

CASE NO. **91354017**

Part ____ of ____ Parts

In The Circuit Court for Baltimore City
CIVIL

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141629

In the Matter of

ROBERT G. SAMET

VS

**INSURANCE COMMISSIONER OF THE STATE
OF MARYLAND, ETAL**

DATE	DOCKET ENTRIES	NO.
3/4/92	Order of Court that Deft's motion & strike demands for jury trial - "granted". (Kondro, J.)	10
3/13/92	Pltff Memorandum	11
3/20/92	Deft's (Ins. Comm.) response to pltff memo.	13
3/13/92	Civil postponement fld. "Approved" (Ross, J.)	12a
3/31/92	Deft's (GEICO) memo fld.	14
6/10/92	Case submitted to the Court for determination w/out the aid of a jury. (Hollander)	
6/10/92	The decision of the Insurance Commission of the state of Maryland is "Sub Curia" (Hollander)	
7/17/92	Memorandum Opinion and order fld. Ordered that the decision of the Administrative Law judge is hereby affirmed. Judgment in favor of the pltff, pltff to pay costs. (Hollander)	
7/21/92	Pltff's Motion to stay judgment pending appeal fld.	15
7/21/92	Pltff's Motion to stay judgment pending appeal is hereby "heard and granted". Order fld. (Hollander)	16

B2

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CATEGORY APPAA

CASE NO. 91354017/CL14192 PAGE 1 of

PARTIES	ATTORNEY(S)
<p>ROBERT G. SAMET</p> <p>VS</p> <p>INSURANCE COMMISSIONER OF THE STATE OF MARYLAND</p> <p>GOVERNMENT EMPLOYEES INSURANCE CO.</p>	<p>JONATHAN S. BEISER 917061</p> <p>Randi F. Reichel 910891</p> <p>Guyne G. Ludek 911698</p>

DATE	DOCKET ENTRIES	NO.
12/20/91	ORDER FOR APPEAL FROM THE DECISION OF THE INSURANCE COMMISSIONER, PETITION, AND EJT.	1
12/20/91	MOTION TO STAY.	2
"	ORDER GRANTING MOTION TO STAY. (JUDGE THOMAS NOEL)	3
1/9/92	App. of Atty. Randi F. Reichel for Dept. of Ins. Comm. same day motion to strike demand for jury trial (Orig 11/28/92) (see)	4
1-10-92	App. Guyne G. Ludek Atty for Dept (GEICO) office by Guyne for petition for appeal for	5
1-10-92	App. (GEICO) Motion to strike demand for jury trial for	6
1/16/92	Dept. of Ins. Comm. answer	7
1/17/92	Atty's opposition to motion to strike demand for J.T., Request for hearing (remove trial) (det mot)	8
1/29/92	Transcript of record 70 pgs (det J.T.)	9
2/4/92	Dept (Ins. Comm.) reply to opposition to motion to strike demand for J.T.	10



IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

ROBERT G. SAMET

Appellant

v.

INSURANCE COMMISSIONER
of the State of Maryland, et al.

Appellees

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Case No. 91354017/
CL 141926

ORDER

UPON CONSIDERATION of Appellant's Motion to Stay Judgment Pending Appeal, it is by this Court, this 21st day of July, 1992,

ORDERED that Appellant's Motion to Stay Judgment Pending Appeal be, and the same hereby is, GRANTED. *The stay shall expire September 4, 1992.*

Ellen Hollander
Judge

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
703-6400
SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311
703-931-5500
SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737
SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785
301-459-8400
SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
410-539-1122

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

ROBERT G. SAMET

Appellant

v.

INSURANCE COMMISSIONER
of the State of Maryland, et al.

Appellees

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Case No. 91354017/
CL 141926

15
Hollander

MOTION TO STAY JUDGMENT PENDING APPEAL

COMES NOW, Robert G. Samet, by and through his attorney, Jonathan S. Beiser, and moves this Honorable Court, pursuant to Maryland Annotated Code, Art. 48A, §40(7) and Maryland Rules of Procedure 2-632(e) and 8-422, for a stay of the Judgment of this Court pending Appeal and as grounds therefor states:

1. That on or about December 20, 1991, Appellant filed an appeal from an Order of the Insurance Commissioner to the Circuit Court for Baltimore City, Maryland;

2. That on June 10, 1992, a hearing on the Appeal was heard before Judge Ellen Hollander;

3. That on July 17, 1992, Judge Hollander passed an Order affirming the decision of the Insurance Commissioner of the State of Maryland;

4. That Appellant has not yet received a copy of the order, but, pursuant to said Order, GEICO telephoned the Appellant and advised Appellant that the insurance policy will be terminated as of 12:01 a.m. on July 22, 1992 and that Appellant no longer has even the option of excluding Janice R. Samet from coverage. This effectively gives the Appellant only one (1) day notice of termination of coverage;

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

783-6400

SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311

703-931-5500

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301-770-3737

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BALTIMORE, MD 21202

410-539-1122


5. That Appellant is in the process of filing an appeal to the Court of Special Appeals from Judge Hollander's Order;

6. That in order to preserve Appellant's right to appeal this Court's decision, a stay is necessary. The denial of a stay will effectively render this appeal moot and deny Appellant any remedy, because Appellant will be forced to change insurers;

7. That Maryland Annotated Code, Art. 48A, §40(7) grants the Court the authority to stay the effectiveness of its judgment pending appeal. The very purpose of this statute is to preserve the right of appeal, because in all such cases the absence of a stay will render nugatory the right to appeal by compelling insured's to seek insurance elsewhere;

WHEREFORE, it is respectfully requested that the Court grant a stay of effectiveness of its judgment pending appeal.

ASHCRAFT & GEREL



Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
301/770-3737
Attorney for Appellant

POINTS AND AUTHORITIES

Md. Ann. Code, Art. 48A, §40(7)
Md. Rules of Procedure, 2-632(e), 8-422

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
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783-6400

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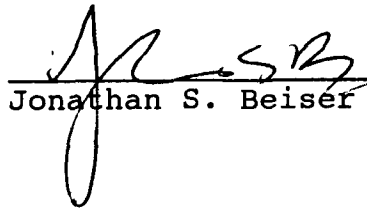
410-539-1122

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Stay Judgment Pending Appeal was mailed postage prepaid this 10 day of July, 1992 to:

Eugene A. Seidel, Esquire
334 St. Paul Place
Baltimore, MD 21202

Randi Reichel, Esquire
Assistant Attorney General
501 St. Paul Place
14th Floor
Baltimore, MD 21202


Jonathan S. Beiser

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D. C. 20036

783-6400

SUITE 650
4900 SEMINARY ROAD
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703-931-5500

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301-459-8400

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BALTIMORE, MD 21202

410-539-1122

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IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

ROBERT G. SAMET
Appellant

FILED

JUL 21 1992

v.

INSURANCE COMMISSIONER of the State of Maryland, et al.

Case No. 91354017/
CL 141926

Appellees

MOTION TO STAY JUDGMENT PENDING APPEAL

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ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

93-6400
SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311
703-931-5500

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737

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WHEREFORE, it is respectfully requested that the Court grant a stay of effectiveness of its judgment pending appeal.

ASHCRAFT & GEREL



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11300 Rockville Pike
Suite 1002
Rockville, MD 20852
301/770-3737
Attorney for Appellant

POINTS AND AUTHORITIES

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2000 L STREET, N.W.
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ROBERT G. SAMET

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Appellees

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Case No. 91354017/
CL 141926

ORDER

UPON CONSIDERATION of Appellant's Motion to Stay Judgment Pending Appeal, it is by this Court, this _____ day of _____, 1992,

ORDERED that Appellant's Motion to Stay Judgment Pending Appeal be, and the same hereby is, GRANTED.

Judge

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ASHCRAFT & GEREL
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2000 L STREET, N.W.
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783-6400

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ROBERT G. SAMET	*	IN THE
Appellant	*	CIRCUIT COURT
v.	*	FOR
INSURANCE COMMISSIONER OF THE STATE OF MARYLAND	*	BALTIMORE CITY
	*	
and	*	Case No. 91354017/CL141926
GOVERNMENT EMPLOYEES INSURANCE COMPANY	*	
Appellees	*	

* * * * *

MEMORANDUM OPINION AND ORDER

Hollander, J.

I. Introduction

Robert G. Samet ("Samet") has appealed from the Order on Hearing issued by the Administrative Law Judge ("ALJ"), dated November 25, 1991. The ALJ approved the proposed action of Government Employees Insurance Company ("GEICO") not to renew Samet's automobile liability insurance policy, or in lieu of nonrenewal, to exclude Samet's wife, Janice Samet ("Ms. Samet"), from coverage under the policy.

The ALJ found that GEICO had applied its underwriting standards in a manner reasonably related to its economic and business purposes. He further concluded that GEICO reasonably determined its insured was at fault with respect to the accident of July 26, 1990 ("the Accident"). The ALJ held, therefore, that GEICO's proposed action did not violate the

provisions of Code, Article 48A, Sections 234A and 240AA.¹

On appeal, Samet contends that the ALJ erred in upholding GEICO's determination of fault with respect to the Accident. He also claims that the ALJ erred in admitting as evidence certain documents relating to the statistical significance of frequency of accidents and traffic convictions.

II. Factual Summary

On March 15, 1991, GEICO sent a "Notice of Cancellation" to Samet informing him that it was not renewing his automobile liability insurance policy. R.72-76.² In lieu of cancellation, GEICO offered to continue the policy, provided that Ms. Samet was excluded from coverage under the policy. R.74-75. Samet exercised his right to protest GEICO's proposed cancellation, and requested an administrative hearing. R.73,80. In accordance with Section 240HH, a hearing was held on October 2, 1991 before Malcolm N. Stewart, ALJ (the "Hearing").

GEICO's proposed termination was based on the fact that Ms. Samet's driving record exceeded GEICO's underwriting standard. R.15-17. GEICO relies on three incidents involving Ms. Samet to support its position. First, on November 9, 1989, Ms. Samet was deemed to have failed to yield the right of way when attempting to make a U-turn. An accident ensued and the

1. All references to the Maryland Code will be to Article 48A, unless otherwise noted.

2. The letter "R" refers to the Record which has been sequentially numbered in this case.

owner of the claimant vehicle was paid \$921.67 under the property damage coverage of Samet's policy. R.17-19. Second, on December 14, 1989, Ms. Samet received a citation for exceeding the maximum speed limit by ten miles per hour. This citation resulted in a conviction on January 31, 1990. R.17. Third, on July 26, 1990, Ms. Samet was involved in the Accident which is the subject of the appeal.

Although Ms. Samet never testified at the Hearing, GEICO related the information Ms. Samet had presented at the time of the Accident. Mabelle Hamlin ("Hamlin"), a GEICO liason to the Maryland Insurance Commissioner, testified that Ms. Samet said the Accident occurred when she was driving her vehicle through a parking lot. According to Ms. Samet, a "phantom" vehicle was speeding towards her from the opposite direction (R.21,47) and, in order to avoid the oncoming vehicle, she moved her car. In doing so, Ms. Samet explained that she hit the claimant's parked car, which was unoccupied. R.46,47. Ms. Samet apparently did not obtain the license tag of the phantom vehicle, or a description of its color or make. But she did leave a note containing her identification on the claimant's parked car. R.21. As a result of this collision, GEICO paid \$303.47 to the claimant under the insured's property damage coverage.

After Ms. Samet reported the Accident, GEICO conducted an investigation, which was necessarily limited due to the lack of information with regard to the phantom vehicle. Although there were no independent witnesses to the occurrence, GEICO interviewed both Ms. Samet and the owner of the parked vehicle.

R.57. Based on the facts as analyzed by GEICO, it concluded that Ms. Samet failed to keep her vehicle properly under control, deemed the Accident to be an at fault occurrence, and paid the claim.

Hamlin also testified that GEICO's underwriting guidelines, set out in the termination notice, preclude continued insurance coverage for drivers like Ms. Samet who have accumulated any combination of three or more "at fault" accidents and/or traffic convictions within the most recent 36 month period. R.14-16.

Although GEICO can charge for certain at fault accidents, it has chosen not to have the ability to surcharge in Maryland for a driver with two at fault accidents and one conviction within the most recent 36 months. R.37. Hamlin testified that there is a significantly higher expected accident frequency for a driver such as Ms. Samet, which would have an adverse effect upon GEICO's ability to profit, and increase its exposure to loss. R.37.³

3. In explaining the process by which GEICO established its underwriting policy, Hamlin testified that the California Department of Motor Vehicles has compiled data which demonstrates that drivers who have prior accidents and/or convictions have a higher rate of subsequent accident involvement than those who do not. R.24; R.91-93. The raw data was analyzed by Dr. Charles Rohde ("Dr. Rohde"), who is chairman of the Department of Biostatistics at Johns Hopkins University. R.97-99. According to Hamlin, Rohde's analysis demonstrates that drivers with prior incidents have a higher rate of subsequent accident involvement. R.32-37.

Based upon the testimony and exhibits, the ALJ found, inter alia, that GEICO reasonably concluded that the Accident was Ms. Samet's fault; that GEICO's application of its underwriting standards to Samet's policy was based on valid statistical data that shows a strong relationship between past accidents and violations and the probability of future accident involvement; that Ms. Samet belongs to a group or class of drivers who, by virtue of two accidents and one violation, has almost twice the chance of future accident involvement as compared to a driver with zero accidents and violations; and that GEICO's application of its underwriting standard is reasonably related to its economic and business purposes. The ALJ further concluded that Ms. Samet's driving record placed additional exposure to loss on GEICO, which was not contemplated by GEICO in its rating plan for coverage. R.3. The proposed nonrenewal was therefore approved.

III. Scope of Review

Section 40(5) governs the standards of judicial review.

It provides:

The court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (i) In violation of constitutional provisions; or
- (ii) In excess of the statutory authority or jurisdiction of the Commissioner; or
- (iii) Made upon unlawful procedure; or
- (iv) Affected by other error of law; or
- (v) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted; or

(vi) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or

(vii) Unsupported by the entire record, as submitted by the Commissioner and including de novo evidence taken in open court; or

(viii) Arbitrary or capricious

Accord, Miller v. Ins. Comm'r., 70 Md. App. 355, 365 (1987);

Ins. Comm'r. v. Allstate Ins. Co., 268 Md. 428, 442-43 (1973).

Section 40(5), and the case law interpreting it, make clear that "the basic standard for reviewing an administrative finding is whether the finding is supported by 'substantial evidence.'" Lumbermen's Mut. Casualty v. Ins. Comm'r., 302 Md. 248, 266 (1985). In applying the substantial evidence test, this court must not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. See Miller, supra, 70 Md. App. at 366. Rather, it is the fact finder who must resolve factual disputes, and assess the credibility of witnesses. On review, this court is only to determine whether "a reasoning mind reasonably could have reached the factual conclusion the agency reached." Id. (citations omitted). See also, Nationwide Mut. Ins. Co. v. Ins. Comm'r., 67 Md. App. 727, 737 (1986); Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978).

IV. Discussion

A.

Samet attacks the ALJ's conclusion that the Accident was reasonably found by GEICO to be fault related. He argues that, based on the case of Insurance Comm'r. v. Nevas, 81 Md. App. 549 (1990), GEICO is not entitled to assess the loss.

In support of his assertion, Samet claims as follows: 1) GEICO should have accepted as true its insured's uncorroborated statement that the Accident was not her fault; 2) GEICO never informed Ms. Samet that they would contest her statement; 3) Samet was prejudiced by GEICO's failure to notify him that it found Ms. Samet to be at fault; 4) Ms. Samet would have investigated the circumstances of the collision more thoroughly had she thought GEICO would find her at fault.

Nevas, supra, requires an insurer to "explain the basis for its conclusion that the insured was at fault." Id. at 558. The requirements of Nevas were clearly satisfied here. Evidence was presented by GEICO amply demonstrating the basis for its at fault determination. The only known witness to the incident was Ms. Samet. The Record shows that GEICO investigated the Accident by speaking to Ms. Samet and to the claimant whose unoccupied, parked vehicle was struck by Ms. Samet.

Ms. Samet furnished no identifying information as to the alleged phantom vehicle. With the exception of Ms. Samet's statement, the record is plainly devoid of any evidence which substantiates the claim that it was the cause of the Accident. Consequently, GEICO was unable to verify Ms. Samet's contention that a phantom vehicle caused her to collide with the parked car.

Samet essentially asks this court to hold that an insurer must accept as true an uncontradicted statement of its insured. To require an insurance company to accept as true whatever statement its insured might make under these circumstances

is to invite potentially spurious, fictitious and self-serving statements from an insured. More to the point, GEICO did conduct an investigation, and reasonably concluded that Ms. Samet did not properly keep her vehicle under control. The ALJ agreed. This court will not substitute its judgment for the judgment of the ALJ, because "a reason[able] mind reasonably could have reached the factual conclusion [he] reached." Lumberman's at 266.

Samet's other contentions, including his claimed entitlement to notice of GEICO's determination, are also without merit. No notice is required under Maryland law or under the insured's contractual policy. Samet could have asked his insurer to advise him as to the determination regarding fault. No evidence was adduced that such a request was ever made, much less refused.

B.

Samet seemingly argues⁴ that the ALJ erred by admitting into evidence certain raw data obtained from the California Department of Motor Vehicles and the cover letter attached to it (Exhibit 4; R.90-93) and GEICO's summary interpretation of the California data which had appended to it a report prepared by Dr. Rohde analyzing the data. (Exhibit 5; R.94-101). The sole basis asserted is that the documents are hearsay.

4. At the appellate argument, appellant did not address the alleged erroneous admission of any exhibits. From a review of Appellant's Rule B12 Memorandum and the Record, it is difficult to ascertain the particular exhibits to which Samet's objections are directed.

When the California data was offered at the Hearing (R.24,25), Samet objected only on the grounds of relevancy and completeness. The following colloquy is illuminating.

Hearing Officer: Any objection to that, Mr. Samet?

Mr. Samet: I would object because it hasn't been tied in and also the entire study is not here.

R.24.

Because hearsay was not timely asserted at the Hearing, the issue has not been preserved for review. Samet has waived all grounds not expressly asserted below. See, generally, Maryland Rule 2-517(a); Klein v. Weiss, 284 Md. 36 (1978); Great Coastal Express, Inc. v. Schroeber, 34 Md. App. 706 (1977).

As to GEICO's summary of the California data, which also contained Dr. Rohde's analysis, Samet did timely object at the Hearing on hearsay grounds. R.40. It is clear that Dr. Rohde's analysis and GEICO's interpretation of that analysis (Exhibit 5, R.92-101) constitute hearsay. Dr. Rohde did not testify, and both documents are out of court statements offered to prove the truth of the matters asserted therein. But, at the Hearing, Samet conceded that an ALJ is not "required to adhere to the strict rules of evidence." R.32. It is, indeed, well settled that the strict rules governing the admissibility of evidence do not apply at an administrative hearing.

The Court of Appeals has recognized that administrative agencies are not generally bound by the technical rules of evidence. There is ample authority that hearsay evidence may

be admitted in contested administrative proceedings. See, e.g., Maryland Dept. of Human Resources v. Bo Peep Day Nursery, 317 Md. 573, cert. denied, Cassilly v. Maryland Dept. of Human Resources, 110 S. Ct. 1784 (1989); Maryland Fire UW v. Insurance Comm., 260 Md. 258 267 (1971); Neuman v. City of Baltimore, 251 Md. 92 (1968); Dal Maso v. Board of County Comm'rs. of Prince George's Co., 238 Md. 333 (1965). Further, the Court has recognized on several occasions that hearsay testimony is not only admissible in administrative hearings in contested cases, but if credible and of sufficient probative force, such evidence may be the sole basis for the decision of the administrative body. See, Redding v. Board of County Comm'rs. for Prince George's Co., 263 Md. 94, cert. denied 406 U.S. 923 (1971); Tauber v. County Board of Appeals for Montgomery Co., 257 Md. 202 (1970); Eger v. Stone, supra. In view of the foregoing, this court finds no error in the ALJ's receipt into evidence of the disputed documents.

Even if the ALJ erred in admitting the documents, such error was harmless. See, McLain, Maryland Evidence, Section 103.22 (1987) and cases cited therein. The thrust of Samet's appeal surrounds the contention that GEICO acted unreasonably in assessing fault against its own insured for the Accident. The statistical data offered does not relate to the issue regarding the propriety of GEICO's at fault conclusion. Rather, the documents relate to an insurer's potential loss due to combined accident and traffic conviction frequency, and addresses GEICO's determination as to its underwriting guidelines.

Based on the foregoing, it is, this 17^m day of July,
1992, by the Circuit Court for Baltimore City,

ORDERED that the decision of the ALJ be, and the same
hereby is, AFFIRMED.

Costs to be paid by Appellant.

Ellen L. Hollander
Ellen L. Hollander, Judge

cc: Eugene Seidel, Esquire
Jonathan Beiser, Esquire
Randi Reichel, Esquire

RESIDING JUDGE *Hellander*

COURTROOM CLERK *Loft*

STENOGRAPHER *Hay*

ASSIGNMENT FOR WEDNESDAY JUNE 10, 1992

CASE NUMBER - 91354017
CASE TITLE - SAMET VS INSURANCE COMM., ETAL CL141926
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY
PROCEEDING - COURT TRIAL - FAST TRACK

CL

REICHEL, RANDI F
SEIDEL, EUGENE
BEISER, JONATHAN S

DEFENSE ATTORNEY 539-3240
DEFENSE ATTORNEY 539-1230
PLAINTIFF ATTORNEY

TYPE OF PROCEEDING: (___) JURY () NON-JURY (___) OTHER

DISPOSITION (CHECK ONE)
(___) SETTLED (___) CANNOT SETTLE (___) NEXT COURT DATE
(___) VERDICT (___) REMANDED (___) NON PROS/DISMISSED
(___) JUDGEMENT NISI (___) ORDER/DECREE SIGNED (___) OTHER
(___) JUDGEMENT ABSOLUTE (___) ORDER/DECREE TO BE SIGNED
(___) POSTPONED (___) MOTION GRANTED
() SUB CURTA (___) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE _____ DATE _____

14
EJB

FILED

MAR 31 1992

CIRCUIT COURT FOR BALTIMORE CITY

ROBERT G. SAMET
Appellant

* IN THE
* CIRCUIT COURT

vs.

* FOR

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND, et al.

* BALTIMORE CITY

Appellees

Case No.: 91354017/
CL141926

* * * * *

MEMORANDUM OF GOVERNMENT EMPLOYEES INSURANCE COMPANY

Government Employees Insurance Company, hereinafter referred to as "GEICO", by its attorney, Eugene A. Seidel, P.A. and Eugene A. Seidel, Esq., submits this Memorandum of Law pursuant to Maryland Rules of Procedure, Rule B12.

STATEMENT OF THE CASE AND OF THE FACTS

By notice dated March 15, 1991, GEICO informed Robert G. Samet, Appellant herein, that, effective 12:01 a.m. on May 31, 1991, his automobile insurance would not be renewed unless he agreed to exclude his wife, Janice Samet, from policy coverage. (R. 72-75). GEICO identified its reasons for non-renewal in the notice which stated as follows:

Our business and economic purpose is to provide low cost automobile insurance to preferred drivers while making a reasonable profit. In order to comply with our business and economic purpose, GEICO's underwriting standards do not allow any one driver to accumulate any combination of 3 or more at-fault accidents and/or convictions within the most recent 36 months.

This action is being taken because the following driving records does not meet our underwriting standard(s) as shown above:

Janice Samet's driving record:

*11-09-89 Failed to yield right of way. Janice made a U-turn and collided with Claimant. GEICO paid \$921.67 under Property Damage coverage.

*12-14-89 Exceeding the maximum speed limit by ten miles per hour.

*07-26-90 Janice struck claimant in a parking lot. GEICO paid \$303.47 under Property Damage coverage.

Independent research studies have concluded that past driving records are valid predictors of future accident involvement. As the number of accidents and convictions increases, so does the probability of future accident involvement. These studies show that the group of drivers with one accident and two convictions is 2.360 times as likely to be involved in an accident in the future as compared to the group of drivers with no prior incidents (accidents and/or convictions). Since it is impossible for us to predict which drivers in the group will have future accidents, we are required by Maryland law to apply our underwriting standards equally to all drivers in the group.

Appellant protested GEICO's proposed non-renewal action and a hearing was held on October 2, 1991 before Administrative Law Judge Malcolm M. Stewart. (R. 1-5). GEICO was represented at the Hearing by Patricia Whitman, an attorney for GEICO, and Machell Hamlin, Maryland Insurance Division Liaison. The Appellant appeared at the hearing without representation, although Mr. Samet is a licensed attorney practicing law in the State of Maryland. Ms. Hamlin testified at length regarding GEICO's reasons for the proposed non-renewal of the subject policy. (R. 15-45). Ms. Hamlin testified that Janice Samet's driving history exceeds the underwriting standard which does not allow any one driver to accumulate a combination of three or more at-fault accidents and/or traffic convictions within a 36 month period, the most recent 36

month period. (R. 15). Ms. Hamlin testified that based on Mrs. Samet's driving record, she had received a citation on December 14, 1989 for exceeding the maximum speed limit by ten miles per hour and a conviction followed on January 31, 1990. (R. 17). A copy of the Motor Vehicle record of Ms. Samet was introduced into evidence. (R. 16). She further testified that a claimant reported that on November 9, 1989, GEICO's insured, Janice Samet, made a U-turn, failing to yield to the claimant, who was travelling in the opposite direction. (R. 18). Ms. Hamlin described the investigation as follows:

We called our insured driver, Janice Samet, who stated that she was on an access road. The claimant and our insured driver were going in opposite directions. The claimant was coming down the road and our insured driver was attempting to make a U-turn onto the road that the claimant was travelling. Our insured driver alleged speed on the claimant.

