

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

E.S. & K.S.¹,	*	
Plaintiffs,	*	
v.	*	Case No. 27-1001-22-00071
State Farm Fire & Casualty Company,	*	
Defendant.	*	

* * * * *

DECISION

E.S. and K.S. (“Plaintiffs”) have alleged that State Farm Fire & Casualty 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 a house fire on August 26, 2020 (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;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
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 October 3, 2022, the Administration received Complaint No. 27-1001-22-00071 (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 intentionally mishandling, and delaying, their claim, refusing to extend the time period for Plaintiffs to recover replacement cost benefits and Defendant’s failure to pay Plaintiffs’ vendors. Plaintiffs

contend that Defendant breached their duty to act in good faith by failing to perform their financial duties under the Policy. Furthermore, Plaintiffs also assert that Defendant acted in bad faith by intentionally mishandling the claim and by delaying the adjustment of Plaintiffs' claim for damages to their personal property.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on October 19, 2022. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on November 18, 2022, 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 August 26, 2020, a fire caused significant damage to Plaintiffs' residence located in Baltimore, Maryland. At the time of the fire, 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 \$391,400, subject to a \$1,957 deductible, and the limit of liability for Personal Property coverage under the Policy is \$293,550

With respect to the personal property coverage under the Policy:

SECTION I – PROPERTY COVERAGES

COVERAGE B – PERSONAL PROPERTY

1. Property Covered

a. We cover personal property owned or used by an insured while it is anywhere in the world. This includes structures not permanently attached to or otherwise forming a party of the realty. At your request, we will cover personal property:

- (1) Owned by others while the property is on the part of the residence premises occupied exclusively by an insured.
- (2) Owned by a guest or residence employee, while the property is in any other residence occupied by an insured; and
- (3) Owned by roomers, boarders, tenants, or other residents, any of whom are related to you.

...

Special Limit of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

...

b. \$1,500 on property used or intended for used in a business, including merchandise held as samples or for sale or for delivery after sale, while on the residence premises. This coverage is limited to \$750 on such property away from the residence premises.

...

SECTION I – LOSSES INSURED

COVERAGE B – PERSONAL PROPERTY

We will pay for accidental direct physical loss to the property described in Coverage B caused by the following perils, unless the loss is excluded or limited in Section I – LOSSES NOT INSURED or otherwise excluded or limited in this policy. However, loss does not include and we will not pay for, any diminution in value:

1. Fire or lightning

...

7. Smoke, meaning abrupted and accidental damage from smoke.

...

SECTION I – LOSS SETTLEMENT

COVERAGE B – PERSONAL PROPERTY

1. B1 – Limited Replacement Cost Loss Settlement
 - a. We will pay the cost to repair or replace property covered under Section I – Property Coverages, Coverage B – Personal Property, except for property listed in item b. below, subject to the following:
 - (1) Until repair or replacement is completed, we will pay only the actual cash value of the damaged property;
 - (2) After repair or replacement is completed, we will pay the difference between the actual cash value and the cost you have actually and necessarily spent to repair or replace the property; and
 - (3) If the property is not repaired or replaced within two years after the date of loss, we will pay only the actual cash value.

....

On August 26, 2020, the same date of the fire, Plaintiffs initiated a claim with Defendant for damage to their residence caused by the August 26, 2022 fire (“Claim”). In response to the Claim, Defendant scheduled an inspection for the following day with Service Master of Baltimore (“Service Master”) to assess the damage. Plaintiffs also contracted with Electronic Restoration Services (“ERS”) to remove a large quantity of art and electronics from the residence for restoration and storage.

On August 27, 2020, Service Master conducted an inspection of the Plaintiffs’ residence. Claim Specialist Pecolia Davis, (“Adjuster Davis”), also spoke with Plaintiffs about the coverages available under the Policy. Adjuster Davis informed Plaintiffs that the Policy had a 2-year time limit to request replacement cost benefits for damaged personal property. Plaintiffs informed Defendant that they were employed as musicians and that some of the personal property damaged by the fire was related to Plaintiffs’ music professions, including music books, sheet music, recordings, and all musical instruments. Adjuster Davis informed Plaintiffs that such damage is considered business property, rather than personal property, and was therefore subject to a \$1,500 limit under the Policy.

On September 14, 2020, Defendant received a black and white photograph report from Plaintiffs, purportedly depicting pack out and items to be cleaned. On September 16, 2020, noting difficulty reading the photograph report, Defendant sent an email response requesting that the photographs should be sent in a different format. Additionally, Defendant issued another payment of the amount of \$1,207.56 for additional living expenses (ALE), for Plaintiffs' hotel stay from August 28, 2020 through September 2, 2020.

