

CASE NO. **93270059**

*DR 22-11-1*

In The Circuit Court for Baltimore City  
**CIVIL**

Part 1 of      Parts

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*L*

THORNTON

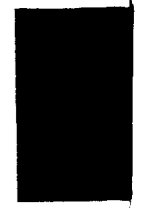
**In the Matter of**

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JERRY E. Yates

VS

MARYLAND INSURANCE COMMISSIONER, ETAL



RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE IN THE CIRCUIT COURT

JERRY E. YATES,  
petitioner,

94 APR 27 PM 9:34 BALTIMORE CITY

v. CIVIL DIVISION Case No.: 93270059/CL170560

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND,

\* Appeal from the Insurance  
\* Commissioner's decision,  
\* Maryland Insurance  
\* Administration

and

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

\* Upon the Complaint of  
\* Jerry E. Yates,

respondents.

\* Case No.: 1095-3/93

\* \* \* \* \*

MEMORANDUM OF STATE FARM  
MUTUAL AUTOMOBILE INSURANCE COMPANY

Licensee, State Farm Mutual Automobile Insurance Company ("State Farm"), by its attorneys, Leonard C. Redmond, III and Louise McB. Simpson, pursuant to Maryland Rule 7-207, submits this memorandum in support of the Order of the Insurance Commissioner upholding the surcharge to petitioners' automobile insurance premium.

Preliminary Statement

Pursuant to Maryland Rule 7-207, petitioner was required to have filed a memorandum setting forth the grounds upon which he based his appeal within thirty days of the date on which the clerk sent notice that the record of the administrative hearing has been received. As set forth in more detail in State Farm's motion to dismiss previously filed herein, petitioner failed to do so. Indeed, it was only after State Farm filed that motion to dismiss that petitioner did file a memorandum. Without waiving the arguments raised in the

motion to dismiss, State Farm is filing this brief memorandum in support of the Order of the Insurance Commissioner.

### Background

Petitioner, Jerry E. Yates, has brought this appeal challenging the Order on Hearing of Administrative Law Judge Geraldine A. Klauber, in which it was held that respondent, State Farm, had properly determined to add a surcharge to the premium charged to Mr. Yates for the policy of automobile insurance (No. 375-5114-A21) issued to him by State Farm.

Specifically, Judge Klauber found that State Farm had correctly determined that the accident of March 10, 1992 was properly chargeable to Mr. Yates's son, Earnest J. Yates, who was driving the insured vehicle when it was involved in the accident, and who was therefore also insured under the policy. The ALJ further found that State Farm had conducted an adequate investigation of the March 10 accident prior to determining that it was the fault of, and therefore chargeable to Earnest Yates. Based upon these determinations, Judge Klauber held that, in accordance with its rate plan filed with the Maryland Insurance Administration, State Farm was justified in increasing the premium charged for that policy. [R.III].

In spite of this holding, and the presumption of correctness to which it is entitled, Nationwide Mutual Insurance Co. v. Insurance Commissioner, 67 Md. App. 727, 509 A.2d 719, 724 (1986), petitioner has brought this appeal, arguing that the surcharge was unjustified. Specifically, Mr. Yates contends

that because his son was ultimately acquitted of the traffic charges arising out of that accident, State Farm improperly concluded that it was his fault.

As set forth below, this argument is without merit. Thus, the decision of the Insurance Commissioner must be affirmed.

#### Issue Presented

Whether State Farm met its burden under Article 48A, §240AA of the Md. Ann. Code?

#### Argument

##### State Farm Met its Burden of Establishing that the Surcharge to Petitioner's Premium was Justified.

Petitioner does not question State Farm's right to increase the premium it charges for a policy of automobile liability insurance where it can establish that an insured was involved in a chargeable accident. See MIA Exhibit 5 [R.28]; Crumlish v. Insurance Commissioner, 70 Md. App. 182, 520 A.2d 738 (1987). Rather, petitioner challenges State Farm's proposed surcharge solely on the grounds that because his son was ultimately acquitted of the traffic charges arising out of the accident, it should not properly be charged to his record for underwriting purposes.

In the case of Nevas v. Insurance Commissioner, 81 Md. App. 549, 568 A.2d 1144 (1990), the Court defined an insurer's burden of proof under Md. Code Ann., art. 48A, § 240AA(f), where the issue is whether an accident on which an underwriting

decision was based was properly charged to the insured. Adopting the conclusion of the Circuit Court that the insurer there had failed to meet its burden, the appellate court held that an insurance carrier, when relying on a determination of fault in an accident as a reason for not renewing a policy, must "explain the basis for its conclusion that the insured was at fault."

Under this standard, an insurer is not required to establish its insured's liability by a preponderance of evidence, however. Thus, the Administrative Law Judge is not required to conduct an independent examination of the facts and circumstances of the accidents at issue in order to determine de novo the issue of fault. Rather, the scope of the administrative review is limited to an examination of the reasonableness of the insurer's investigation and its conclusions. Where evidence is presented to establish that the insurer conducted an adequate investigation, and that such investigation disclosed facts upon which a reasoning mind could conclude that the accident was the fault of the insured, the non-renewal must be upheld.

In the present case, unlike the insurer in Nevas, State Farm presented evidence regarding the extent of its investigation of the March 10, 1992 accident. Specifically, State Farm offered the testimony of Mike Wolf, the Claims Specialist who investigated the claim on behalf of State Farm. Mr. Wolf testified that in investigating the claim, he took a

statement from Earnest Yates, as well as from the driver of the other vehicle involved in the accident. Both reported that the accident resulted when Earnest Yates lost control of his vehicle and crossed the double yellow line. [R.11]. Further, Mr. Wolf testified that he obtained a copy of the police report that was prepared with regard to the accident, [R.12], which again confirmed the facts, and placed responsibility on the Yates vehicle. Licensee's Exhibit 1 [R.35 - R.36]. Based upon this investigation, Mr. Wolf concluded that the accident was the fault of Earnest Yates.

In an attempt to overcome the decision of the Insurance Commissioner, Mr. Yates argues that notwithstanding the undisputed facts of the accident which clearly indicate fault on the part of his son, State Farm must be precluded from charging the accident to his son's record because he was ultimately acquitted of the related traffic charges. As Judge Klauber correctly noted in her decision, however, it is well established that, because of the differing standards of proof in a criminal proceeding and in the administrative proceeding here,

[t]he fact that a court found that the evidence presented at a trial did not support a criminal conviction is not determinative of civil liability for the incident.

[R.III]; accord, 18 Wright, Miller & Cooper, Federal Practice and Procedure, § 4474, at 759 (1981).

As recognized by the Court of Special Appeals in Nationwide Mutual Ins. Co. v. Insurance Commissioner, 67 Md. App. 727, 509 A.2d 719, 724 (1986) (adopting the Memorandum

Opinion and Order of the Circuit Court for Baltimore City, Joseph H.H. Kaplan, J.), a reviewing court is to accord great deference to the administrative findings of the Insurance Commissioner when considering an appeal based on evidentiary grounds:

In short, and as capsulized by the Court of Appeals, 'the basic standard for reviewing an administrative finding by the Insurance Commissioner is whether the finding is supported by "substantial evidence." This means whether "a reasoning mind reasonably could have reached the factual conclusion the agency reached."' Lumbermen's Mutual Casualty v. Insurance Commissioner, 302 Md. 248, 266 [487 A.2d 271] (1985), quoting from Prince George's Doctors' Hospital v. Health Services Cost Review Commissioner, 302 Md. 193, 200-201 [486 A.2d 744] (1985), and Bulluck v. Pelham Wood Apts., 283 Md. 505, 512 [390 A.2d 1119] (1978), and Insurance Commissioner v. National Bureau, 248 Md. 292, 309 [236 A.2d 282] (1967). In addition, the Court of Appeals has emphasized that in applying the substantial evidence test, a court is not to substitute its judgment for the expertise of the administrative agency. Bulluck, 283 Md. at 513 [290 A.2d 1119]. Furthermore, the decisions of administrative agencies are prima facie correct, and thus must be viewed in the light most favorable to the agency.

Id.<sup>1</sup>

In the present case, there was ample evidence to establish both that State Farm conducted a thorough investigation of the March 10, 1992 accident, and that it thereafter properly concluded that that accident was chargeable

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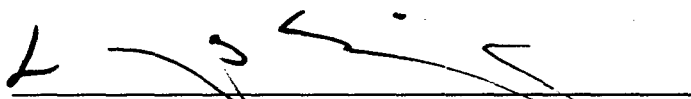
<sup>1</sup> Here, it is appropriate to note that the goal of the insurer in conducting its investigation of a claim is not to find fault on the part of its insured, and thereby to incur liability. Rather, it is in the best interests of both the insured and the insurer that the investigation exonerate the insured of fault.

to Earnest Yates. Thus, State Farm fully satisfied its burden under Nevas, the Order of the Administrative Law Judge must be affirmed.

Conclusion

For the forgoing reasons, Licensee, State Farm Mutual Automobile Insurance Company, respectfully requests that the Insurance Commissioner's order on hearing be affirmed.

  
\_\_\_\_\_  
Leonard C. Redmond, III

  
\_\_\_\_\_  
Louise McB. Simpson  
Suite 1301, The Fidelity Building  
210 North Charles Street  
Baltimore, Maryland 21201  
(410) 752-1555  
Attorney for respondent,  
State Farm Fire & Casualty Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 26th day of April, 1994, a copy of the foregoing memorandum was mailed, postage prepaid, to:

J. Thomas Burch, Jr., Esquire  
1100 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036

Dennis W. Carroll, Esquire  
501 St. Paul Place  
Fourteenth Floor  
Baltimore, Maryland 21202-2272

  
\_\_\_\_\_  
Leonard C. Redmond, III



**JERRY YATES**  
Petitioner

JUN 17 1994 \*

IN THE

CIRCUIT COURT \*  
FOR BALTIMORE CITY

CIRCUIT COURT

v.

FOR

**MARYLAND INSURANCE COMM'R** \*  
**& STATE FARM MUTUAL AUTO-** \*  
**MOBILE INSURANCE CO.** \*

BALTIMORE CITY

CASE NO. 93270059/CL170560

Respondents

\* \* \* \* \*

MEMORANDUM

Factual Background

On March 10, 1992, Ernest Yates ("Ernest"), the son of Petitioner Jerry Yates ("Petitioner"), was driving on Cranbrook Road shortly before midnight, in heavy rain, when he was involved in a collision with a vehicle operated by an off-duty police officer. At the time of the accident, Ernest was 16 years old and had been a licensed driver approximately four months. Ernest received a traffic citation at the scene for crossing the median line, but the charges were later dismissed in court.

Respondent State Farm Mutual Automobile Insurance Company ("State Farm"), through its claims agent, Michael Wolf ("Wolf"), investigated the accident. Wolf obtained a copy of the police report, and about 10 days after the accident, he took a statement from Ernest. Although Wolf spoke to the driver of the other vehicle, Wolf did not obtain a formal statement from him because he was represented by counsel during the time of the investigation.<sup>1</sup> Although Wolf did discover that the other driver was also insured by State Farm, Wolf apparently did not speak to the other State Farm claims agent or otherwise

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<sup>1</sup>Transcript of the Proceedings of November 30, 1993, at 11-12 (hereinafter abbreviated as "T." followed by the page of the transcript).

attempt to review any statement the other driver may have given to State Farm.

Thereafter, State Farm determined that Ernest was at fault and paid \$4,721 to the other driver. On December 2, 1992, State Farm sent Petitioner notice that it was imposing a surcharge on his automobile insurance policy, which could be avoided if Ernest was excluded from the policy coverage. T.9. Petitioner exercised his right to protest under Md. Code Ann., Art. 48A, § 240AA (1990),<sup>2</sup> and requested a hearing.