We spoke to the claimant and the claimant's attorney. Claimant did not admit speed. The insured driver was charged with failure to yield the right of way.

Based on our insured driver's description of the accident, as well as the claimant's accident description, GEICO formed the basis for our determination that our insured driver failed to yield the right of way to the claimant. In addition, there was no proof of speed on the claimant, and therefore no proof of contributory negligence on the claimant.

Our insured was legally responsible for the loss of November 9, 1989, and, thereby, we made the payment of \$921.67 under the Property Damage coverage to cover the claimant's repairs. (R. 18-19).

A copy of the claims loss payment screen was then introduced into evidence and marked as Licensee Exhibit No. 2 (R. 19, Licensee's Exhibit No. 2, pg. 88).

Ms. Hamlin further testified that another accident occurred on

July 26, 1990 involving GEICO's insured, Janice Samet. GEICO's records showed that Janice Samet stated that on July 26, 1990, she was driving on a parking lot when another vehicle came in the opposite direction at an excessive speed, pushing Mrs. Samet over. Mrs. Samet stated that she went over a little too far and struck the claimant's parked vehicle. There was no proof of this alleged phantom vehicle travelling in the opposite direction of GEICO's insured. (R. 21). Ms. Hamlin explained in greater detail the extent of the investigation as follows:

We spoke with the claimant who stated that he discovered his vehicle with damage and a note from our insured driver. Based on our insured's description, her failure to maintain control of her vehicle to avoid a collision, and no proof of the alleged phantom alleged by the insured driver, GEICO formed the basis for our determination that our insured driver was legally responsible for the loss of July 26, 1990 and we paid, again, \$303.47 under Property Damage. (R. 21).

A copy of the claims payment screen evidencing payment of this claim was then entered into evidence and marked as Licensee's Exhibit No. 3 (R. 21, Licensee's Exhibit No. 3, pg. 89).

In order to validate GEICO's underwriting standards, Ms. Hamlin introduced data from the California Department of Motor Vehicles which demonstrates that groups of drivers who have prior incidents, that is a combination of accidents and/or convictions, have a higher rate of subsequent accident involvement than those who do not. (R. 24, Licensee's Exhibit No. 4, pg. 90). She testified that based on the data, the group of drivers who had two accidents and one conviction for the first three year period had the exact number of accidents in the second three year period as

shown on the data. (R. 27). She testified that the conclusion of this data was that the group of drivers with prior incidents had a higher rate of subsequent accident involvement. The conclusion had been analyzed and qualified by Dr. Charles Rohde, a professor and chairman of the Department of Biostatistics at Johns Hopkins University. (R. 33). She stated that from the data appearing as Exhibit No. 4 (R. 90), Dr. Rohde calculated an odds ratio for various prior incident combinations. This odds ratio is the ratio of the expected ensuing accident frequency for drivers with prior incidents to the expected ensuing accident frequency for drivers without prior incidents. (R. 33). As an example, Ms. Hamlin stated that an odds ratio of 2 means that this group of drivers is twice as likely to have 1 or more accidents in the subsequent 3 year period as compared to those drivers with no prior incidents in the prior 3 year period. (R. 34). She then had admitted into evidence an eight page Exhibit which contained the odds ratio testified to earlier. (R. 34, Licensee's Exhibit No. 5, pg. 94-101). She stated that this Exhibit contained the minimum and maximum times as likely factors for the various prior incident combinations as well as GEICO's 1990 Estimated Effect of Retaining Non-Renewed and Canceled Policies in the State of Maryland. It also contains the statistical formulas Dr. Rohde used to compute the odds ratio and the confidence intervals. (R. 34). In explanation of this Exhibit, Ms. Hamlin stated that since the data in Exhibit No. 4 is only a sample of the total population, the mean accident rate shown for the various prior incident combinations are

only estimates of the true accident rate. She stated that the true accident rate may be higher or lower than the accident rate shown in the data. (R. 35). By using generally accepted statistical methods, GEICO can develop a 95% confidence interval for each mean accident rate. As explanation, she stated that statistically, this means that GEICO can state that it is 95% confident that the true accident rate will fall between the minimum and maximum likely accident rates. She continued by stating that where the odds ratio is 2.37, which is the odds ratio for a group of drivers with two accidents and one conviction within a prior three year period, 95% of the time, the real value of the accident rate will be somewhere between the minimum times as likely factor of 1.942 and a maximum times as likely factor of 2.893. (R. 36). Thus, she stated, that this group of drivers is 1.942 to 2.893 times as likely to be involved in one or more accidents in the subsequent three year period in comparison to those with no prior incidents in the prior three year period. (R. 36). She summarized by stating that this data demonstrates that as a group, drivers having prior accidents and/or convictions during one three year period in comparison to those with none are more likely to have accidents in the subsequent three year period. (R. 37). She stated in general, as the number of prior incidents increases, the minimum and maximum times as likely factors also increase. As a group, drivers with prior accidents and/or convictions develop a higher subsequent accident frequency than drivers without prior incidents. (R. 37). She stated that GEICO does not have a surcharge in its rating plan that

applies for a driver with two accidents and one conviction within the most recent 36 month period; therefore GEICO can not be collecting sufficient premium to compensate for the increased exposure to loss. (R. 37). Regarding the Economic Impact, Ms. Hamlin stated that if GEICO were to continue to insure this group of drivers, it would have a direct impact on GEICO's losses and loss expenses. (R. 42). In referring to the Economic Impact statement, Ms. Hamlin stated that the expected accident frequency for this group of drivers is between 1.697 and 2.421 times that of drivers GEICO voluntarily insures. (R. 43). She noted that on the Impact Statement Exhibit, the minimum and maximum times as likely factors differ from the ones earlier provided. She explained that in this Exhibit, GEICO is attempting to estimate the impact of the non-retained drivers versus GEICO's actual underwriting results. Therefore GEICO weight's out the policies it does not retain. In applying this test to GEICO's actual 1990 results for the State of Maryland, GEICO's loss ratio, which is the amount of claim dollars it pays out to the amount of premium dollars collected, would increase from 71.9% to a minimum of 122% and a maximum of 174% (R. 43). GEICO's loss adjustment expense ratio would increase from 9.4% to a minimum of 15.9% and a maximum of 22.7% (R. 43). Additionally, the general expense ratio would remain the same at 11.1% ultimately resulting in an underwriting ratio increase from 92.4% to a minimum of 149% and a maximum of 207.8%; therefore, GEICO would be paying out between \$1.49 and \$2.08 for every dollar of premium collected. (R. 44).

Appellant/Counsel, Robert Samet, cross-examined Ms. Hamlin regarding the accident of July 26, 1990 and questioned the determination of "fault" (R. 46-58). Ms. Hamlin restated GEICO's position that based on the insured's description of her going too far over and striking the claimant's parked car and her failure to maintain control of her vehicle formed the basis for its determination to charge legal responsibility against the insured. She further stated that GEICO's insured had alleged a speeding phantom vehicle was involved but Ms. Hamlin stated that there was no proof of this phantom vehicle to suggest that the phantom vehicle was the reason for Mrs. Samet's going over into a parked car. (R. 47). She expounded on this position further by stating that Mrs. Samet alleged a speeding phantom vehicle and there was no proof of that phantom vehicle. However, what GEICO did know was that Mrs. Samet struck a parked vehicle and admitted to going over too far and striking that parked vehicle. Finally, she stated that if she made an allegation of another vehicle, then GEICO would investigate that and it found no proof of a phantom vehicle. (R. 47). Ms. Hamlin testified on numerous instances during cross-examination that there was no independent proof of the alleged phantom vehicle. (R. 45-53). However, the lack of proof, standing alone, was not the sole determining factor of chargeability. (R. 54). Ms. Hamlin responded to the proof issue in the following manner:

Again, I stated that the determination of liability was based on, number one, our insured's description of the accident. Number two, her failure to maintain control of her vehicle to avoid a collision. The insured's

description of the accident includes her stating that she went over too far and struck a claimant's parked car. And, number 3, that the insured did, indeed, allege a speeding phantom vehicle. We investigated that -- (inaudible) -- investigated that and found no proof of the alleged phantom vehicle. (R. 54).

She further stated that GEICO talked to the claimant, who stated that he saw his vehicle was damaged and a note from GEICO's insured driver on his vehicle giving her information. There was no proof of the alleged phantom. There was no independent witness. There was no one else to talk to. There was nothing else to do. There was no proof of a phantom vehicle. (R. 57).

Appellant also contended that a prior dismissal of a termination action at the Circuit Court level was relevant to the issues in the case sub judice. The Hearing Examiner declined to permit evidence of the prior ruling to be placed in the record because it was irrelevant and he sustained GEICO's objection to the introduction of such evidence.

On November 25, 1991, Administrative Law Judge Malcolm N. Stewart issued an Order On Hearing in which he made the following findings:

The Licensee's representative testified that the Complainant's driving record exceeded its underwriting standard. It also presented evidence showing (1) the statistical basis for its standard, (2) the validity of those statistics and (3) how its underwriting standard is related to its economic and business purposes.

The Complainant disputed the Licensee's contentions by stating that he did not believe his wife Janice Samet, was at-fault in the July 26, 1990 accident and that a phantom vehicle had been the cause of the accident.

After considering all the evidence and testimony, the Administrative Law Judge finds by a preponderance of the evidence:

1. That by notice dated March 15, 1991, the Licensee informed the Complainant of its intention to non-renew policy number 171-31-62; in lieu of said non-renewal the

Licensee proposed to exclude Janice Samet from coverage do to her poor driving record.

2. That the Licensee utilizes an underwriting standard which provides that it will not continue to insure any driver who has accumulated any combination of three or more at-fault accidents and/or traffic conviction in this the most recent thirty-six months.

3. That Janice Samet has the following driving record:

11-9-89 - Failed to yield right of way. Janice made a U-turn and collided with claimant. GEICO paid \$921.67 under Property Damage coverage.

12-14-89 - Exceeded the maximum speed by 10 mph

7-26-90 - Janice struck claimant in a parking lot. GEICO paid \$303.47 under Property Damage coverage.

I find the determination of fault of the July 26, 1990 accident by the Licensee to be reasonable.

4. That the driving record of Janice Samet exceeds the Licensee's underwriting standard and presents additional exposure to the Licensee which is not contemplated by its rating plan.

5. That Janice Samet belongs to a group or class of drivers who by virtue of two accidents and one violation has a 1.942 times greater chance of future accident involvement as compared to a driver with zero accidents and violations.

6. That the statistical data presented is valid and shows an strong relationship between past accidents and violations and the probability for future accident involvement.

7. That the Licensee's application of its underwriting standard is reasonably related to its economic and business purposes. The Licensee's rating plan does not contemplate coverage for the additional exposure presented by the driving record of Janice Samet. Continuation of coverage for Janice Samet under circumstances where the Licensee will not receive an adequate rate for such additional exposure will adversely affect the Licensee's losses and expenses.

Accordingly, GEICO was permitted to effectuate its proposed non-renewal on or after December 25, 1991. Appellant filed a timely Appeal to this Court and procured a stay of the Administrative Law Judge's Order.

QUESTION PRESENTED

WHETHER THE ADMINISTRATIVE LAW JUDGE CORRECTLY DETERMINED THAT GEICO MET ALL THE REQUIREMENTS OF SECTION 234 A AND 240 AA IN ATTEMPTING TO TERMINATE APPELLANT'S PRIVATE PASSENGER AUTOMOBILE INSURANCE COVERAGE.

ARGUMENT

THE ADMINISTRATIVE LAW JUDGE CORRECTLY DETERMINED THAT GEICO MET ALL THE STATUTORY REQUIREMENTS OF SECTION 234A AND SECTION 240AA IN ITS EFFORT TO TERMINATE APPELLANT'S PRIVATE PASSENGER AUTOMOBILE INSURANCE COVERAGE.

Appellant has raised two major issues in an attempt to convince this Honorable Court that the Administrative Law Judge incorrectly determined that GEICO had met all of its statutory requirements. Specifically, Appellant claims that the Administrative Law Judge improperly found that Janice Samet was "at-fault" for the July 26, 1990 accident. He also alleges that the Administrative Law Judge erroneously admitted and considered an independent statistical report from the California Department of Motor Vehicles in determining GEICO's underwriting standards were valid and reasonable. He based this attack on the allegation that the statistical report is hearsay.

In Crumlish v. Insurance Commissioner, 70 Md. App. 182 (1987), the Court of Special Appeals set forth, in dicta, the degree of

proof an insurer must meet in order to satisfy the statutory requirements of Section 234A. The Court stated:

Facts must be produced which answer the at least the following questions:

1. What is the statistical basis for the supposition that a person [violates the applicable underwriting standards] is more likely to have an chargeable accident within the next [twelve, twenty-four, thirty-six] months than a person who [does not violate the standard]?

2. How valid is any such statistical evidence?

3. If there is statistical validity to a supposition, what direct and substantial adverse effect would it have upon [the insurer's] losses and expenses in light of its approved rating plan? 70 Md. App. at page 190.

Section 234A requires insurers to justify their underwriting standards as "reasonably related to the insurer's economic and business purposes." The statute requires in relative part :

No insurer ... shall cancel or refuse to underwrite or renew to a particular insurance risk ... except by the application of standards which are reasonably related to the insurer's economic and business purposes. Any hearing to determine whether there has been violation of this Section, the burden of persuasion shall be upon the insurer to demonstrate that the cancellation or refusal to underwrite or renew is justified under the standards so demonstrated.

In GEICO v. Insurance Commissioner, 273 Md. at 483-484, the Court of Appeals unequivocally stated that Section 240AA does not permit the Insurance Commissioner to substitute his underwriting judgment for that of the insurer. Similarly, the Court of Appeals indicated that it is not for the "courts to decide whether a driver is a good or poor risk".

The standard of review to be applied by a reviewing court in analyzing quasi-judicial decisions of the Insurance Commissioner is

set forth in Section 40(5) of Article 48A, which states:

The Court may affirm the decision of the Commissioner or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights to the Petitioners may have been prejudiced because of the Administrative findings, inferences, conclusions, or decisions are:

- (i) In violation of constitutional provisions; or
- (ii) In excess of the statutory authority or jurisdiction of the Commissioner; or
- (iii) Made upon unlawful procedures; or
- (iv) Affected by other error of law; or
- (v) Unsupported by competent, material and substantial evidence in view of the entire record as submitted; or
- (vi) Against the weight of competent, material and substantial evidence in view of the entire record, as submitted by the Commissioner and including de novo that it is taken in open court; or
- (vii) Unsupported by the entire record, as submitted by the Commissioner and including de novo taken in open court; or
- (viii) Arbitrary or capricious.

A reviewing court may not set aside an Agency's decision merely because it might weigh the evidence differently. Secretary v. Crowder, 43 Md. App. 276, 281-282 (1979). It may only determine whether a reasoning mind reasonably could have reached the same conclusions and inferences that the Commissioner reached. Lumberman's Mutual Casualty Co. v. Insurance Commissioner, 302 Md. 248, 266 (1985). The reviewing court must also review the

Agency's decision in the light most favorable to the Agency, since the decision of the Administrative Agencies are prima facie correct ... and carry with the presumption of validity. Bulluck v. Pelham Woods Apts., 283 Md. 505 (1977);

The Court of Appeals has also stated that where the decision of the Administrative Agency is not one of fact but one of law, the reviewing court must determine only whether the decision is "in accordance with law." Baltimore Building and Construction Trade Councils, AFL-CIO v. J. Gordon Barnes, 290 Md. 9, 14-15 (1981).

The first issue raised by Appellant involves the application of Insurance Commissioner v. Nevas, 81 Md. App. 549, 568 Atl. 2d 1144 (1990) as to the facts of this case. In Nevas, Harleysville Insurance Company attempted to non-renew the private passenger automobile insurance coverage for Susan R. Nevas based on two at-fault accidents chargeable to the insured. Ms. Nevas testified at the hearing before the Administrative Law Judge wherein she stated that she was not "at-fault" in the December 10, 1986 accident and that the claim brought against her by Mr. Guay, the driver of the other vehicle, should not have been paid. As to the facts of this accident, Ms. Nevas stated that her car was struck in the middle of an intersection by another car coming from her left that was driven by Mr. Guay at an excessive rate of speed. Nevas was given a traffic citation for failing to yield the right of way and Guay was cited for speeding. She further testified that the claims adjuster for Harleysville had advised her that the claim would be denied. Ultimately the claim was paid and she subsequently received her notice of non-renewal based on two "at-fault" accidents. The Administrative Law Judge permitted Harleysville to effectuate the proposed non-renewal action. On appeal to the Circuit Court, Judge Heller ruled that "there are no facts on the record for this court to determine how Harleysville made a determination that the December 10, 1986 accident was at-fault or chargeable..." The

decision of the Insurance Commissioner was reversed and remanded for further proceedings. The Court of Special Appeals held that Section 240AA requires that an insurer explain the basis for its conclusion that the insured was at-fault. The Court applied the test enunciated in Lumberman's Mutual Casualty v. Insurance Commissioner, 302 Md. 248, 266, 487 Atl. 2d 271 (1985), "i.e., whether a reasoning mind could have reached the factual conclusion the agency reached." After cautioning that the standard of review is extremely narrow and the "decision of the Administrative Agency carries a presumption of validity" Doctor's Hospital v. Maryland Health Resources, 65 Md. App. 656, 667, 501 Atl. 2d 1324 (1986) and noting that a reviewing Court may not substitute its judgment for the expertise of the agency, Bulluck v. Pelham Woods Apts., 283 Md. 505, 513, 390 Atl. 2d 738 (1978), the court still agreed with Judge Heller's finding that Harleysville produced no witnesses who were either involved in making the decision to pay the claim against Nevas or could explain why the claim was paid. The court noted that the only relevant evidence produced, was written by an officer who was not an eyewitness to the 1986 accident and which, more importantly, indicated that the other driver was travelling at an excessive rate of speed. Nevas, 81 Md. App. 5496, 553. The court therefore found that Harleysville did not produce sufficient evidence at the hearing to support the agency's find that Harleysville was justified in non-renewing the Appellant's policy based on its at-fault determination regarding the 1986 accident and that further, until Harleysville produced sufficient evidence to

support its assigned reason for the non-renewal of Nevas' policy, there could be no meaningful judicial review of the agency's conclusion as to whether the proposed non-renewal was arbitrary or capricious. Therefore the court affirmed the ruling of the Circuit Court, reversing and remanding the case to the Insurance Commissioner for further proceedings. Nevas, 81 Md. App. 549, 559.

In the case sub judice, GEICO quite properly explained the basis for its conclusions that the insured was responsible for the accidents which resulted in payment of the claims. The relevant testimony regarding the basis for payment of the claim resulting from the July 26, 1990 accident was as follows:

MS. HAMLIN: Our records show that our insured driver, Janice Samet, stated that on July 26, 1990, she was driving on a parking lot when another vehicle came in the opposite direction at an excessive speed, pushing our insured driver over. Our insured driver stated that, excuse me, that she went over a little too far and struck the claimant's parked vehicle. There was no proof of this alleged phantom vehicle traveling in the opposite direction of our insured.

We spoke with the claimant who stated that he discovered his vehicle with damage and a note from our insured driver.

Based on our insured's description of the accident, her failure to maintain control of her vehicle to avoid a collision, and no proof of the alleged phantom alleged by the insured driver, GEICO formed the basis for our determination that our insured driver was legally responsible for the loss of July 26, 1990 and we paid, again, \$303.47 under Property Damage. (R. 21).

During cross-examination of Ms. Hamlin, she again restated GEICO's position regarding its determination of liability as to the July 26, 1990 accident. She stated as follows:

MS. HAMLIN: Again, I stated that the determination of liability was based on, number one, our insured's

description of the accident. Number two, her failure to maintain control of her vehicle to avoid a collision. The insured's description of the accident includes her stating that she went over too far and struck a claimant's parked car. And number three, that the insured did, indeed, allege a speeding phantom vehicle. We investigated that -- (inaudible) -- investigated that and found no proof of the alleged phantom vehicle. (R. 54).

Ms. Hamlin also stated that:

We talked to the claimant, who stated that he saw his vehicle was damaged and a note from our insured driver on his vehicle giving her information. There was no proof of the alleged phantom. There were no independent witnesses. There was no one else to talk to. There was nothing else to do. There was no proof of a phantom vehicle. (R. 57).

The Nevas holding stands for the proposition that an insurer must prove that the basis for its non-renewal action is justified and actual and not arbitrary and capricious. The Nevas case is clearly distinguishable from the case at bar in that the police report in Nevas indicated that the claimant was guilty of contributory negligence i.e. excessive speed. No such evidence appears in the claim forming the basis of this non-renewal action. A thorough investigation was performed by GEICO including statements from the claimant, the insured and a thorough evaluation of those statements. GEICO evaluated all facts available to it and based upon those facts concluded that the Appellant was responsible for the claim. There were no independent witnesses whatsoever regarding the alleged "speeding phantom vehicle". The only substantive evidence was the insured's statement that she "went too far" and struck a parked vehicle. Without independent corroboration of a phantom vehicle, any insured could claim that a

phantom vehicle caused an accident in which instance, based on Appellant's theory, no liability could be assessed. It is imperative that an insurer have the opportunity to assess the credibility of both the claimant, the insured and any independent witnesses that may be available in its determination of responsibility. In this case, the only available information was from the claimant whose parked vehicle had been hit and the insured. There were no independent witnesses. The insurer must determine whether or not the insured is providing a credible statement of the occurrence. In the case at bar, GEICO did not believe that the statement of the insured regarding a "speeding phantom vehicle" was sufficient proof and, therefore, based on the insured's statement that she went too far and struck a parked vehicle, assessed fault against the insured. In light of the evidence available to GEICO, neither the Administrative Law Judge nor a reviewing court could determine that its actions could possibly be construed as arbitrary and capricious. An insurer must be in a position to make an independent evaluation of chargeability in order to assess its own risk in refusing to pay a particular claim. In the event an insurer erroneously concludes that a claim should not be paid, it, and not the insured, bears the financial liability for such actions. Neither the Insurance Division or a reviewing court is an appropriate forum for determining whether the insurer made a correct determination of fault. The only issue before the Insurance Commissioner, an Administrative Law Judge or this Honorable Court is whether the insurer's determination to pay

a claim was justified based on a reasonable investigation of the facts and not arbitrary and capricious in nature. Clearly, the decision to pay this claim was not arbitrary and capricious and is based on a reasonable investigation of the facts presented to GEICO.

Appellant's second and final argument is that the Administrative Law Judge erroneously admitted and considered an independent statistical report from the California Department of Motor Vehicles in determining that GEICO's underwriting standards were valid and reasonable. Appellant contends that the statistical report is hearsay in that the report itself was prepared by an agent or employee of GEICO and purports to be an interpretation of a California, not Maryland, study done by Dr. Rohde. He claims that the report is not validated and does not sufficiently support its underwriting guidelines. Therefore, GEICO allegedly did not meet its burden of proof as required by Crumlish v. Insurance Commissioner, supra and the Maryland Annotated Code, Article 48A Section 234A. He also alleges that since the "episode" of July 26, 1990 can not be described as an "accident" within the ordinary meaning of that term, that the statistical study, on its face, is compromised of genuine "accidents" within the ordinary meaning of that term, and therefore no logical relevancy was ever shown by GEICO between the Study and the particular facts of the July 26 accident involving Janice Samet.

As to the first subissue regarding the use of hearsay testimony, the law in Maryland is quite clear that hearsay evidence

is admissible in Administrative proceedings. In Fairchild Heller Corporation v. Supervisor of Assessments, 367 Md. 519 (1973) the Court stated that "although not bound by technical common law rules of evidence, Administrative Agencies must observe basic rules of fairness as to the parties appearing before them." Hearsay evidence is absolutely permitted in Administrative Hearings. In the case at bar, GEICO presented the data from the California Study as analyzed by its expert, Dr. Charles Rohde and provided sufficient validation and Economic Impact Analysis to meet the Crumlish criterion. The mere fact that Dr. Rohde was not at trial to testify regarding his validation technique is not, in any way, a justiciable claim or argument. All the documentation upon which Dr. Rohde's calculations were made were offered into evidence as exhibits and subject to review by the Appellant. The Administrative Law Judge accepted the statistics offered by GEICO as appropriate justification or support for the Crumlish requirements.

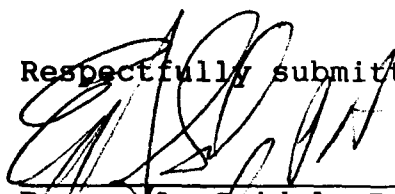
Appellant's second argument that the accident of July 26, 1990 could not be characterized as a "accident" thereby invalidating the California Study presentation is totally devoid of merit. As stated previously, the underwriting standard upon which GEICO based its determination was a "three surchargeable occurrence" standard. In the instant case, Janice Samet had a driving record including two chargeable accidents and one conviction, thereby meeting the necessary standard. The data submitted incorporated this type of driving record and provided the statistical likelihood of

subsequent accident frequency for that group of drivers. Notwithstanding Appellant's apparent attempt to redefine the meaning of "accident", this case was a three incident case and sufficient proof was provided by GEICO to meet all required statutory and judicial burdens.