On September 16, 2020, Defendant received an invoice from ERS in the amount of \$7,952.15 that included several musical instruments, including guitars, base guitars, violas, trumpets, and electronic piano. Defendant deemed these items to be business personal property. On September 18, 2020, Defendant contacted Plaintiffs by telephone and notified them that it viewed certain items listed in the ERS invoice as business personal property.

On September 22, 2020, Defendant issued a payment of \$14,310.56 to Plaintiffs and Platinum Emergency Service for damage mitigation under the Dwelling coverage of the Policy, including costs to board up the residence and remove the generator.

On September 23, 2020, Plaintiffs' public adjuster, Matthew "Wayne" Frazier ("Plaintiffs' Frazier"), contacted Defendant to advise them that he was retained to represent Plaintiffs in connection with their Claim. Defendant informed Plaintiffs' Adjuster of the business related property limit under the Policy and that the policy limit had been reached. Plaintiffs' Adjuster notified Defendant that he was in the process of completing a review of the contents inventory and that he would discuss the business property policy limit, as well as the inventory of property from the ERS invoice, with Plaintiffs.

On October 8, 2020, Defendant issued a payment in the amount of \$276,082.61 to Plaintiffs and Insurance Claims Specialist LLC under the Dwelling coverage of the Policy, for repairs to the residence, per the Defendant's repair estimate.

On December 11, 2020, Defendant sent an email to Plaintiffs and Plaintiff's Adjuster, stating that Plaintiffs' contents inventory had not been received.

On January 13, 2021, Defendant and Plaintiffs' Adjuster discussed that Plaintiffs, not Defendant, had retained ERS and that Plaintiffs were in control of how ERS would proceed with the property in their possession. Additionally, Defendant again advised Plaintiffs' Adjuster of the business related property limit.

On February 5, 2021, Defendant issued a payment for ALE in the amount of \$36,393.09 to cover a hotel invoice for September 9, 2020 through November 2, 2020, and for temporary housing from November 1, 2020 through April 30, 2021. Defendant also issued a payment in the amount of \$11,563.92 to Woodmoor Cleaners for contents cleaning and six months of storage.

On or about March 18, 2021, Defendant requested that ERS separate the business and personal property items contained in its contents inventory.

Also on March 18, 2021, Adjuster Davis sent a letter to Plaintiff E.S. stating,

On January 13, 2021, we were informed by your Public Adjuster...; that you had not selected a contractor as of yet to perform the repairs to your home. If you has (*sic*) since contracted with a contractor please provide their name and contact number for State Farm to follow up on the repair status of your home. Please be aware that since the completion time period has been established and an actual cash value payment was issued on October 8, 2020 in the amount of \$276,082.61, your temporary housing will terminate on August 1, 2021. If there are delays due to selection of a contractor there will be no extensions granted.

....

By email dated April 16, 2021, ERS submitted revised contents inventories for electronics (containing 79 items with a total amount of \$7,297.35), musical instruments

(containing 12 items with a total amount of \$1,325.55), art (containing 102 items with a total amount of \$21,074.63), personal documents (total amount of \$3,110.80, and business documents (total amount of \$7,860.15).

On March 19, 2021, Defendant issued a payment for \$21,654.94 to Service Master for cleaning services and six months of storage. Additionally, from June 2021 through October 2021, Defendant continued issuing payments to Defendant for ALE. Specifically, on June 4, 2021, Defendant issued a payment in the amount of \$8,233.24 for temporary housing from May 1, 2021 through June 20, 2021. On July 16, 2021, Defendant issued another payment in the amount of \$12,349.86 to cover temporary housing from July 1, 2021 through September 30, 2021. On October 7, 2021, Defendant issued a payment of \$4,249.68 for temporary housing from October 1, 2021 through November 1, 2021.

On October 8, 2021, Adjuster Davis sent a letter to Plaintiff E.S. stating that the Claim had not been concluded. The letter listed outstanding issues to be resolved concerning the Claim, including revised invoices separating business and personal items.

On November 4, 2021, Plaintiffs submitted a contents inventory to Defendant, including over 3,000 items, with supporting photographs. In response, Defendant requested that Plaintiffs upload the contents inventory using the XactContents software program. Plaintiffs then submitted the inventory as a PDF document. In response, due to the size of the inventory, Defendant requested that Plaintiff's Adjuster either enter the contents inventory into XactContents or send the file as an Excel spreadsheet. Additionally, Defendant notified Plaintiffs' Adjuster that the inventory did not include the ages of the items, which is required by the Policy. The next day, on November 5, 2021, Defendant issued a payment for ALE in the amount of \$12,432.64 for temporary housing from November 1, 2021 through January 31, 2022.