At the hearing on November 30, 1993 before the Administrative Law Judge ("ALJ"), State Farm contended that, based on Wolf's testimony and the police report, it was justified in concluding, under Ins. Comm'r v. Nevas, 81 Md. App. 549 (1990), that Ernest had crossed the median line and was therefore at fault.<sup>3</sup> Petitioner disputed State Farm's determination of fault on the grounds that there was no evidence corroborating the police report. In addition, Petitioner asserted that Wolf himself had said, during the investigation, that the other driver was likely to be at fault.<sup>4</sup> Further, Petitioner pointed to the dismissal of the traffic charges as support for his contention that his son did not cross the median line. The ALJ disagreed, and this appeal followed.

At the hearing on May 2, 1994 before this court, Petitioner introduced new evidence through the testimony of Ernest and Petitioner. Both Ernest and Petitioner testified that

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<sup>2</sup>Hereinafter, all statutory references are to Code of 1957, Article 48B (1991 Supp. 1993), unless otherwise specified.

<sup>3</sup>At the administrative hearing, the parties did not offer the formal statements of either driver. In fact, neither driver testified or even appeared.

<sup>4</sup>On the issue of Wolf's statements, Petitioner produced no documentation at the hearing; on cross examination, Wolf testified that he could not remember any of the conversations in which Petitioner claims Wolf made these statements. T.16-17.

Ernest had never admitted crossing the center line. Moreover, Ernest stated that he had turned onto Cranbrook Road, briefly lost control of the car, regained control, continued to drive for as much as 30 seconds, and then collided with a car that he never saw coming. The impact was sufficient to spin Ernest's car 180 degrees, but the car came to rest on the same side of the center line as Ernest had been driving.

#### New Testimony

Counsel for both parties represented to this court that Petitioner was entitled to present new testimony under § 40(4).<sup>5</sup> However, this court is of the view that it erroneously received the testimony of Ernest and Petitioner. Effective June 1, 1993, the Maryland Legislature removed the statutory authorization to hear de novo evidence on appeal.

Before June 1, 1993, § 40(4) permitted all parties to present new evidence on appeal to the circuit court. Indeed, refusal by the circuit court to receive such evidence, if admissible, was reversible error. Fromberg v. Insurance Comm'r, 87 Md. App. 236, 242-44 (1991). If, upon consideration of all evidence, including newly offered testimony, the circuit court was satisfied that the decision of the Commissioner would have been different had the evidence been presented at the administrative level, the circuit court could remand the case for further proceedings. Id., at 249. By letter dated May 4, 1994, Respondent stated that the parties agreed that the amendment to § 40 does not apply to this hearing. However, counsel presented no authority which would empower this court to take new

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<sup>5</sup>At the hearing, before the testimony was formally presented, the court questioned counsel as to whether new evidence could be offered. Both sides agreed that the court should permit Yates to offer additional evidence.

evidence. The ALJ heard the instant case on August 19, 1993, *after* the effective date of the amendment. While the date of the accident itself preceded the effective date of the amendment, administrative law statutes are generally given prospective application, even in pending cases, absent a clear, contrary legislative expression. See generally, 73 C.J.S. *Pub. Admin. L. & Proc.* § 7, at 365-66 & n.26 (1983 & Supp. 1993). Accordingly, this court must rely solely upon the evidence in the record, and the testimony offered on May 2, 1994 will be disregarded.

#### Scope of Review

Section 40(5) of the Insurance Code governs the standards of judicial review of decisions of the Insurance Commissioner. 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) Arbitrary or capricious.

See also *Ins. Comm'r v. Allstate Ins. Co.*, 268 Md. 428, 442-43 (1973); *Miller v. Ins. Comm'r*, 70 Md. App. 355; 365 (1987).

Section 40(5), and the case law interpreting it, make clear that "the basic standard for reviewing an administrative finding by the Insurance Commissioner is whether the finding is supported by "substantial evidence." *Lumbermen's Mut. Casualty v. Ins. Comm'r*, 302 Md.

248, 266 (1985). The test is not how this court would resolve a factual dispute, or questions of credibility. 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).

In applying the substantial evidence test, the appellate courts have emphasized that this court should not substitute its judgment for the expertise of those persons who constitute the administrative agency from which the appeal is taken. See Miller, 70 Md. App. at 366. Furthermore, the decisions of administrative agencies must be viewed in the light most favorable to the agency, since such decisions are prima facie correct. Id.; Nationwide Mut. Ins. Co. v. Ins. Comm'r, 67 Md. App. 727, 737 (1986). See generally, Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978).

The insurer has the burden of persuasion to satisfy the Commissioner that the surcharge on the policy was justified; see § 234A(a). But, on appeal, the burden shifts to the Petitioner to show that the administrative proceedings prejudiced any of his substantial rights. See Miller, 70 Md. App. at 365; Gov't Employees Ins. v. Ins. Comm'r, 273 Md. 467 (1975); Nuger v. Ins. Comm'r, 238 Md. 55, 61 (1965).

#### Discussion

On appeal, Petitioner argues, inter alia, that the ALJ's determination of fault was capricious and arbitrary; that the ALJ improperly ignored the dismissal of the traffic citation; and that the decision otherwise lacked sufficient evidence to support it. Petitioner's argument as to the traffic charge can be resolved readily, as it is not apposite.

In her order, the ALJ correctly stated: "The fact that a court found that the evidence presented at trial did not support a criminal conviction is not determinative of civil liability for the incident." To prevail, an insurer need only produce "substantial evidence," Lumbermen's, 302 Md. at 266, not evidence beyond a reasonable doubt; therefore, the fact that Ernest was not convicted of a traffic violation--where the State's burden of proof is beyond a reasonable doubt--does not have any bearing on whether the insurer has met its civil burden of proof.

A review of the ALJ's decision and the testimony adduced at the November 30, 1993 hearing also satisfies the requirements of Ins. Comm'r v. Nevas, 81 Md. App. 549 (1990). Nevas requires an insurer to "explain the basis for its conclusion that the insured was at fault." Id. at 558. State Farm based its determination of fault on the statement of Ernest contained in the police report. T.35-36.<sup>6</sup> Wolf testified that based upon his investigation, he concluded that Ernest had lost control while trying to change lanes, crossed the center line, and struck the other car, whose driver had not lost control. T.37. On cross examination, Wolf acknowledged that Ernest "had never indicated [to Wolf] that he had crossed the center line." T.15. Petitioner conceded that Ernest did not know whether he had crossed the line,<sup>7</sup> and did not produce any evidence contradicting the content of the police report.

This court must treat the ALJ's decision as prima facie correct. Miller, 70 Md. App. at 366. Based upon the evidence, the ALJ concluded that State Farm had presented

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<sup>6</sup>Petitioner did not object to its introduction into evidence. T.12-13.

<sup>7</sup>According to Petitioner, "[Ernest] said, 'The policeman asked me if this and that happened, i.e. if I lost control.' And he said, 'I don't know, I guess I must have.' The kid was very rattled." T.19.

substantial evidence supporting a conclusion of fault. This court will not substitute its judgment for that of the ALJ because "a reason[able] mind reasonably could have reached the factual conclusion [she] reached." Lumbermen's, 302 Md. at 266.<sup>8</sup>

Conclusion

Based on the foregoing, it is, this 10<sup>th</sup> day of June, 1994, 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 Petitioner.

  
\_\_\_\_\_  
Judge Ellen L. Hollander

JUN 28 1994

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<sup>8</sup>Even if the court were entitled to consider the de novo testimony, it does not seem that the outcome would have been any different.

PRESIDING JUDGE *Ellen L. Hollander*

COURTROOM CLERK *Louise C. Taylor*

STENOGRAPHER *John Crowbridge*

ASSIGNMENT FOR WEDNESDAY MAY 02, 1994

CASE NUMBER - 94070059  
CASE TITLE - YATES VS MD INSURANCE COMMISSIONER, ET AL170560 CL  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

CARROLL, DENNIS JR	DEFENSE ATTORNEY	333-8335
JENIFER, LAURA C	DEFENSE ATTORNEY	752-1555
REDMOND, LEONARD III	DEFENSE ATTORNEY	752-1555
YATES, JERRY E	PETITIONER	

*Case submitted to the Court for determination without the aid of a jury. The decision of the Maryland Insurance Comm. is hereby; " Affirmed "*

*Judgment in favor of the ~~petitioner~~ <sup>respondent</sup> for costs.*

TYPE OF PROCEEDING: ( \_\_\_ ) JURY (  ) NON-JURY ( \_\_\_ ) OTHER

DISPOSITION (CHECK ONE)

( \_\_\_ ) SETTLED ( \_\_\_ ) CANNOT SETTLE ( \_\_\_ ) NEXT COURT DATE

( \_\_\_ ) VERDICT ( \_\_\_ ) REMANDED ( \_\_\_ ) NON PROS/DISMISSED

( \_\_\_ ) JUDGEMENT MIST ( \_\_\_ ) ORDER/DECREE SIGNED ( \_\_\_ ) OTHER

( \_\_\_ ) JUDGEMENT ABSOLUTE ( \_\_\_ ) ORDER/DECREE TO BE SIGNED

( \_\_\_ ) POSTPONED ( \_\_\_ ) MOTION GRANTED

( \_\_\_ ) SUB CURIA ( \_\_\_ ) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE *Ellen Hollander* DATE *6/10/94*



PRESIDING JUDGE *Allen L. Hollander*

COURTROOM CLERK *Louise C. Taylor*

STENOGRAPHER *John Crowbridge*

ASSIGNMENT FOR MONDAY MAY 02, 1994

CASE NUMBER - 93270059  
CASE TITLE - YATES VS MD INSURANCE COMMISSIONER, ET CL170560 CL  
CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY  
PROCEEDING - COURT TRIAL - FAST TRACK

CARROLL, DENNIS JR	DEFENSE ATTORNEY	333-8335
JENIFER, LAURA C	DEFENSE ATTORNEY	752-1555
REDMOND, LEONARD III	DEFENSE ATTORNEY	752-1555
YATES, JERRY E	PETITIONER	

*Case submitted to the Court for determination without the aid of a jury. The decision of the Maryland Insurance Comm. is hereby "Affirmed".*

*Judgment in favor of the Respondent ~~Plaintiff~~ for costs.*

*Missing*

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	PLEASE EXPLAIN:
( ) POSTPONED	( ) MOTION GRANTED	
( ) SUB CURIA	( ) MOTION DENIED	

JUDGE SIGNATURE *Allen Hollander* DATE *6/10/94*

PRESIDING JUDGE *Allen Howard*

COURTROOM CLERK *Kimberly Taylor*

STENOGRAPHER *Michelle R. ...*

ASSIGNMENT FOR MONDAY MAY 02, 1994

CASE NUMBER - 93270059

CASE TITLE - YATES VS MD INSURANCE COMMISSIONER, ET AL 170560

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

PROCEEDING - COURT TRIAL - FAST TRACK

CARROLL, DENNIS JR  
JENIFER, LAURA C  
REDMOND, LEONARD III  
YATES, JERRY E

DEFENSE ATTORNEY 333-8335  
DEFENSE ATTORNEY 752-1555  
DEFENSE ATTORNEY 752-1555  
PETITIONER

*see ... filed ... in Baltimore ... without they ...  
to ... the ... insurance ...  
is ... "Approved"  
... in favor of the ... costs.*

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 CURIA ( ) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE *Allen Howard* DATE 6/10/94