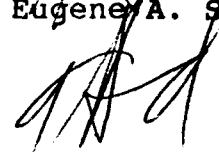
CONCLUSION

Given this extremely limited scope of review of the Administrative Agency's determination, as well as the evidentiary standard which GEICO has met in conforming with all statutory and judicial requirements, the Administrative Law Judge's Order on Hearing of November 25, 1991 should be affirmed with all cost being assessed against the Appellant.

Respectfully submitted,



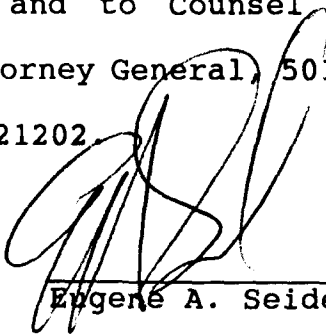
Eugene A. Seidel, P.A.



Eugene A. Seidel, Esq.
334 St. Paul Place
Baltimore, Maryland 21202
(301) 539-1230
Attorney for GEICO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 1992, a copy of the foregoing Memorandum of Government Employees Insurance Company was mailed, postage prepaid, to Counsel for the Appellant, Jonathan S. Beiser, Esquire, 11300 Rockville Pike, Suite 1002, Rockville, Maryland 20852 and to Counsel for Appellee, Randi Reichel, Esq., Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.



Eugene A. Seidel, Esq.

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FILED

MAR 20 1992

CIRCUIT COURT FOR BALTIMORE CITY

ROBERT G. SAMET

Appellant

v.

INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, et al.,

Appellees

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY

* CASE NO: 91354017/
* CL141926

* * * * *

Response of the Insurance Commissioner
of the State of Maryland to Appellant's Memorandum

Appellee, John A. Donaho, Insurance Commissioner of the State of Maryland, by Randi F. Reichel, Assistant Attorney General, his attorney, responds to the Memorandum filed on behalf of Appellant, Robert G. Samet, and states that final decision making authority in actions brought pursuant to Article 48A §240AA has been delegated to the Office of Administrative Hearings and that after reviewing that portion of the administrative record available to him at this time, the Insurance Commissioner believes there is no economic or other public policy interest which would override the interests, economic and otherwise, of Appellant and the Government Employees Insurance Company, Appellants' insurer. The Commissioner therefore believes that the public interest is best served by his taking no position concerning the propriety of the Administrative Law Judge's Order of November 25, 1991.

Samet v. Insurance Comm. et al.

Appellee's Mtn to strike Demand for J.T.

Facts:

Appellant ^{Robert} Samet lost insurance coverage when GEICO assigned fault to Janice Samet for 3 ~~accidents~~ accidents +/or convictions within 36 months. Insurance Comm. found for GEICO. Robert Samet Appeals.

Appellee's GEICO + Ins. Com'r. Mtn: Appellant has no right to a jury trial when appealing from Ins. Com'r or Admin. Judge

Appellant's Response: The Ins. Com. is to be considered a Court of law not an admin. agency. The same as if a WCC appeal.

RESIDUAL RICHARD T. ROMBRO, JUDGE

10

JURTRC

TENOGRAPHER

ASSIGNM 1 1992 P09

3⁰⁰

CASE NUMBER - 91354017
CASE TITLE - SACKET VS INSURANCE COMPANY
CATEGORY - SUIT FROM ADMINISTRATIVE AGENCY
PROCEEDING - HEARING - GENERAL

REICHEL, RAN
SEIDEL,
WITNER,

DEFENSE ATTORNEY 539-324
DEFENSE ATTORNEY 539-1
PLAINTIFF ATTORNEY

Defendants' motions to strike Demand for Jury Trial - "GRANTED"
Clerk shall remove case from Jury Trial Docket and
re-set on Non-Jury Docket

PROC	() JURY	() NON-JURY	()
()	()	()	() NEXT COURT DATE
() VERDICT	() REMANDED	()	() PROS/DISMISSED
() JUDGE	()	()	() OTHER
() JUDGEMENT	()	()	PLEASE EXPLAIN:
() TPNED	(X)	()	()
()	()	()	()

[Handwritten Signature]

March 4, 1992

RICHARD T. ROMBRO, JUDGE

COPIES TO Counsel

2

120
Eggs

CL-141926

2

E

CIVIL POSTPONEMENT FORM

DATE: 3/13/92

Plaintiff(s)

Robert G. Sarnet

v.

Insurance Commissioner of the
State of Maryland, et al.

Defendant(s)

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY

Computer #: 91354017

File #: _____

Jury _____ CT. _____ CTF. MOT. GEN 2-507

DOMESTIC JUDGE: _____ DOMESTIC MASTER: _____

PLEASE PRINT

To be postponed from: DATE: May 11, 1992 PRIOR POSTPONEMENTS: Y N

Postponement requested by: Jonathan Beiser

Postponement reason: (please specify):

previously scheduled trial in the Circuit Court for Prince George's County
Carbonaro v. Super Bite Supermarket

Plaintiff(s) Attorneys:
Jonathan Beiser

Defendant(s) Attorneys:
Eugene Seidel
Randi Reichel

New Trial Date: 6/10/92

Approved: Denied: _____ : _____
(JUDGE'S SIGNATURE)

NF 3/13/92



FILED

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

MAR 18 1992
CIRCUIT COURT FOR
BALTIMORE CITY

ROBERT G. SAMET :
 :
 Appellant :
 :
 v. :
 :
 INSURANCE COMMISSIONER OF THE :
 STATE OF MARYLAND, et al :
 :
 Appellees :

Case No. 91354017/
CL141926

12

APPELLANT'S RULE B-12 MEMORANDUM

COMES NOW the Appellant, Robert G. Samet, by and through his attorney, Jonathan S. Beiser, and pursuant to Maryland Rule B-12, states as follows:

ISSUE I

Whether the Commissioner erroneously found that Janice R. Samet had accumulated three losses or convictions within the thirty-six month period prior to March 15, 1991 and upheld Government Employees Insurance Company's action in seeking to compel exclusion of Janice R. Samet from the automobile insurance policy of the Appellant.

ARGUMENT

The Insurance Commissioner erroneously found that Janice R. Samet had accumulated three or more at fault accidents and/or traffic convictions within the 36 month period prior to March 15, 1991 and upheld GEICO's action in seeking to compel exclusion of Janice R. Samet from the automobile insurance policy of Appellant, Robert G. Samet. This ruling was erroneous because the episode of July 26, 1990, which GEICO classified as an "at fault accident," clearly was not an "at fault accident."

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2100 M STREET, N.W.
WASHINGTON, D. C. 20036
202-783-6400

SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311
703-931-5500

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785
301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
410-539-1122

On that date, Janice R. Samet was driving in a parking lot, when a phantom vehicle traveling in the opposite direction at an excessive speed, forced Janice R. Samet over into a parked vehicle. GEICO arbitrarily and capriciously found this to be an "at fault accident" basing its' decision on the fact that there were no independent witnesses to substantiate Janice R. Samet's statement regarding the actions of the phantom driver. GEICO totally disregarded and ignored its own insured, Janice R. Samet's, contention, when GEICO had no evidence contradicting Ms. Samet's statement. Furthermore, Md. Ann. Code, Section 48A, Section 240 AA requires that an insurer explain the basis for its conclusion that the insured was at fault which GEICO has completely failed to do.

Likewise, GEICO's standard was clearly improper, since all phantom vehicle situations are recognized as a proper basis for an uninsured motorist claim, even when there is not any independent corroborating proof. Janice R. Samet's Statement was proof and should have been accepted as such. As in Insurance Comm'r v. Nevas, 81 Md. App. 549, 568 A.2d 1144 (1990), the Insurance Commissioner's decision that Janice R. Samet had three losses or convictions within the thirty-six month period in question was not supported by any facts in the records and therefore should be reversed.

Moreover, the Insurance Commissioner erred in finding that the driving record of Janice R. Samet exceeded GEICO's underwriting standards. GEICO's underwriting standards allegedly do not

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 STREET, N.W.
WASHINGTON, D.C. 20036
202-783-6400

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301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
410-539-1122

allow them to continue to insure any driver who has accumulated three losses and/or traffic convictions within a thirty-six month period. Since Janice R. Samet only had one accident and one traffic conviction within the thirty-six month period, Janice R. Samet's driving record does not exceed GEICO's own underwriting standards.

ISSUE II

Whether the Insurance Commissioner erroneously considered improper evidence in determining that GEICO's underwriting standards were reasonable.

ARGUMENT

The Insurance Commissioner erroneously admitted and considered an independent statistical report from the California Department of Motor Vehicles in determining that GEICO's underwriting standards were valid and reasonable. The statistical report is hearsay. The numbers in the report were statistics were found by Dr. Charles Rohde, however, the report itself was prepared by an agent or employee of GEICO and purports to be an interpretation of a California, not Maryland, study done by Dr. Rohde. The report is not validated and does not sufficiently support its underwriting guidelines. Therefore, GEICO did not meet its burden of protection as required by Md. App. Code, Art. 48A, Sec. 234A and Crumlish v. Insurance Commissioner, 70 Md. App. 182, 520 A.2d 738 (1987).

However, the Insurance Commissioner concluded from the statistical data presented by GEICO that Janice R. Samet belonged

LAW OFFICES
ASHCRAFT & GEREL

SUITE 400
2015 STREET, N.W.
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852

301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785

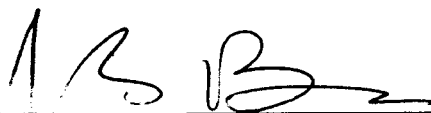
301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

410-539-1122

to a group or class of drivers who, by virtue of two "accidents" and one conviction, has a 2.36 times greater chance of future accidents than a driver with zero accidents. Since the episode of July 26, 1990 cannot be described as an "accident" within the ordinary meaning of that term, and the statistical study, on its face, is comprised of genuine "accidents" within the ordinary meaning of that term, no logical relevancy was ever demonstrated by GEICO between the statistical study and the particular facts of the incident of July 26, 1990 involving Janice R. Samet. Therefore, the finding of the Insurance Commissioner relying upon the statistical study was clearly erroneous, warranting the reversal of the decision of the Insurance Commissioner.

ASHCRAFT & GEREL



Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
301/770-3737
Attorney for Appellant

POINTS AND AUTHORITIES

Md. Code Ann., Art. 48A, Sec. 234A
Md. Code Ann., Art. 48A, Sec. 240AA

Insurance Commissioner v. Nevas, 81 Md. App. 549, 568 A.2d
1144 (1990)

Crumlish v. Insurance Commissioner, 70 Md. App. 182, 520 A.2d
788 (1987)

LAW OFFICES

ASHCRAFT & GEREL

SUITE 400

2000 STREET, N.W.
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650

4900 SEMINARY ROAD
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002

ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852

301-770-3737

SUITE 101

METRO 400 BUILDING
LANDOVER, MD 20785

301-459-8400

SUITE 805

10 EAST BALTIMORE STREET
BALTIMORE, MD 21202


410-539-1122


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Rule B-12 Memorandum was mailed postage prepaid this 3rd day of March, 1992 to:

Randi F. Reichel
Assistant Attorney General
501 St. Paul Place, 14th. Floor
Baltimore, MD 21202

Eugene A. Seidel, Esquire
334 St. Paul Place
Baltimore, MD 21202



Jonathan S. Beiser


LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 STREET, N.W.
WASHINGTON, D.C. 20036

202-783-6400

SUITE 650
4900 SEMINARY ROAD
ALEXANDRIA, VA 22311

703-931-5500

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852

301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785

301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

410-539-1122

ROBERT G. SAMET,
Appellant
v.
INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND,
Appellee

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* Case No. 91354017/CL141926
*

FILED
FEB 4 1992
CIRCUIT COURT FOR
BALTIMORE CITY

* * * * *

REPLY BY THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND TO APPELLANT'S
OPPOSITION TO MOTION TO STRIKE DEMAND FOR JURY TRIAL

Appellee, John A. Donaho, the Insurance Commissioner of the State of Maryland, by J. Joseph Curran, Jr., Attorney General of Maryland, and Randi F. Reichel, Assistant Attorney General, his attorneys, replies to Appellant's "Opposition to Motion to Strike Demand for Jury Trial" as follows.

Appellant demands that this Court provide him with a trial by jury in the determination of his administrative appeal. In response to the State's Motion to Strike the jury trial demand Appellant alleges that he must be afforded a jury pursuant to Article 48A, §40 and that every action that may be tried before a court automatically confers the additional right to a jury. Both arguments are meritless.

Appellant avers that because the language of Article 48A, §40 permits a hearing de novo, then he must be afforded a jury. This argument ignores the settled insurance and administrative law in this State. The language of §40 does not, as Appellant claims, alter the traditional standard of review of agency decisions, see, Nuger v. Insurance Commissioner, 238 Md. 55, 207 A.2d 619 (1965),

and the rule that "'if an administrative function remains to be performed, a reviewing court may not modify the administrative agency's action even when a statute provides that the court may 'affirm, modify or set aside' because a court may not usurp administrative functions'" holds true in appeals from administrative decisions under the Insurance Code. Insurance Commissioner v. Magan, 313 Md. 462 (1988), Fromberg v. Insurance Commissioner, 87 Md. App. 236, 589 A.2d 544 (1991). The true issue on appeal in this instance is purely whether a reasoning mind reasonably could have reached the same conclusions and inferences that the Commissioner reached. Nationwide v. Insurance Commissioner, 67 Md. App. 727, 509 A.2d 719 (1986). This is a question of law; hence, no right to trial by jury attached to this question. Cicala v. Disability Review Board, 288 Md. 254, 418 A.2d 205 (1980).

Additionally, the issue of the right to a jury in these cases has been considered in the Maryland Rules of Procedure, Rules 2-325(a) and B11.

Rule 2-325(a) states:

Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing. . .

(emphasis supplied). Rule B11 states:

A party entitled by law to trial by jury may elect a jury trial.

(emphasis supplied). There is no underlying right to trial by jury in appeals from administrative agencies, unless that right is

specifically granted by statute. See, Allnut v. Comptroller of the Treasury, 61 Md. App. 517, 525-26, 487 A.2d 670, cert. denied, 303 Md. 295 (1985):

The right of jury trial referred to in Art. 5 (of the Declaration of Rights) 'is the historical trial by jury, as it existed when the Constitution of the State was first adopted. . .' (citations omitted). It does not apply to civil proceedings in equity, (citations omitted) or to administrative proceedings created by statute that were unknown at common law. See, Branch v. Indemnity Ins. Co., 156 Md. 482, 144 A. 696 (1929).

See also, Attorney Grievance Commission v. Kerpleman, 292 Md. 228, 438 A.2d 501 (1981); Bouton v. Potomac Edison Company, 288 Md. 305, 418 A.2d 1168 (1980) (submission of a condemnation action involving a factual dispute to a jury was error); and Cicala v. Disability Review Board, 288 Md. 254, 418 A.2d 205 (1980). Insurance hearings are certainly "administrative proceedings created by statute that were unknown at common law" and appeals from insurance hearings are vested with no greater rights than the underlying action. Hence, no right to jury trial attaches in these cases.

In Cicala, a police officer sought review of an administrative determination through a writ of mandamus and concurrently demanded trial by jury of all factual questions raised. In denying the officer's request, the Court reasoned as follows:

In the absence of a statutory provision for an appeal from a determination of an administrative agency, judicial review may be obtained through an action for a writ of mandamus. . . . When an action for a writ of mandamus is brought to have a trial court review the decision of an administrative

agency, the trial court's function is limited to a determination of whether the administrative agency has acted arbitrarily, capriciously, unreasonably, or illegally. . . . In determining whether the agency has acted arbitrarily. . . a court is restricted to the record made before the administrative agency. . . may not substitute its judgment for that of the agency. . . and is confined to a determination whether, based upon the record, a reasoning mind reasonably could have reached the factual conclusion reached by the administrative agency. . . . Such a determination involves a matter of law, not of fact, and is appropriately one to be made by the court without a jury. See, Federal Radio Comm'n v. Nelson Bros. Bond & Mortgage Co., 289 U.S. 266, 275-76, 53 S.Ct. 627, 632 (1933); Suburban Properties, Inc. v. Mayor of Rockville, 241 Md. 1, 6, 216 A.2d 200, 203 (1965).

(citations omitted, emphasis supplied). Cicala v. Disability Review Board, 288 Md. at 259-260. Here, too, the only question to be answered on appeal is whether, as a matter of law, the Insurance Commissioner's determination was arbitrary, capricious or illegal. See, Maryland Code Ann., Article 48A, §40(5). In making this determination the appropriate standard of review is whether a reasoning mind reasonably could have reached the same conclusions the agency reached. Lumberman's Mutual Casualty Co. v. Insurance Commissioner, 302 Md. 248, 487 A.2d 271 (1985). Hence, under the reasoning of the Court of Appeals in Cicala, this determination is "appropriately one to be made by a court without a jury."

Appellant, in his Reply, apparently would alter the standard of review for administrative appeals and create a new right to trial by jury. Yet, as articulated in Rule B11, this right only exists in a administrative appeal where such right previously

exists, either by statute or at common law. An example of such a preexistent statutory right is found in Article 101, §56 (appeals from decisions of the Workmen's Compensation Commission):

Any. . . person feeling aggrieved by any decision of the Commission. . . may have the same reviewed by a proceeding in the nature of an appeal. . .

Upon the hearing of such an appeal the court shall, upon motion of either party filed with the clerk of the court according to the practice in civil cases submit to a jury any question of fact involved in such case.

In this case, however, there is no underlying right, either at common law, or by statute, which permits a trial by jury. If the right to a jury were automatic, as Appellant asserts, there would be no need for the Legislature to have specifically included the enabling language in §101. No such language exists in the Insurance Code, and no such right exists in appeals from the Insurance Division.

WHEREFORE, Appellee, the Insurance Commissioner of the State of Maryland, respectfully requests this Honorable Court to grant his Motion to Strike Demand for a Jury Trial.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

Randi F. Reichel

Randi F. Reichel
Assistant Attorney General
501 St. Paul Place, 14th Floor
Baltimore, Maryland 21202
(301) 333-4063

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 1992, a copy of the foregoing Reply by the Insurance Commissioner of the State of Maryland to Appellant's Opposition to Motion to Strike Demand for Jury Trial was mailed, postage prepaid to Robert G. Samet, Esquire, Ashcraft & Gerel, 11300 Rockville Pike, Suite 1002, Rockville, Maryland 20852, and to Eugene A. Seidel, Esquire, 334 St. Paul Place, Baltimore, Maryland 21202.

Randi F. Reichel
Randi F. Reichel
Assistant Attorney General

TRANSCRIPT TO RECORD

BEFORE THE INSURANCE DIVISION

OF THE

DEPARTMENT OF LICENSING AND REGULATION

(CASE NO. 106-7/91)

ROBERT G. SAMET

APPELLANT

VS.

INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND

APPELLEE

TO THE

CIRCUIT COURT FOR BALTIMORE CITY

CASE NO. 91354017/CL141926

JD

FILED
JAN 29 1992
CIRCUIT COURT FOR
BALTIMORE CITY

AB

ROBERT G. SAMET
10507 Tanager Lane
Potomac, MD 20854-6357

APPELLANT

VS.

INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, Maryland 21202

APPELLEE

* IN THE CIRCUIT COURT
* FOR BALTIMORE CITY
* CASE NO. 91354017/CL141926
* APPEAL OF THE INSURANCE
* COMMISSIONER'S DECISION,
* DEPARTMENT OF LICENSING
* AND REGULATION - UPON THE
* COMPLAINT OF:
* Robert G. Samet
* Case No. 106-7/91

* * * * *

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EX REL:

Robert Samet
10507 Tanager Lane
Potomac, Md. 20854-6357

* LICENSEE:

* Government Employees Ins. Co.
Geico Plaza
* Washington, D.C. 20076

* MID CASE NO.: 106-7/91

* OAH CASE NO.: 91-DLR-INS-31-1605

COMPLAINANT

* * * * *

ORDER ON HEARING

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW AND ORDER

STATEMENT OF THE CASE

This case arises upon the Complainant's protest of the proposed action of the Licensee in nonrenewing the Complainant's motor vehicle liability insurance policy. The Maryland Insurance Division, after investigation, affirmed the Licensee's proposed action, and the Complainant requested a hearing.

In accordance with Section 240AA of Article 48A, Annotated Code of Maryland (1991 Replacement Volume), a hearing in this matter was held on October 2, 1991, before Malcolm N. Stewart, Administrative Law Judge, Office of Administrative Hearings.

Patricia E. Whitman, Esq. represented the Licensee.

The Complainant appeared without representation, and participated on his own behalf.

ISSUE

Whether the Licensee's proposed action is in accordance with Article 48A, Sections 234A and 240AA of the Annotated Code of Maryland?

SUMMARY OF THE EVIDENCE

7 exhibits were admitted on behalf of the Insurance Division.
0 exhibits were admitted on behalf of the Complainant.
5 exhibits were admitted on behalf of the Licensee.

The Licensee's representative testified that the Complainant's driving record exceeded its underwriting standard. It also presented evidence showing (1) the statistical basis for its standard, (2) the validity of those statistics and (3) how its underwriting standard is related to its economic and business purposes.

The Complainant disputed the Licensee's contentions by stating that he did not believe his wife Janice Samet, was at fault in the July 26, 1990 accident and that a Phantom vehicle had been the cause of the accident.

FINDINGS OF FACT

After considering all of the evidence and testimony, the Administrative Law Judge finds by a preponderance of the evidence:

1. That by notice dated March 15, 1991, the Licensee informed the Complainant of its intention to nonrenew Policy No. 171-31-62; in lieu of said nonrenewal the Licensee proposed to exclude Janice Samet from coverage due to her poor driving record.
2. That the Licensee utilizes an underwriting standard which provides that it will not continue to insure any driver who has accumulated any combination of 3 or more at fault accident and/or traffic conviction in this the most recent 36 months.
3. That Janice Samet has the following driving record:
 - 11/09/89 - Fail to yield right of way. Janice made a U turn and collided with claimant. Geico paid \$921.67 under Property Damage coverage.
 - 12/14/89 - Exceeding maximum speed limit by 10 mph.
 - 07/26/90 - Janice struck claimant in a parking lot. Geico paid \$303.47 under Property Damage coverage.

I find the determination of fault of the July 26, 1990 accident by the Licensee to be reasonable.

4. That the driving record of Janice Samet exceeds the Licensee's underwriting standard and presents additional exposure to the Licensee which is not contemplated by its rating plan.

5. That Janice Samet belongs to a group or class of drivers who by virtue of 2 accidents and one violation has a 1.942 times greater chance of future accident involvement as compared to a driver with zero accidents and violations.

6. That the statistical data presented is valid and shows a strong relationship between past accidents and violations and the probability for future accident involvement.

7. That the Licensee's application of its underwriting standard is reasonably related to its economic and business purposes. The Licensee's rating plan does not contemplate coverage for the additional exposure presented by the driving record of Janice Samet. Continuation of coverage for Janice Samet under circumstances where the Licensee will not receive an adequate rate for such additional exposure will adversely affect the Licensee's losses and expenses.

DISCUSSION

The Licensee's proposed nonrenewal of this automobile insurance policy is governed by the provisions of the Maryland Insurance Code, MD. ANN. CODE, art. 48A. Section 234A(a) of the Code provides, in pertinent part:

...No insurer, agent or broker may cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by application of standards which are reasonably related to the insurer's economic and business purposes...

In determining whether an insurer's standards are reasonably related to its economic and business purposes, the Maryland Court of Special Appeals has held that an insurer must present sufficient facts to objectively answer the following:

1. What is the statistical basis for the supposition giving rise to its underwriting standard(s)?
2. How valid is any such evidence?
3. If there is statistical validity to the supposition, what direct and substantial adverse effect would it have upon the insurer's losses and expenses in light of its approved rating plan?

Crumlish v. Insurance Commissioner, et al., 70 Md. App. 182, 521 A.2d 761 (1987).

At the hearing in this case the Licensee produced statistical data from an independent research study which demonstrates that there is a strong relationship between past accidents and violations and the probability of future accident involvement. The statistical data is valid and satisfies the first two prongs of the Crumlish test.

In addition, the Licensee's rating plan does not contemplate coverage for the additional exposure presented by the driving record of Janice Samet. Taken as a group, continuation of drivers with records identical to Janice Samet under the Licensee's approved rating plan will result in underwriting losses. Thus, in accordance with the third prong of Crumlish, Licensee has demonstrated that continuation of coverage of Janice Samet under circumstances in which it will not receive an adequate rate for such additional and extraordinary exposure will adversely affect the Licensee's losses and expenses. The Licensee's application of its underwriting standards in this case is therefore reasonably related to its economic and business purposes.

Licensee's investigation of the accident and determination of liability, and thereby the fault of Complainant conformed with the requirements of Insurance Commissioner vs. Nevas, 81 MD. APP. 549 (1990).

