the key arguments made by the Complainant is that he was confused about the language on the premium renewal notices. He claimed that he did not realize that, based on the premium notices, he was not receiving the low mileage discount.

The undersigned reviewed the language on the first page of the renewal notices and agreed with the Complainant that the language is confusing. Based on the language on the first page of the premium notices, it would be difficult to determine whether he was receiving the discount or not. On the Complainant’s premium notice it states that he drives less than 100 miles to work each week. If that is accurate, then at the maximum of 100 miles a week, the Complainant would only be driving 5,200 miles a year. The representative of the Respondent stated that she interpreted this language to indicate that the Complainant drove over 7,500 miles per year.

However, another section of the first page is clear as to the coverage discounts the Complainant was receiving. On the right-hand side of page 1, in the section entitled “Coverage and Limits,” there is a list of “Premium Reductions.” This list states all the bases for which the

Complainant is entitled to receive discounts. It lists such things as Accident Free discount, discounts for Multicar, Coverage U Multi-Coverage and Coverage W Multi-Vehicle. Nowhere in this section does it state that the Complainant is receiving a Low Mileage discount. All the Complainant would have had to do is to look at this list and he could easily determine that he was not receiving the discount that he claims should have been transferred when he moved to West Virginia.

As part of this argument, the Complainant stated, based on the language of the renewal notices, that there was no time limitation on when he could ask that he receive the low mileage discount. The Respondent is not required to state whether any changes must be brought to the attention of the Respondent within a certain period of time. Each of the premium notices are separate reaffirmations of the policy. By submitting his payment he is entering into a new contract with the Respondent. Since this is what occurs, there is no need to list a time period.

The next argument contained in the Complainant's brief is that the Respondent violated West Virginia Code § 33-11-4(9)(d), 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:

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

The Complainant argues that the Respondent failed to conduct any investigation into his request that he be granted the low mileage discount retroactively. The Complainant, by the use of this statute, asserts that the Complainant's request for a refund was a claim. Typically a claim in insurance parlance, is when an insured is involved in an accident and either the insured or a third party, or both, makes a claim for damages. In this case, the Complainant characterizes his request for a refund as a claim. While I believe that this characterization is creative, I am not sure that it

would fall under West Virginia Code § 33-11-4(9)(d) as a claim.

However, assuming that it is a claim, which is doubtful, we must look at West Virginia Code of State Rules § 114-14-6.1, which states as follows:

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.

Under this Rule, in order for an investigation to be reasonable, it must be timely, thorough, fair and objective. Under the evidence presented at the hearing, the Complainant brought the fact that he was not receiving the low mileage discount to the attention of the Respondent in 2019. The Respondent immediately changed the Complainant's policy premium to reflect that discount. The Complainant then requested that the Respondent provide him a premium refund for the period of time after beginning his policy in West Virginia until 2019, approximately eight years. According to the testimony of Ms. Wendy Riggs-Ritchie, the state law of West Virginia does not allow for the refund of any premium payments.

In its Motion to Dismiss, the Respondent cites West Virginia Code § 33-6-30(b), which states as follows:

(b) The Legislature finds:

(1) That consumers and insurers both benefit from the legislative mandate that the Insurance Commissioner approve the forms used and the rates charged by insurance companies in this state;

(2) That certain classes of persons are seeking refunds of insurance premiums and seeking to void exclusions and other policy provisions on the basis that insurance companies allegedly failed to provide or demonstrate a reduction in premiums

charged in relation to certain terms or exclusions incorporated into policies of insurance;

(3) That historically, as a prerequisite to a rate or form being approved, neither the Legislature nor the Insurance Commissioner has ever required that the insurer demonstrate that there was a specific premium reduction for certain exclusions incorporated into policies of insurance;

(4) That the provisions of this chapter were enacted with the intent of requiring the filing of all rates and forms with the Insurance Commissioner to enable the Insurance Commissioner to review and regulate rates and forms in a fair and consistent manner;

(5) That the provisions of this chapter do not provide and were not intended to provide the basis for monetary damages in the form of premium refunds or partial premium refunds when the form used and the rates charged by the insurance company have been approved by the Insurance Commissioner;

(6) That actions seeking premium refunds or partial premium refunds have a severe and negative impact upon insurers operating in this state by imposing unexpected liabilities when insurers have relied upon the Insurance Commissioner's approval of the forms used and the rates charged insureds; and

(7) That it is in the best interest of the citizens of this state to ensure a stable insurance market.

The key sections of this Code that are applicable to the matter at hand is West Virginia Code § 33-6-30(b)(4), (5) and (6).