PRESIDING JUDGE *Edward J. ...*

COURTROOM CLERK *...*

STENOGRAPHER *...*

ASSIGNMENT FOR MONDAY MAY 02, 1994

CASE NUMBER - 93270059

CASE TITLE - YATES VS MD INSURANCE COMMISSIONER, ET AL 170560

CL

CATEGORY - APPEAL FROM ADMINISTRATIVE AGENCY

PROCEEDING - COURT TRIAL - FAST TRACK

CARROLL, DENNIS JR  
JENIFER, LAURA C  
REDMOND, LEONARD III  
YATES, JERRY E

DEFENSE ATTORNEY 333-8335  
DEFENSE ATTORNEY 752-1555  
DEFENSE ATTORNEY 752-1555  
PETITIONER

*and referred to the Court for determination, without the aid  
of jury. The decision of the Maryland Insurance  
Commission; "Approved"  
Application for award of the <sup>respondent</sup> ~~petitioner~~ for costs.  
Messing*

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 CURIA ( ) MOTION DENIED

PLEASE EXPLAIN:

JUDGE SIGNATURE *Allen ...* DATE *6/10/94*



LAW OFFICES

**MALONEY & BURCH**

1100 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036-4101

(202) 293-1414  
FAX (202) 293-1702

April 29, 1994

Jerry Yates  
P.O. Box 386  
Timonium, Maryland 21093

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For Professional Services Rendered:

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Prepare and litigate insurance increase before Circuit Court	\$ 600.00
Out-of-pocket costs	<u>48.00</u>
<b>TOTAL AMOUNT DUE</b>	<b>\$ 648.00</b>

JTB/dmr

J. JOSEPH CURRAN, JR.  
ATTORNEY GENERAL

OFFICE OF



DENNIS W. CARROLL  
PRINCIPAL COUNSEL

Maryland Insurance Administration

RALPH S. TYLER  
DEPUTY ATTORNEY GENERAL

THE ATTORNEY GENERAL  
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SUSAN COHEN  
CHRISTINA BEUSCH  
JOY Y. HATCHETTE  
ASSISTANT ATTORNEYS GENERAL

NORMAN E. PARKER, JR.  
DEPUTY ATTORNEY GENERAL

April 26, 1994

The Honorable Ellen L. Hollander  
408 Clarence M. Mitchell, Jr. Courthouse  
100 N. Calvert Street  
Baltimore, Maryland 21202

Re: Jerry E. Yates v. Insurance Commissioner  
Case No. 93270059/CL170560

Dear Judge Hollander:

The above action is scheduled for argument before you on May 2, 1994. As set forth in our Answer, the Insurance Commissioner has not taken a position in this case. Therefore, unless you desire the presence of counsel for the Insurance Commissioner, I do not anticipate that counsel will appear at the May 2, 1994 hearing. However, should you wish us to be present at the hearing we will, of course, attend. Please call me at 333-8335 if you would like me or one of my colleagues to be present.

Sincerely,

A handwritten signature in cursive script that reads "Dennis W. Carroll".

Dennis W. Carroll

DWC:db

cc: J. Thomas Burch, Jr., Esquire  
Leonard C. Redmond, III, Esquire

CIRCUIT COURT FOR BALTIMORE CITY  
MSV523 CASE INQUIRY

DATE: 04/26/94  
TIME: 10:34  
TERMINAL: C136

CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560  
CATEGORY: APPAA  
ORIG COURT: CL AMOUNT OF SUIT :\$ LAST PLEA DATE : 04/18/94  
DATE FILED: 09/27/93 TRANSCRIPT PAGES : 22 TERMINATION DATE: 04/18/95  
STATUS: A CONSOLIDATED CASE: BOOK NUMBER :  
STATUS CODE: 10/15/93 PAGE NUMBER :  
PROTRACTED: WHO PAYS COSTS :  
LAST MODIFIED ON: 04/20/94

DATE	CODE	AMOUNT	RECP #	BAD CK/	BANK	CHECK	NUMBER	NUMBER
09/27/93	CLERK	\$ 80.00						
09/27/93	PAYMT	\$ 10.00	8135					

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
05/02/94	CAL	09:30		219W	CTF					
09/27/93	FILE									
09/27/93										
09/27/93										
/27/93										

NEXT PAGE P/N PAGE: 001  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94  
MSV523 CASE INQUIRY TIME: 10:34  
CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560

09/27/93 MOTN MOTION TO STAY. (2)  
09/28/93 MEMO CASE SENT TO JUDGE HELLER.  
09/30/93 ORDR ORDER OF COURT THAT THE ORDER ON HEARING OF THE MD INS. COMM., EX  
09/30/93 REL JERRY E. YATES, MID. CASE NO. 1095-3/93, OAH NO. 93-DLR-INS-  
09/30/93 31-012502, AND THE SURCHARGE THEREIN ORDERED, ARE HEREBY STAYED  
09/30/93 PENDENT LITE, PLTF. BE REQUIRED TO POST SECURITY IN THE AMT. OF  
09/30/93 \$0. (WARD, J) (3)  
10/15/93 ANSW APP. OF LEONARD C. REDMOND, III AND LAURA C. JENIFER, ATTYS. FOR  
10/15/93 APPELLEE, ST. FARM MUTUAL AUTO, INS. CO., SAME DAY ANS. FD. (4)  
/22/93 PLEA APPELLEE, MD. INS. COMM.-DWIGHT K. BARTLETT, III, RESPONSE FD.(5)  
11/08/93 MOTN PLTF MOTION FOR EXTENSION OF TIME TO FILE THE RECORD FD.(6)  
11/12/93 MEMO CASE SENT TO JUDGE HELLER ON ENTRY 6  
11/12/93 MOTN DEFT (STATE FARM) MOTION TO RECONSIDER ORDER ON REQUEST FOR STAY  
11/12/93 FD.(7)  
11/12/93 ORDR ORDER OF COURT THAT THE MOTION FOR EXTENSION OF TIME TO FILE THE  
11/12/93 RECORD IS HEREBY GRANTED FOR 60 DAYS. (HELLER, J) (8)  
12/08/93 MEMO CASE SENT TO JUDGE WARD ON ENTRY 7

NEXT PAGE P/N PAGE: 002  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94  
MSV523 CASE INQUIRY TIME: 10:34  
CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560

12/13/93 ORDR ORDER DATED 12/9/93. ORDERED THAT THE DEFT.'S MOTION IS GRANTED  
12/13/93 AND THAT THE STAY BE REVOKED AND THAT THE LICENSEE BE ALLOWED  
12/13/93 TO IMPOSE ITS SURCHARGE ON PLTF'S INSURANCE POLICY. JUDGE WARD  
12/13/93 (9)  
01/26/94 PLEA TRANSCRIPT OF RECORD (10)  
01/31/94 NOTICE SENT IN ACCORDANCE W/MD RULE 7-207 (11)  
03/21/94 MOTN DEFT (STATE FARM) MOTION TO DISMISS APPEAL, STATEMENT OF GROUNDS,  
03/21/94 EXHIBITS & REQUEST FOR HEARING FD. (12)  
04/08/94 PLEA PLTF'S PRAECIPE TO ANSWER THE MOTION TO DISMISS APPEAL (13)  
04/18/94 PLEA APPR OF ATTY J. THOMAS BURCH JR FOR PETITIONER, (J YATES)  
04/18/94 OPPOSITION TO MOTION TO DISMISS, MEMORANDUM PURSUANT TO RULE  
04/18/94 7-207 (14)  
05/02/94 PPSN SUMMONS SENT TO PARTIES REPRESENTED AS PROPER PERSON

NEXT PAGE P/N PAGE: 003  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94  
MSV523 CASE INQUIRY TIME: 10:34  
CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER. ET CL170560

CONN NAME  
DEF \*MARYLAND INSURANCE COMMISSIONER IDENT I03165  
501 ST. PAUL PLACE  
BALTIMORE MD 21202

DEF \*STATE FARM INSURANCE COMPANY IDENT S18947  
800 OAK STREET  
FREDERICK MD 21701

DEF CARROLL, DENNIS JR IDENT 489069  
501 ST. PAUL PLACE PHONE 410 333-8335  
14TH FLOOR  
BALTIMORE MD 21202

ADF JENIFER, LAURA C IDENT 916408  
FIDELITY BUILDING, SUITE 1301 PHONE 410 752-1555  
210 NORTH CHARLES STREET  
BALTIMORE MD 21201

NEXT PAGE P/N PAGE: 004  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 04/26/94  
MSV523 CASE INQUIRY TIME: 10:34  
CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER. ET CL170560

F REDMOND, LEONARD III IDENT 383045  
210 NORTH CHARLES STREET PHONE 410 752-1555  
STE. 1301, FIDELITY BLDG. SSN 218-38-3045  
BALTIMORE MD 21201

PET YATES, JERRY E IDENT N79292  
35 CASTLEBAR COURT PHONE 410 -  
TIMONIUM MD 21093

APT BURCH, J THOMAS JR IDENT 918517  
1100 CONNECTICUT AVE NW PHONE 410 -  
WASHINGTON DC 20036

END OF DISPLAY P/1 PAGE: 005



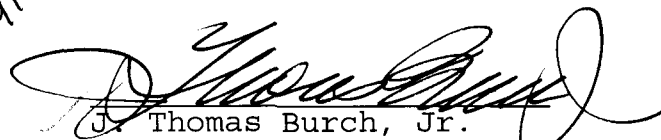
(1987). "State Farm" concedes as such.

In addition, "State Farm" has not demonstrated that Mr. Yates' failure to timely file the memorandum has prejudiced the respondents in any way. If nothing else, Petitioner's Petition for Review affords the Defendants a fair presentation of Petitioner's case. Thus, a motion to dismiss on these grounds is unsubstantiated.

Dismissal is, in any event, too drastic a remedy. Mr. Yates' initial pro se status should entitle him to consideration in regards to the court's discretion in this matter. He is essentially inexperienced with this type of proceeding and thus unfamiliar with the conditions of Maryland Rule 7-207. For this reason, the court should take this into the "light of the totality of the circumstances," Rule 1-102(a), and deny the Motion to Dismiss.

918517  
Respectfully submitted,

MALONEY & BURCH



J. Thomas Burch, Jr.  
1100 Connecticut Avenue, NW  
Washington, D.C. 20036  
(202) 293-1414

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 16<sup>th</sup> day of April, 1994, a copy of the foregoing Opposition to the Motion to Dismiss was mailed, postage prepaid, to Mr. Leonard C. Redmond, III, Suite 1301, Fidelity Building, 210 North Charles Street, Baltimore, Maryland 21201 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202

  
J. Thomas Burch, Jr

JERRY E. YATES  
petitioner,

v.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND,  
and

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

respondents.

\* \* \* \* \*

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No.:93270059/CL170560  
\* Appeal from the Insurance  
\* Commissioner's decision,  
\* Maryland Insurance  
\* Administration  
\* Upon the Complaint of  
\* Jerry Yates  
\* Case No.:1095-3/93

RECEIVED FOR  
CIRCUIT COURT FOR  
BALTIMORE CITY  
94 APR 18 AM 9:26  
CIVIL DIVISION

MEMORANDUM PURSUANT TO RULE 7-207

ISSUES PRESENTED

1. Whether the decision of the Insurance Commissioner for the State of Maryland is capricious and arbitrary.

STATEMENT OF MATERIAL FACTS

1. Jurisdiction is conferred by Maryland Code, Article 48A, Section 40.

2. The Petitioner, Jerry E. Yates, was insured at the time of the accident by State Farm Mutual Automobile Insurance Company under Policy No. 375 5114-A21-20B.

3. On March 10, 1992, Ernest Yates, the Petitioner's son, who was covered under the Petitioner's insurance

policy, was involved in an automobile accident.

4. State Farm Mutual Automobile Insurance Company thereupon levied a surcharge on Policy No. 375 5114-A21-20B, and offered as unacceptable alternative, the exclusion of Ernest Yates from coverage.