CONCLUSIONS OF LAW

Based upon the foregoing, it is concluded as a matter of Law, that the Licensee has met its burden of proof and production as required by Article 48A, Section 234A, Annotated Code of Maryland, and Crumlish v. Insurance Commissioner, et al., supra. The Licensee is not in violation of the Maryland Insurance Code by virtue of its proposed nonrenewal of the subject insurance policy.

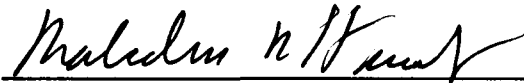
ORDER

THEREFORE, it is on this 25th day of November,
ORDERED:

That the Licensee be permitted to effect its proposed action on or after December 25, 1991.

November 25, 1991

Date:



Malcolm N. Stewart
Administrative Law Judge

MNS:rlm

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOGLE, JR.
Secretary

JOHN A. DONAHO
Insurance Commissioner



Department of Licensing and Regulation
INSURANCE DIVISION

501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333-

IMPORTANT NOTICE

This notice has been prepared to provide you with general directions in the event you wish to appeal an adverse ruling that you may receive from your administrative hearing. Please read and familiarize yourself with Section 40 of Article 48A, Annotated Code of Maryland (the Insurance Code) and the B Rules of the Maryland Rules of Procedure.

Section 40 grants you the right to appeal the decision contained in the Insurance Commissioner's Order on Hearing to the Circuit Court for Baltimore City within thirty (30) days of mailing or delivery by filing a written notice of appeal with the Circuit Court and a copy with the Insurance Commissioner. You must also file a timely appeal petition in accordance with Maryland Rule B2e and pay a filing fee. A simple appeal letter is not sufficient. The Circuit Court address is:

Circuit Court for Baltimore City
Civil Division
Room 462, Court House East
111 North Calvert Street
Baltimore, Maryland 21202
(Telephone: 301/333-3709)

To maintain your insurance coverage while your appeal is pending in the Circuit Court, you should simultaneously seek and obtain a stay within thirty (30) days of the mailing or delivery of the Insurance Commissioner's Order on Hearing when you file your appeal with the Circuit Court.

If you do not appeal to the Circuit Court for Baltimore City, your insurance company may cancel your insurance policy, increase your premium (surcharge) or exclude a named insured on the date specified in the Order on Hearing without sending you another notice. You should contact your insurance agent or insurance company within thirty (30) days of the date of the Order if you wish to execute the Exclusion of Driver offer. The excluded driver must obtain coverage with another insurance company if your insurance company permits the Exclusion of Driver offer to be executed, but you and other persons will continue to be insured under the policy.

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STATE OF MARYLAND
DEPARTMENT OF LICENSING AND REGULATION
INSURANCE DIVISION

EX REL: Robert Samet *
Complainant *
vs. * MID CASE NO.: 106-7/91
GOVERNMENT EMPLOYEES * OAH CASE NO.:
INSURANCE CO., 91-DLR-INS-31-1605
*
Licensee

* * *

The following is a transcript of a cassette recording of a hearing held on October 2, 1991, in the above-entitled matter before Malcolm N. Stewart, Administrative Law Judge.

* * *

A P P E A R A N C E S

On behalf of the Licensee:

Patricia E. Whitman, Esquire

Transcribed by:
Laurie F. Collins

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I N D E X

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Machell Hamlin	10	45		

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P R O C E E D I N G S

HEARING OFFICER: Good afternoon. This hearing is recorded. My name is Malcolm Stewart, Administrative Law Judge, the Office of Administrative Hearings, hearing cases today for the Insurance Commission of the Department of Licenses and Regulations.

It's October 2nd, 1991, and this is the case of a non-renewal of insurance policy by GEICO Insurance Company. The insurance policy holder is Robert G. Samet, who is here today. The policy number is 171 31 62.

Now, all those who are going to testify, raise your right hand.

Mr. Samet.

MR. SAMET: I don't think I'm going to testify. I'll be arguing, but I'm going to raise it anyway just in case.

HEARING OFFICER: Under the -- now you made me forget the oath.

(All to testify are sworn.)

HEARING OFFICER: Ms. Counsel, would you

1 identify yourself for the record, please.

2 MS. WHITMAN: My name is Patricia Whitman. I'm
3 an attorney for GEICO.

4 HEARING OFFICER: Ms. Hamlin.

5 MS. HAMLIN: Machell Hamlin, Maryland Insurance
6 Department liaison for GEICO.

7 HEARING OFFICER: Okay. And?

8 MR. SAMET: Robert Samet, the insured.

9 HEARING OFFICER: Okay. Now, are there any
10 opening statements or any preliminary matters before we
11 start?

12 All right. Ms. Whitman.

13 MACHELL HAMLIN,
14 a Witness produced on call of the Licensee, having been
15 previously duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. WHITMAN:

19 Q Would you please state your name and position?

20 A Machell Hamlin, Maryland Insurance Department
21 liaison for GEICO.

1 HEARING OFFICER: Oh, wait a minute. I'm
2 sorry. I'm going to put some documents in for the
3 Insurance Commission. We'd better start this thing
4 right. It always works out better in the long run.

5 The first exhibit is a transmittal from the
6 Insurance Division stating that the records immediately
7 following the transmittal and next to be introduced are
8 the certified file of the Department as far as G.
9 Samet -- or Robert Samet is concerned. Any objection to
10 my putting that in as Exhibit 1?

11 MR. SAMET: No.

12 MS. WHITMAN: No.

13 HEARING OFFICER: All right. That's Exhibit 1.

14 Exhibit Number 2 is the notice sent to Mr.
15 Samet by GEICO Insurance Company dated March 15th, 1991,
16 telling him that they would nonrenew Policy Number 171
17 31 62 as of March 15th, 1991, or is that the date it was
18 mailed? I don't have the --

19 MR. SAMET: I think the actual --

20 MS. HAMLIN: I'm sorry.

21 HEARING OFFICER: Oh, it's May 30th, 1991 --

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MS. HAMLIN: May 30th, 1991.

HEARING OFFICER: -- at 12:01 a.m.

MS. HAMLIN: Uh-huh.

HEARING OFFICER: Okay. And also offering him an exclusionary part of the policy. If he excluded Janice Samet from the policy, then it would be renewed. And that's Exhibit Number 2. Any objection? That's a three-page document. Any objection to that being introduced into evidence?

MR. SAMET: No.

MS. WHITMAN: No.

HEARING OFFICER: Exhibit Number 3 is a notice to GEICO from the Insurance Commission that Mr. Samet has protested the nonrenewal, and it's dated April 16th, 1991. Any objection to that being introduced as Exhibit Number 3?

MS. WHITMAN: No.

HEARING OFFICER: That's also a two-part document.

Exhibit Number 4 is a notice to Mr. Samet from the Insurance Commission saying based on the information

1 that they had received the protest must be dismissed and
2 offering him the opportunity to request a hearing.
3 That's Insurance Division Exhibit Number 4. Is there
4 any objection to that being placed into evidence?

5 MR. SAMET: No objection.

6 MS. WHITMAN: no.

7 HEARING OFFICER: Insurance Division Exhibit
8 Number 5 is a letter from Mr. Samet dated July 10th,
9 1991, requesting a hearing in this matter. Any
10 objection to my placing that into evidence as Exhibit
11 Number 5? Insurance Division Number 5 into evidence.

12 Insurance Division Exhibit Number 6 is a notice
13 to the insurance company that Mr. Samet has requested a
14 hearing and a hearing would be set up for him. That's
15 dated July 16th, 1991. Is there any objection to that
16 being admitted as Insurance Division Exhibit Number 6?

17 MR. SAMET: No objection.

18 MS. WHITMAN: No.

19 HEARING OFFICER: The last of the exhibits,
20 Insurance Division Exhibit Number 7, is a notice of
21 hearing sent to both GEICO in Washington, D.C., and to

1 Mr. Samet, Potomac, Maryland, telling them of this
2 hearing scheduled for October 2nd at this time. Any
3 objection to that being admitted as Insurance Exhibit
4 Number 7?

5 MR. SAMET: No objection.

6 MS. WHITMAN: No.

7 HEARING OFFICER: All right. Now, Ms. Whitman,
8 you can go ahead.

9 MS. WHITMAN: Thank you.

10 HEARING OFFICER: Uh-huh.

11 BY MS. WHITMAN:

12 Q Would you please state your name and position
13 again, please.

14 A It's Machell Hamlin, Maryland Insurance
15 Department liaison for GEICO Insurance.

16 Q And how long have you been with GEICO?

17 A About five and a half years.

18 Q Have you held a previous position with GEICO?

19 A Yes. I was a claims examiner as well.

20 Q For about how long?

21 A For approximately four years.

1 Q What action is GEICO attempting to take with
2 regard to Policy Number 171 31 62?

3 A GEICO is attempting to nonrenew that policy
4 effective May 30th, 1991.

5 Q Is there an exclusion being offered?

6 A Yes, we're offering an exclusion for Janice
7 Samet.

8 Q What is GEICO's business and economic purpose?

9 A It's to provide low cost automobile insurance
10 to preferred drivers while making a reasonable profit.

11 Q And what guideline does Janice Samet's driving
12 history exceed?

13 A Her history exceeds -- her driving record
14 exceeds the underwriting standard which, GEICO's
15 underwriting standard which does not allow any one
16 driver to accumulate a combination of three or more at
17 fault accidents and/or traffic convictions within a
18 36-month period, the most recent 36-month period.

19 Q Did you personally review GEICO's records on
20 Mrs. Samet's driving history prior to this hearing?

21 A Yes.

1 Q And what do these records indicate?

2 A They indicate that Ms. Samet has three, an
3 accumulation or combination of three or more --
4 actually, there are exactly three -- traffic accidents
5 and/or convictions, two accidents and one conviction.

6 Q All right. Ms. Hamlin, do you recognize this
7 document --

8 A Yes.

9 Q -- a copy of which I've already given to Mr.
10 Samet?

11 A Yes, I do.

12 Q Can you tell what it is?

13 A It's the motor vehicle record for Janice Samet.

14 MS. WHITMAN: I would like this -- the
15 Plaintiff enters the motor vehicle record of Ms. Samet
16 into evidence.

17 HEARING OFFICER: Mr. Samet, do you have any
18 objection to this being admitted into evidence as
19 Licensee's Exhibit Number 1?

20 MR. SAMET: No objection.

21 HEARING OFFICER: All right. It will be

1 admitted then as Licensee's Exhibit Number 1.

2 Go ahead, Ms. Whitman.

3 BY MS. WHITMAN:

4 Q Ms. Hamlin, can you tell us what the motor
5 vehicle record indicates about the driving record?

6 A Yes. According to Ms. Samet's driving record,
7 she received a citation on December 14th, 1989, for
8 exceeding the maximum speed limit by ten miles per hour,
9 a conviction followed on January 31st, 1990.

10 Q Do you recognize this document, a copy of which
11 has already been given to Mr. Samet?

12 A Yes.

13 Q Can you explain what it is?

14 A This is a copy of our claims loss payment
15 screen for the accident of November 9th, 1989. It shows
16 that we made a payment of \$921.67 under the property
17 damage coverage of Mr. Samet's policy.

18 MS. WHITMAN: I'd like this marked at this
19 moment and I'm entering it into evidence --
20 (inaudible) -- explains about the accident she just
21 mentioned.

1 HEARING OFFICER: All right. It will be marked
2 as Licensee's Exhibit Number 2. Go ahead.

14

3 BY MS. WHITMAN:

4 Q Do GEICO's records explain what happened in the
5 accident you just mentioned?

6 A Yes. The claimant reported that on November
7 9th, 1989, our insured driver, Janice Samet, made a
8 U-turn, failing to yield to the claimant, who was
9 traveling in the opposite direction.

10 We called our insured driver, Janice Samet, who
11 stated that she was on an access road. The claimant and
12 our insured driver were going in opposite directions.
13 The claimant was coming down the road and our insured
14 driver was attempting to make a U-turn onto the road
15 that the claimant was traveling. Our insured driver
16 alleged speed on the claimant.

17 We spoke to the claimant and the claimant's
18 attorney. The claimant did not admit speed. The
19 insured driver was charged with failure to yield the
20 right of way.

21 Based on our insured's driver's description of

1 the accident, as well as the claimant's accident
2 description, GEICO formed the basis for our
3 determination that our insured driver failed to yield
4 the right of way to the claimant. In addition, there
5 was no proof of speed on the claimant, and, therefore,
6 no proof of contributory negligence on the claimant.

7 Our insured driver was legally responsible for
8 the loss of November 9th, 1989, and, thereby, we made
9 the payment of \$921.67 under the property damage
10 coverage to cover the claimant's repairs.

11 MS. WHITMAN: At this time I would like the
12 claims loss payment screen to be actually entered into
13 evidence.

14 HEARING OFFICER: Any objection, Mr. Samet?

15 MR. SAMET: No objection to the document, no.

16 HEARING OFFICER: All right. Exhibit Number 2.

17 BY MS. WHITMAN:

18 Q Ms. Hamlin, do GEICO's records show any further
19 accident activity of Mrs. Samet's part?

20 A Yes. There was also an accident on July 26,
21 1990.

1 Q Do you recognize this document --

2 A Yes, this is --

3 Q -- a copy of which I've already given to Mr.
4 Samet?

5 A Yes, this is a copy of the claims loss payment
6 screen for that loss of July 26, 1990. It shows that we
7 paid \$303.47 under property damage, again under Mr.
8 Samet's policy.

9 MS. WHITMAN: At this time I would like this
10 marked.

11 HEARING OFFICER: Licensee's Exhibit Number 2.
12 Go ahead.

13 BY MS. WHITMAN:

14 Q Ms. Hamlin, what do GEICO's records show about
15 the investigation of this accident?

16 A Our records show that our insured driver,
17 Janice Samet, stated that on July 26, 1990, she was
18 driving on a parking lot when another vehicle came in
19 the opposite direction at an excessive speed, pushing
20 our insured driver over. Our insured driver stated
21 that, excuse me, that she went over a little too far and

1 struck the claimant's parked vehicle. There was no
2 proof of this alleged phantom vehicle traveling in the
3 opposite direction of our insured.

4 We spoke with the claimant who stated that he
5 discovered his vehicle with damage and a note from our
6 insured driver.

7 Based on our insured's description of the
8 accident, her failure to maintain control of her vehicle
9 to avoid a collision, and no proof of the alleged
10 phantom alleged by the insured driver, GEICO formed the
11 basis for our determination that our insured driver was
12 legally responsible for the loss of July 26, 1990, and
13 we paid, again, \$303.47 under property damage.

14 MS. WHITMAN: At this time I would like that
15 claims loss payment screen entered into evidence.

16 HEARING OFFICER: Any objection, Mr. Samet?

17 MR. SAMET: I would object to this because, if
18 I'm not mistaken, and I could be, and perhaps counsel
19 can correct me, the underwriting standards set a \$300
20 threshold --

21 THE WITNESS: No, it does not.

1 MR. SAMET: So it's for any accident at all,
2 even if it's --

3 THE WITNESS: For three surchargeable
4 occurrences. You're thinking of the two one-point loss
5 standard. The two one-point loss standard has --

6 BY MS. WHITMAN:

7 Q Ms. Hamlin, would you explain the guidelines --

8 A Yes.

9 Q -- that you just testified to --

10 MR. SAMET: Well, I --

11 THE WITNESS: Again, as I stated earlier --
12 well, let me clarify the --

13 HEARING OFFICER: Wait a minute.

14 MR. SAMET: I just want to --

15 THE WITNESS: Let me answer your question and
16 then --

17 MR. SAMET: I can withdraw my objection if you
18 can just --

19 THE WITNESS: Well, I'm going to answer your
20 question.

21 The standard used today, if you'll notice on

1 the letter, the second page of the letter, termination
2 letter of March 15, 1991, for which we're here today,
3 states that the standard is we do not allow any one
4 driver to accumulate a combination of three or more at
5 fault accidents and/or traffic convictions within the
6 most recent 36 months.

7 MR. SAMET: I see. So your letter sets forth
8 the standard that you're relying on.

9 THE WITNESS: That's correct.

10 MR. SAMET: Then I won't object to this if the
11 amount is not important.

12 HEARING OFFICER: That will be Licensee's
13 Exhibit Number 2. Ms. Whitman.

14 MS. WHITMAN: I believe that's Number 3.

15 HEARING OFFICER: 3, I'm sorry.

16 BY MS. WHITMAN:

17 Q Ms. Hamlin, does GEICO have statistical reports
18 for the guidelines you mentioned?

19 A Yes, we do.

20 Q Do you recognize this document, a copy of which
21 has been already been given to Mr. Samet?

1 A Yes. The California Department of Motor
2 Vehicles compiled data which demonstrates that groups of
3 drivers who have prior incidents, that is a combination
4 of accidents and/or convictions, have a higher rate of
5 subsequent accident involvement than those who do not.
6 This is the raw data that was actually accumulated by
7 that State and made available to us upon request.

8 MS. WHITMAN: All right. At this time I would
9 like to enter this document into evidence.

10 HEARING OFFICER: All right. It will be marked
11 for identification purposes as Number 4, Licensee's
12 Exhibit Number 4. Go ahead, counselor.

13 MR. SAMET: I would --

14 HEARING OFFICER: Oh, you want to enter it into
15 evidence at this point? Oh, okay. Any objection to
16 that, Mr. Samet?

17 MR. SAMET: I would object because it hasn't
18 been tied in and also the entire study is not here. I
19 mean, I can't figure out --

20 THE WITNESS: This isn't a study. As I stated
21 earlier, this is the actual data that was accumulated by

1 the State of California. This is not a study. This is
2 the actual raw data that was accumulated, the actual
3 numbers that they accumulated.

4 HEARING OFFICER: Well, wait a minute now.
5 He's saying it's not relevant, that it wasn't tied in as
6 far as relevancy.

7 MS. WHITMAN: Does this comprise --

8 MR. SAMET: I can't figure it out.

9 MS. WHITMAN: -- (inaudible) -- guideline you
10 mentioned?

11 THE WITNESS: Well, maybe we should --

12 MR. SAMET: -- (inaudible) -- conclusions in
13 here --

14 HEARING OFFICER: Well, all right. I'll admit
15 it subject to your objections.

16 BY MS. WHITMAN:

17 Q Ms. Hamlin, can you explain --

18 HEARING OFFICER: Go ahead.

19 THE WITNESS: Okay. If you will notice on Page
20 one, two, three of the exhibit, which is actually Page 2
21 of the data, you notice that I've highlighted two lines.

1 The far left-hand column represents the number of
2 accidents this group of drivers had in the first
3 three-year period of the accumulation of data. That
4 would be the two, which represents two accidents.

5 MR. SAMET: What page?

6 THE WITNESS: Page -- you've got it. It's
7 right there. It's highlighted.

8 MS. WHITMAN: Where the highlight is.

9 MR. SAMET: Okay.

10 THE WITNESS: The far -- let me start over
11 again since you weren't -- you didn't have it in front
12 of you.

13 The far left-hand column represents the total
14 number of accidents observed by this group of drivers in
15 the first three-year period, okay, it's a total of a
16 six-year period, and in the first three years this group
17 of drivers had two accidents, which is similar to Ms.
18 Samet's record. And the column directly to its right is
19 the total number of convictions that were observed in
20 the first three-year period, in this case one
21 conviction.

1 The following columns represent the total
2 number of accidents, the total number of drivers
3 involved and their average accident frequencies for the
4 next three-year period. In other words, the group of
5 drivers who had two accidents and one conviction for the
6 first three-year period had exactly this many accidents
7 in the second three-year period. For instance, the
8 group of drivers with two accidents and one conviction
9 in the first three-year period, 472 of them had no
10 accidents, 106 had one accident and so on. Then the
11 average accident frequency is simply a division of the
12 number of drivers and the number of accidents.

13 And again, as I've stated, this is not a study.
14 This is the actual data. There was a study that was
15 done from this data, but we have entered the actual
16 data, the raw data that was accumulated, the actual
17 numbers.

18 MR. SAMET: I'm going to object because we have
19 nothing here that even interprets the different columns
20 as Ms. Hamlin has testified, but beyond that --

21 THE WITNESS: On Page 1 I think -- on Page 2 of

1 the exhibit, if you're looking for titles, that would be
2 on the front page.

3 MR. SAMET: Okay. The second ground of my
4 objection, though, is that this isn't the standard upon
5 which they offered the exclusion to me and that we're
6 here on today. The letter that they sent talks about
7 two convictions and one accident.

8 MS. WHITMAN: Two accidents and one conviction.

9 THE WITNESS: No, I'm sorry. It says two
10 accidents and one conviction.

11 MR. SAMET: I don't think it does.

12 THE WITNESS: Okay. Well --

13 HEARING OFFICER: Yeah, it does say that. It
14 says two accidents and one conviction.

15 THE WITNESS: And I just gave a description of
16 both accidents --

17 MR. SAMET: No, no. It said that that's what
18 Janice had.

19 THE WITNESS: Well, that's --

20 MR. SAMET: My question is what they say here
21 is the study showed that the group of drivers with one

1 accident and two convictions -- I mean, that was the
2 basis --

3 THE WITNESS: No.

4 HEARING OFFICER: The little 2 on the left-hand
5 side -- is yours underlined like mine is? I don't know
6 whether it is or not. Is it highlighted?

7 MR. SAMET: No.

8 HEARING OFFICER: All right. Let me show
9 you -- well, I understand --

10 MR. SAMET: -- (inaudible) -- I understand
11 that. I'm just pointing out that in their denial they
12 rely upon statistics pertaining only to one accident and
13 two convictions.

14 THE WITNESS: No. Let me --

15 HEARING OFFICER: I didn't understand your
16 question either. Now I do. Okay.

17 THE WITNESS: One accident and -- it does say
18 one accident and two convictions; however, first of all,
19 the basis for the termination is the exceeding of the
20 guideline, which is the exceeding of three or more at
21 fault accidents and/or convictions. That's the basis

1 for the letter, number one, and that's the basis for the
2 termination.

3 Now, the statistics are in this letter not by
4 requirement, not by legal requirement. We are not
5 required to put any statistics in this letter when we
6 send the termination letter. The only level where we're
7 required to submit statistics is this level, the hearing
8 level.

9 We clearly list the activity, two accidents and
10 one conviction, and that is clearly stated for the
11 reason. The mere fact that someone put one accident
12 instead of two convictions does not change, number one,
13 the basis for the termination, and, number two, the
14 activity that is clearly listed there.

15

15 BY MS. WHITMAN:

16 Q Have you testified to the actual applicable
17 statistics?

18 A Yes, I have.

19 MR. SAMET: So you're saying this is a mistake.

20 THE WITNESS: I'm saying it's a typo. It was
21 totally a typo.

1 MR. SAMET: You quoted the wrong statistics in
2 your letter.

3 MS. WHITMAN: But the statistics aren't --

4 THE WITNESS: As I stated --

5 MS. WHITMAN: -- required in the letter at all.

6 THE WITNESS: As I stated --

7 HEARING OFFICER: Let's not argue. That's what
8 I'm here for. If you want to talk to him, talk to me.

9 THE WITNESS: Okay. As I stated earlier, the
10 statistics are not required in this letter. They are
11 not --

12 HEARING OFFICER: I've already heard you.
13 Okay.

14 THE WITNESS: Okay.

15 HEARING OFFICER: Now, Mr. Samet --

16 MR. SAMET: My objection is based upon
17 surprise. You know, they wait until the hearing and then
18 they cite the correct statistics.

19 HEARING OFFICER: Well, I understand your
20 objection, but the only thing they're really required to
21 do is put down the standard and the activity, although

1 I'll note your objection.

2 MR. SAMET: Can I also, just for the record,
3 note an objection. Basically one interpretation of
4 these statistics is being -- (inaudible) -- by testimony
5 here today, and they're also trying, and I don't know
6 what the purpose of the cover letter is, but it's a
7 letter to GEICO, and while I know that you aren't
8 required to adhere to the strict rules of evidence, this
9 is -- this would be a fairly blatant violation of the
10 hearsay rule, so let me note that objection for the
11 record also.

12 HEARING OFFICER: All right. I'll overrule it
13 and admit it as it is for what it is, for what it's
14 worth. All right. Go ahead, Ms. Whitman.

15 BY MS. WHITMAN:

16 Q Ms. Hamlin, have these statistics been
17 validated in any way?

18 A Yes. As I stated earlier, the conclusion of
19 the data was that the group of drivers with prior
20 incidents had a higher rate of subsequent accident
21 involvement. The conclusion has been analyzed and

1 qualified by Dr. Charles Rohde who is the professor and
2 chairman of the Department of Biostatistics at Johns
3 Hopkins University.

4 HEARING OFFICER: Do you have a copy of this,
5 Mr. Samet?

6 MR. SAMET: I'm looking for something --

7 THE WITNESS: We haven't entered what we're --
8 what I'm getting ready to say.

9 HEARING OFFICER: Have you given him copies of
10 everything?

11 THE WITNESS: Yes, he has a copy of everything.

12 HEARING OFFICER: All right. Go ahead.

13 THE WITNESS: From this data, the data being
14 the Exhibit Number 4, Dr. Rohde calculated an odds ratio
15 for the various prior incident combinations. This odds
16 ratio is the ratio of the expected ensuing accident
17 frequency for drivers with prior incidents to the
18 expected ensuing accident frequency for drivers without
19 prior incidents. For example, an odds ratio of two
20 means that this group of drivers is twice as likely to
21 have one or more accidents in the subsequent three-year

1 period as compared to those drivers with no prior
2 incidents in the prior three-year period.

