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BULLETIN 09-18

To: All Property & Casualty Insurers and All Interested Parties

Re: 27-1001 Case – Duty to Act in Good Faith on First Party Claims

Date: July 9, 2009

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The Maryland Insurance Administration (“MIA”) wishes to remind all property and casualty insurers handling first party claims to act in accordance with Section 3-1701 of the Courts and Judicial Proceedings Article and Section 27-1001 of the Insurance Article. Section 27-1001 authorizes the award of enhanced damages in civil actions that arise out of first party property and casualty insurance claim disputes where the plaintiff proves that the insurer failed to act in good faith.

The MIA would refer all interested parties to its recent decision in Buckley v. The Brethren Mutual Insurance Company in which it was found that the carrier failed to act in good faith in the handling of the uninsured motorist claim by failing to pay full value for the Plaintiff’s claim. You can access this decision by going to the MIA website and checking for the 27-1001 decisions or by clicking on the following link:
www.mdinsurance.state.md.us/sa/documents/Civil-09-00014-Decision.pdf.

In Buckley, an uninsured motorist carrier consented to a settlement and waiver of its right of subrogation against the tortfeasor, but later the carrier reversed itself and refused to make payment to its insured, the Plaintiff, and raised various defenses to the breach of contract action she filed, e.g., contributory negligence, assumption of the risk, and release, all of which it was barred from raising by operation of the prior settlement/waiver. See Mauer v. Pennsylvania Mutual Casualty Insurance Company, 404 Md. 60 (2007).

While it is true that the insurer had consented to the settlement with the tortfeasor before the Court of Appeals issued the Maurer decision, once it was issued, all insurers were required to follow it. Thus, the Buckley decision concluded that the insurer’s refusal to pay its limits to the Plaintiff demonstrated an absence of good faith and resulted in the insurer being required to pay the Plaintiff enhanced damages, including interest and attorney’s fees. While the Buckley

decision is not yet final, subject to the parties right to request a hearing and judicial review; nonetheless, insurers need to keep in mind the Maurer decision when handling these types of claims.

Insurers and their counsel are reminded also to follow the regulation, COMAR 31.08.11, with regard to the Defendant's submissions in Section 27-1001 cases as the failure to comply with the requirements of this regulation may, in and of itself, support a finding of an absence of good faith by the insurer.

Should you have any questions concerning this Bulletin, please contact P. Randi Johnson, Associate Commissioner, Property & Casualty, by email at prjohnson@mdinsurance.state.md.us or by telephone at 410-468-2301.

Ralph S. Tyler, Insurance Commissioner

By: P. Randi Johnson
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