OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

B.S. & J.S.[1],	*	
Plaintiffs,	*	
v.	*	**Case No. 27-1001-23-00023**
	*	
Garrison Property & Casualty Insurance Company,	*	
Defendant.	*	

* * * * * * * * * * * * * *

DECISION

B.S. and J.S. ("Plaintiffs") have alleged that Garrison Property & Casualty Insurance Company ("Defendant") breached its contractual duties by failing to pay Plaintiffs' first-party claim for damages under the terms of their homeowners' policy ("Policy") in connection with storm damage from March 2, 2018 (the "Claim"). Pursuant to Section 27-1001 of the Insurance Article of the Annotated Code of Maryland ("Section 27-1001"), the Maryland Insurance Administration (the "Administration") concludes that Plaintiffs have failed to demonstrate that Defendant breached any duties owed to Plaintiffs or otherwise failed to act in good faith in connection with Plaintiffs' claim.

I. STANDARD OF REVIEW

Section 3-1701 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland ("Section 3-1701") authorizes the award to an insured of certain statutory remedies if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in

[1] The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff's and other individuals' privacy.

part, a first-party property insurance or disability insurance claim. However, before the insured may file an action pursuant to 3-1701, Section 27-1001 requires that the insured first submit a complaint to the Administration.

Section 27-1001 defines "good faith" as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim." The Administration in rendering a decision on the complaint is required by Section 27-1001(e)(1)(i) to focus on five issues:

> 1. Whether the insurer is required under the applicable policy to cover the underlying claim;
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> 2. The amount the insured was entitled to receive from the insurer;
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> 3. Whether the insurer breached its obligation to cover and pay the claim;
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> 4. Whether an insurer that breached its obligation failed to act in good faith; and
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> 5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't, § 10-217 (2020 Repl. Vol.); *Md. Bd. Of Physician v. Elliott,* 170 Md. App. 369, 435, *cert denied,* 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On March 22, 2023, the Administration received Complaint No. 27-1001-23-00023 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiffs alleged that Defendant breached its obligations under the Policy by failing to issue a determination on whether the loss was covered under the Plaintiffs' policy. Plaintiffs contend that Defendant breached its duty to act in good faith by failing to perform their financial duties under the Policy by failing to fully pay Plaintiffs' claim. Furthermore, Plaintiffs also assert that

Defendant acted in bad faith by intentionally and wrongfully making misrepresentations in order to delay the claim's process.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on March 27, 2023. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on April 24, 2023, and acknowledged the obligation to provide coverage on the claim.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiffs have failed to establish that they are entitled to additional coverage for the Claim under the Policy.

On or about March 2, 2018, a storm caused significant wind and subsequent water damage to Plaintiffs' residence located in Lothian, Maryland. At the time of the storm, Plaintiffs' residence was insured by a homeowner's insurance policy issued by the Defendant ("Policy"). The Policy provides coverage for Dwelling, Other Structures, Personal Property, and Loss of Use. The limit of liability for Dwelling coverage under the Policy is $705,000, subject to a $2,000 deductible, and the limit of liability for Personal Property coverage under the Policy is $352,500.

With respect to the personal property coverage under the Policy:

> **SECTION I – LOSSES WE COVER**
> **COVERAGE C – PERSONAL PROPERTY PROTECTION**
> We insure against "sudden and accidental", direct, physical loss to tangible property described in PROPERTY WE COVER — Coverage C caused by a peril listed below unless the loss is excluded in LOSSES WE DO NOT COVER UNDER DWELLING PROTECTION, OTHER STRUCTURES AND PERSONAL PROPERTY PROTECTION.
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2. Windstorm or Hail.
This peril does not include loss to the property contained in the building caused by rain, snow, sleet, sand, or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand, or dust enters through this opening

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SECTION II– LOSSES WE DO NOT COVER

LOSSES WE DO NOT COVER UNDER DWELLING PROTECTION AND OTHER STRUCTURES PROTECTION.

1. Unless otherwise stated in 3. Below, we do not insure damage consisting of or caused directly or indirectly by any of the following, regardless of:
   (i) The cause of the excluded event or damage that; or
   (ii) Other causes of the loss that; or
   (iii) Whether the event or damage occurs, suddenly or gradually, involves isolated or widespread damage, or occurs as a result of any combination of these to; or

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f. Wear and tear, marring, deterioration

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LOSSES WE DO NOT COVER UNDER DWELLING PROTECTION, OTHER STRUCTURES PROTECTION, AND PERSONAL PROPERTY PROTECTION.