3 Q Ms. Hamlin, do you recognize this document, a
4 copy of which has already been given to Mr. Samet?

5 A Yes, I do. This is an eight-page exhibit which
6 contains the odds ratios that I mentioned earlier. It
7 also contains the minimum and maximum times as likely
8 factors for the various prior incident combinations,
9 which I will testify to in a few minutes. It contains
10 GEICO's 1990 estimated effect of retaining nonrenewed
11 and cancelled policies in the State of Maryland. It
12 also contains the statistical formulas Dr. Rohde used to
13 compute the odds ratio and the confidence intervals.

14 MS. WHITMAN: At this point I would like this
15 exhibit marked.

16 HEARING OFFICER: All right. It will be marked
17 as -- are you introducing it or do you just want it
18 marked?

19 MS. WHITMAN: I'll be introducing it after she
20 has --

21 HEARING OFFICER: Okay. It will be marked as

1 Licensee's Exhibit Number -- what am I up to -- 5. Go
2 ahead.

3 THE WITNESS: Since the data in Exhibit Number
4 4 is only a sample of the total population, the mean
5 accident rate shown for the various prior incident
6 combinations for -- combinations being accidents and/or
7 convictions, are only estimates of the true accident
8 rate. The true accident rate may be higher or lower
9 than the accident rate shown in the data.

10 However, by using generally accepted
11 statistical methods, we can develop a 95 percent
12 confidence interval around each mean accident rate.
13 This means that statistically we can say that we're 95
14 percent confident that the true accident rate will fall
15 between the minimum and the maximum likely accident
16 rate.

17 Stated another way, if this study were done
18 many times over, we would expect the mean accident rate
19 to fall between the minimum and the maximum likely
20 accident rates 95 percent of the time.

21 Thus, where the odds ratio, which I mentioned

1 earlier, is 2.37, which is the odds ratio for a group of
2 drivers with two accidents and one conviction within a
3 prior three-year period, 95 percent of the time the real
4 value of the accident rate will fall between the minimum
5 times as likely factor of 1.942 and the maximum times as
6 likely factor of 2.893. Thus, this group of drivers was
7 1.942 to 2.893 times as likely to be involved in one or
8 more accidents in the subsequent three-year period in
9 comparison to those drivers with no prior incidents in
10 the prior three-year period.

11 And if you look on Page 2 of Exhibit Number 5,
12 you'll find a listing of the minimum and maximum times
13 as likely factors that I mentioned earlier. I believe
14 I've already highlighted the applicable record, again,
15 two accidents and one conviction, and corresponding to
16 that you'll find the minimum and the maximum times as
17 likely factors that I mentioned earlier.

18 This data demonstrates that as a group drivers
19 having prior accidents and/or convictions during one
20 three-year period in comparison to those with none are
21 more likely to have accidents in the subsequent

1 three-year period. In general, as the number of prior
2 incidents increases, the minimum and the maximum times
3 as likely factors also increase. As a group, drivers
4 with prior accidents and/or convictions develop a higher
5 subsequent accident frequency than drivers without prior
6 incidents.

7 GEICO does not have a surcharge in its rating
8 plan that applies for a driver with two accidents and
9 one conviction within the most recent 36-month period;
10 therefore, GEICO cannot be collecting sufficient premium
11 to compensate for the increased exposure to loss. That
12 is, GEICO would be responsible to settle 94 percent to
13 189.3 percent additional accident claims without
14 receiving compensating revenue.

15 HEARING OFFICER: Anything else, counselor?

16 BY MS. WHITMAN:

17 Q What economic impact would retaining these
18 drivers have on GEICO?

19 MS. WHITMAN: Oh, yes. At this point I would
20 like to offer this exhibit into evidence.

21 HEARING OFFICER: Any objection, Mr. Samet?

1 MR. SAMET: I would object, and maybe if I
2 could briefly voir dire.

3 This is not Dr. Rohde's writing, is it, that we
4 have here?

5 THE WITNESS: Dr. Rohde's writing?

6 HEARING OFFICER: No, it's hearsay.

7 MR. SAMET: This is GEICO's -- somebody from
8 GEICO prepared this?

9 THE WITNESS: The first two pages were written
10 by GEICO.

11 MR. SAMET: The first three?

12 THE WITNESS: We got the numbers from GEICO --

13 MS. WHITMAN: The first three.

14 THE WITNESS: I mean, from -- we got the
15 numbers from Dr. Rohde.

16 HEARING OFFICER: Oh, I see what you're saying
17 now. Okay. Go ahead.

18 MS. WHITMAN: The numbers are from Dr. Rohde.
19 The formulae are the ones that he, the formulae that he
20 used.

21 MR. SAMET: Okay. So this basically -- all

1 these documents relate about what Dr. Rohde told you he
2 found.

3 THE WITNESS: What Dr. Rohde showed us. He
4 had -- Dr. Rohde gave us copies of the formulas that he
5 used in his work and we put it in a legible --

6 MS. WHITMAN: The last two pages was him I was
7 about to explain.

8 MR. SAMET: Okay. But this entire exhibit was
9 prepared by GEICO, is that correct?

10 THE WITNESS: The formulas were not created by
11 GEICO. Put together, stapled together, yes.

12 MR. SAMET: All right. Based upon --

13 MS. WHITMAN: Mechanically put together, yes.

14 THE WITNESS: Yes.

15 MR. SAMET: Based upon information provided by
16 Dr. Rohde.

17 MS. WHITMAN: Yes.

18 MR. SAMET: Okay. And Dr. Rohde himself
19 didn't -- made no report out there in the literature
20 that I can find by him, that he --

21 MS. WHITMAN: Report? No, he took this data --

1 MR. SAMET: Was Dr. Rohde hired by GEICO to do
2 that?
3 THE WITNESS: Yes.
4 MR. SAMET: Okay.
5 THE WITNESS: To validate it.
6 MS. WHITMAN: To validate the data that we
7 entered before.
8 HEARING OFFICER: Your objection is --
9 THE WITNESS: Dr. Rohde did not create the
10 original data, again, but the Department of Motor
11 Vehicles in California --
12 MS. WHITMAN: He was hired by GEICO to
13 determine its validity.
14 MR. SAMET: Based on --
15 HEARING OFFICER: Well, let him talk to me for
16 a minute.
17 MR. SAMET: Based upon the fact that it is
18 hearsay, really, of the worst sort.
19 HEARING OFFICER: It's hearsay.
20 MR. SAMET: But there is hearsay and then
21 there's hearsay. The reliability of this, I mean GEICO

1 hires Dr. Rohde to do an interpretation of a California
2 study which isn't here today, Dr. Rohde does the
3 interpretation, works out some numbers and formulas,
4 presumably orally or in writing reports it to GEICO, but
5 we don't have his actual report to GEICO. We have what
6 GEICO prepares claiming to be based upon what Dr. Rohde
7 told them.

8 MS. WHITMAN: Let me correct a
9 misinterpretation there. He is not interpreting the
10 study. He was given the raw data that we just entered.
11 He was hired to validate this data, whether it was
12 statistically valid. He used the formulae that we have
13 just entered to do that and concluded that the data was
14 valid. That is the purpose --

15 MR. SAMET: I think we all understand exactly
16 what they've done here and I realize full well that my
17 objection creates a practical problem for GEICO, not
18 only in this case, but probably in hundreds of cases
19 where they appear here, and they're using this as a
20 practical way of proving their case. I realize the
21 difficulty that my objection creates, but I think it's a

1 legitimate objection, so --

2 MS. WHITMAN: Hearsay is admissible. It would
3 be theoretically possible to call Dr. Rohde. We're not
4 doing that in a hearing. We are admitting it as
5 hearsay, but it is admissible as hearsay.

6 HEARING OFFICER: All right. I'll accept it
7 for what it's worth.

8 BY MS. WHITMAN:

9 Q Ms. Hamlin, can you tell us what the impact on
10 GEICO might be of retaining these drivers?

11 A Yes. If we were to continue to insure this
12 group of drivers, it would have a direct impact --
13 (inaudible) -- our losses or loss expenses.

14 Referring you to Exhibit B, Page 1, which is
15 the second page from the back in Exhibit Number 5. This
16 is GEICO's 1990 Estimated Effect of Retaining Nonrenewed
17 and Cancelled Policies in the State of Maryland. You'll
18 notice that the minimum and the maximum times as likely
19 factors listed here is between -- the expected accident
20 frequency of this group of drivers -- is between 1.697
21 and 2.421 times that of drivers we voluntarily insure.

16

1 You'll notice that minimum and maximum times as
2 likely factor differs from the one given earlier. That's
3 because in this exhibit we are attempting to estimate the
4 impact of the non-retained drivers versus our actual
5 underwriting results, against our actual underwriting
6 results. Therefore, we must weight out the policies
7 that we do retain. For instance, we would keep a policy
8 with no accidents and one conviction or one accident and
9 one conviction, so those have been weighted out to give
10 a true reflection of the non-retained policies.

11 So applying this to our actual 1990 results for
12 the State of Maryland, our loss ratio, which is the
13 amount of claim dollars we pay out to the amount of
14 premium dollars coming in, would increase from 71.9
15 percent to a minimum of 122 percent and a maximum of 174
16 percent.

17 Our loss adjustment expense ratio, which is the
18 amount of dollars we pay out for the expense of handling
19 the claim to the premium dollars, would increase from
20 9.4 percent to a minimum of 15.9 percent and a maximum
21 of 22.7 percent.

1 Adding in the general expense ratio, which
2 accounts for overhead and salary of 11.1 percent, and
3 that remains the same, our underwriting ratio would
4 increase from 92.4 percent to a minimum of 149 percent
5 and a maximum of 207.8 percent; therefore, GEICO would
6 be paying out between \$1.49 and \$2.08 for every dollar
7 of premium collected.

8 Q And so does GEICO conclude on the basis of
9 these figures that this guideline is related to its
10 business and economic purpose?

11 A Yes.

12 MS. WHITMAN: That last exhibit was entered
13 into evidence?

14 HEARING OFFICER: Yeah, the other one was, yeah.

15 MS. WHITMAN: Okay. In that case, that
16 concludes our presentation on behalf of GEICO.

17 HEARING OFFICER: No, this one wasn't --

18 MR. SAMET: I think they stapled it -- mine's
19 stapled --

20 THE WITNESS: It's all one packet. It's an
21 eight-page exhibit.

1 HEARING OFFICER: I'm sorry. Did you have any
2 objection to that part, Mr. Samet? I didn't even ask
3 you that. I was assuming you were talking about the
4 beginning of this thing, but -- oh, no, you were talking
5 about the whole thing. All right. Then it's in. It's
6 Exhibit Number 5.

7 BY MS. WHITMAN:

8 Q Okay. Do you have anything to add, Ms. Hamlin?

9 A To state again GEICO utilizes an underwriting
10 standard that provides for termination of any one driver
11 who accumulates three or more at fault accidents and/or
12 traffic convictions during the most recent 36 months.
13 This is, of course, in line with --

14 (The tape was turned over.)

15 HEARING OFFICER: Mr. Samet, you have an
16 opportunity now to cross-examine Ms. Hamlin if you'd
17 like to.

18 MR. SAMET: Thank you.

19 CROSS-EXAMINATION

20 BY MR. SAMET:

21 Q Ms. Hamlin, you did indicate that the

1 underwriting standard that you have testified to today
2 and that was utilized in deciding to terminate me and/or
3 offer the exclusion of my wife --

4 A Okay, to terminate your wife. I'm sorry. To
5 terminate the policy with an offered exclusion on your
6 wife.

7 Q Right. You won't terminate me if I agree to
8 have her excluded.

9 A This is correct. If we prevail today.

10 Q That's based upon an at fault standard?

11 A Yes.

12 Q Okay. You made a determination in the parking
13 lot incident of July 26, 1990, that Janice was at --

14 A Our Claims Department, yes, as I testified to
15 earlier.

16 Q And I think you indicated it was simply because
17 there was no proof offered --

18 A No. That's not what I said.

19 Q -- that another vehicle pushed her too close.

20 A That's not what I said. I said based on her
21 description of her going too far over and striking the

1 claimant's parked car, and her failure to maintain
2 control was the basis for that determination. I added
3 that our insured alleged speed -- a speeding phantom
4 vehicle. Now, there was no proof of this phantom
5 vehicle to suggest that that phantom vehicle was the
6 reason for Ms. Samet going over into a parked car.

7 So, in other words, your -- our insured driver
8 alleged a speeding phantom vehicle, and what I was
9 saying was there was no proof of that phantom vehicle.
10 However, we do know that your, that Ms. Samet struck a
11 parked vehicle and admitted to going over too far and
12 striking the parked vehicle. If she makes an allegation
13 of another vehicle, then we investigate that as well,
14 and we found no proof of a phantom vehicle.

15 Q This is my opportunity to cross-examine which
16 means you're just supposed to answer my questions, not
17 anticipate my next question or elaborate --

18 A I'm sorry. I was answering -- he asked me
19 about the liability and I explained --

20 Q -- (inaudible) -- have more questions and if
21 every time we --

1 HEARING OFFICER: Well, I know, but you did,
2 and I appreciate her answering it fully, to tell you the
3 truth.

4 Go ahead, Mr. Samet.

5 BY MR. SAMET:

6 Q Back to what we were talking about. A
7 determination was made that she was at fault, is that
8 correct?

9 A Yes.

10 Q She said to the GEICO representative that there
11 was another car in the parking lot that came by too fast
12 and pushed her over, is that correct?

13 A That's that she alleged, yes.

14 Q And you chose to disbelieve that, is that
15 correct?

16 A No, that's -- we, again, there was no proof of
17 that alleged vehicle.

18 Q Let us suppose she had gotten the tag number
19 and had given that to you. Would you have --

20 MS. WHITMAN: Objection. What's the purpose
21 of --

1 MR. SAMET: I want to determine what they
2 consider proof. Proof -- her testimony and her
3 statements to the GEICO representative --

4 MS. WHITMAN: That's irrelevant.

5 MR. SAMET: -- was proof. She's the only
6 witness to --

7 MS. WHITMAN: That is irrelevant.

8 HEARING OFFICER: I have to agree. She can
9 only testify to what she knows and as far as her -- this
10 claim is concerned. She can't testify to hypothetical
11 questions.

12 BY MR. SAMET:

13 Q You say there was no proof that there was
14 another vehicle that pushed her into this car.

15 A That's correct.

16 Q Okay. You did not take her statements to you
17 as proof?

18 A As proof of an alleged vehicle?

19 Q Uh-huh.

20 A No, it had to be substantiated.

21 Q Well, how would one prove a vehicle pushed them

1 off the road?

2 A Again, this is the same question.

3 Q How would one ever prove this to you?

4 A There could be a witness who saw the alleged
5 vehicle --

6 Q Wouldn't your insured be considered a witness?

7 A An independent witness.

8 Q I see. So in the absence of an independent
9 witness to confirm your insured's story about how an
10 accident happened, you always conclude your insured is
11 at fault?

12 A Okay. Again, I can't testify on everything
13 that is considered when we're looking for a phantom
14 vehicle. There was no proof. I've testified to that.
15 There was no proof of the phantom vehicle. I cannot go
16 through like a claims manual and tell Mr. Samet every
17 criterion for proving an alleged phantom vehicle.

18 Q I'm simply trying to --

19 A However, as I stated, there was no proof of an
20 alleged vehicle.

21 Q I'm simply trying to determine and maybe

1 demonstrate to this Administrative Law Judge that your
2 determination that she was at fault in this accident was
3 not a fair determination.

4 HEARING OFFICER: Well, let me interject,
5 counselor. She's already answered the question. She
6 can't go over every possible detail as far as -- or at
7 least she can't do it at this time, but, you know, I'm
8 going to base my decision on what I've heard today, not
9 on what, you know, something of a hypothetical nature.

10 Go ahead.

11 MR. SAMET: I understand.

12 BY MR. SAMET:

13 Q You used a phrase before that she failed to
14 maintain control of her vehicle.

15 A To avoid a collision. That was the entire
16 phrase.

17 Q That's language that comes out of the Motor
18 Vehicle Code if somebody is charged. It's actually a
19 charge, failure to maintain control to avoid a
20 collision?

21 A Are you asking --

1 Q Is there any factual basis for your use of that
2 phrase that she failed to maintain control?

3 A Yes. She struck a parked vehicle.

4 Q I see.

5 A She stated that she went over too far and
6 struck a parked vehicle. Had she maintained her
7 control, control of that vehicle to avoid an accident,
8 the accident wouldn't have occurred.

9 Q All right. So that any time someone strikes a
10 vehicle they have failed to maintain control?

11 A Again, I can't testify to that. I'm
12 testifying --

13 HEARING OFFICER: Go ahead, please, counselor.
14 Anything else?

15 BY MR. SAMET:

16 Q Is it true that the determination that she was
17 at fault in this accident was made based upon the claims
18 adjustor's determination at the time that what Janice
19 said regarding there being an unknown vehicle that
20 pushed her off being untrue?

21 A That's not what I stated. I did not say

1 whether it was true or untrue. I stated that there was
2 no proof of the alleged phantom vehicle.

3 Q Okay. And does GEICO's standards require that
4 where there is not independent corroborating proof the
5 accident is determined to be the fault of your insured?

6 A Again, I can't -- because, again, you're taking
7 one specific -- there may be many other things that are
8 taken into consideration in deciding whether or not
9 there's proof of an alleged vehicle. I just testified
10 that I couldn't do that, so I can't answer that question
11 either.

12 Q All right. So you don't know specifically what
13 went into this original determination of the examiner at
14 GEICO?

15 A I just stated --

16 Q Other than the evidence of any corroborating
17 proof what went into her determination that Janice was
18 at fault?

19 A I just stated all of the proof. I've stated it
20 three or four times. If you'd like, Judge, I will state
21 it again --

1 Q I want to hear the proof other -- I want to
2 hear the proof other --

3 A Again, I stated that the determination of
4 liability was based on, number one, our insured's
5 description of the accident. Number two, her failure to
6 maintain control of her vehicle to avoid a collision.
7 The insured's description of the accident includes her
8 stating that she went over too far and struck a
9 claimant's parked car. And, number three, that the
10 insured did, indeed, allege a speeding phantom vehicle.
11 We investigated that -- (inaudible) -- investigated that
12 and found no proof of the alleged phantom vehicle.

13 Q What investigation did you do?

14 MS. WHITMAN: Objection. Asked and answered
15 over and over.

16 MR. SAMET: It's the first time she ever said
17 they investigated, at least that I remember. Unless I
18 missed it the first time.

19 HEARING OFFICER: I'll sustain the objection.
20 She has given you everything that she has there to give
21 you, counselor. I mean, what more can you ask for?

1 MR. SAMET: I can tell you. She just they
2 investigated it, and I want to know what investigation
3 was done or if she --

4 HEARING OFFICER: She's answered that. That's
5 why I sustained the objection.

6 MR. SAMET: Your Honor, I'm going to leave here
7 today not knowing what investigation was done other than
8 talking to my wife. I haven't heard her say that they
9 did anything but talk to my wife about this accident.

10 HEARING OFFICER: Well, I've heard her say that
11 they talked to your wife about it and, well, several
12 other things. Go ahead. Do you want to repeat your --
13 repeat the answer, Ms. Hamlin.

14 MS. HAMLIN: Again, would you like me to go
15 through the whole thing again?

16 BY MR. SAMET:

17 Q My question was what investigation was done --

18 A And I explained --

19 Q -- other than talk to my wife.

20 A I explained the entire investigation. Number
21 one, we talked to your wife, who told us, again, that

17

1 she moved over too far and struck the claimant's car,
2 that she alleged a phantom speeding vehicle. We --

3 Q My question is what other than talking to my
4 wife --

5 A Excuse me. If I may be allowed --

6 HEARING OFFICER: Let her finish the answer.

7 MR. SAMET: She's self-servingly adding,
8 repeating --

9 MS. WHITMAN: Either you want the question
10 answered --

11 MR. SAMET: I do.

12 MS. WHITMAN: -- or you don't.

13 HEARING OFFICER: Wait a minute now. Let's not
14 argue. You know, she's telling you now what they did.
15 You've asked her what they did --

16 MR. SAMET: My question was other than talking
17 to my wife.

18 HEARING OFFICER: Well, and then she's going on
19 from that. She just mentioned that and now she's going
20 on further --

21 MR. SAMET: All right.

1 HEARING OFFICER: -- and let her finish it. Go
2 ahead.

3 THE WITNESS: We talked to the claimant, who
4 stated that he saw his vehicle was damaged and a note
5 from our insured driver on his vehicle giving her
6 information. There was no proof of the alleged phantom.
7 There were no independent witnesses. There was no one
8 else to talk to. There was nothing else to do. There
9 was no proof of the phantom vehicle.

10 BY MR. SAMET:

11 Q The claimant was not present, is that correct?

12 A That's correct.

13 Q So the only investigation that was done was --

14 A Was what we --

15 Q -- to speak to the claimant who wasn't present
16 and my wife, is that correct?

17 A That's -- well, no, and a determination of
18 fault based on that.

19 Q My question was the investigation. Is that
20 correct?

21 A Well, that's part of the investigation.

1 Q The determination of fault. Okay.

2 And you keep using the phrase that my wife
3 stated to GEICO that she went over too far.

4 A That's correct.

5 Q Is it correct that she stated that she went
6 over too far because of the speeding vehicle that pushed
7 her over?

8 A And I testified to that, sir. I testified to
9 both of them. I stated both phrases.

10 Q Am I correct that she testified she was forced
11 over?

12 A Yes.

13 MR. SAMET: All right. I shouldn't say
14 testified. She told the GEICO representative she was
15 forced over.

16 HEARING OFFICER: Anything else, counselor?

17 MR. SAMET: I don't think I have any other
18 cross-examination. Let me just check.

19 HEARING OFFICER: Okay.

20 MR. SAMET: I don't have any other
21 cross-examination.

1 HEARING OFFICER: Okay. Now your turn to call
2 your case, Mr. Samet. What do you have?

3 MR. SAMET: Your Honor, GEICO's effort to
4 exclude was the subject of a prior proceeding.

5 HEARING OFFICER: Prior proceeding here?

6 MR. SAMET: Prior proceeding before the
7 Insurance Commission.

8 MS. WHITMAN: Objection. That's not settled.

9 HEARING OFFICER: Let him finish. I haven't
10 heard what he has to say yet.

11 MR. SAMET: There was a prior proceeding back
12 in, I believe 1989, where there was an effort to cancel
13 me or, in the alternative, offer an exclusion. The
14 Insurance Commission found that GEICO's effort was
15 valid. That was appealed to the Circuit Court for
16 Baltimore City in October of 1990. That date is
17 important. That's a date after the three incidents that
18 they are here on today.

19 In October of 1990 I commenced efforts,
20 speaking first directly to Sharon Oliver at GEICO, who I
21 think was in Ms. Hamlin's role at the time, and then

1 received a telephone call from GEICO's lawyer, who was
2 representing them in this appeal before the Circuit
3 Court for Baltimore City. We ended up settling the
4 matter and GEICO agreed at that time to withdraw their
5 effort to terminate me. A line of dismissal was filed
6 in the Circuit Court for Baltimore City entering the
7 case as settled and dismissed with prejudice.

8 I have for you a letter from GEICO's lawyer
9 sent to me, GEICO's letter withdrawing its termination
10 letter, a copy showing you that this was done about two
11 weeks before the trial date so we had gone through some
12 substantial proceedings before that leading up to the
13 trial date, and finally a copy of the line of dismissal
14 which ultimately was filed. And it is my contention
15 that that basic agreement on GEICO's part to drop the
16 matter at that time, on a date after these three
17 incidents that we're here on today had taken place, was,
18 number one, an agreement not to press a further effort
19 to exclude Janice from the policy, or, alternatively,
20 res judicata unless it's a matter that at the time the
21 litigation was concluded it was already --

1 (inaudible) --

2 I'd like to offer these documents as an
3 exhibit.

4 MS. WHITMAN: I object.

5 HEARING OFFICER: What's the basis --

6 MR. SAMET: -- (inaudible) -- exhibits.

7 MS. WHITMAN: My objection is this is totally
8 irrelevant --

9 HEARING OFFICER: Has she seen it yet?

10 MR. SAMET: Yes.

11 MS. WHITMAN: -- to the present proceeding.
12 This was based on an entirely different termination
13 letter, on an entirely different guideline, on an
14 entirely different activity. Is is totally irrelevant
15 to the present proceeding. It has nothing to do with
16 this whatever.

17 HEARING OFFICER: Well, counselor, if all three
18 of these -- these two, both accidents in this conviction
19 were not part of this case, then I'm going to sustain
20 the objection and not put it in. I would assume that if
21 this was two weeks after the last violation here, which

1 would be 7/26/90 --

2 MR. SAMET: Three months later.

3 HEARING OFFICER: Well, I mean, I'm asking you
4 the question. Was it or was it not? Were all three of
5 these things considered as far as this particular
6 exclusion was concerned --

7 MR. SAMET: No.

8 HEARING OFFICER: -- or this nonrenewal?

9 MR. SAMET: When the exclusion began back in
10 1989, there were two other violations before any of
11 these --

12 HEARING OFFICER: Oh, all right.

13 MR. SAMET: Okay. These three took place while
14 the proceedings were pending --

15 HEARING OFFICER: I see.

16 HEARING OFFICER: -- and were still pending up
17 to the moment --

18 MS. WHITMAN: That were for two accidents that
19 happened --

20 MR. SAMET: Excuse me. I'm not --

21 HEARING OFFICER: Wait a minute. Let him

1 finish.