5. The Petitioner filed a timely petition for a hearing on the case by the Insurance Commissioner for the State of Maryland.

6. The Petitioner vigorously contested this surcharge, as it is contrary to law and not supported by the facts.

7. All criminal charges against Ernest Yates in traffic court were dismissed.

8. On September 2, 1993, relief from the proposed surcharge was denied to the Petitioner by the Insurance Commissioner for the State of Maryland.

#### ARGUMENT

Mr. Jerry E. Yates should not be subject to the imposition of the proposed surcharge required by State Farm Mutual Automobile Insurance Company. This surcharge, in actuality, is unjustified in that it is not supported by law or based in fact. It is for this reason that the order of the Insurance Commissioner is considered to be arbitrary and capricious under Article 48A, Section 40 of the Maryland Code and thereby should

be reversed.

The issue is predicated upon the fact that the testimony of a Claims specialist was surprisingly granted precedence over the decision of the traffic court which dismissed the charges brought against Ernest Yates, the Petitioner's son. The accident for which Ernest Yates was charged could not be corroborated by witnesses or by proof. It is quite evident that in this circumstance, the order of the Insurance Commissioner was capricious and arbitrary in that the decision was unsupported by any competent, material or substantial evidence which would have been provided by the dismissed charges. Thus, the Insurance Commissioner erred in neglecting to consider the ruling of the traffic court when denying relief from the proposed surcharge to Mr. Yates.

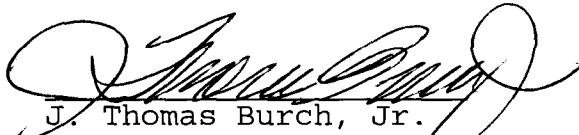
In regards to the civil liability of Ernest Yates, the Insurance Commissioner held in the discussion that "the fact that a court found the evidence presented at trial did not support a criminal conviction is not determinative of civil liability for the incident." Since currently there are no showings of a civil claim asserted against the Petitioner, civil liability is not a concern in this matter.

Overall, the deliberations of the Insurance Commissioner failed to include the pertinent dismissal of criminal charges relating to the incident as well as to substantiate feasible grounds for civil liability. It is

on this basis, the decision to deny Mr. Yates relief from the surcharge imposed by "State Farm" is capricious and arbitrary and thus should be reversed.

Respectfully submitted,

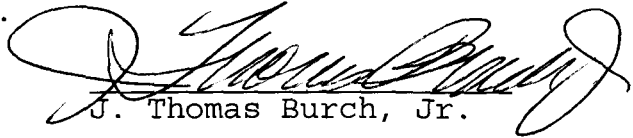
MALONEY & BURCH

A handwritten signature in cursive script, appearing to read "J. Thomas Burch, Jr.", is written over the typed name.

J. Thomas Burch, Jr.  
1100 Connecticut Avenue, NW  
Washington, D.C. 20036  
(202) 293-1414

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 16<sup>th</sup> day of April, 1994, a copy of the foregoing Memorandum was mailed, postage prepaid, to Mr. Leonard C. Redmond, III, Suite 1301, Fidelity Building, 210 North Charles Street, Baltimore, Maryland 21201 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.

  
J. Thomas Burch, Jr.

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

JERRY E. YATES \*

IN THE CIRCUIT COURT

petitioner -8 AM11:10 \*

FOR BALTIMORE CITY -8 AM11:10 \*

v. \*

CIVIL DIVISION \*

Case No.: 93270059/CLI70560

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

Appeal from the Insurance  
Commissioner's decision,  
Maryland Insurance  
Administration

and \*

STATE FARM MUTUAL \*  
AUTOMOBILE INSURANCE \*  
COMPANY, \*

Upon the Complaint of  
Jerry Yates

respondents. \*

Case No.: 1095-3/93

\* \* \* \* \*

**PRAECIPE**

The clerk will extend the time for the Plaintiff,  
Jerry E. Yates, to answer the Motion to Dismiss Appeal  
filed by the Defendants until April 17, 1994, by reason of  
the fact that the plaintiff did not receive document until  
April 2, 1994 due to an incorrect zip code in the  
plaintiff's mailing address (Exhibits A-C).

MALONEY & BURCH

By: 

S. Thomas Burch, Jr.  
1100 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 293-1414



AFFIDAVIT OF J. ELDON YATES

I, J. Eldon Yates, am over the age of twenty-one, do declare as stated below:

1. I received the Motion to Dismiss Appeal dated March 16, 1994 from Leonard C. Redmond, III by mail on Saturday, April 2, 1994.

2. The zip code in the address on the envelope which contained the Motion read 21701 and was incorrect (Exhibit A).

3. My zip code is 21093.

4. In order for the Motion to be delivered, the Post Office changed the zip code from 21701 to 21093 and was unable to deliver the document until April 2, 1994.

5. This same discrepancy is found in the cover letter to the Motion (Exhibit B).

I solemnly affirm under the penalties of perjury and upon the personal knowledge that the contents of the foregoing paper are true.

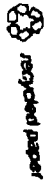
Executed this day of April 5, 1994.

  
J. Eldon Yates

EXHIBIT A

103  
**REDMOND, CHERRY & BERGIN, P.A.**

ATTORNEYS AT LAW  
THE PENNSYLVANIA BUILDING, SUITE 1501  
210 NORTH CHARLES STREET  
BALTIMORE, MARYLAND 21201



MR. JERRY YATES  
35 CASTLEBAR COURT  
TIMONIDH, MARYLAND

~~21093~~  
21093



15

EXHIBIT B  
(EXHIBIT A)

**REDMOND, CHERRY & BURGIN, P.A.**

ATTORNEYS AT LAW  
THE FIDELITY BUILDING, SUITE 1301  
210 NORTH CHARLES STREET  
BALTIMORE, MARYLAND 21201  
(410) 752-1555  
FACSIMILE: (410) 752-1064

PRINCE GEORGES COUNTY OFFICE  
14746 MAIN STREET  
UPPER MARLBORO, MARYLAND 20772  
(301) 952-1555  
COUNSEL  
LOUISE McB. SIMPSON

LEONARD C. REDMOND, III  
RONALD M. CHERRY  
HAROLD L. BURGIN\*  
DEBRA B. CRUZ\*

LAURA C. JENIFER  
MARK ANTHONY KOZICWISG  
KIMBERLY BROWN  
GUIDO PORCARELLI

March 16, 1994

\* Also admitted in the District of Columbia

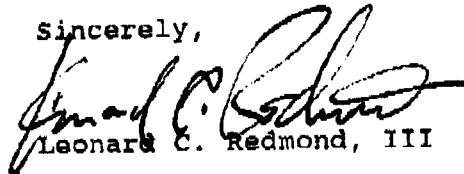
Mr. Jerry Yates  
35 Castlebar Court  
Timonium, Maryland 21701

RE: Yates v. Insurance Commissioner, et al.  
Case No.: 93270059/CL170560  
Our File No.: 600-8056

Dear Mr. Yates:

We filed today in the Circuit Court for Baltimore City a Motion to Dismiss Appeal and have enclosed a copy for your reference.

Sincerely,

  
Leonard C. Redmond, III

LCR:dlw

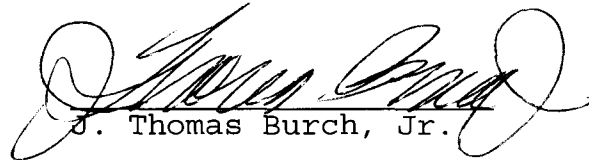
cc: Dennis Carroll, Esquire

EXHIBIT C  
(EXHIBIT B)



CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 7 day of April, 1994, a copy of the foregoing Praecipe was mailed, postage prepaid, to Mr. Leonard C. Redmond, III, Suite 1301, Fidelity Building, 210 North Charles Street, Baltimore, Maryland 21201 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.

  
J. Thomas Burch, Jr.

JERRY E. YATES  
petitioner,

v.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND,  
and

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

respondents.

\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No.:93270059/CL170560  
\* Appeal from the Insurance  
\* Commissioner's decision,  
\* Maryland Insurance  
\* Administration  
\*  
\* Upon the Complaint of  
\* Jerry Yates  
\*  
\* Case No.:1095-3/93

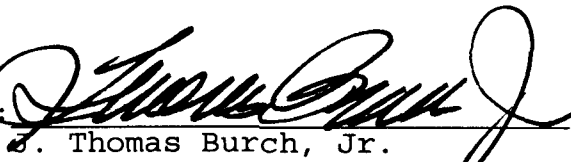
\* \* \* \* \*

PRAECIPE

The clerk will extend the time for the Plaintiff,  
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filed by the Defendants until April 17, 1994, by reason of  
the fact that the plaintiff did not receive document until  
April 2, 1994 due to an incorrect zip code in the  
plaintiff's mailing address (Exhibits A-C).

MALONEY & BURCH

By:



J. Thomas Burch, Jr.  
1100 Connecticut Avenue N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 293-1414

AFFIDAVIT OF J. ELDON YATES

I, J. Eldon Yates, am over the age of twenty-one, do declare as stated below:

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3. My zip code is 21093.

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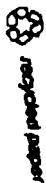
5. This same discrepancy is found in the cover letter to the Motion (Exhibit B).

I solemnly affirm under the penalties of perjury and upon the personal knowledge that the contents of the foregoing paper are true.

Executed this day of April 5, 1994.

  
J. Eldon Yates

EXHIBIT A



1c3

**REDMOND, CHERY & BUEGIN, P.A.**

ATTORNEYS AT LAW

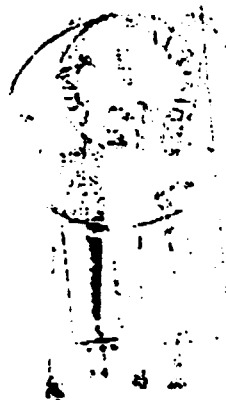
THE FEDERAL BUILDING, SUITE 1301

210 NORTH CHARLES STREET

BALTIMORE, MARYLAND 21201

MR JERRY YATES  
35 CASTLEBAR COURT  
TIMONIDM, MARYLAND

~~210~~  
21093



15

EXHIBIT B  
(EXHIBIT A)

**REDMOND, CHERRY & BURGIN, P.A.**

ATTORNEYS AT LAW  
THE FIDELITY BUILDING, SUITE 1301  
210 NORTH CHARLES STREET  
BALTIMORE, MARYLAND 21201

(410) 752-1555  
FACSIMILE: (410) 752-1066

LEONARD C. REDMOND, III  
RONALD M. CHERRY  
HAROLD L. BURGIN\*  
DEBRA H. CRUZ\*

LAURA C. JENNER  
MARK ANTHONY KOZICWSKI  
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GUIDO FORCARELLI

PRINCE GEORGE'S COUNTY OFFICE  
14746 MAIN STREET  
UPPER MARLBORO, MARYLAND 20772  
(301) 952-1555

COUNSEL  
LOUISE McB. SIMPSON

March 16, 1994

\* Also admitted in the District of Columbia


Mr. Jerry Yates  
35 Castlebar Court  
Timonium, Maryland 21701

RE: Yates v. Insurance Commissioner, et al.  
Case No.: 93270059/CL170560  
Our File No.: 600-8056

Dear Mr. Yates:

We filed today in the Circuit Court for Baltimore City a Motion to Dismiss Appeal and have enclosed a copy for your reference.