1. Unless otherwise stated in 3. Below, we do not insure damage consisting of or caused directly or indirectly by any of the following, regardless of:
   (iv) The cause of the excluded event or damage that; or
   (v) Other causes of the loss that; or
   (vi) Whether the event or damage occurs, suddenly or gradually, involves isolated or widespread damage, or occurs as a result of any combination of these to; or

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c. Water arising from, caused by or resulting from human or animal forces, any act of nature, or any other source. Water damage means damage caused by or consisting of:
   (1) Flood, surface water, waves, tidal water, storm surge, tsunami, any overflow of a body of water, or spray from any of these, whether or not driven by wind; or

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e. Neglect, by or failure of any "insured" to use all reasonable means to save and preserve property at and after the time of a loss or damage or the event resulting in loss or damage.

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SECTION I – CONDITIONS

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2. Your Duties After Loss. In case of a loss to which this insurance may apply you must see that the following are done:

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d. (1) Protect the property from further damage;
(2) Make reasonable and necessary repairs to protect the property; and

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On March 5, 2018, Plaintiffs reported the loss to Defendant and Defendant created a claim. Also on this day, Defendant sent Plaintiffs confirmation that the property claim was received, as well as a letter that explained the statute of limitations on the claim.

On March 13, 2018, Plaintiffs emailed Defendant with concerns that their premium payment may increase because they initiated the claim. Defendant responded the next day, March 14, 2018, and explained that there was no guarantee that their premiums would not increase because of the many factors, including claims history, that determine premium price. However, Defendant advised Plaintiffs that any impact would not be seen until the next renewal date and Plaintiffs could address any questions or concerns at that time.

On March 17, 2018, Plaintiffs' house was inspected and the inspector found that the total net for the claim was $12,535.93.

On March 22, 2018, Defendant issued a payment of $12, 535.93 for the estimated cost of replacement of $27,177.74, minus depreciation of $12,641.81 and Plaintiffs' $2,000 deductible.

On May 1, 2018, Plaintiffs submitted a supplemental request for additional repairs. Defendant approved a skylight flashing kit, ice and water barrier, step slashing, and counter flashing. However, Defendant denied the request for a ridge cap.

On May 9, 2018, Defendant paid Plaintiffs $500 for food spoilage from when they were without power for several days due to the storm. Also on this day, Plaintiffs told Defendant that they should be paid another $500 because they submitted two food spoilage claims since they had two freezers that were affected by the power outage. Defendant explained that, under the policy, the maximum payment for food spoilage is $500 for one loss, regardless of the number of freezers. Thus, Defendant advised Plaintiffs that it would not being issuing payment for the second freezer since the impact came from the same event.

On May 17, 2018, Defendant talked to Plaintiffs' general contractor, who was hired to perform mold remediation. The general contractor advised Defendant that Plaintiffs stated that mold was present, which was causing them to get sick and family pets to be hospitalized. He also stated that Plaintiffs hired an environmental testing company to perform mold testing, but results were not available yet. In response, that same day, Defendant extensively reviewed the claim and found that Plaintiffs never mentioned any mold issues. Defendant also reviewed inspection photos and did not find any mold or points of mold, especially because Plaintiffs declined an interior inspection. Defendant also left a voicemail for Plaintiffs stating that their policy has limited coverage for mold but that it would need more details before any payment can be approved. However, Defendant advised Plaintiffs to take the best measure for their health and to provide additional details when they could.

On May 21, 2018, Plaintiffs called Defendant requesting a second $500 payment for food spoilage. Defendant again explained that it had already issued the maximum $500 payment for

food spoilage from the same date of loss. However, Plaintiffs explained that the second claim for food spoilage was actually from a date of loss on November 17, 2017. Defendant corrected the date of loss for the second food spoilage claim and made note of Plaintiffs' explanation.

On May 31, 2018, Plaintiffs' contacted Defendant to advise that their house had extensive mold damage and that it was unlivable. Plaintiffs inquired about coverage to rent a recreational vehicle ("RV") to live in on their property until the house was safe to live in. Defendant explained that if coverage for mold was approved, it would cover the cost of temporary housing, like a hotel.

On June 14, 2018, Defendant sent Plaintiffs an email stating that once repairs or replacements are complete, to send copies of itemized work or replacement item descriptions, costs, and dates for completed work or purchased replacement items.

On June 19, 2018, Plaintiffs' called Defendant for an update on payment for the food spoilage claim from November 2017. That same day, Defendant issued the $500 payment to Plaintiffs.

On July 11, 2018, Defendant sent Plaintiffs payment of $10,002.46 for the remediation of mold damage.