2 MR. SAMET: The standard of review on appeal to
3 the Circuit Court for Baltimore City is trial de novo,
4 so that evidence could have been offered in the
5 proceeding before the Circuit Court for Baltimore City.

6 MS. WHITMAN: It was irrelevant.

7 HEARING OFFICER: It would have been irrelevant
8 because the case was based on other convictions or other
9 accidents, and I'll sustain the objection.

10 MR. SAMET: There's two things about that.
11 Number one, the standard of review on appeal is de novo,
12 but apart from that, her objection I don't think goes to
13 the admissibility of the documents. It goes to an
14 argument. Essentially you're saying -- (inaudible) --

15 MS. WHITMAN: I'm arguing -- (inaudible) --

16 MR. SAMET: But I've got to get those
17 documents --

18 MS. WHITMAN: -- totally irrelevant to this
19 case.

20 MR. SAMET: I've got to get those documents in
21 the record. If you don't want to offer them as an

1 exhibit, you can mark for identification and include
2 them in the record because --

3 MS. WHITMAN: For what purpose?

4 MR. SAMET: Excuse me. Let me finish. You
5 keep cutting me off. I wanted to bring it up on appeal.
6 I'm going to be arguing that it's res judicata. When
7 they call me up and they tell me they're dropping the
8 matter and I end up dismissing my appeal at that time,
9 filing a line of dismissal that the case has been
10 settled --

11 MS. WHITMAN: It's a totally different res
12 that's been judicatad.

13 HEARING OFFICER: I don't find it relevant. If
14 it's not relevant, I'm not putting it in the case. I'm
15 only going to put in this case what pertains to this
16 case. If I don't find it relevant, I'm not putting it
17 in the case --

18 MR. SAMET: I understand.

19 HEARING OFFICER: -- you know, and it'll be
20 probably another 30 days before this decision goes out
21 of here. If you can submit proof to me that -- from the

1 District Court that all of these convictions and
2 accidents were considered as far as the agreement to
3 dismiss is concerned --

4 MS. WHITMAN: If you would like to see a
5 copy -- excuse me.

6 HEARING OFFICER: Wait a minute. Then I would
7 make a different ruling of it. At this point, you know,
8 they're out.

9 MR. SAMET: All right. Your Honor, just so I
10 can understand your ruling, you're declining to either
11 accept it as an exhibit or mark it for identification
12 for inclusion in the record?

13 HEARING OFFICER: I'm declining to put it in
14 the record because it's irrelevant and I'm sustaining
15 the counselor's objection.

16 MR. SAMET: Thank you.

17 HEARING OFFICER: You're welcome.

18 MS. WHITMAN: Then I guess you don't need a
19 copy of the order.

20 HEARING OFFICER: Now, Mr. Samet, is there
21 anything else?

1 MR. SAMET: That would be it, I think. If one
2 considers, you know, in any legal case there are a
3 number of different positions, points that are -- some
4 of them more cogent than others. Perhaps the one thing
5 I believe that you ought to look at is their standard
6 for determination of at fault.

7 In this particular case, accepting that -- I
8 don't doubt for a moment that GEICO does get reports
9 from people of phantom vehicles in situations where they
10 don't exist, but that uniform standard, that without
11 independent corroborating proof you can't, you don't
12 believe your insured -- I mean, if we had a situation,
13 if we had a situation where the insured said there was a
14 phantom vehicle and this other car in the parking lot,
15 the driver had been there and he said he saw nothing or
16 heard nothing, then that would be reason to disbelieve
17 her. But they basically made a determination that she
18 was at fault in that accident without any evidence at
19 all, and essentially they're saying that they must in
20 all cases, if there's no proof of a phantom vehicle,
21 they must conclude that there was none.

1 Not only is that not a proper standard, but
2 that flies in the face of the fact that, and it's an
3 analogous situation, phantom vehicle situations are
4 recognized as a proper basis for an uninsured motorist
5 claim. The Maryland Court of Appeals has on numerous
6 occasions recognized that when they put in a claim under
7 one's own policy under an uninsured motorist benefits in
8 the situation of a phantom vehicle, and I just am aware
9 that there are many situations where there isn't any
10 independent corroborating proof.

11 The insured's own statement to GEICO is proof.
12 In a court of law it would stand up as testimony. If
13 GEICO could swear -- I mean, perhaps GEICO could have
14 said, well, give us an affidavit to that effect.

15 But the point is they did an investigation, the
16 investigation was solely to interview my wife, and they
17 concluded, after she told them that she was forced to
18 the side in this parking lot by another car, they
19 concluded there was no such car. That's the only way
20 they could have determined she wasn't at fault -- that
21 she was at fault, and that's not a proper standard to

1 apply.

2 Ms. Hamlin did say, in fact, that with only one
3 accident and one conviction they would keep an insured.

4 HEARING OFFICER: All right. Any closing
5 statements, Ms. Whitman?

6 MS. WHITMAN: I would just like to say in
7 closing that we have testified to the appropriate
8 guidelines. We have shown a proper investigation. We
9 reached a determination of liability based in part on
10 the insured's own statements, and we have presented
11 statistics adequately validating for our guidelines, and
12 we would request that we be allowed to take the
13 nonrenewal action.

14 HEARING OFFICER: All right. Let me tell you
15 what happens now, Mr. Samet. I know the insurance
16 company knows. I'm going to -- it will take me about 30
17 days to write an opinion on this and send it out to you.

18 If either -- whichever one of you lose, I
19 should say, you have the right to appeal it within 30
20 days to the Circuit Court of Baltimore City, and I think
21 you're both aware of that. If I rule against you, Mr.

1 Samet, you have 30 days after the date of the opinion to
2 make your decision as to whether or not you're going to
3 exercise the exclusion. The Insurance Commission puts
4 all this out in a printed form if you'd like to have one
5 of them.

6 All right. That's all. The hearing is
7 concluded.

8 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

STATE OF MARYLAND)
CITY OF BALTIMORE)

I, Laurie F. Collins, hereby certify that the foregoing is a correct and accurate transcript of a cassette recording furnished by the Insurance Division of Maryland.

Laurie F Collins
Laurie F. Collins

SEND TO: OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW BUILDING
GREEN SPRING STATION
10753 FALLS ROAD, UNIT C/CLERK'S OFFICE
LUTHERVILLE, MARYLAND 21093
(301) 321-3993

Insurance Division Exhibit No. 1

TRANSMITTAL FOR DEPARTMENT OF LICENSING AND REGULATION (DLR)
INSURANCE COMMISSION (INS)

Transmitting Officer: Wenda K. Gordon

Date Appeal Received: 7/22/91

Telephone Number: 333-4002/4003

Name of Case: Samet v. GEICO

Agency File No.: (if any) 106-7/91

Complainant:

Samet, Robert G.

LAST FIRST MI

Address: 10507 Tanager Lane

Potomac, MD ZIP 20854-6357

Telephone No.: _____

Licensee:

Government Employees Ins. Co.
COMPANY NAME

Address: GEICO Plaza

Washington, DC ZIP 20076-0001

Telephone No.: _____

I hereby certify that the attached file constitutes the true record of the Commission in the above matter.


Commissioner

=====

Please Circle Appeal Category:

31 - Auto Termination or Premium Insurance

32 - Disciplinary

33 - Section 35(2)

Other: _____
Please Specify

PLEASE ATTACH APPEAL LETTER AND ANY CORRESPONDENCE RELATING TO CASE

GEICO

2ND Pg.

23458



Government Employees Insurance Company
GEICO General Insurance Company

GEICO Plaza ■ Washington, D.C. 20076-0901

CERTIFIED MAIL

POLICY NUMBER: 171 31 62

March 15, 1991

Robert G. Samet
10507 Tanager Lane
Potomac, MD 20854-6357

ML
AP240

Dear Mr. Samet:

Periodically we review the records of all drivers insured under a GEICO policy to determine whether or not their driving records continue to conform to our underwriting and rating standards. To continue coverage for individuals whose records no longer meet our standards would be in violation of our underwriting standards which are filed with the Maryland Insurance Commissioner.

Unfortunately, those drivers who do not meet our underwriting standards must be notified of our inability to continue coverage. In your case the records of

Name: Janice Samet Date of Birth: 8/20/51

do not qualify for continued coverage for the reasons expressed on the attached page; and, UNLESS YOU AGREE TO EXCLUDE SUCH PERSON(S) FROM POLICY COVERAGE, YOUR INSURANCE WILL BE NONRENEWED AS FOLLOWS:

THE INSURANCE PROVIDED BY GOVERNMENT EMPLOYEES INSURANCE COMPANY UNDER THE POLICY OR POLICIES AS NUMBERED ABOVE IS HEREBY TERMINATED AS OF 12:01 A.M. ON MAY 30, 1991.

(CONTINUED ON NEXT PAGE)

**IMPORTANT
"Right of Protest"**

For your protest to be duly filed you must sign two copies of the notice and send them to the:

Maryland Insurance Commissioner
501 St. Paul Place
Baltimore, Maryland 21202-2272

within thirty (30) days after the date of mailing of the notice. Unless your protest is filed within thirty (30) days, the protest cannot be considered by the Insurance Division as provided under Article 48A §240AA, Annotated Code of Maryland. If the Insurance Commissioner determines that your protest does not have merit, you will have the right, within thirty (30) days after the date of mailing of the determination, to request a hearing.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION CONCERNING:

Eligibility for Maryland Automobile Insurance Fund...Right of Protest and Hearing Request.

MARYLAND AUTOMOBILE INSURANCE FUND

You have the right to replace the insurance through the Maryland Automobile Insurance Fund. You may wish to contact your agent or broker or contact the Fund directly for an explanation.

The phone number and address of the Fund are: Maryland Automobile Insurance Fund, 1750 Forest Drive, Annapolis, Maryland 21401-4230, telephone 301-269-1680.

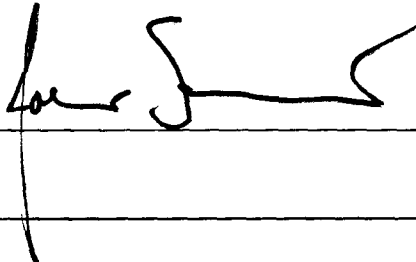
RIGHT TO PROTEST AND REQUEST HEARING

This notice has been sent to you in triplicate. You have the right to protest this action and request a hearing thereon before the Commissioner by signing two copies of the notice in the space provided and sending them to the Commissioner of Insurance, State of Maryland, 501 St. Paul Place, Baltimore, Maryland 21202-2272 within 30 days after the date of mailing of this notice.

If protest is filed, this policy will remain in effect until a determination is made by the Commissioner upon payment of any lawful premium due or becoming due prior to determination.

The Commissioner has authority to award reasonable counsel fees to the insured for services rendered to the insured in connection with any such hearing if he finds the proposed action to be unjustified.

I hereby request a hearing.

DATE 4-10-91 SIGNED 

You may continue coverage for all operators other than the driver(s) listed on the exclusion below by accepting the exclusion offer. If you accept the exclusion, the premium will be \$1,144.30.

EXCLUSION OFFER

POLICY NUMBER: 171 31 62

EXCLUSION TAKES EFFECT 12:01 A.M. ON MAY 30, 1991

If you wish to have a policy which will exclude all coverage when the person or persons shown below operates any motor vehicle, indicate acceptance by SIGNING below and returning this notice PRIOR TO THE EFFECTIVE DATE OF THIS ACTION.

This exclusion will be included within any subsequent transfer, reinstatement, reissuance or renewal of such policy or policies.

NAME AND DATE OF BIRTH OF EXCLUDED DRIVER(S):

NAME: Janice Samet DATE OF BIRTH: 8/20/51

DATE: _____

SIGNATURE OF NAMED INSURED(S):

Please return the completed and signed exclusion to GEICO, P.O. Box 96518, Washington, D.C. 20090-6518.

Our business and economic purpose is to provide low cost automobile insurance to preferred drivers while making a reasonable profit. In order to comply with our business and economic purpose, GEICO's underwriting standards do not allow any one driver to accumulate any combination of 3 or more at fault accidents and/or traffic convictions within the most recent 36 months.

This action is being taken because the following driving record does not meet our underwriting standard(s) as shown above:

Janice's driving record:

11/09/89 Fail to yield right of way. Janice made a U-turn and collided with claimant. GEICO paid \$921.67 under Property Damage Coverage.

11/15/89 ...

12/14/89

Exceeding maximum speed limit by 10 MPH

07/26/90

Janice struck claimant in a parking lot. GEICO paid \$303.47 under Property Damage Coverage.

Independent research studies have concluded that past driving records are valid predictors of future accident involvement. As the number of accidents and convictions increases, so does the probability of future accident involvement. These studies show that the group of drivers with 1 accident and 2 convictions is 2.360 times as likely to be involved in an accident in the future as compared to the group of drivers with no prior incidents (accidents and/or convictions). Since it is impossible for us to predict exactly which drivers in the group will have future accidents, we are required by Maryland law to apply our underwriting standards equally to all drivers in the group.

Under our rate filing, which has been deemed by the Maryland Insurance Department to be in compliance with the Maryland Insurance Laws, such an accident and/or conviction record would have a direct and substantial impact upon our losses and expenses. If we were to retain individuals who do not meet our standards, we calculate that we would suffer an underwriting loss in the range of \$.37 to \$3.88 for every dollar we collect from these individuals. This result would not be in line with our business and economic purpose.

If you wish to discuss this action, please call us at (301) 986-3990 between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

Lisa Landrum
UNDERWRITING DEPARTMENT

Encl: M-134-MD

P.S. We can help you obtain other insurance protection if you call our affiliate, Insurance Counselors Inc., at 986-2100.

ASHCRAFT & GEREL

ATTORNEYS AT LAW
SUITE 1002

ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MARYLAND 20852

*Fold at line over top of envelope to the right
of the return address*

CERTIFIED

P 935 538 280

MAIL

Commissioner of Insurance
State of Maryland
501 St. Paul Place
Baltimore, MD 21202-2272

76

Thank you for using
Return Receipt Service.

Is your **RETURN ADDRESS**
completed on the reverse side?

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOGLE, JR.
Secretary

JOHN A. DONAHO
Insurance Commissioner



Department of Licensing and Regulation
INSURANCE DIVISION

501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333-

A Regulator Helping People

GEORGETOWN, MARYLAND
WASHINGTON, D.C.

NOTICE

10507 TANGER LANE
POTOMAC, MARYLAND

POLICY NUMBER: 53091

RE:

PERSONAL AUTO POLICY AND OF ARTICLE 48A, MARYLAND. YOU ARE HEREBY NOTIFIED THAT THE ENCLOSURE IS A COPY OF THE POLICY AND REQUESTING THAT YOU SIGN AND RETURN IT TO THE ACTION CENTER IN YOUR NOTICE. THIS POLICY IS STAYS YOUR ACTION AS IS STATED IN YOUR...

PERIOD OF TIME THIS POLICY IS IN EFFECT UNDER THE DIRECTIVE, THE PREMIUM ON THE POLICY WILL BE DUE FROM INSURED, WHEN BILLED, IN ACCORDANCE WITH THE POLICY.

YOU WILL BE NOTIFIED OF WHAT DECISION HAS BEEN MADE...

VERY TRULY YOURS,

LONG SOME
INSURANCE INVESTIGATOR

TO INSURED: PLEASE COMPLETE THE ATTACHED FORM AND FORWARD AS POSSIBLE TO THE ABOVE UNDERSIGNED.

ENCLOSURE

MD

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOGLE, JR.
Secretary

JOHN A. DONAHO
Insurance Commissioner



Department of Licensing and Regulation
INSURANCE DIVISION

501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333- 103

A Regulator Helping People

JULY 1 1991 FILE
INSURED : ROBERT A. AMET
POLICY : 17121
POTOMAC MD

ANCELLATION

TO PROTECT YOUR LEGAL RIGHTS, READ THIS NOTICE CAREFULLY.

DEAR ROBERT AMET

INFORMATION WE HAVE RECEIVED, YOUR TEST MUST BE
AND YOUR INSURANCE COMPANY MAY CANCEL YOUR COVERAGE AT
12:00 P.M. ON THE DATE SHOWN ON YOUR NOTICE OF CANCELLATION OR
THIRTY (30) DAYS FROM THE DATE THIS NOTICE IS MAILED TO YOUR
ADDRESS, WHICHEVER IS LATER. YOUR INSURER IS NOT REQUIRED TO
PROVIDE ADDITIONAL NOTICE.

THAT YOUR INSURANCE COMPANY HAS NOT VIOLATED THE MARYLAND
INSURANCE CODE* NOR ANY INSURANCE REGULATIONS. IF YOU WISH TO
ACCEPT THE EXCLUSION OR DRIVER OFFER AS STATED ON YOUR NOTICE OF
CANCELLATION OR NON-RENEWAL, YOU MUST SEND A SIGNED AND DATED COPY
OF YOUR EXCLUSION OFFER TO YOUR INSURANCE AGENT OR COMPANY WITHIN
THIRTY (30) DAYS OF THIS NOTICE.

HOWEVER, YOU MAY REQUEST A HEARING ON THIS MATTER IN WRITING
WITHIN THIRTY (30) DAYS AFTER THIS NOTICE IS MAILED, GIVING
REASONS FOR YOUR REQUEST. WE RECEIVE YOUR REQUEST FOR
HEARING YOU WILL BE NOTIFIED OF THE DATE AND TIME OF THE HEARING
AND THIS IMPORTANT INFORMATION.

IF YOU REQUEST FOR HEARING WITHIN THIRTY (30) DAYS, YOUR
INSURANCE COMPANY WILL BE REQUIRED TO PROVIDE COVERAGE UNTIL A
FINAL DECISION IS MADE, PROVIDED ANY PREMIUM DUE OR BECOMING DUE
IN ACCORDANCE WITH YOUR POLICY.

IF THE HEARING OFFICER DETERMINES THAT YOUR
INSURANCE IS UNJUSTIFIED, HE MAY ALLOW THE ACTION. IN
ADDITION, HE MAY ORDER YOUR INSURANCE COMPANY TO PAY SUCH
REASONABLE COUNSEL FEES INCURRED BY YOU FOR REPRESENTATION AT THE
HEARING, AND OTHER EXPENSES, IF APPROPRIATE.

THE HEARING OFFICER, HOWEVER, MAY NOT REVERSE ANY INCIDENTS
RECORDED IN THE MOTOR VEHICLE ADMINISTRATION DRIVING RECORDS
OR ISSUES OF NEGLIGENCE, LIABILITY OR FAULT IN ACCIDENTS.

Z. MARIE LONESOME
INSURANCE DIVISION

ARTICLE 48A, 240AA OF THE ANNOTATED CODE OF MARYLAND, 1979
REPLACEMENT VOLUME.

July 10, 1991

RECEIVED

11 1991

INSURANCE DIVISION

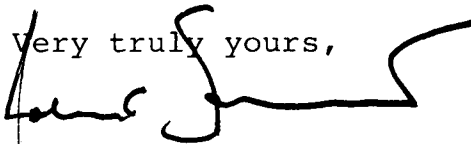
Marie Lonesome
Insurance Division
Maryland Insurance Commissioner
501 St. Paul Place
Baltimore, MD 21202

Re: Robert G. Samet
Case No: 23458
GEICO Policy No. 171-31-62

Dear Ms. Lonesome:

I hereby protest the action of the Insurance Division and formally request a hearing. Although your letter was dated June 6, 1991, it was postmarked within the last thirty days and GEICO has advised us that we have until July 12, 1991 to file this request. Thank you.

Very truly yours,



Robert G. Samet

RGS:jmb

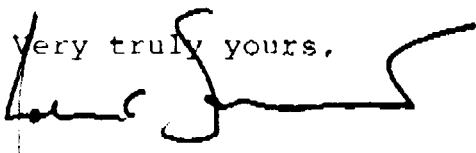
July 10, 1991

Marie Lonesome
Insurance Division
Maryland Insurance Commissioner
501 St. Paul Place
Baltimore, MD 21202

Re: Robert G. Samet
Case No: 23458
GEICO Policy No. 171-31-62

Dear Ms. Lonesome:

I hereby protest the action of the Insurance Division and formally request a hearing. Although your letter was dated June 6, 1991, it was postmarked within the last thirty days and GEICO has advised us that we have until July 12, 1991 to file this request. Thank you.

Very truly yours,


Robert G. Samet

RGS:jmb

ASHCRAFT & GEREL

11300 Rockville Pike
Suite 1002
Rockville, MD 20852
Telephone No. (301) 770-3737

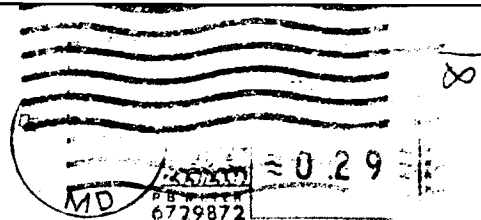
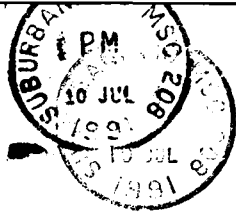
TO: MARIE LONESOME 1-301-333-6650
FROM: ROBERT G. SAMET File No. 23458
DATE: 7-10-91
RE: Request for Hearing

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

COMMENTS:

Please see the enclosed Request for Hearing.

ASHCRAFT & GEREL
ATTORNEYS AT LAW
SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MARYLAND 20852



MARIE LONESOME
INSURANCE COMMISSIONER
INSURANCE DIVISION
501 ST. Paul Place
Baltimore, Md. 21202

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOGLE, JR.
Secretary

JOHN A. DONAHO
Insurance Commissioner



Department of Licensing and Regulation
INSURANCE DIVISION

501 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL 301/333- 6103

A Regulator Helping People

JULY 16, 1991

FILE NO: 20854-6357-29103 P

GOVERNMENT EMPLOYEES INS CO
GEICO PLAZA
WASHINGTON DC 20076-0000

SUBJECT: NOTICE OF REQUEST FOR HEARING AND FINAL DETERMINATION
PURSUANT TO SECTION 240AA

ROBERT G. SAMET
10507 Tanager Lane
POTOMAC MD 20854-6357

POLICY NO. 1713162
TERMINATION DATE: 53091

GENTLEMEN:

PURSUANT TO SECTION 240AA OF ARTICLE 48A, ANNOTATED CODE OF MARYLAND, YOU ARE HEREBY NOTIFIED THAT A HEARING REQUEST HAS BEEN MADE BY YOUR INSURED TO THE ACTION PROPOSED IN YOUR NOTICE AND OUR RECENT FINDING ON HIS/HER PROTEST. THIS HEARING REQUEST STAYS THE PROPOSED ACTION AS STATED IN YOUR NOTICE.

THEREFORE, YOUR COMPANY IS HEREBY DIRECTED TO CONTINUE IN EFFECT ALL INSURANCE COVERAGES OF THE COMPLAINANT'S POLICY REFERRED TO HEREIN PENDING A FINAL DETERMINATION OF THE PROTEST BY THE COMMISSIONER PROVIDED ANY LAWFUL PREMIUM DUE OR BECOMING DUE PRIOR TO SUCH DETERMINATION IS PAID.

VERY TRULY YOURS,

BY: Z. MARIE LONESOME
INSURANCE INVESTIGATOR

CC: ROBERT G. SAMET
10507 Tanager Lane
POTOMAC

MD 20854-6357



OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING
GREEN SPRING STATION
10753 FALLS ROAD
LUTHERVILLE, MARYLAND 21093
(301) 321-3993
FAX 301-321-2040

Government Employees Insurance Co.
GEICO Plaza
Washington, D.C. 20076-0001
ATTN: Machell Hamlin

August 7, 1991
Policy No. 1713162
Case No. 106-7/91
OAH No. 91-DLR-INS-31-1605

NOTICE OF HEARING

A hearing has been requested by Robert G. Samet pursuant to the provisions of Sections 234A, 240AA and 55 of Article 48A, Annotated Code of Maryland (The Insurance Code). The above-captioned protest has been scheduled for a hearing to be held on Wed., October 2, 1991 AT 1:30 p.m. Office of Administrative Hearings, Administrative Law Building, 3rd Floor, 10753 Falls Road Lutherville, Maryland 21093. Please inform this office of any changes in address and/or phone number while this matter is pending.

mlt

Hearing Information Attached

Robert G. Samet
10507 Tanager Lane
Potomac, MD 20854-6357

All cases ~~scheduled for~~ the Maryland Insurance Division for hearing will proceed as scheduled without delay whether or not the parties appear. Where there is absence of a party or witness, a determination and Order on Hearing will be made from testimony of attending witnesses, file documents and information otherwise deemed necessary by the Administrative Law Judge.

Policy coverages will remain in effect until: (1) parties are notified of the Commissioner's determination by written Order issued; or (2) parties are notified that the hearing is canceled: provided ANY LAWFUL PREMIUM DUE OR BECOMING DUE PRIOR TO SUCH DETERMINATION IS PAID.