Sincerely,

  
Leonard C. Redmond, III

LCR:dlw

cc: Dennis Carroll, Esquire

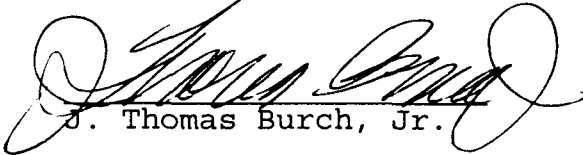
EXHIBIT C  
(EXHIBIT B)





CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 7 day of April, 1994, a copy of the foregoing Praecipe was mailed, postage prepaid, to Mr. Leonard C. Redmond, III, Suite 1301, Fidelity Building, 210 North Charles Street, Baltimore, Maryland 21201 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.

  
J. Thomas Burch, Jr.

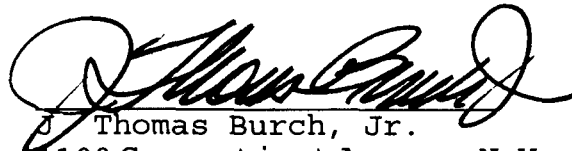
JERRY E. YATES	*	IN THE CIRCUIT COURT
petitioner,	*	FOR BALTIMORE CITY
v.	*	Case No.:93270059/CL170560
INSURANCE COMMISSIONER	*	Appeal from the Insurance
OF THE STATE OF MARYLAND,	*	Commissioner's decision,
and	*	Maryland Insurance
	*	Administration
STATE FARM MUTUAL	*	Upon the Complaint of
AUTOMOBILE INSURANCE	*	Jerry Yates
COMPANY,	*	
respondents.	*	Case No.:1095-3/93

\* \* \* \* \*

**NOTICE OF ENTRY OF APPEARANCE**

PLEASE TAKE NOTICE THAT the undersigned attorney hereby enters his appearance as counsel of record on behalf of the named plaintiff in the cited caption.

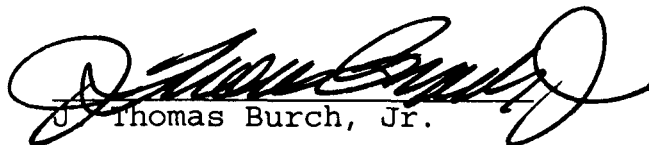
MALONEY & BURCH



J. Thomas Burch, Jr.  
 1100 Connecticut Avenue, N.W.  
 Suite 1200  
 Washington, D.C. 20036  
 (202) 293-1414

**CERTIFICATION**

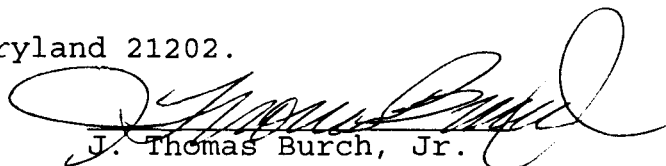
I HEREBY CERTIFY, pursuant to Maryland Rule 1-313, that I am admitted to the practice of the law of Maryland.



J. Thomas Burch, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 7 day of April, 1994, a copy of the foregoing Notice of Entry of Appearance was mailed, postage prepaid, to Mr. Leonard C. Redmond, III, Suite 1301, Fidelity Building, 210 North Charles Street, Baltimore, Maryland 21201 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.

  
J. Thomas Burch, Jr.

JERRY E. YATES  
petitioner,

v.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND,  
and

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY,

respondents.

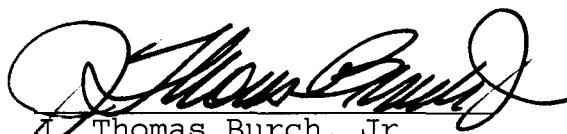
\* IN THE CIRCUIT COURT  
\* FOR BALTIMORE CITY  
\* Case No.:93270059/CL170560  
\* Appeal from the Insurance  
\* Commissioner's decision,  
\* Maryland Insurance  
\* Administration  
\*  
\* Upon the Complaint of  
\* Jerry Yates  
\*  
\* Case No.:1095-3/93

\* \* \* \* \*

**NOTICE OF ENTRY OF APPEARANCE**

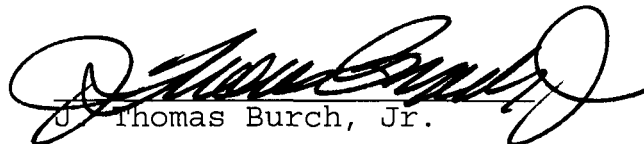
PLEASE TAKE NOTICE THAT the undersigned attorney hereby enters his appearance as counsel of record on behalf of the named plaintiff in the cited caption.

MALONEY & BURCH

  
J. Thomas Burch, Jr.  
1100 Connecticut Avenue, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 293-1414

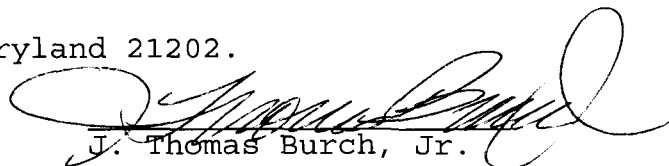
**CERTIFICATION**

I HEREBY CERTIFY, pursuant to Maryland Rule 1-313, that I am admitted to the practice of the law of Maryland.

  
J. Thomas Burch, Jr.

CERTIFICATE OF SERVICE

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J. Thomas Burch, Jr.

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
MAR 21 PM 3:51  
CIVIL DIVISION

JERRY E. YATES \* IN THE CIRCUIT COURT  
 petitioner, \* FOR BALTIMORE CITY  
 v. \* Case No.: 93270059/CLI70560  
 INSURANCE COMMISSIONER \* Appeal from the Insurance  
 OF THE STATE OF MARYLAND, \* Commissioner's decision,  
 and \* Maryland Insurance  
 STATE FARM MUTUAL AUTOMOBILE \* Administration  
 INSURANCE COMPANY, \* Upon the Complaint of  
 respondents. \* Jerry Yates  
 Case No.: 1095-3/93

\* \* \* \* \*

MOTION TO DISMISS APPEAL

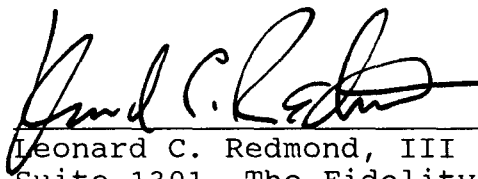
State Farm Mutual Automobile Insurance Company ("State Farm"), by Leonard C. Redmond, III, its attorney, pursuant to Maryland Rule 7-207(d), hereby moves to dismiss the captioned appeal, and as grounds therefor, states:

1. The petitioner, Jerry E. Yates, has failed to comply with Maryland Rule 7-207, in that he has failed to file a memorandum supporting this appeal within thirty days after the clerk sent notice that the record of the administrative hearing from which the appeal is taken has been filed.

2. As a result of this failure, respondent, State Farm, has been prejudiced, inter alia, in that it is unable to prepare its defense of the appeal.

WHEREFORE, for the foregoing reasons, and for those reasons set forth more fully in the statement of grounds and authorities in support of this motion, respondent, State Farm

Mutual Automobile Insurance Company, requests that the captioned appeal be dismissed, with costs to be paid by the petitioner.



Leonard C. Redmond, III  
Suite 1301, The Fidelity Building  
210 North Charles Street  
Baltimore, Maryland 21201  
(410) 752-1555

**REQUEST FOR HEARING**

State Farm hereby requests a hearing on its Motion to Dismiss Appeal.



Leonard C. Redmond, III

**STATEMENT OF GROUNDS AND AUTHORITIES**

**BACKGROUND**

This appeal is from an order on hearing issued by the Insurance Commissioner on September 2, 1993, pursuant to the decision of Administrative Law Judge Geraldine A. Klauber. That order on hearing permitted State Farm to effect its proposed surcharge of an automobile insurance policy issued to the petitioner, Jerry E. Yates.

On September 27, 1993, the petitioner noted his appeal to this Court and requested a stay of the proposed nonrenewal action. On September 30, 1993 this Court issued an order granting the petitioner's request for a stay, without holding a hearing as required by Rule 7-205. State Farm filed a motion to reconsider the order on the request for stay, which was granted on December 9, 1993, allowing State Farm to impose

the surcharge.

On January 26, 1994, the Administrative Officer of the Insurance Division filed the record of the administrative proceedings with the Circuit Court for Baltimore City. The Clerk of the Court notified the petitioner of the filing of the record in a notice dated January 26, 1994. (A copy of that notice is attached hereto as Exhibit 1.)

**ARGUMENT**

Maryland Rule 7-207 provides:

"Within 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citation of authority and references to pages of the record and exhibits relied on.

More than 30 days has elapsed since the record in this case was filed on January 26, 1994, and the petitioner has failed to file "a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions and argument on each questions, . . ." The Court of Appeals has recognized that Rule 7-205, formerly known as Rule B12, is a mandatory procedural rule which must be followed. Gaetano v. Calvert County, 310 Md. 121, 527 A.2d 46, 47 (1987). Although the rules does not mandate dismissal as a sanction for failure to comply with its provisions, the court may order dismissal as a sanction if it is appropriate "in light of the totality of the circumstances and the purpose of the rule." Rule 1-201(a), quoted in



Gaetano, supra, 310 Md. 121, 527 A.2d at 49.

In this appeal, a court trial has been scheduled on May 2, 1994. Notice of that trial date was mailed to the parties on February 3, 1994. By failing to comply with the 30 day requirement of Rule 7-205, the petitioner has placed in jeopardy the ability of the respondents "to respond in kind" to the petitioner's arguments on appeal and "for the court to make an informed decision" by the scheduled trial date. In Gaetano, the petitioners filed their Rule 7-207 (B12) memorandum in an untimely manner but still more than three months before the scheduled trial date. Id. The petitioners still had ample time in which to file their answering memorandum well in advance of the trial date. Unlike in Gaetano, the petitioner's failure to comply with Rule 7-205 will be prejudicial to the respondents and undermine the purpose of the rule if the respondents will not be given the requisite 30 days in which to file answering memoranda before the trial date of May 21, 1994. Accordingly, State Farm submits that the petitioner's failure to comply with Rule 7-205 warrants consideration of dismissal as a sanction under the circumstances of this case.

**CONCLUSION**

For the foregoing reasons, State Farm requests that this appeal be dismissed.

  
\_\_\_\_\_  
Leonard C. Redmond, III

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21<sup>ST</sup> day of March, 1994, a copy of the foregoing Motion to Dismiss Appeal was mailed, postage prepaid, to Mr. Jerry Yates, 35 Castlebar Court, Timonium, Maryland 21701 and Dennis Carroll, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202.

  
\_\_\_\_\_  
Leonard C. Redmond, III

JERRY E. YATES

petitioner,

v.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND,  
et al.

\* IN THE

\* CIRCUIT COURT

\* FOR

\* BALTIMORE CITY

\* 93270059/CL170560

\* \* \* \* \*

ORDER

Upon consideration of the motion to dismiss appeal filed by State Farm Mutual Automobile Insurance Company ("State Farm"), and any response thereto, it is this \_\_\_ day of \_\_\_\_\_, 1994,

ORDERED that State Farm's motion is hereby GRANTED, and that the clerk is directed to enter this appeal "Dismissed with Prejudice, costs to be paid by the petitioner.

\_\_\_\_\_  
JUDGE

STATE OF MARYLAND

WILLIAM DONALD SCHAEFER  
Governor

DWIGHT K. BARTLETT, III  
Insurance Commissioner



MARYLAND INSURANCE  
ADMINISTRATION

501 ST. PAUL PLACE  
BALTIMORE, MARYLAND 21202-2272

DIRECT DIAL (410) 333-

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

January 26, 1994

Jerry E. Yates  
35 Castlebar Court  
Timonium, Maryland 21093

RE: Jerry E. Yates vs.  
Insurance Commissioners of the State of Maryland  
Case No. 1095-3/93

Dear Mr. Yates:

Enclosed is a copy of the Index to Record in the above referenced matter which was filed with the Circuit Court of Baltimore City on January 26, 1994.