On September 20, 2018, Plaintiffs emailed Defendant with a request for onsite temporary housing during the mold remediation. Plaintiffs also noted that they would submit receipts for mold testing, medical bills, and veterinarian bills.

On September 21, 2018, Plaintiffs called Defendant asking for an onsite RV to stay in during mold remediation because their house was unlivable and the nearest hotel was 100 miles away.

On September 24, 2018, Defendant called Plaintiffs for details regarding the mold remediation and alternate housing. Defendant advised Plaintiffs that their policy would cover lodging and additional food costs if they provided support that the house was unlivable. Defendant also explained that the policy did not cover medical or veterinarian bills resulting from mold exposure.

On October 1, 2018, Plaintiffs sent Defendant a doctor's note that stated they had been sick due to mold exposure and that their house was unlivable because of mold.

On October 2, 2018, Plaintiffs called Defendant to get lodging because the house was unlivable and the mold remediation company told Plaintiffs they needed to vacate while the home undergoes environmental testing. Defendant reminded Plaintiffs that their policy limit for mold repairs, mold testing, and lodging is $15,000. Additionally, Defendant offered to set up a hotel for a few days but Plaintiffs requested an RV or trailer on property. In response, Defendant advised Plaintiffs that they needed to get a quote for a trailer or RV before it can determine if it could be covered.

On October 3, 2018, Defendant emailed Plaintiffs to advise them that they had already used $10,002.46 of their mold coverage allowance, meaning that they had $4,663.54 left to cover lodging. Defendant also stated that if Plaintiffs used more than the remaining allowance, they would be responsible for any out of pocket expenses.

On October 10 2018, Defendant called Plaintiffs to get more information about how the water damage and mold damage occurred. Plaintiffs said that the storm caused holes and cracks in the roof, and water entered the roof and traveled down to the basement through the walls, causing mold. Defendant advised Plaintiffs that it had not received any photos of water or mold

damage and that they needed to submit such photos immediately so that Defendant could determine coverage.

Also on October 10, 2018, Defendant issued payment of $788.00 to Plaintiffs for mold remediation.

On October 11, 2018, Defendant extended Plaintiffs' hotel stay since mold remediation was still not finished. Defendant explained that Plaintiffs had a total allowance of $15,000 for mold coverage, and that after the extended hotel stay, they would have $1,647.14 remaining for any additional testing, repairs, or lodging. Also on this date, Plaintiffs sent Defendant photos of mold damage, but only in the attic. Thus, Defendant requested photos of the mold damage in the basement.

On October 13, 2018, Plaintiffs submitted additional photos of mold damage.

On October 14, 2018, Plaintiffs requested that the hotel stay was extended for an additional night because the house was still not safe to live in. Defendant extended the hotel stay for another night. Defendant also advised Plaintiffs that prior to extending the hotel stay, they only had $1,647.14 of the mold coverage allowance to cover any additional testing, repairs, remediation, and lodging. Defendant told Plaintiff that how they use the mold coverage allowance is up to them but that there was a possibility that they may go over their allowance and would have to pay out of pocket.

On October 15, 2018, Defendant advised Plaintiffs that it needed the estimate from their mold remediation contractor in order to affirmatively determine coverage for mold damage.

On October 20, 2018, Defendant emailed Plaintiffs to advise them that it cannot accurately calculate the remaining funds for mold remediation until it receives a repair estimate.

Defendant also explained that the mold remediation is being covered under the mold limit and not under the dwelling limit.

On October 21, 2018, Defendant called Plaintiffs to go over the claim. Defendant advised Plaintiffs to get a contractor to do the mold mitigations and that they would not receive any additional payments until Defendant receives a remediation estimate.

On October 30, 2018, Defendant received a water and mold remediation estimate of $88,000. Defendant also recorded that Plaintiffs' remaining allowance for mold coverage was $589.81.

On October 31, 2018 Defendant issued payment of $3,629.73 to Plaintiffs' contractor for remediation. Also on this date, Defendant issued the remaining mold coverage allowance of $589.81 to Plaintiffs.

On November 3, 2018, Plaintiffs emailed Defendant with frustrations that their house was still unlivable. In response, on November 4, 2018, Defendant explained that Plaintiffs used their full allowance for mold remediation under the mold coverage in their policy; thus Plaintiffs would not be receiving any more payments for mold remediation.

On November 5, 2018, Plaintiffs sent an email to Defendant accusing it of delaying the claims process and not helping them. Plaintiffs stated that the mold was caused by water damage which should be covered under their dwelling coverage. Thus, Plaintiffs believe they are entitled to additional payments for mold remediation.