At the hearing, the Insurer will have the burden of persuasion that its standards are reasonably related to its economic and business purposes, the burden of proof that its action is justified, and in doing so may rely only upon the reasons set forth in its Notice to the Insured. No testimony extraneous to the Notice reasons will be heard. THE ADMINISTRATIVE LAW JUDGE MAY NOT REVERSE OR AMEND INCIDENTS CONTAINED IN MOTOR VEHICLE ADMINISTRATION DRIVING RECORDS NOR CONDUCT AN INDEPENDENT INVESTIGATION INTO ISSUES OF NEGLIGENCE LIABILITY OR FAULT IN ACCIDENTS, BUT MAY ONLY DETERMINE WHETHER THE REASON RELIED UPON BY THE INSURER IS GENUINE.

If the Commissioner finds in the hearing that the proposed action of the insurer is unjustified, he shall disallow the action and may, in addition, order the insurer to pay such reasonable counsel fees incurred by the insured for representation at the time of the hearing, unless otherwise determined by the Administrative Law Judge. /

Please be advised that in the event you choose to engage the services of an attorney to represent you, Maryland law requires that the attorney be licensed to practice law in Maryland, or is specially admitted in the case by the Circuit Court for Baltimore City. (Article 10, Section 7(b) of the Annotated Code of Maryland).

Any party aggrieved with the decision of the Commissioner may appeal that decision to the Circuit Court for Baltimore City. If there is an appeal from the Commissioner's Order, all costs in connection with the making and/or photocopying of the transcript and exhibits must be paid by the party making the Appeal.

Postponements will be granted only for good cause. Requests must be made in writing, received in this office not later than five (5) working days prior to the hearing date and should contain the reason for the request, names of the parties, date of hearing, case number and telephone number for contact between 8:30 a.m. and 4:30 p.m. Please mail a copy of the request to the other parties involved in hearing. Request for postponements should be addressed to the postponement Judge, Office of Administrative Hearings, Administrative Law Building, 10753 Falls Road, Lutherville, Maryland 21093. The postponement judge will make the final decision on postponements and notify all parties.

Licensee Exhibit No. 1

SOUNDEX	HEIGHT	WEIGHT	RACE	SEX	DATE-OF-BIRTH	PAGE
S 530 368 730 650	5 00	100	2	F	08 20 51	1
RES: JANICE RAFFEL SAMET						
10507 Tanager Lane						
POTOMAC M MD 20854						

DRIVING PRIVILEGE STATUS: VALID

LIC-CLASS	ISSUE-DT	EXPIR-DT	ENDORSEMENT	RESTRICTION	SP-RESTRICTION
CLASS D	08/14/87	08/20/91		1	

THE RECORD REFLECTS ENTRIES FOR THE PAST 36 MONTHS

V-DATE	C-DATE	SUMMARY	DESCRIPTION	POINTS
08-14-87			ADDRESS CHANGE	
01-25-80			SOUNDEX CHANGE	
12-14-89	01-31-90	H842983	EXCEEDING MAXIMUM SPEED LIMIT BY 10 MPH	02
12-14-89	01-31-90	H842982	MOTOR VEHICLE OPERATOR NOT RESTRAINED BY SEATBELT	
11-09-89		US DIST COURT	FAILURE TO YIELD RIGHT OF WAY WHEN MAKING A LEFT OR U TURN	

CONTINUED ON NEXT PAGE

SOUNDEX	HEIGHT	WEIGHT	RACE	SEX	DATE-OF-BIRTH	PAGE
S 530 368 730 650	5 00	100	2	F	08 20 51	2
RES: JANICE RAFFEL SAMET						

THE RECORD REFLECTS ENTRIES FOR THE PAST 36 MONTHS

V-DATE	C-DATE	SUMMARY	DESCRIPTION	POINTS
03-11-90	04-04-90	H583459	MOTOR VEHICLE OPERATOR NOT RESTRAINED BY SEATBELT	

RECORD END TOTAL CURRENT POINTS 02

Licensee Exhibit No. 2

INACTIVE

CLAIM (2)

PAGE 1 OF 1

CLAIM NUMBER	INSUREDS NAME	CO	FCC	LOSS DT	LOSS ST
0014436980101067	ROBERT G SAMET	01	05	11/09/89	DC

----- CLAIMANT DATA -----

F	ADJ	S	S	RESERVE	LOSS	EXPENSE
NO SYM S CLAIMANT NAME	CODE	U	A	AMOUNT	PAYMENT	PAYMENT
01 APD C RESERVE RENTAL CAR 5	H524			00	921.67	00.00
02 COL C ROBERT SAMET 2	H524			00	2290.44	00.00
03 ABI C GAY BEATTY 5	H524			00	3200.00	00.00

CLPOST (PF3) CLAIM1 (PF7) CLAIM2 (PF8) EXIT (PF12)
SEL-SUM _ CLCORRI _ ADDL INFO (A) CLAIMANT INFO (C) INJURY (I)
ACTORING TRAN: CLIQI KEY: 0014436980101067

Licensee Exhibit No. 3

CLAIM (2)

PAGE 1 OF 1

CLAIM NUMBER	INSUREDS NAME	CO	FCC	LOSS DT	LOSS ST
0014436980101109	ROBERT G SAMET	01	05	07/26/90	MD

----- CLAIMANT DATA -----

F	ADJ	S	S	RESERVE	LOSS	EXPENSE
NO SYM S CLAIMANT NAME	CODE	U	A	AMOUNT	PAYMENT	PAYMENT
01 COL C ROBERT G. SAMET 2	A711			00	329.15	00.00
02 APD C BERNARD BRILL 5	A711			00	303.47	00.00

CLPOST (PF3) CLAIM1 (PF7) CLAIM2 (PF8) EXIT (PF12)
SEL-SUM _ CLCORRI _ ADDL INFO (A) CLAIMANT INFO (C) INJURY (I)
STORING TRAN: CLIQI KEY: 0014436980101109

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P. O. BOX 932328
SACRAMENTO, CA 94232-3288

Licensee Exhibit No. 4

October 6, 1989

Mr. James D. Hospital, Jr.
Director, Underwriting
GEICO General Insurance Co.
GEICO Plaza, Washington, D.C. 20076-0001

Dear Mr. Hospital:

Thank you for your letter dated September 11, 1989. We appreciate your interest in our publications.

During the past twenty years or so, we have done a lot of work along the lines you suggested regarding the relationship of prior accidents and convictions to subsequent accidents. Enclosed for your reference is a copy of such a table. You will note that, some of the times-as-many values for some of the combinations are not linearly increasing, and in a couple of occasions, they are even smaller than that of the 0-conviction levels. This is due solely to the smaller sample sizes in the cells.

My own interpretation of these data is that the effects of prior accidents and convictions on subsequent accident risk are largely additive---i.e., the combined pattern of convictions and accidents does not seem to predict much variation in subsequent accidents beyond what would be predicted from the two variables considered additively. Seven years ago, we subjected this type of data to a log-linear analysis and found interactions to be negligible compared to the main effects. You may wish to subject the enclosed data to a similar analysis.

The enclosed data contain accident-related convictions (the so-called spurious convictions). However, the concept of spuriousness does not really apply to these data because the criterion elements (80-82 accidents) were obtained during an independent time period.

Thank you again for your interest in our work.

Sincerely,



RAYMOND C. PECK, Chief
Research and Development Section

Attachment

TOTAL ACCIDENTS, 1980-82, BY TOTAL ACCIDENTS, 1977-79, AND TOTAL CONVICTIONS, 1977-79

Total Accidents 1977-79	Total Convictions 1977-79	TOTAL ACCIDENTS, 1980-82							# ACC	# DRIVERS	AV. ACC
		0	1	2	3	4	5	6+			
0	0	96,471	9,631	864	101	7	2	1	11,709	107,077	0.11
	1	18,797	2,727	282	38	2			3,407	21,844	0.16
	2	6,167	1,113	131	20	4		1	1,457	7,436	0.20
	3	2,379	475	64	13	1	1		651	2,933	0.22
	4	1,056	246	45	1	2			347	1,350	0.26
	5	572	137	22	5	1			200	737	0.27
	6	272	69	16	1				104	356	0.29
	7	163	42	4					50	209	0.24
	8	109	36	7	1				53	153	0.35
	9	50	21	3					27	74	0.36
	10+	120	43	7	1	1			64	172	0.37
	Subtotal	126,156	14,540	1,445	179	18	3	2	18,068	142,343	0.13
1	0	7,475	1,101	137	9	3	1		1,419	8,726	0.16
	1	3,785	665	90	11	1			882	4,552	0.19
	2	1,607	354	54	6	3			492	2,024	0.24
	3	829	202	28	11	1			295	1,071	0.28
	4	422	115	27	2	1			179	567	0.32
	5	240	73	17	3	1	1		125	335	0.37
	6	131	62	12					86	205	0.42
	7	63	21	10	1				44	115	0.38

92

0	70	22	9	1	1		47	103	0.46
9	28	15	2	1			22	46	0.48
10+	65	30	11	1			55	107	0.51

Subtotal	14,735	2,660	397	46	11	2	3,646	17,851	0.20
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2	0	631	107	19	3	1	158	761	0.21
	1	472	106	16		1	142	595	0.24
	2	271	64	14	4		104	353	0.29
	3	162	45	5		1	59	213	0.28
	4	112	42	9	1		63	164	0.38
	5	67	26	6			38	99	0.38
	6	57	23	4	2	1	41	87	0.47
	7	25	9	1	1		14	36	0.39
	8	16	3	3			9	22	0.41
	9	17	7	5			17	29	0.59
	10+	37	13	2	1		20	53	0.38

Subtotal	1,867	445	84	12	4		665	2,412	0.28
-----------------	--------------	------------	-----------	-----------	----------	--	------------	--------------	-------------

3	0	65	10	3	1		19	79	0.24
	1	48	15	2			19	65	0.29
	2	38	10	2	1		17	51	0.33
	3	21	10	1			12	32	0.38
	4	25	4	1			6	30	0.20
	5	17	5	1			7	23	0.30
	6	17	5	2			9	24	0.30
	7	10	5	2			9	17	0.53
	8	3	2	3			8	8	1.00
	9	3		1			8	5	1.60
	10+	11	8	6	1		23	26	0.88

Subtotal	258	74	24	3		1	137	360	0.38
-----------------	------------	-----------	-----------	----------	--	----------	------------	------------	-------------

4+	0	9	1					1	10	0.10	
	1	5	1					1	6	0.17	
	2	4	2					1	6	0.17	
	3	5	4		1			7	10	0.70	
	4	3	4			1		8	8	1.00	
	5	3	1					1	4	0.25	
	6	5						0	5	0.00	
	7	1	2					2	3	0.67	
	8	1	1					1	2	0.50	
	9	2		1				2	3	0.67	
	10+	3	1		3			1	7	0.14	
	Subtotal	40	17	1	4	1		35	63	0.56	
		41						25	64		
Total		143,056	17,736	1,951	244	34	5	3	22,549	163,029	0.14
									<i>22539</i>	<i>163030</i>	

The California Department of Motor Vehicles compiled data which demonstrates that groups of drivers who have prior incidents, that is, various combinations of accidents and/or convictions, have a higher rate of subsequent accident involvement than those that do not. This conclusion has been analyzed and qualified by Dr Charles Rohde, Professor and Chairman, Department of Biostatistics at John Hopkins University.

From the California data, Dr. Rohde has calculated an odds ratio for various prior incident combinations. This odds ratio is the ratio of the expected ensuing accident frequency for drivers with prior incidents to the expected ensuing accident frequency for drivers with 0 prior incidents. For example, an odds ratio of 2 means that these drivers are twice as likely to have one or more accidents in the next three years as compared to drivers without previous accidents or convictions in the prior three year period.

Because this data is only a sample of the total population, the mean accident rates shown for the various prior accident/conviction groups are only estimates of the "true" accident rates. The "true" accident rate may be higher or lower than the accident rates shown in the data. However, by using generally accepted statistical methods, we can develop a 95% confidence interval around each mean accident rate. This means that, statistically, we can say that we are 95% confident that the "true" accident rate will fall between the minimum and maximum likely accident rates. Stated another way, if this study were done many times over we would expect the mean accident rate to fall between the minimum and maximum likely accident rates 95% of the time.

Thus, where the odds ratio is 2.370 (two accident(s) and one conviction(s) within a prior three year period), 95% of the time the real value of the accident rate will be between the minimum times as likely factor (lower bound) of 1.942 and the maximum times as likely factor (upper bound) of 2.893. Thus, this group of drivers is 1.942 to 2.893 times as likely to have an accident in a subsequent three year period in comparison to those who had zero incidents in the prior three years. These factors are displayed on the following page:

NUMBER OF INCIDENTS IN FIRST THREE YEARS		MINIMUM TIMES-AS-LIKELY FACTOR OF HAVING AN ACCIDENT IN SUBSEQUENT THREE YEARS IN COMPARISON TO THOSE WITH 0 ACCIDENTS AND 0 CONVICTIONS IN <u>FIRST THREE YEARS</u>	MAXIMUM TIMES-AS-LIKELY FACTOR OF HAVING AN ACCIDENT IN SUBSEQUENT THREE YEARS IN COMPARISON TO THOSE WITH 0 ACCIDENTS AND 0 CONVICTIONS IN <u>FIRST THREE YEARS</u>
<u>ACCIDENTS</u>	<u>CONVICTIONS</u>		
0	0	1.000*	1.000*
0	1	1.412	1.540
0	2	1.756	1.995
0	3	1.927	2.328
0	4	2.222	2.886
1	0	1.429	1.621
1	1	1.701	1.997
1	2	2.115	2.634
1	3	2.298	3.068
1	4	2.585	3.778
2	0	1.550	2.266
<u>2</u>	<u>1</u>	<u>1.942</u>	<u>2.893</u>
2	2	2.148	3.526
2	3	2.089	3.925
2	4	3.038	5.871

*Defined to equal 1.000

The above demonstrates that, as a group, drivers having prior accidents and/or convictions during one three year period, in comparison to those with none, are more likely to have accident(s) in the subsequent three year period. In general, as the number of prior incidents increases, the minimum and maximum times-as-likely factors also increase.

As a group, drivers with prior accidents and/or convictions develop a higher subsequent accident frequency than drivers with no prior accidents and/or convictions. GEICO does not have a surcharge in its rating plan that applies for a driver with two accident(s) and one conviction(s) within the last three years. Therefore, GEICO would not be collecting sufficient premium to compensate for the increased exposure to loss. That is, GEICO would be responsible to settle 94% to 189.3% additional accident claims without receiving compensating revenues.

As stated above, drivers with two accident(s) and one conviction(s) within a prior three year period would be charged the same rate as drivers with 0 prior accidents and/or convictions. If we were to continue to insure this group of drivers it would have a direct and substantial impact upon our losses and loss expenses. The expected accident frequency for this group of drivers is between 1.697 and 2.421 times that of the drivers we voluntarily insure. Applying this to our actual 1990 results for the State of Maryland, our loss ratio would increase from 71.9% to a minimum of 122.0% and a maximum of 174.0%. Our loss adjustment expense ratio would increase from 9.4% to a minimum of 15.9% and a maximum of 22.7%. Adding in a general expense ratio of 11.1%, our underwriting ratio would increase from 92.4% to a minimum of 149.0% and a maximum of 207.8%. Thus, we would pay out between \$1.49 and \$2.08 for every dollar of premium collected.

GEICO utilizes an underwriting standard that provides for termination of any one driver who has three or more at-fault accidents and/or convictions within the most recent 36 month period. This is in line with our business and economic purpose, that is, to provide automobile insurance to preferred drivers while making a reasonable profit.

- Notes: A) A technical explanation of the statistical approach utilized and its validation, prepared by Dr. Charles Rohde, appears as Exhibit A.
B) Calculations for the Economic Impact Statement appear as Exhibit B.

Definitions and Terms

A parameter, in statistical terms is a characteristic of a population.

e.g. the proportion of drivers who have an accident in a given year
the proportion of drivers who are over 25 years of age

Data are used to estimate parameters and statistical methods, based on probability, are used to quantify the uncertainty in the estimates.

One of the most important methods of quantifying the uncertainty in an estimate of a parameter is to provide a confidence interval for the parameter.

Confidence intervals may be interpreted as follows:

values of the parameter in the confidence interval are consistent with (supported by) the observed data

OR

values of the parameter not in the confidence interval are not consistent with (not supported by) the observed data

Confidence intervals have an associated confidence level (usually 95%). The interpretation of the confidence level is that the interval is produced by a method that gives correct answers 95% of the time.

An important parameter is the odds ratio defined as follows.

$$\frac{P_2(E)/[1-P_2(E)]}{P_1(E)/[1-P_1(E)]}$$

where $P_1(E)$ refers to the probability of E in group 1 and $P_2(E)$ refers to the probability of E in group 2. If the odds ratio is 1 then the probabilities in the two groups are equal and conversely. If the odds ratio exceeds 1 then the probabilities are different with group 2 having a higher probability than group 1. From observed data we can calculate the 95% confidence interval for the odds ratio. If this interval is entirely above 1 then there is evidence that group 2 has a higher probability of the event than group 1. Thus if we find that the 95% confidence interval for the odds ratio is 1.5 to 2.7 then the value 1 is not in the interval and we conclude that there is evidence that group 2 has a significantly higher probability of the event E than does group 1.

**Odds Ratios and Upper and Lower 95% Confidence Bounds
based on the California Data**

PC stands for prior convictions
 PA stands for prior accidents
 LB is the lower confidence bound
 UB is the upper confidence bound
 OR is the odds ratio

PA	PC	0	1	2	3	4
0	LB		1.412	1.756	1.927	2.222
	OR		1.474	1.872	2.118	2.532
	UB		1.540	1.998	2.328	2.886
1	LB	1.429	1.701	2.115	2.290	2.585
	OR	1.522	1.843	2.360	2.658	3.125
	UB	1.621	1.997	2.634	3.068	3.778
2	LB	1.550	1.942	2.148	2.089	3.038
	OR	1.874	2.370	2.752	2.866	4.223
	UB	2.266	2.893	3.526	3.928	5.871

Note that all the odds ratios are significantly greater than one indicating that the odds of having an accident are higher if a driver has had prior accidents or convictions.

Odds Ratio - Confidence Interval

The standard statistical method for obtaining confidence intervals for the odds ratio is based on the fact that the approximate (asymptotic) standard error of the log odds ratio is given by:

$$s = \sqrt{\frac{1}{n_2(\hat{p}_2)(1-\hat{p}_2)} + \frac{1}{n_1(\hat{p}_1)(1-\hat{p}_1)}}$$

where \hat{p}_2 = estimated proportion in group 2
 \hat{p}_1 = estimated proportion in group 1
 n_2 = sample size in group 2
 n_1 = sample size in group 1

The 95% confidence interval for the log odds ratio is therefore:

$$\log \left[\frac{\hat{p}_2 / (1-\hat{p}_2)}{\hat{p}_1 / (1-\hat{p}_1)} \right] \pm 1.96 s \text{ or } e^l \text{ to } e^u$$

(log = natural logarithm)

The 95% confidence interval for the odds ratio is then taken to be:

$$e^l \text{ to } e^u \quad (e = 2.71828...)$$

and represents an interval of odds ratio values consistent with the data.

GEICO - MARYLAND AUTO - 1990 ESTIMATED EFFECT
OF RETAINING NON-RENEWED & CANCELLED POLICIES

	Actual Und Results	Results on Non-Ren. & Canc. Policies				Remarks		
		<u>Minimum</u>	<u>Odds</u>	<u>Maximum</u>		<u>Minimum</u>	<u>Odds</u>	<u>Maximum</u>
LOSS RATIO	71.9%	122.0%	145.8%	174.0%	71.9% x	(1.697)	(2.028)	(2.421)
LAE RATIO	9.4%	15.9%	19.0%	22.7%	9.4% x	(1.697)	(2.028)	(2.421)
GE RATIO	11.1%	11.1%	11.1%	11.1%				
UND RATIO	92.4%	149.0%	175.9%	207.8%				

Notes: Expected accident frequency for drivers with 2 accidents and 1 conviction within three years equals a minimum of 1.697 to a maximum of 2.421 times the frequency of drivers that we voluntarily insure.

ESTIMATED RELATIVE ACCIDENT FREQUENCY OF DRIVERS WITH TWO ACCIDENT AND ONE CONVICTION IN THREE YEARS VS. DRIVERS THAT WE VOLUNTARILY INSURE

MIN LOWER BOUND

Incidents 1st 3 years Acc Conv		Number of Drivers	Times-as-Many Factor (subsequent 3 yrs)	Weighted Factor
0	0	107,077	1.000	
0	1	21,844	1.412	
0	2	7,436	1.756	
1	0	8,726	1.429	
1	1	4,552	1.701	1.144
2	1	595	1.942	1.942
			RELATIVE FREQUENCY	1.697

ODDS RATIO

Incidents 1st 3 years Acc Conv		Number of Drivers	Times-as-Many Factor (subsequent 3 yrs)	Weighted Factor
0	0	107,077	1.000	
0	1	21,844	1.474	
0	2	7,436	1.872	
1	0	8,726	1.522	
1	1	4,552	1.843	1.169
2	1		2.370	2.370
			RELATIVE FREQUENCY	2.022

MAX UPPER BOUND

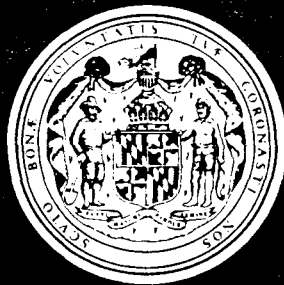
Incidents 1st 3 years Acc Conv		Number of Drivers	Times-as-Many Factor (subsequent 3 yrs)	Weighted Factor
0	0	107,077	1.000	
0	1	21,844	1.540	
0	2	7,436	1.995	
1	0	8,726	1.621	
1	1	4,552	1.997	1.195
2	1		2.893	2.893
			RELATIVE FREQUENCY	2.421

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER
Governor

WILLIAM A. FOGLE, JR.
Secretary

JOHN A. DONAHO
Insurance Commissioner



Department of Licensing and Regulation
INSURANCE DIVISION

501 ST. PAUL PLAZA
BALTIMORE, MARYLAND 21202-2

DIRECT DIAL (301) 333- 4002

A Regulator Helping People

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 26, 1991

Jonathan S. Beiser, Esquire
Ashcraft & Gerel
Suite 1002
One Central Plaza
11300 Rockville Pike
Rockville, MD 20852

Dear Mr. Beiser:

In accordance with the Maryland Rules of Procedure, Chapter 1100, Subtitle B, entitled "Administrative Agencies - Appeal From", Rules B2.c and d and B7.a, and Section 40 of Article 48A, entitled "Appeals From Commissioner", this will acknowledge receipt of your order for Appeal in the matter of:

**Robert G. Samet vs.
Insurance Commissioner of the State of Maryland
(Case No. 106-7/91)**

This written notice of the Order of Appeal is being given to every party in this proceeding.

Please arrange to have a Reporting Service write to me or send me a copy of your authorizing letter to them, so that I can forward the original hearing tape recording and exhibits to the Reporting Service for transcribing, photocopying, and binding. The original exhibits, transcription, tape, and one transcribed copy will be returned to this office and one copy will be forwarded to the Appellant by the Reporting Service. You will receive an invoice for transcribing from the Reporting Service.

If the Reporting Service is unable transcribe your record within the time limitation, you may wish to request an extension of time for filing the record from the Circuit Court for Baltimore City.

Very truly yours,

Wenda K. Gordon
Administrative Officer

cc: Meg Rosthal, Assistant Attorney General
Machell Hamlin, Government Employees Ins. Co.

OUTSIDE BALTIMORE METRO AREA, TOLL FREE 1-800-492-6116
TTY FOR DEAF, BALTIMORE METRO AREA 383-7555, D.C. METRO AREA 565-0451
FAX: (301) 333-6650

ROBERT G. SAMET
10507 Tanager Lane
Potomac, MD 20854-6357

* IN THE CIRCUIT COURT
* FOR BALTIMORE CITY
* Case No.

APPELLANT

VS.

INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, Maryland 21202

* Appeal of the Insurance
* Commissioner's decision,
* Department of Licensing
* and Regulation.
* Upon the Complaint of
* Robert G. Samet

APPELLEE

Case No. 106-7/91

* * * * *

CERTIFICATE OF COMPLIANCE
WITH MARYLAND RULE B2.c and d

I HEREBY CERTIFY that on this 26th day of December, 1991,
pursuant to Maryland Rule B2.c and d, I have given written notice
to the following party to the proceeding styled:

**ROBERT G. SAMET VS.
INSURANCE COMMISSIONER OF THE STATE OF MARYLAND
(Case No. 106-7/91)**

scheduled before the Insurance Division of the Maryland Department
of Licensing and Regulation, that an Order for Appeal has been
filed in the Circuit Court of Baltimore City by:

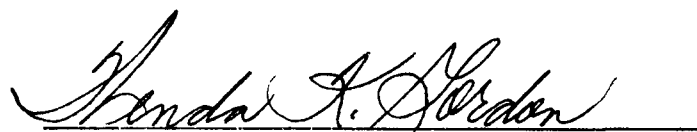
**JONATHAN S. BEISER
ATTORNEY FOR APPELLANT**

from the decision of the Insurance Commissioner of the State of
Maryland, on November 25, 1991.