Defendant also requested that Plaintiffs' Adjuster submit any contracts for reference purposes when making a determination of the replacement cost benefits for the Dwelling portion of the Claim. Plaintiffs' Adjuster submitted the contracts to Defendant, and later that day, Defendant confirmed receipt.

On November 18, 2021, Plaintiffs' Adjuster Frazier and Adjuster Davis exchanged emails regarding the additional time that would be needed for Defendant to review the contents inventory. From November 23, 2021 through December 23, 2021, Plaintiffs' Adjuster made several attempts to contact Adjuster Davis by email, but did not receive a response from Adjuster Davis. On December 10, 2021, Plaintiffs' Adjuster notified Adjuster Davis and her supervisor by email that Plaintiffs' needed to dispose of non-salvageable and non-restorable contents that were in the residence and requested an immediate response to the contents inventory. However, Plaintiffs assert that no response was provided. On December 23, 2021, Plaintiffs' Adjuster sent an email to Adjuster Davis' supervisor, as well as the Defendant's CEO, concerning the Defendant's lack of communication pertaining to the Claim. The same day, on December 23, 2021, Adjuster Davis responded and requested the contracts for the replacement cost benefits pertaining to the Dwelling portion of the Claim. However, Plaintiffs assert that Adjuster Davis' response did not address the contents inventory.

On December 27, 2021, Plaintiffs' Adjuster responded to Adjuster Davis and stated that the contracts were previously submitted on November 5, 2021. Plaintiffs' Adjuster also requested an update on the Claim. Adjuster Davis acknowledged receipt of the contracts but did not provide an update concerning the Claim. On December 29, 2021, Plaintiffs' Adjuster sent another email to Adjuster Davis, her supervisor, and Defendant's CEO with a copy of the

contracts. Plaintiffs' Adjuster also raised concerns about the Defendant's lack of communication with respect to the Claim. In response, Adjuster Davis confirmed receipt of the contracts.

On January 12, 2022, Defendant issued a payment of \$8,750.00 to Service Master to cover additional storage from March 1, 2021 through February 1, 2022.

On January 27, 2022, Adjuster Davis sent an email to Plaintiffs' Adjuster apologizing for the delay in reviewing and addressing the contents inventory.

On February 10, 2022 and February 11, 2022, Adjuster Davis requested that Plaintiffs' Adjuster either submit the contents inventory to XactContents or send the document as an Excel spreadsheet. On February 12, 2022, Plaintiffs' Adjuster sent the contents inventory as a spreadsheet to Adjuster Davis, which was then uploaded into Defendant's system on the same date.

On March 9, 2022, Defendant issued two payments. The first payment of \$750.00 was issued to Service Master for additional storage from March 2, 2022 through April 1, 2022. The second payment of \$7,983.24 was issued to cover temporary housing from February 1, 2022 through March 31, 2022.

On March 14, 2022, Defendant again issued two payments. The first payment of \$80,000.00 was issued to Insurance Claims Specialist LLC and to Plaintiffs as an advance for the non-salvageable contents. The second payment of \$98,157.70 was also issued to Insurance Claims Specialist LLC and to Plaintiffs for replacement cost benefits.

On April 13, 2022, April 27, 2022, and again on May 3, 2022, Adjuster O'Hara contacted Plaintiffs' Adjuster and requested the following information,

“Upon review of the contents claim submitted for our insureds [E.S. and K.S.], it is clear that over 99% of the claimed personal property claimed (*sic*) is also claimed to be purchased in the last year. Accordingly, original purchase documentation is being requested to substantiate the claim of substantial recent purchases.

....

In response, Plaintiffs' Adjuster notified Adjuster Davis that the contents inventory was reviewed weeks ago. Additionally, while the Plaintiffs claimed that the replacement cost value for their personal property was \$223,030.69, Defendant notified Plaintiffs' Adjuster on May 3, 2022, that the replacement cost value for the Plaintiffs' personal property was \$176,138.64.

On May 19, 2022, Defendant notified Plaintiffs that the Policy required a claim for replacement cost benefits within two years from the date of loss and that the date was approaching. Furthermore, on June 13, 2022, Plaintiffs received a letter in the mail from Defendant that stated the Policy allows replacement cost coverage for personal property, but the property must be replaced by August 26, 2022 to qualify for these replacement benefits.