West Virginia Code §33-6-30(b)(4) means that the West Virginia Offices of the Insurance Commissioner is required to review all rates and forms used by all insurance companies doing business in West Virginia. While the Complainant may believe that the language under "Ordinary use of vehicle" section is confusing, the language has been reviewed and approved by the West Virginia Offices of the Insurance Commissioner. When that occurs, there is an automatic assumption that the language is not confusing or ambiguous. However, the language issue discussed above may not be of concern based on the discussion below.

In West Virginia Code § 33-6-30(b)(5), the Legislature determined that the West Virginia Code does not allow for premium or partial premium refunds. West Virginia Code § 33-6-30(b)(6) states, that to allow partial premium refunds, would have a negative impact on insurers because of the potential liabilities.

As stated above, the Complainant is seeking a partial refund of his premium payments from 2011 until 2019, because the Respondent did not transfer his low mileage discount when he moved to West Virginia. West Virginia Code § 33-6-30(b)(5) does not allow partial premium refunds but that is exactly what the Complainant is looking to receive. West Virginia Code § 33-6-30(b)(6) provides the basis for the Legislature's restriction on premium refunds. The Legislature found that any refund would have a negative impact on the business of insurance in West Virginia.

The statute is clear that insurance companies in West Virginia cannot give partial refunds on premiums. Therefore, the Complainant is not entitled to a refund even if the language is ambiguous and the fact that he did not receive his low mileage discount.

Since the law is clear about providing a refund to the Complainant, any investigation that the Respondent would be required to undertake would end at that moment. The Complainant states that the Respondent did not conduct any investigation, let alone a reasonable one. From the discussion above, it appears that the Respondent investigated the Complainant's request for a refund and immediately determined that under West Virginia law, the Complainant could not be given a refund. Therefore, under these circumstances, the investigation conducted by the Respondent was timely, thorough, fair and objective, thus, was reasonable.

The Complainant also argues that the Respondent had a duty to inform him that his low mileage discount was not transferred when he moved from Florida to West Virginia. The

undersigned could not find any statute or rule that would require that the Respondent disclose the loss of a discount to the insured. After the Complainant moved his policy to West Virginia, every six months he was given a premium notice. It was his duty to review these premium notices and determine what, if any, discounts he was receiving.

Another issue raised by the Complainant is that he was not given an opportunity to fill out an application when he moved his policy from Florida to West Virginia. While this argument is unclear, the Complainant may be stating that he could have brought up the fact he was not receiving his low mileage discount if he had been allowed to complete an application. However, this argument is not persuasive, since the Complainant received several renewal notices following his move to West Virginia, and did not inquire about the low mileage discount at any of those times. The question is why would the review of an application by the Complainant be any different. While it does seem odd that the Complainant was not asked to complete a new application for a new policy when he moved to West Virginia, that may be the Respondent's procedures. The application process appears to be a mere formality since the Complainant is transferring his policy from one state to another. To avoid any of this type of problem in the future, it would be to the Respondent's best interest to have the insured sign and review any transferred policy. While this is not required, it may avoid a similar problem in the future.

The Motion to Dismiss, filed by the Respondent, stated that the Complainant had not alleged any violation of an unfair practice rule. During his testimony, the Complainant was given every opportunity to present any evidence that could reasonably be construed to be a violation. While it was true that the Complainant did not cite any statutory violation during the hearing, counsel for the Complainant, in his brief, did cite at least two potential violations, therefore, the Respondent's

Motion to Dismiss was properly denied at the hearing.

However, the Complainant failed to prove that, the language in his renewal notices misrepresented his policy; that the investigation conducted by the Respondent was not reasonable; that the Respondent should have notified him that he was no longer receiving his low mileage discount; and that not refunding his partial premium are violations of the Unfair Trade Practices Act.

Conclusions of Law

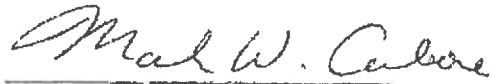
The following are made as conclusions of law:

1. The Complainant has the burden to prove, by a preponderance of the evidence, that the Respondent violated the insurance laws of West Virginia.
2. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(a), by failing to prove that the Respondent made any misrepresentation.
3. The Complainant failed to prove that the investigation conducted by the Respondent was unreasonable and, thus, failed to prove that the Respondent violated West Virginia Code § 33-11-4(9)(d) and West Virginia Code of State Rules § 114-14-6.1
4. The Respondent acted in accordance with West Virginia Code § 33-6-30(b) in the denial of the Complainant's request for a partial refund of his premium payment,
5. The Respondent was not required to inform the Complainant that he no longer had his low mileage discount when he moved from Florida to West Virginia.
6. Once the language in a form is approved by the West Virginia Offices of the Insurance Commissioner it is presumed to be fair.

Recommended Decision

It is recommended that the Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated any West Virginia Insurance laws. Therefore, the Complainant's complaint should be dismissed.

Respectfully recommended,



MARK W. CARBONE
HEARING EXAMINER

Date: March 18, 2021