Meg Rosthal, Esquire
Assistant Attorney General

Jonathan S. Beiser, Esquire
Ashcraft & Gerel
Suite 1002
One Central Plaza
11300 Rockville Pike
Rockville, MD 20852

Machell Hamlin
Government Employees
Insurance Company
GEICO Plaza
Washington, DC 20076-0001


Wenda K. Gordon
Administrative Officer



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Jonathan S. Beiser, Esquire Ashcraft & Gerel Suite 1002 One Central Plaza 11300 Rockville Pike Rockville, MD 20852	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990



Certified Mail Receipt

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Machell Hamlin Street Government Employees Insurance Company GEICO Plaza P.O. Washington, DC 20076-0001	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Address of Delivery	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, June 1990

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
Machell Hamlin
Government Employees
Insurance Company
GEICO Plaza
Washington, DC 20076-0001

4. Article Number
P623 506 902

Type of Service:
 Registered
 Certified
 Express Mail
 Insured
 COD
 Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature Addressed to: *[Signature]*

6. Signature Agent: *[Signature]*

7. Date of Delivery: 12-31-91

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1989-239-815 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
Jonathan S. Beiser, Esquire
Ashcraft & Gerel
Suite 1002
One Central Plaza
11300 Rockville Pike
Rockville, MD 20852

4. Article Number
P623 506 901

Type of Service:
 Registered
 Certified
 Express Mail
 Insured
 COD
 Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature Addressed to: *[Signature]*

6. Signature Agent: *[Signature]*

7. Date of Delivery: 12-30-91

PS Form 3811, Apr. 1989 * U.S.G.P.O. 1989-239-815 DOMESTIC RETURN RECEIPT

ROBERT G. SAMET
10507 Tanager Lane
Potomac, MD 20854-6357

APPELLANT

VS.

INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, Maryland 21202

APPELLEE

* IN THE CIRCUIT COURT
* FOR BALTIMORE CITY
* CASE NO. 91354017/CL141926
* APPEAL OF THE INSURANCE
* COMMISSIONER'S DECISION,
* DEPARTMENT OF LICENSING
* AND REGULATION - UPON THE
* COMPLAINT OF:
* Robert G. Samet
*
* Case No. 106-7/91

* * * * *

CERTIFICATE OF TRANSCRIPT TO RECORD

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I, WENDA K. GORDON, hereby certify that the following is a true record taken from the proceedings of the Insurance Division, Department of Licensing and Regulation, in the administrative proceedings styled ROBERT G. SAMET VS. INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, CASE NO. 106-7/91.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Insurance Division, Department of Licensing and Regulation, this 29th day of January, 1992.

Meg Rosthal, Esquire
Assistant Attorney General

Jonathan S. Beiser, Esquire
Ashcraft & Gerel
Suite 1002
One Central Plaza
11300 Rockville Pike
Rockville, MD 20850

Machell Hamlin
Government Employees Ins. Co.
GEICO Plaza
Washington, DC 20076-0001



Wenda K. Gordon

Wenda K. Gordon
Administrative Officer

ROBERT G. SAMET

Appellant

v.

INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, et al.

Appellee

Case No. 91354017/CL141926

J
J

APPELLANT'S OPPOSITION TO APPELLEE'S MOTION TO STRIKE DEMAND FOR JURY TRIAL

COMES NOW the Appellant, Robert G. Samet, by and through his attorney, Jonathan S. Beiser, and opposes Appellees' Motions to Strike Demand for Jury Trial and as grounds therefor states:

1. Maryland Rule 2-325(a) states the following:

(a) Demand -- Any party may elect a trial by jury of any issue triable of right by a jury by filing a Demand therefore in writing as a separate paper or separately titled at the conclusion of a pleading immediately preceding any required Certificate of Service.

2. Maryland Rule B11 provides that "[a] party entitled by law to trial by jury may elect a jury trial;"

3. Appellee construes the silence of a statute to infer that there is no Constitutional right to a trial by jury in administrative proceedings;

4. Md. Ann. Code Art. 48A Sec. 40 (1957) provides for a hearing de novo in cases appealed from a decision of the Insurance Commissioner;

5. Unless otherwise stated there is always the presumption that one has a Constitutional right to a trial by jury. (Md. Constitution Code Ann. Art. 23);

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

2-783-6400

SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304

703-751-7400

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852

301-770-3737

SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785

301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

6. The statutory right to a hearing de novo in appeals from decisions of the Insurance Commissioner coupled with the Constitutional right to a trial by jury clearly supports Appellant's demand for a jury trial in this case;

7. Appellee, Insurance Commissioner of the State of Maryland's, reliance on Allnut v. Comptroller, 61 Md. App. 517 (1985) and Branch v. Indemnity Insurance Co., 156 Md. 482 (1929), in support of their argument is misplaced. In Allnut v. Comptroller, 61 Md. App. 517, the Court ruled that there was no right to a jury trial in the Tax Court because the Tax Court was not a Court of Law, but an administrative agency. In the instant case, we are dealing with an Appeal to a Court of Law;

8. The Branch v. Indemnity Insurance Company case relied upon by the aforementioned Appellee involved the Workers' Compensation law, which grants a jury trial on appeals from decision of the Workers' Compensation Commission, and it clearly does not stand for the proposition that a statute which grants a de novo Appeal, but is silent on the right to a jury trial, impliedly denies that right. The Constitutional right to a trial by jury is so fundamental that an intention by the Legislature to deny the same should not be inferred from mere silence. This Court need not decide whether the Legislature had the power to deny a jury trial in this instance. The sole issue is whether silence should be construed to deny a right of fundamental importance, where the very statute which provides for the Appeal

LAW OFFICES
ASHCRAFT & GEREL

SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

2-783-6400

SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304

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ROCKVILLE, MD 20852

301-770-3737

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METRO 400 BUILDING
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301-459-8400

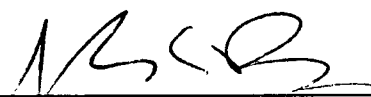
SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

clearly contemplates a full de novo trial on the facts of the case;

WHEREFORE, Appellant, Robert G. Samet, respectfully requests that this Court deny Appellee's Motion to Strike the Demand for Jury Trial.

ASHCRAFT & GEREL



Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
301/770-3737
Attorney for Appellant

STATEMENT OF GROUNDS AND AUTHORITIES

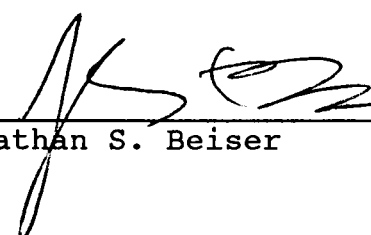
Maryland Rule 2-325(a).
Maryland Rule B11.
Md. Constitution Code Ann. Art. 23.
Branch v. Indemnity Insurance Co., 156 Md. 482 (1929)
Allnut v. Comptroller, 61 Md. App. 517 (1985).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Opposition to Motion to Strike Demand for Jury Trial was mailed, postage prepaid this 14th day of January, 1992 to:

Randi F. Reichel, Esquire
Assistant Attorney General
501 St. Paul Place, 14th. Flr.
Baltimore, MD 21202-2272

Eugene A. Seidel, Esquire
334 St. Paul Place
Baltimore, MD 21202



Jonathan S. Beiser

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
2-783-6400
SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304
703-751-7400
SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737
SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785
301-459-8400
SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
301-539-1122

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

ROBERT G. SAMET

Appellant

v.

INSURANCE COMMISSIONER OF THE
STATE OF MARYLAND, et al.

Appellee

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:
:
:
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:
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:
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Case No. 91354017/CL141926

ORDER

UPON CONSIDERATION of the Opposition to Strike Demand for
Jury Trial filed herein by Appellant, Robert G. Samet, it is this
_____ day of _____, 1992, by the Circuit Court for
Baltimore City,

ORDERED, that the Motion to Strike Demand for Jury Trial is
DENIED.

Judge

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

2-783-6400

SUITE 220
4660 KENMORE AVENUE
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SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

FILED

JAN 16 1992

ROBERT G. SAMET,

*

IN THE

Appellant

*

CIRCUIT COURT ~~CIRCUIT COURT FOR~~
BALTIMORE CITY.

v.

*

FOR

INSURANCE COMMISSIONER OF
THE STATE OF MARYLAND, et al.,

*

BALTIMORE CITY

*

CASE NO: 91354017/
CL141926

Appellees

* * * * *

ANSWER OF THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND

Appellee, John A. Donaho, Insurance Commissioner of the State of Maryland, by J. Joseph Curran, Jr. Attorney General of Maryland, and Randi F. Reichel, Assistant Attorney General, his attorneys, answers the Petition filed on behalf of Robert G. Samet, Esquire, as follows:

- 1. Appellee denies the allegations of Paragraph 1 of the Petition.
- 2. Appellee denies the allegations of Paragraph 2 of the Petition.
- 3. Appellee denies the allegations of Paragraph 3 of the Petition.
- 4. Appellee denies the allegations of Paragraph 4 of the Petition.

WHEREFORE, Appellee, the Insurance Commissioner of the State of Maryland respectfully requests that this Honorable Court dismiss the above appeal, with prejudice.

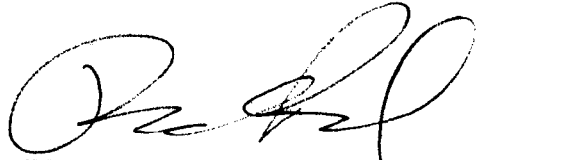
J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND



Randi F. Reichel
Assistant Attorney General
501 St. Paul Place 14th Floor
Baltimore, Maryland 21202
(410) 333-4063

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ^{14th} day of January, 1992, a copy of the foregoing Answer of the Insurance Commissioner of the State of Maryland was mailed, postage prepaid to Jonathan S. Beiser, Esquire, 11300 Rockville Pike, Suite 1002, Rockville, Maryland 20852, and to Eugene A. Seidel, Esquire, 334 St. Paul Place, Baltimore, Maryland 21202.



Randi F. Reichel
Assistant Attorney General

ROBERT G. SAMET

Appellant

vs.

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND, et al.

Appellees

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY

Case No.: 91354017/
CL141926

* * * * *

MOTION TO STRIKE DEMAND FOR JURY TRIAL

Appellee, GEICO, by its attorney, Eugene A. Seidel, P. A. and Eugene A. Seidel, Esquire, moves, pursuant to Maryland Rule 2-322(e), to strike the Demand for Jury Trial filed by the Appellant and in support thereof states as follows:

1. Maryland Rules of Procedures, Rule B11 provides as follows:

A party entitled by law to trial by jury may elect a jury trial.

2. Maryland Rule 2-325(a) provides as follows:

(a) Demand. -- Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service. (emphasis supplied).

3. That the right to appeal a decision of the Insurance Commissioner as decided by an Administrative Law Judge has its roots in the Maryland Annotated Code, Article 48A Section 40 and Section 240AA(h) entitled Appeal.

4. Neither Article 48A Section 40 or 240AA grants unto the Appellant the right to a jury trial in an administrative appeal of a decision of the Insurance Commissioner or Administrative Law Judge.

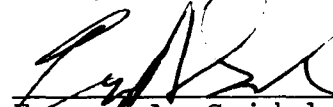
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5. There exists no common law right to a jury trial and, as stated above, no statutory right as well.

WHEREFORE, GEICO respectfully requests this Honorable Court strike the Demand for Jury Trial submitted herein by Appellant.

Respectfully submitted,


Eugene A. Seidel, P.A.


Eugene A. Seidel, Esquire
334 St. Paul Place
Baltimore, Maryland 21202
(410) 333-4063
Attorney for GEICO

STATEMENT OF POINTS AND AUTHORITIES

Maryland Rule 2-322(e)
Maryland Rule 2-325(a)
Maryland Rule B11 Article 48A Sections 40 and 240AA

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of January, 1992, I mailed a copy of the foregoing Motion to Strike Demand for Jury Trial by first class mail, postage prepaid, to counsel for the Appellant, Jonathan S. Beiser, Esquire, c/o Ashcraft & Gerel, Suite 1001, One Central Plaza, 11300 Rockville, Pike, Rockville, Maryland 20852 and to Counsel for the Appellee, Randi Reichel, Esq., Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.


Eugene A. Seidel, Esq.

ROBERT G. SAMET

Appellant

vs.

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND, et al.

Appellees

IN THE
*
CIRCUIT COURT
*
FILED
*
FOR
*
JAN BALTIMORE CITY
*
CIRCUIT CASE No.: 91354017/
BALTIMORE CITY FOR CL141926
*

* * * * *

RESPONSE TO APPELLANT'S PETITION FOR APPEAL

Government Employees Insurance Company, hereinafter referred to as GEICO, by its attorney, Eugene A. Seidel, P.A. and Eugene A. Seidel, Esquire, answers the Petition For Appeal filed by the Appellant, Robert G. Samet, as follows:

1. GEICO denies all allegations contained in Paragraphs 1-4 of the Petition For Appeal.


WHEREFORE, having fully answered Appellant's Petition For Appeal, GEICO respectfully requests that this Honorable Court:

(1) Affirm the Order on Hearing of the Insurance Commissioner dated November 25, 1991 and

(2) Assess all costs related to this Appeal against the Appellant.

Respectfully Submitted,


Eugene A. Seidel, P.A.

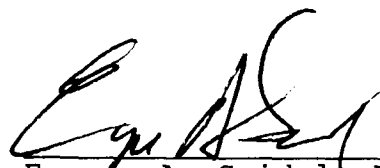

Eugene A. Seidel, Esq.
334 St. Paul Place
Baltimore, Maryland 21202
539-1230
Attorney for GEICO

5

2

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of January, 1992, I mailed a copy of the foregoing Response to Appellant's Petition for Appeal by first class mail, postage prepaid, to counsel for the Appellant, Jonathan S. Beiser, Esquire, c/o Ashcraft & Gerel, Suite 1001, One Central Plaza, 11300 Rockville, Pike, Rockville, Maryland 20852 and to Counsel for the Appellee, Randi Reichel, Esq., Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.



Eugene A. Seidel, Esq.

FILED

JAN 9 1972

ROBERT G. SAMET,

Appellant

v.

INSURANCE COMMISSIONER OF
THE STATE OF MARYLAND, et al.,

Appellees

* * * * *

COURT FOR *

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

CASE NO: 91354017/
CL141926

MOTION TO STRIKE DEMAND FOR JURY TRIAL

Appellee, John A. Donaho, Insurance Commissioner of the State of Maryland, by J. Joseph Curran, Jr., Attorney General of Maryland and Randi F. Reichel, Assistant Attorney General, his attorneys, moves, pursuant to Maryland Rule 2-322(e), to strike the demand for jury trial filed by Appellant and in support thereof states as follows:

1. Maryland Rule 2-325(a) provides as follows:

(a) Demand. -- Any party may elect a trial by jury of any issue triable of right by a jury by filing a demand therefor in writing either as a separate paper or separately titled at the conclusion of a pleading and immediately preceding any required certificate of service. (emphasis supplied).

2. Maryland Rule B11 provides that "(a) party entitled by law to trial by jury may elect a jury trial."

3. The constitutional guaranty of trial by jury in civil matters (Md. Const., Art. 23) is determined by the historical test of its use at the time the Constitution was adopted. There is no right to trial by jury in administrative proceedings created by statutes that were unknown at common law.


4. The statutory scheme which created the Office of the Insurance Commissioner, and which provides for an appeal from an

Order of the Commissioner, was unknown at common law and the statute itself confers upon the Appellant no right to a jury trial.

WHEREFORE, the Insurance Commissioner of the State of Maryland respectfully requests this Court to strike the Demand for Jury Trial submitted herein by Appellant.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF MARYLAND



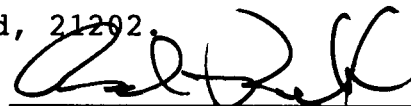
Randi F. Reichel
Assistant Attorney General
501 St. Paul Place, 14th Floor
Baltimore, Maryland 21202
(410) 333-4063

STATEMENT OF GROUNDS AND AUTHORITIES

Maryland Rule 2-322(e)
Maryland Rule 2-325(a)
Maryland Rule B11
Branch v. Indemnity Insurance Company, 156 Md. 482, 487-88 (1929)
Allnut v. Comptroller, 61 Md. App. 517, 526 (1985)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 1992, a copy of the foregoing Motion to Strike Demand for Jury Trial was mailed, postage prepaid to Jonathan S. Beiser, Esquire, Ashcraft & Gerel, Suite 1002 One Central Plaza, 11300 Rockville Pike, Rockville, Maryland 20852, and to Eugene A. Seidel, Esquire, 334 St. Paul Place, Baltimore, Maryland, 21202.



Randi F. Reichel
Assistant Attorney General

ROBERT G. SAMET,

Appellant

v.

INSURANCE COMMISSIONER OF
THE STATE OF MARYLAND, et al.,

Appellees

*
*
*
*
*

IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
CASE NO: 91354017/
CL141926

* * * * *

ORDER

Upon consideration of the Motion to Strike Demand for Jury Trial filed herein by Appellee, the Insurance Commissioner of the State of Maryland, it is this day of , 1992, by the Circuit Court for Baltimore City,

ORDERED that the Motion to Strike Demand for Jury Trial is GRANTED.

JUDGE

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

FILED

DEC 20 1991

**CIRCUIT COURT FOR
BALTIMORE CITY**

Robert G. Samet
10507 Tanager Lane
Potomac, MD 20854-6357

Complainant/Appellant

Vs.

Case No.: _____

91354017

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, MD 21202-2272

Appellee

and

GOVERNMENT EMPLOYEES
INSURANCE COMPANY
GEICO Plaza
Washington, DC 20076-0001

Appellee

*Cd 11/12/20/91 2027023 A ****
#0913540
#0000017
CIVIL \$80.00
LIBRA \$5.00
**TTL \$85.00
CHECK \$85.00
CHNG \$0.00

ORDER OF APPEAL

Mr. Clerk:

Please enter an Appeal on behalf of Robert G. Samet,
Complainant/Appellant, from an Order of the Insurance Commissioner
dated November 25, 1991 to the Circuit Court for Baltimore City,
Maryland.

ASHCRAFT & GEREL

JSB
Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
(301) 770-3737

- LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036
783-6400
- SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304
703-751-7400
- SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737
- SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785
301-459-8400
- SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
301-539-1122

*Copy to
Judge Neal*

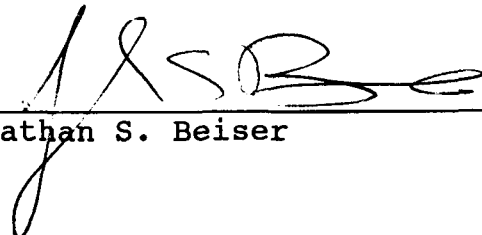
CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that I have this day served a copy of the foregoing Order of Appeal by placing a copy of same in the U.S. Mail, postage prepaid, and addressed as follows:

John A. Donaho
Insurance Commissioner
Department of Licensing and Regulation
Insurance Division
501 St. Paul Place
Baltimore, MD 21202-2272

Government Employees Ins. Co.
Geico Plaza
Washington, DC 20076

This 20th day of December, 1991.


Jonathan S. Beiser

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

703-6400
SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304

703-751-7400

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852

301-770-3797

SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785

301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

Robert G. Samet
10507 Tanager Lane
Potomac, MD 20854-6357

Complainant/Appellant

Vs.

Case No.: _____

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, MD 21202-2272

Appellee

and

GOVERNMENT EMPLOYEES
INSURANCE COMPANY
GEICO Plaza
Washington, DC 20076-0001

Appellee

PETITION OF APPEAL

The Complainant/Appellant, Robert G. Samet, hereby appeals from the action of the Department of Licensing and Regulation, Insurance Division and the Insurance Commissioner on November 25, 1991 on the grounds that:

1. The Insurance Commissioner erroneously found that Janice R. Samet had accumulated three losses or convictions within the last 36 months, and, therefore, erroneously upheld Government Employees Insurance Company's action in seeking to compel exclusion of Janice R. Samet from the automobile insurance policy of Appellant under threat of termination of coverage.

2. The Insurance Commissioner totally ignored evidence that GEICO had assigned fault to Janice R. Samet for an accident without any facts to support the same.

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

783-6400
SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304
703-751-7400

SUITE 1002
ONE CENTRAL PLAZA
11300 ROCKVILLE PIKE
ROCKVILLE, MD 20852
301-770-3737

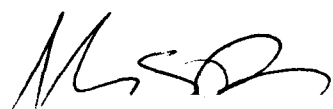
SUITE 101
METRO 400 BUILDING
LANDOVER, MD 20785
301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202
301-539-1122

3. The Insurance Commissioner considered improper evidence in determining that GEICO's underwriting standards are reasonable.

4. The Insurance Commissioner improperly denied the Appellant the opportunity to present evidence in his behalf and impeded his cross examination of the insurance company's representative.

ASHCRAFT & GEREL


Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
(301) 770-3737

CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that I have this day served a copy of the foregoing Petition of Appeal by placing a copy of same in the U.S. Mail, postage prepaid, and addressed as follows:

John A. Donaho
Insurance Commissioner
Department of Licensing and Regulation
Insurance Division
501 St. Paul Place
Baltimore, MD 21202-2272

Government Employees Ins. Co.
Geico Plaza
Washington, DC 20076

This 20th day of December, 1991.


Jonathan S. Beiser

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

783-6400

SUITE 220
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SUITE 101
METRO 400 BUILDING
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301-459-8400

SUITE 805
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

Robert G. Samet
10507 Tanager Lane
Potomac, MD 20854-6357

Complainant/Appellant

Vs.

Case No.: _____

THE INSURANCE COMMISSIONER
OF THE STATE OF MARYLAND
501 St. Paul Place
Baltimore, MD 21202-2272

Appellee

and

GOVERNMENT EMPLOYEES
INSURANCE COMPANY
GEICO Plaza
Washington, DC 20076-0001

Appellee

MOTION TO HAVE APPEAL OPERATE AS A STAY

OF THE ORDER OF THE INSURANCE COMMISSIONER

Comes now the Complainant/Appellant, Robert G. Samet, and moves, pursuant to the Annotated Code of Maryland Article 48A, Sec.40 (2) and moves that the November 25, 1991 order of the Insurance Commissioner be stayed pending the outcome of this Appeal, and as grounds therefore states:

1. That in order to preserve Appellant's right to appeal the decision of the Insurance Commissioner, a stay is necessary. The denial of a stay will effectively render this appeal moot and deny Appellant any remedy, because Appellant will be forced to either exclude Janice R. Samet from coverage or change insurers.

2. Md. Ann. Code, Art. 48A, Sec. 40 (2) grants the Court the authority to stay the order of the Insurance Commissioner.

LAW OFFICES
ASHCRAFT & GEREL
SUITE 400
2000 L STREET, N.W.
WASHINGTON, D.C. 20036

783-6400
SUITE 220
4660 KENMORE AVENUE
ALEXANDRIA, VA 22304

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ROCKVILLE, MD 20852

301-770-3737

SUITE 101
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LANDOVER, MD 20785


301-459-8400

SUITE 808
10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

Wherefore, it is respectfully requested that the Court rule that the instant appeal shall operate as a stay of the decision of the Insurance Commissioner.

ASHCRAFT & GEREL


Jonathan S. Beiser
11300 Rockville Pike
Suite 1002
Rockville, MD 20852
(301) 770-3737

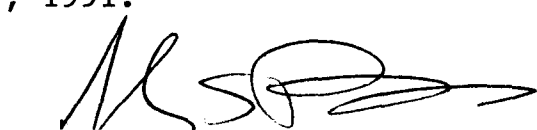
CERTIFICATE OF SERVICE AND COMPLIANCE

This is to certify that I have this day served a copy of the foregoing Motion to Have Appeal Operate as a Stay of the Order of the Insurance Commissioner by placing a copy of same in the U.S. Mail, postage prepaid, and addressed as follows:

John A. Donaho
Insurance Commissioner
Department of Licensing and Regulation
Insurance Division
501 St. Paul Place
Baltimore, MD 21202-2272

Government Employees Ins. Co.
Geico Plaza
Washington, DC 20076

This 20th day of December, 1991.


Jonathan S. Beiser

LAW OFFICES
ASHCRAFT & GEREL

SUITE 400
2000 L STREET, N.W.
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783-6400

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10 EAST BALTIMORE STREET
BALTIMORE, MD 21202

301-539-1122

1991

D. Lee
2-2-10
Image 193

HALL VS PRIEST Box 1803 Case No. 91303043

[MSA T2691-4440, OR/12/11/74]

File should be named msa_sc5458_82_150_[full case number]-####

THOMPSON VS DEPART.OF PUBLIC SAFETY Box 1869 Case No. 91340071

[MSA T2691-4507, OR/12/13/14]

File should be named msa_sc5458_82_150_[full case number]-####

SAMET VS INSURANCE COMM., ET. AL. Box 1892 Case No. 91354017

[MSA T2691-4530, OR/12/13/37]

File should be named msa_sc5458_82_150_[full case number]-####

D Lee
2-2-10
Image 193

THOMPSON VS DEPT. OF HUMAN RESOURES Box 1892 Case No. 91354021

[MSA T2691-4530, OR/12/13/37]

File should be named msa_sc5458_82_150_[full case number]-####

KLINERS VS BD. OF APPEALS DEPART.OF ECON. Box 1896 Case No.
91358008

[MSA T2691-4534, OR/12/13/41]

File should be named msa_sc5458_82_150_[full case number]-####