On July 20, 2022, Plaintiffs' Adjuster demanded that Defendant extend the period for claiming replacement costs. In response, Defendant advised Plaintiffs' Adjuster and Plaintiffs that the delay in adjusting the Claim was, in part, caused by missing information in the contents inventory. On or about July 31, 2022, Plaintiffs moved back into their residence.

The Parties discussed the Claim on August 1, 2022. Plaintiffs' Adjuster again asked Defendant to extend the deadline for Plaintiffs to recover replacement cost benefits due to the Defendant's delays. David O'Hara, Claim Specialist ("Adjuster O'Hara"), explained that it arrived at a total replacement cost amount of \$176,138.64 and promised to follow up with a formal offer. Adjuster O'Hara also indicated that he would speak with supervisors and look into extending the time for Plaintiffs to recover replacement costs.

The following day, on August 2, 2022, Plaintiffs' Adjuster sent an email to Adjuster O'Hara summarizing the phone conversation from the day before. Also on August 2, 2022,

Defendant issued a payment for ALE in the amount of \$11,009.02 for Plaintiffs' living expenses from April, May, and June of 2022.

On August 9, 2022, Defendant agreed to apply a 25% depreciation value to all items on the contents inventory list. As a result, Defendant issued a payment of \$43,524.39 to Plaintiffs and Insurance Claims Specialist LLC.

On August 15, 2022, Defendant sent Plaintiffs' Adjuster sent an email with the final contents inventory as an attachment. The email also included an invitation for Plaintiffs to enter receipts for items they had replaced.

On September 26, 2022, Defendant issued a payment in the amount of \$4,488.90 to Plaintiffs for replacement cost benefits.

On September 30, 2022, Plaintiffs filed the instant Section 27-1001 Complaint with the Administration.

IV. DISCUSSION

Plaintiffs assert that Defendant failed to act in good faith in its handling of the Claim because it refused to extend time for Plaintiffs to recover replacement cost benefits and because Defendant failed to pay outstanding invoices owed to Plaintiffs' contractors.²

² In Plaintiffs' Complaint, Plaintiffs ask that Defendant be compelled to extend the time period for Plaintiffs to recover replacement cost benefits under the Claim. Plaintiffs also seek an immediate accounting of the amounts paid in settlement of the Claim. Further, Plaintiffs seek payment of outstanding amounts owed to its vendors. Lastly, Plaintiffs request that the Administration proceed with a market conduct examination and claims handling investigation of Defendant. When rendering a decision on the Complaint, Section 27-1001(e)(1)(i) directs the Administration to determine whether the insurer is required under the applicable policy to cover the underlying claim; the amount the insured was entitled to receive from the insurer; whether the insurer breached its obligation to cover and pay the claim; whether an insurer that breached its obligation failed to act in good faith; and if there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest. With the exception of the Plaintiffs request to compel the Defendant to pay the outstanding amount owed to its vendors, the remaining remedies requested in Plaintiffs' Complaint are not permitted under Section 27-1001(e)(1)(i).

Defendant asserts that it has already paid a total amount of \$180,732.15, as replacement costs for Plaintiffs' personal property. Further, Defendant maintains that the delays in handling the Claim were caused by Plaintiffs' Adjuster and his failure to respond to repeated requests for information concerning the contents inventory. Finally, Defendant asserts that its adjustment of the Claim was based on honesty and diligence.

The crux of the Plaintiffs' Complaint is that Defendant failed to pay amounts owed to Plaintiffs under the personal property coverage of the Policy. In Plaintiffs' Complaint, they also seek to compel Defendant to pay any outstanding amounts owed to any vendors. Specifically, Plaintiffs assert that Defendant has not satisfied its duty to pay Service Master and Prism Specialists, formally ERS. However, Plaintiffs have not satisfied their burden of demonstrating the amount of any outstanding invoice, or that the amounts are covered under the Policy. While ERS submitted revised invoices on April 16, 2021, the personal property invoice included items business property items. Plaintiffs have not submitted any documentation to refute Defendant's request to separate personal property versus business property in its estimates. Moreover, with respect to the invoice from Service Master, Plaintiffs have not identified any specific amounts that were improperly denied by Defendant. Instead, Plaintiffs simply contend that Defendant is obligated to pay the full amount of the invoice, without citing to any specific amount or language of the Policy to justify its request.

Based on these findings, Plaintiffs have failed to meet their burden to prove that Defendant breached any obligation owed to them under the Policy or that they are entitled to any additional payment under the Policy.

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 fire on August 26, 2020.
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 3rd day of January 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/ Erica J. Bailey _____
Erica J. Bailey, Associate Commissioner
Office of Hearings

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).