Very truly yours

*Cordelia Liles*  
Cordelia Liles  
Appeals Clerk

/cl  
Enclosure

cc: Dennis Carroll, Esquire  
Principal Counsel

Laura C. Jenifer, Esquire  
Redmond, Cherry & Burgin, P.A.  
The Fidelity Building, Suite 1301  
210 North Charles Street  
Baltimore, MD 21201

TRANSCRIPT TO RECORD  
BEFORE THE  
MARYLAND INSURANCE ADMINISTRATION

(CASE NO. 1095-3/93)

JERRY E. YATES

APPELLANT

vs.

INSURANCE COMMISSIONER  
OF THE STATE OF MARYLAND

APPELLEE

TO THE

CIRCUIT COURT FOR BALTIMORE CITY

CASE NO. 93270059/CL170560

JERRY E. YATES  
35 Castlebar Court  
Timonium, Maryland 21093

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. 93270059/CL170560  
\* APPEAL OF THE INSURANCE  
\* COMMISSIONERS' DECISION  
\* MARYLAND INSURANCE  
\* ADMINISTRATION - UPON THE  
\* COMPLAINT OF:  
\* Jerry E. Yates  
\* Case No. 1095-3/93

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JERRY E. YATES  
35 Castlebar Court  
Timonium, Maryland 21093

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. 93270059/CL170560  
\* APPEAL OF THE INSURANCE  
\* COMMISSIONERS' DECISION  
\* MARYLAND INSURANCE  
\* ADMINISTRATION - UPON THE  
\* COMPLAINT OF:  
\* Jerry E. Yates  
\* Case No. 1095-3/93

CERTIFICATE OF TRANSCRIPT TO RECORD

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I, CORDELIA LILES, hereby certify that the following is a true record taken from the proceedings of the Insurance Administration, in the administrative proceedings styled JERRY E. YATES VS. INSURANCE COMMISSIONER OF THE STATE OF MARYLAND, CASE NO. 1095-3/93.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Maryland Insurance Administration, this 26th day of January, 1994.

Dennis Carroll, Esquire  
Principal Counsel

Jerry E. Yates  
35 Castlebar Court  
Timonium, MD 21093

Laura C. Jenifer, Esquire  
Redmond, Cherry & Burgin, P.A.  
The Fidelity Building, Ste. 1301  
210 North Charles Street  
Baltimore, MD 21201



*Cordelia Liles*  
Cordelia Liles  
Appeals Clerk



Circuit Court for Balto. City  
111 N. Calvert St. Rm. 462  
21202

Leonard C. Redmond, III  
210 North Charles Street  
Suite 1301  
Baltimore, Maryland 21201

Circuit Court for Balto. City  
111 N. Calvert St. Rm. 462  
21202

Randi Reischel, Esquire  
Asst. Atty. General  
501 St. Paul Place, 14th Fl.  
Balto., MD. 21202-2272

Circuit Court for Balto. City  
111 N. Calvert St. Rm. 462  
21202

Jerry Yates  
35 Castlebar Court  
Timonium, Maryland 21093

NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Jerry E. Yates

Docket: .....

vs.

Folio: .....

MD. Insurance Commissioner; etal File: 93270059/CL170560

Date of Notice: 1-31-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 26th day of January  
Nineteen Hundred and ninety-four, I received from the Administrative  
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

MARYLAND RELAY SERVICE VOICE 1-800-735-2258



NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Jerry E. Yates

Docket: .....

vs.

Folio: .....

MD. Insurance Commissioner, etal File: 93270059/CL170560

Date of Notice: 1-31-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 26th day of January  
Nineteen Hundred and ninety-four, I received from the Administrative  
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

MARYLAND RELAY SERVICE VOICE 1-800-735-2258



NOTICE SENT IN ACCORDANCE WITH MARYLAND RULE 7-207

Jerry E. Yates

Docket: .....

vs.

Folio: .....

MD. Insurance Commissioner, etal File: 93270059/CL170560

Date of Notice: 1-31-94

STATE OF MARYLAND, ss:

I HEREBY CERTIFY, That on the 26th day of January  
Nineteen Hundred and ninety-four, I received from the Administrative  
Agency, the record, in the above captioned case.

SAUNDRA E. BANKS, Clerk  
Circuit Court for Baltimore City

CC-39

MARYLAND RELAY SERVICE VOICE 1-800-735-2258



(9) BB

FILED

DEC 13 1993

CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES,  
Appellant

v.

INSURANCE COMMISSIONER OF THE  
STATE OF MARYLAND  
Appellee

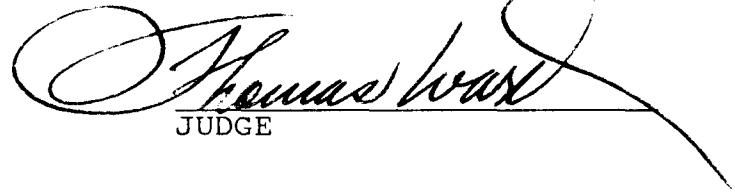
IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY  
93270059/CL170560

\* \* \* \* \*

ORDER

Upon Consideration of State Farm Mutual Automobile Insurance Company's motion to reconsider, it is this 9 day of Dec., 1993

ORDERED, that the defendant's motion is granted and that the stay be revoked and that the licensee be allowed to impose its surcharge on appellant's Jerry Yates' insurance policy.

  
JUDGE

1993

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE CITY  
93270059\CL170580

JERRY B. YATES,  
Appellant  
v.  
INSURANCE COMMISSIONER OF THE  
STATE OF MARYLAND  
Appellee

\* \* \* \* \*

ORDER

Upon Consideration of State Farm Mutual Automobile  
Insurance Company's motion to reconsider, it is this 1 day  
of 12, 1993  
ORDERED, that the defendant's motion is granted and that  
the stay be revoked and that the licensee be allowed to impose  
its surcharge on appellant's Jerry Yates' insurance policy.

*[Handwritten Signature]*  
JUDGE

From  
12/15-93

Jay

RECEIVED  
 JERRY E. YATES, CIRCUIT COURT FOR  
 Petitioner, BALTIMORE CITY  
 93 NOV 12 PM 3:18  
 v. \*  
 CIVIL DIVISION \*  
 INSURANCE COMMISSIONER OF THE \*  
 STATE OF MARYLAND, et al., \*  
 Respondent. \*

IN THE  
 CIRCUIT COURT  
 FOR  
 BALTIMORE CITY  
 93270059/CL170560

\* \* \* \* \*

**MOTION TO RECONSIDER ORDER ON REQUEST FOR STAY**

Respondent, State Farm Mutual Automobile Insurance Company, by Leonard C. Redmond, III, its attorney, hereby moves this Court to reconsider its prior Order granting a stay of the Order of the Maryland Insurance Administration, and as grounds therefor states:

1. On September 27, 1992 appellant, Jerry Yates ("Yates"), filed a petition for appeal on an administrative finding, which provided that State Farm Mutual Automobile Insurance Company ("State Farm"), could enforce its proposed surcharge of Yates' insurance policy.

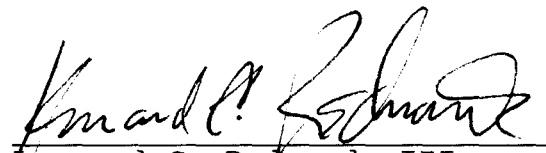
2. Yates also filed a request that the proposed action by State Farm be stayed pending the outcome of the appeal.

3. On September 30, 1993, the Honorable Thomas Ward granted Yates' request for stay without holding a hearing, in spite of the requirement under Maryland Rule 7-205 that such a stay may be granted only after a hearing.

4. A stay of the agency's order is inappropriate in this case as petitioner can be retroactively compensated

for the surcharge in the event that this Court should reverse the Agency.

WHEREFORE, State Farm Mutual Automobile Insurance Company, respectfully requests this Court to reconsider its prior Order granting a stay of the Order of the Maryland Insurance Administration, and that the stay be revoked and that State Farm be allowed to impose the surcharge.

  
Leonard C. Redmond, III  
210 North Charles Street  
Suite 1301  
Baltimore, Maryland 21201  
(410) 752-1555

**STATEMENT OF GROUNDS AND AUTHORITIES**

Maryland Rule 7-205, provides:

The filing of a petition does not stay the order or action of the administrative agency. Upon motion and after hearing, the court may grant a stay, unless prohibited by law, upon the conditions as to bond or otherwise that the court considers proper.

Thus, a stay may not properly be granted unless and until the agency and any other party has had the opportunity to be heard on the issue of whether and under what circumstances a stay is appropriate in a given case. In spite of this requirement, no hearing was held before the stay was granted. Indeed, the stay was granted only three (3) days after petitioner's motion


was filed, such that the respondents were unable to respond even by written opposition.

In the present case, this procedural error adversely affects respondent's substantive rights. The present appeal is from an order of the Insurance Administration permitting State Farm to surcharge petitioner. In this regard, the case can and should be distinguished from those Administration appeals from an Order permitting cancellation of insurance. In the latter case, a stay is routinely granted in order to ensure that the petitioner is not deprived of insurance coverage during the pendency of the appeal, thereby furthering the public policy of this State that all motorists be protected by certain minimum insurance. See Md. Code Ann., art. 48A, § 538 et seq.

Here, the issue is not one of coverage vel non, but rather one simply of economics. Because the petitioner would be entitled to a retroactive rebate in the event that he should prevail on this appeal, then there is threat of irreparable which would require the imposition of a stay.

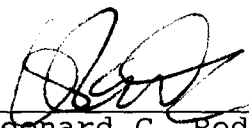
#### **CONCLUSION**

For the foregoing reasons, respondent, State Farm, should be permitted to present its reasons why such a stay is inappropriate to this Court at a hearing.

  
\_\_\_\_\_  
Leonard C. Redmond, III  
210 North Charles Street  
Suite 1301  
Baltimore, Maryland 21201  
(410) 752-1555

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of November, 1993 a copy of the forgoing motion to reconsider order on request for stay was mailed, postage prepaid, to: Jerry Yates, 35 Castlebar Court, Timonium, Maryland 21093 and Randi Reischel, Esquire, Assistant Attorney General, 501 St. Paul Place, 14th Floor, Baltimore, Maryland 21202-2272.

  
\_\_\_\_\_  
Leonard C. Redmond, III





MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES )  
35 Castlebar Court )  
Timonium, MD. 21093 )  
Plaintiff )

vs. )

Case No. 93270059/CL170560

MARYLAND INSURANCE COMMISSIONER )  
501 St. Paul Place )  
Baltimore, Maryland 21202 )

STATE FARM INSURANCE CO. )  
800 Oak Street )  
Frederick, Maryland 21701 )

Defendents )

*8*  
*[Handwritten initials]*

ORDER

The matter having come before the Court and for good cause shown, it is hereby

ORDERED, that the motion for extension of time to file the record is hereby granted for 60 days.

Jerry E. Yates  
Insurance Commissioner of the State of Maryland  
(Case No. 1095-3/93)

ENTERED this 12 day of November, 1993.

*[Handwritten signature]*

Copies to:

Jerry E. Yates  
35 Castlebar Court  
Timonium, Md. 21093

(410) 561-8810

ELLEN M. HELLER  
JUDGE

IN THE COURT FOR BALTIMORE CITY

JERRY E. YATES  
32  
COURT

Case No. 1055-37981

vs.

MARYLAND INSURANCE  
501 St. Paul Place  
Baltimore, Maryland 21202

STATE FARM  
300 Oak Street  
Frederick, Maryland 21701

Defendants

ORDER

The matter having come before the Court for good cause shown, it is hereby

ORDERED that the motion for a stay of proceedings be granted for 60 days.