On November 9, 2018, Defendant contacted Plaintiffs to discuss their concerns. Plaintiffs expressed that they felt like they were owed at least the $88,000 estimate for the mold repairs. Defendant explained again that their policy specifically had a limit of $15,000 for mold

remediation and that the allowance had been exhausted, meaning that Plaintiffs could not receive additional money for mold remediation.

On November 17, 2018, Plaintiffs initiated an administrative complaint with the MIA for improper handling of their claim.

On November 28, 2018, Defendant received and reviewed the estimate for water mitigation repairs. The estimate for water mitigation was $41,480.40. Thus, Defendant issued payment for $26,148.09, which included the repair estimate minus the $15,332.31 that Plaintiffs already received.

On December 3, 2018, Plaintiffs emailed Defendant with frustrations that the house was still not fixed and that they were left without a home for the holidays. Plaintiffs asserted that Defendant was handling the claim in bad faith. In response, Defendant explained that the claim had been reviewed by multiple adjusters and supervisors. Defendant advised Plaintiffs that it had released the maximum amount of funds that Plaintiffs' policy would allow based on the information provided.

On December 28, 2018, Plaintiffs contacted Defendant asking for the claim to be reassigned because they were dissatisfied with how the agent was handling the claim. Plaintiffs asserted that Defendant was trying to lump the entire claim under mold coverage so it only had to pay the $15,000 limit. Defendant advised Plaintiff that it had already paid $68,615.55 for the claim. Plaintiffs responded that they still had not been paid enough for the claim.

On January 18, 2019, Plaintiffs called Defendant to voice their concerns about the claim and request the claim be reassigned to someone in upper management. Defendant explained that it had concerns that payment to Plaintiffs of $26,148.09 had not been cashed and that the roof

never had a tarp put on it after the date of loss, which may have caused all the subsequent mold and water damage.

On February 10, 2019, Defendant received a letter of representation from Plaintiffs' public adjuster, Lawrence Goodman ("Adjuster Goodman").

On February 17, 2019, Adjuster Goodman demanded that Defendant meet at the loss location, Defendant advised Adjuster Goodman that meeting at Plaintiffs' house was not necessary because there had already been an inspection and demolition of the house had already started. Adjuster Goodman responded that he would initiate a complaint with the MIA and a lawsuit.

On February 21, 2019, Defendant received a letter from Adjuster Goodman demanding a representative from Defendant's Virginia office meet at the loss location as well as copies of the checks Defendant had issued and insurer information for Errors & Omissions insurance carrier. Defendant sent an email as acknowledgment of receipt of the demand letter.

On March 1, 2019, Defendant spoke with Adjuster Goodman and scheduled an inspection for March 5, 2019.

On March 4, 2019, the inspection was rescheduled to March 7, 2019.

On March 12, 2019, Plaintiffs emailed Defendant requesting the adjuster's report from the March 7th inspection. Defendant advised Plaintiffs that it had not received the report yet.

On March 18, 2019, Defendant contacted Plaintiffs' mold hygienist to request any photos that were taken and copies of air quality tests. Defendant noted that it had not received any test results or photos.

Also on March 18, 2019, Plaintiffs emailed Defendant requesting a copy of the adjuster's report. Defendant explained that there was no additional report because the adjuster did not find

anything to add to Defendant's own estimate. However, Defendant advised Plaintiffs that it was preparing a written response to Adjuster Goodman regarding the findings of the March 7th inspection and the evaluation of the claim.

On May 7, 2019, Defendant received an estimate of $306,000 from Adjuster Goodman and a demand for appraisal if the estimate was not approved. Adjuster Goodman also asserted that the damage is all related to water damage and not mold damage. Additionally, he stated that he advised Plaintiffs to take the claim to court.

On May 28, 2019, Plaintiffs contacted Defendant's CEO to allege that Defendant's adjuster continually provided a low estimate, refused to provide requested documents, and failed to categorize the damage correctly.

On June 7, 2019, Plaintiffs alerted Defendant that they contacted the Washington Post about Defendant's mishandling the claim.

On July 10, 2019, Defendant sent Adjuster Goodman a letter advising that Plaintiffs' policy had limited coverage and that the policy did not cover ground water damage in the basement.

On July 11, 2019, the MIA concluded its investigation and found that Defendant did not violate the insurance article.

On July 23, 2019, Plaintiffs requested a hearing for their administrative complaint, which was granted.

On August 8, 2019, Plaintiffs requested a copy of their policy. Defendant provided them with this copy on August 13, 2019.

On October 7, 2019, Plaintiffs submitted an invoice for roof repair from May 2018 and requested payment.

On October 18, 2019, Defendant notified Plaintiffs that it could release payment for the May 2018 roof repair if it was not already paid.