Jerry E. Yates  
Insurance Commissioner of the State of Maryland  
(Case No. 1055-37981)

ROBERT M. REILLY  
JUDGE

Jerry E. Yates  
32 Court  
Baltimore, MD 21202

For  
11-17-83

CIRCUIT COURT FOR BALTIMORE CITY MSV534  
TERMINAL: V147

EVENT DATA

DATE: 11/10/93  
TIME: 15:26

CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560

CATEGORY: APPAA

ORIG COURT: CE

TRANSCRIPT PAGES:

TERMINATION DATE: 11/08/94

STATUS: A

CONSOLIDATED:

LAST CHANGE: 11/09/93

STATUS DATE: 10/15/93

PROTRACTED:

DATE: CODE: EVENT TEXT

092793 FILE PETITION FOR JUDICIAL REVIEW ON BEHALF OF THE PLAINTIFF, JERRY E.  
092793 YATES FROM A DECISION OF THE MARYLAND INSURANCE COMMISSIONER  
092793 AND EXHIBITS. (1)  
092793 MOTN MOTION TO STAY. (2)  
2893 MEMO CASE SENT TO JUDGE HELLER.  
093093 ORDR ORDER OF COURT THAT THE ORDER ON HEARING OF THE MD INS. COMM., EX  
093093 REL JERRY E. YATES, MID. CASE NO. 1095-3/93, OAH NO. 93-DLR-INS-  
093093 31-012502, AND THE SURCHARGE THEREIN ORDERED, ARE HEREBY STAYED  
093093 PENDENT LITE, PLTFF. BE REQUIRED TO POST SECURITY IN THE AMT. OF  
093093 \$0. (WARD, J) (3)  
101593 ANSW APP. OF LEONARD C. REDMOND, III AND LAURA C. JENIFER, ATTYS. FOR  
101593 APPELLEE, ST. FARM MUTUAL AUTO. INS. CO., SAME DAY ANS. FD. (4)

PAGE 001

CIRCUIT COURT FOR BALTIMORE CITY MSV534  
TERMINAL: V147

EVENT DATA

DATE: 11/10/93  
TIME: 15:26

CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560

CATEGORY: APPAA

ORIG COURT: CE

TRANSCRIPT PAGES:

TERMINATION DATE: 11/08/94

STATUS: A

CONSOLIDATED:

LAST CHANGE: 11/10/93

STATUS DATE: 10/15/93

PROTRACTED:

DATE: CODE: EVENT TEXT

102293 PLEA APPELLEE, MD. INS. COMM.-DWIGHT K. BARTLETT, III, RESPONSE FD. (5)  
110893 MOTN PLTFF MOTION FOR EXTENSION OF TIME TO FILE THE RECORD FD. (6)  
111293 MEMO CASE SENT TO JUDGE HELLER ON ENTRY 6

PAGE 002

604

MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES  
35 Castlebar Court  
Timonium, MD. 21093  
Plaintiff

vs.

Case No. 93270059/CL170560

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

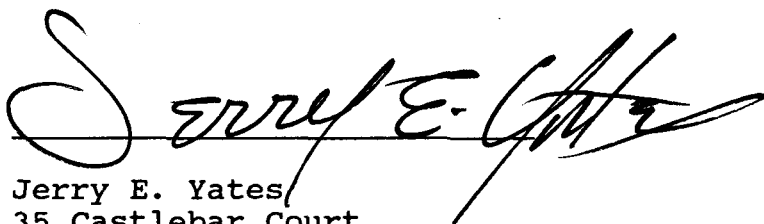
STATE FARM INSURANCE CO.  
800 Oak Street  
Frederick, Maryland 21701

Defendants

RECEIVED FOR  
CIRCUIT COURT CITY  
BALTIMORE CITY  
93 NOV -8 PM 3:03  
CIVIL DIVISION

Motion for Extension of Time to File the Record

Plaintiff Jerry E. Yates requests extension of time for 60 days to arrange to have a reporting service transcribe the record. The extension is necessary because the original notification was delivered to me late due to an incorrect zip code on the correspondence informing me to arrange for a reporting service.



Jerry E. Yates  
35 Castlebar Court  
Timonium, MD 21093

(410) 561-8810

1. I, hereby certify that an EXACT COPY OF the above response was mailed to Laura C. Jenifer 210 N. Charles street suite 1301 Baltimore, MD 21201. ON THE 7 DAY OF NOV. 1993
2. The Maryland Insurance Commissioner 501 St. Paul Place Baltimore, MD 21202 on the 7. day of NOV. 1993. JERRY E. YATES

JERRY E. YATES

Appellant

v.

MARYLAND INSURANCE  
COMMISSIONER  
and  
STATE FARM INSURANCE  
COMPANY

Appellees

\* \* \* \* \*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY  
\*  
\* CASE NO. 93270059/CL170560  
\*  
\*

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY  
1993 OCT 22 A 7:55  
CIVIL DIVISION

5

**RESPONSE OF THE MARYLAND INSURANCE COMMISSIONER**

Appellee Dwight K. Bartlett, III, Maryland Insurance Commissioner hereby responds, pursuant to Rule 7-204 of the Maryland Rules, to the Petition filed by Appellant, and states:

(1) State Government Article §10-222(d)(2) provides that an administrative agency may decline to participate in an appeal to the Circuit Court where the agency delegated the authority to issue a final administrative decision to the Office of Administrative Hearings;

(2) The Commissioner has generally delegated to the Office of Administrative Hearings final decision making authority in cases involving motor vehicle insurance under Article 48A, §240AA;

(3) Pursuant to the Commissioner's delegation, the Office of Administrative Hearings issued the Order on Hearing, which is the final administrative decision in this case;

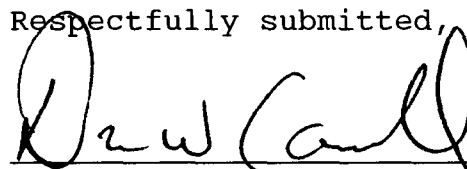
(4) A review of that portion of the administrative record available at this time indicates that this case involves a dispute

✓

between two other adverse parties, i.e. Jerry E. Yates, the insured, and State Farm Insurance Company, the insurer, and that there are no significant public policy questions involved which would require the Commissioner to take a position concerning the propriety of the Administrative Law Judge's Order in this case.

**WHEREFORE**, the Maryland Insurance Commissioner declines, at this time, to participate in this case as a party.

Respectfully submitted,

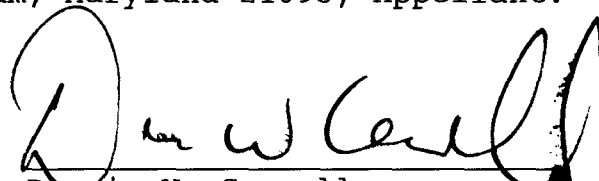
 489069

Dennis W. Carroll  
Assistant Attorney General  
501 St. Paul Place  
Fourteenth Floor  
Baltimore, Maryland 21202  
(410) 333-8335

Counsel for Appellee  
Maryland Insurance Commissioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>ST</sup> day of October, 1993, a copy of the foregoing Response of the Maryland Insurance Commissioner was mailed first class, postage prepaid to Laura C. Jenifer, Esquire, Redmond, Cherry & Burgin, 210 North Charles Street, Suite 1301, Baltimore, Maryland 21201, and to Jerry E. Yates, 35 Castlebar Court, Timonium, Maryland 21093, Appellant.

  
Dennis W. Carroll  
Assistant Attorney General

JERRY E. YATES  
RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

Appellant  
93 OCT 15 PM 3:38

v.

CIVIL DIVISION

INSURANCE COMMISSIONER OF  
THE STATE OF MARYLAND

Appellee

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

93270059/CL170560

\* \* \* \* \*

ANSWER OF STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY


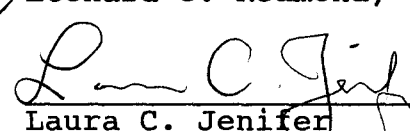
State Farm Mutual Automobile Insurance Company ("State Farm"), appellee, by Leonard C. Redmond, III and Laura C. Jenifer, its attorneys, in answer to the Petition for Appeal filed by Jerry E. Yates says:

1. The decision of the Insurance Commissioner was consistent with the controlling principles of law relative to insurance underwriting in the State of Maryland.

2. The decision of the Insurance Commissioner was supported by competent, material, and substantial evidence.

3. The decision of the Insurance Commissioner was neither arbitrary nor capricious.

WHEREFORE, State Farm requests that the decision of the Insurance Commissioner be affirmed.

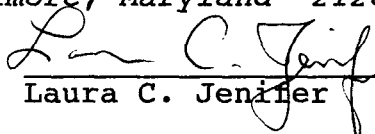
383045  
916408  
  
\_\_\_\_\_  
Leonard C. Redmond, III  
  
\_\_\_\_\_  
Laura C. Jenifer  
210 North Charles Street  
Suite 1301  
Baltimore, Maryland 21201  
(410) 752-1555

4



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this <sup>14<sup>th</sup></sup> day of October, 1993  
a copy of the forgoing answer of State Farm Mutual Automobile  
Insurance Company was mailed, postage prepaid, to: Jerry  
Yates, 35 Castlebar Court, Timonium, Maryland 21093 and and  
Randi Reischel, Esquire, Assistant Attorney General, 501 St.  
Paul Place, 14th Floor, Baltimore, Maryland 21202-2272.

  
\_\_\_\_\_  
Laura C. Jenifer

MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

*Handwritten initials*

JERRY E. YATES  
35 Castlebar Court  
Timonium, MD. 21093  
Plaintiff

vs.

Case No. 93270059/CL170560

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

STATE FARM INSURANCE CO.  
800 Oak Street  
Frederick, Maryland 21701

Defendants

ORDER

The matter having come before the Court and for good cause shown, it is hereby

ORDERED, that the Order on Hearing of the Maryland Insurance Commissioner, ex rel Jerry E. Yates, Mid. Case No. 1095-3/93, OAH No. 93-DLR-INS-31-012502, and the surcharge therein ordered, are hereby stayed pendent lite;

AND FURTHER ORDERED that Plaintiff be required to post security in the amount of \$0.

ENTERED this 10 day of September, 1993.

*Handwritten signature*

JUDGE

Copies to:

Jerry E. Yates  
35 Castlebar Court  
Timonium, Md. 21093

(410) 561-8810

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

Laura C. Jenifer, Esq.  
Redmond, Cherry & Burgin  
210 North Charles Street  
Suite 1301  
Baltimore, MD 21201  
(410) 752-1555

CIRCUIT COURT FOR BALTIMORE CITY  
MSV523 CASE INQUIRY

DATE: 09/28/93  
TIME: 11:05  
TERMINAL: V114

CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560  
CATEGORY: APPAA  
ORIG COURT: CE AMOUNT OF SUIT :\$ LAST PLEA DATE : 09/27/93  
DATE FILED: 09/27/93 TRANSCRIPT PAGES : TERMINATION DATE: 09/27/94  
STATUS: F CONSOLIDATED CASE: BOOK NUMBER :  
STATUS CODE: 09/27/93 PROTRACTED: PAGE NUMBER :  
WHO PAYS COSTS :  
LAST MODIFIED ON: 09/28/93

DATE	CODE	AMOUNT	BAD CK/	BANK	CHECK
			RECPT #	NUMBER	NUMBER
09/27/93	CLERK \$	80.00			
09/27/93	PAYMT \$	10.00	8135		

DATE	CODE	TIME	PART	ROOM	SCHED	ACTUAL	DISP	REAS	JUDGE	ID
09/27/93	FILE									
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NEXT PAGE P/N PAGE: 001  
CIRCUIT COURT FOR BALTIMORE CITY DATE: 09/28/93  
MSV523 CASE INQUIRY TIME: 11:05  
CASE NUMBER: 93270059 YATES VS MD INSURANCE COMMISSIONER, ET CL170560

09/28/93 MEMO CASE SENT TO JUDGE HELLER.

CONN	NAME	IDENT	PROPER PERSON
DEF	*MARYLAND INSURANCE COMMISSIONER 501 ST. PAUL PLACE BALTIMORE MD 21202	I03165	PROPER PERSON
DEF	*STATE FARM INSURANCE COMPANY 800 OAK STREET FREDERICK MD 21701	S18947	PROPER PERSON
PET	YATES, JERRY E 35 CASTLEBAR COURT TIMONIUM MD 21093	N79292	PROPER PERSON

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MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES  
35 Castlebar Court  
Timonium, MD. 21093  
Plaintiff

vs.

Case No. 93270059 CL170560

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

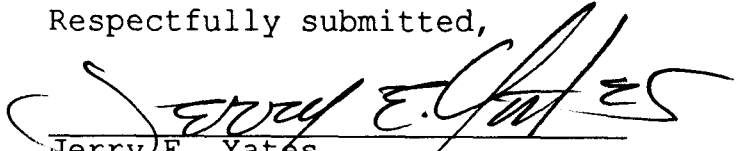
STATE FARM INSURANCE CO.  
800 Oak Street  
Frederick, Maryland 21701

Defendants

MOTION TO STAY

Comes now Jerry E. Yates, Plaintiff pro se, and moves this Honorable Court to stay the Order on Hearing in the appealed proceeding before the Maryland Insurance Commissioner, ex rel Jerry E. Yates, Mid. Case No. 1095-3/93, OAH No. 93-DLR-INS-31-012502, and to stay the proposed surcharge ordered therein pendente lite.

Respectfully submitted,



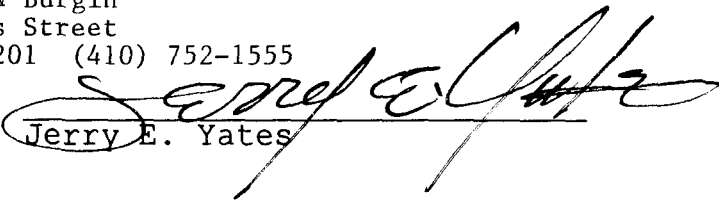
Jerry E. Yates  
35 Castlebar Court  
Timonium, Md. 21093  
(410) 561-8810

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served by first class mail, postage prepaid, this 27th day of September 1993 upon:

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

Laura C. Jenifer, Esq.  
Redmond, Cherry & Burgin  
210 North Charles Street  
Baltimore, MD 21201 (410) 752-1555

  
Jerry E. Yates

(1)

RECEIVED  
CIRCUIT COURT FOR  
BALTIMORE CITY

93 SEP 27 PM 4:04

CIVIL DIVISION

MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES  
35 Castlebar Court  
Timonium, MD. 21093  
Plaintiff

vs.

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

STATE FARM INSURANCE CO.  
800 Oak Street  
Frederick, Maryland 21701

Defendants

Case No.

93270059

CL 170560

110PM00/27/93 002#8135 A \*\*\*

#000059  
CIVIL \$80.00  
\*\*TTL \$80.00  
CASH \$80.00  
CHNG \$0.00

PETITION FOR JUDICIAL REVIEW

Plaintiff Jerry C. Yates pro se, pursuant to Maryland Annotated Code, Article 48A. Section 40, herewith appeals the Order on Hearing of the Maryland Insurance Commissioner, ex rel Jerry E. Yates, Mid. Case No. 1095-3/93, OAH No. 93-DLR-INS-31-012502.

1. Jurisdiction is conferred by Maryland Annotated Code, Article 48A. Section 40.
2. The Plaintiff, Jerry E. Yates was insured at the time of the accident by State Farm Mutual Automobile Insurance Co. under Policy No. 375 5114-A21-20B.
3. The Insurance Commissioner for the State of Maryland is a statutory defendant to this action.
4. The Defendant, State Farm Mutual Automobile Insurance Co. is licensed in the State of Maryland, and has a pecuniary interest in the case.
5. On March 10, 1992, Ernest Yates, the Plaintiff's son, who

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was covered under Plaintiff's insurance policy, was involved in an automobile accident.

6. State Farm Mutual Automobile Insurance Co. thereupon levied a surcharge on Policy No. 375 5114-A21-20B, and offered as an unacceptable alternative, the exclusion of Ernest Yates from coverage.

7. The Plaintiff filed a timely petition for a hearing on the case by the Insurance Commissioner for the State of Maryland.

8. The Plaintiff vigorously contested this surcharge, as it is contrary to law and not supported by the facts.

9. On September 22, 1993, an ORDER ON HEARING denying relief to the Plaintiff was entered by the Insurance Commissioner for the State of Maryland. (See Attachment A)

10. The decision of the Insurance Commissioner for the State of Maryland is unsupported by competent, material, and substantial evidence in view of the entire record as submitted.

11. The Decision of the Insurance Commissioner is arbitrary and capricious.

WHEREFORE, Plaintiff requests that Court reverse the decision of the Insurance Commissioner for the State of Maryland, determine Plaintiff not obligated to pay the levied surcharge, and award him his costs, attorney fees, interest, and such other relief as this court deems just and proper.



EX REL:

Jerry E. Yates  
35 Castlebar Court  
Timonium, MD 21093

Complainant

\* LICENSEE:  
 \*  
 \* State Farm Mutual  
 \* Automobile Insurance Co.  
 \* Seaboard Office  
 \* 800 Oak Street  
 \* Frederick, MD 21709-1000  
 \* Attn: G. Doss Baker  
 \*  
 \* MID CASE NO. 1095-3/93  
 \* OAH NO. 93-DLR-INS-31-012502

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 surcharging the Complainant's motor vehicle liability insurance policy. The Maryland Insurance Division ("MID"), after investigation, affirmed the Licensee's proposed action, and the Complainant requested a hearing.

In accordance with MD. ANN. Code art. 48A, §240AA (1991 Replacement Volume), a hearing in this matter was held on August 19, 1993, before Geraldine A. Klauber, Administrative Law Judge, Office of Administrative Hearings.

Laura C. Jenifer, 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 MD. ANN. CODE art. 48A, §240AA.

Chapter 538 (House Bill 607) of the Laws of Maryland 1993, effective May 27, 1993, created the Maryland Insurance Administration as an independent agency. This matter was referred and docketed prior to the effective date of the legislation.

### SUMMARY OF THE EVIDENCE

Nine (9) exhibits were admitted on behalf of the Insurance Division. Two (2) exhibits were admitted on behalf of the Licensee. No (0) exhibits were admitted on behalf of the Complainant.

### 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 December 2, 1992, State Farm Mutual Automobile Insurance Company, the Licensee, informed the Complainant of its intention to surcharge Policy No. 375 5114-A21-20B; in lieu of said surcharge, the Licensee proposed to exclude Ernest Yates from coverage.

2. That the Licensee has an established rating plan which requires it to charge an additional premium (surcharge) if its insured is involved in an accident that results in payments totaling \$400.00 or more under the property damage liability coverage of the policy, or in the event of a one car accident under the collision coverage provided by the policy.

3. On March 10, 1992, Ernest Yates was involved in an at fault accident in which the company paid \$4,721.00 under property damage coverage. The circumstances of the accident were as follows:

On March 10, 1992, Ernest Yates was operating his vehicle when he lost control of the vehicle, crossed the center line and struck an oncoming vehicle.

4. That the Licensee used reasonable means to validate the above cited accident, determine liability and pay the resulting claim.

### DISCUSSION

Insurance Comm'rs v. Navas, 81 Md. App. 549, 558 (1990) and MD. ANN. CODE art. 48A, 240AA (1991 Repl. Vol.) require that an insurer explain the basis for its conclusion that the insured was at fault. The Licensee has provided such explanation in the testimony of Michael Wolf, Claims Specialist.

The testimony of Mr. Wolf, as corroborated by a police report, established that Mr. Yates lost control of his vehicle, crossed the center line and struck another vehicle.

The Complainant disputed the Licensee's contentions by stating that his son, Ernest Yates was involved in an accident on March 10, 1992. His son was travelling in heavy rain when he was involved in an accident with an off duty police officer. He stated that there were no witnesses to the incident and no proof that his son

was at fault. His son went to court to contest the citation and all charges were dropped.

Mr. Yates argument is unpersuasive. The police report states that the vehicle driven by the Complainant's son crossed the center line. The fact that a court found that the evidence presented at trial did not support a criminal conviction is not determinative of civil liability for the incident. The Licensee used reasonable means to investigate the accident and determine that Ernest Yates crossed the center line and struck another vehicle.

Accordingly, I conclude that the Licensee's proposed surcharge is in accordance with the law. The Licensee provided adequate notice to Mr. Yates of its intention to surcharge his policy according to the terms of its established rating plan on file with the Maryland Insurance Division. The Licensee used reasonable and adequate means to investigate the accident and pay the claim.

#### CONCLUSIONS OF LAW

Based on the forgoing, it is concluded that the Licensee has met its burden of proof and production as required by MD. ANN. CODE art. 48 A, §240AA. The Licensee is not in violation of the Maryland Insurance Code by virtue of its proposed surcharge of the subject insurance policy.

#### ORDER

THEREFORE, it is this 2nd day of September, 1993 by the Insurance Commissioner of Maryland, ORDERED

That the Licensee be permitted to effect its proposed action on or after October 2, 1993.

  
Geraldine A. Klauber

Administrative Law Judge

cc: Laura Jenifer, Esq.

MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE CITY

JERRY E. YATES )  
35 Castlebar Court )  
Timonium, MD. 21093 )  
Plaintiff )

vs. )

Case No. \_\_\_\_\_ )

MARYLAND INSURANCE COMMISSIONER )  
501 St. Paul Place )  
Baltimore, Maryland 21202 )

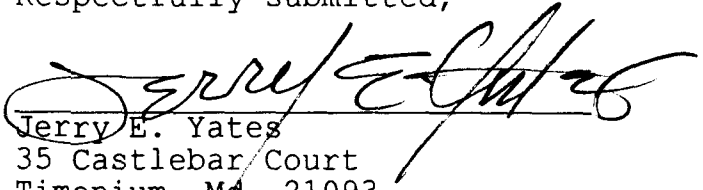
STATE FARM INSURANCE CO. )  
800 Oak Street )  
Frederick, Maryland 21701 )

Defendants )

POINTS AND AUTHORITIES

Maryland Code Ann., Art. 48A, Sec. 40 (2).

Respectfully submitted,

  
Jerry E. Yates  
35 Castlebar Court  
Timonium, Md. 21093  
(410) 561-8810

**1993**

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3-4-10  
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DISC. DAYS CHILD CARE V NUTRITION & TRANS Box 481  
Case No. 93258067 [MSA T2691-5556, OR/22/10/31]

YATES VS MD INSURANCE COMMISSIONER, ET Box 499 Case  
No. 93270059 [MSA T2691-5574, OR/22/11/1]

BOARMAN VS LITTON SYSTEM INC Box 551 Case No.  
93308008 [MSA T2691-5627, OR/22/12/6]

KINZIE VS.MD DEPT OF ECON.& EMP. DEV. Box 599 Case No.  
93337061 [MSA T2691-5675, OR/22/13/7]

KIM VS. ZONING BOARD Box 614 Case No. 93350027 [MSA  
T2691-5690, OR/22/13/22]