On October 31, 2019, Defendant found that it did not issue full payment for the May 2018 roof repair. Defendant could not release payment for the roof repair because it was unclear if Plaintiffs were still represented by Adjuster Goodman.

On November 6, 2019, Defendant called Adjuster Goodman and was advised that he still had an active contract with Plaintiffs. Therefore, Adjuster Goodman stated he must be included on payments for the claim.

On November 22, 2019, Defendant received a letter of representation from Plaintiffs' attorney, Kaosy Umeh, Esq.

On December 14, 2019, Defendant issued payment of $19,840.43 to cover the May 2018 roof repair.

On January 31, 2020, Defendant received the MIA's final order for Plaintiffs' administrative complaint. The order affirmed that Defendant did not violate the insurance article.

On February 4, 2020, Defendant received a copy of the lawsuit that Plaintiffs initiated against Defendant.

On March 7, 2023, the Maryland Circuit Court for Anne Arundel County found that Defendant was materially in breach of the insurance policy by issuing insufficient payments related to the claim reported by Plaintiffs. The Court awarded Plaintiffs $41,488.00 for repairs of water damage and $7,200.00 for additional living expenses.

IV. DISCUSSION

Plaintiffs assert that Defendant failed to act in good faith in its handling of the Claim because it failed to pay for demolition, remediation, mitigation, restorations, or multiple

estimates to fix the damage. Plaintiffs also assert that Defendant acted in bad faith by wrongfully and intentionally making misrepresentations in order to delay the claims process.

Defendant asserts that it has already paid a total amount of $138,403.98 on the claim to cover the storm damage to Plaintiffs home. Further, Defendant asserts that its adjustment of the Claim was based on a full and honest investigation.

The crux of the Plaintiffs' Complaint is that Defendant failed to pay amounts owed to Plaintiffs under the dwelling coverage or the personal property coverage of the Policy. Specifically, in Plaintiffs' Complaint, they assert that Defendant failed to pay for demolition, remediation, mitigation, and restoration of the damage when it is obligated to do so under the policy. However, Plaintiffs have not satisfied their burden of demonstrating that Defendant has failed to make payments on the claim that are required under the policy. Here, the record shows that Defendant made multiple payments on Plaintiffs' claim in accordance with the policy. First, on March 22, 2018, Defendant issued a payment of $12, 535.93 for the estimated cost of replacement of $27,177.74, minus depreciation of $12,641.81 and Plaintiffs' $2,000 deductible. Second, on May 9, 2018, Defendant paid Plaintiffs $500 for food spoilage from when they were without power for several days due to the storm. Third, on July 11, 2018, after Plaintiffs alerted Defendant to mold damage, Defendant sent Plaintiffs payment of $10,002.46 for the remediation of mold damage. Similarly, on October 10, 2018, October 30, 2018, and October 31, 2018, Defendant paid Plaintiffs $788.00, $589.81, and $3,629.73 respectively under the policy's mold coverage. Fourth, on November 28, 2018, Defendant issued payment for $26,148.09, which included the $41,480.40 water mitigation repair estimate minus the $15,332.31 that Plaintiffs already issued. Lastly, on December 14, 2019, Defendant issued payment of $19,840.43 to cover

the May 2018 roof repair. Thus, Plaintiffs have not shown that Defendant failed to make payments on the claim in accordance with Plaintiffs' policy.

Plaintiffs have not demonstrated that Defendant breached its obligations under the Policy or failed to act in good faith. Instead, based on the evidence in this case, the dispute between the Parties is based solely on a disagreement as to the Parties' valuation of the Claim. Accordingly, I find that Plaintiffs have not demonstrated that Defendant breached its obligations under the Policy or failed to act in good faith in connection with the Claim.

V. CONCLUSIONS OF LAW

In accordance with Section 27-1001, the Administration concludes:

1. Plaintiffs established by a preponderance of the evidence that Defendant issued a homeowner's insurance policy to Plaintiffs providing personal property coverage and obligating Defendant to pay a claim for damage to the Plaintiffs' personal property caused by a storm on March 2, 2018.

2. Plaintiffs did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.

3. Plaintiffs did not establish by a preponderance of the evidence that they are entitled to additional damages as a result of the claim.

4. Plaintiffs did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.

5. Since a breach is a necessary element of a failure to act in good faith, Plaintiffs did not establish a failure by Defendant to act in good faith.

6. Plaintiffs are not entitled to expenses and litigation costs.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED on this 19th day of June 2023, that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

ORDERED that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

/S/ *Tammy R.J. Longan*
Tammy R.J. Longan
Acting Deputy Commissioner

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f).