

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

S.E.<sup>1</sup>,

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**Plaintiff,**

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v.

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**Case No. 27-1001-22-00075**

**SELECTIVE AUTO  
AND FIRE INSURANCE,  
COMPANY OF AMERICA**

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**Defendant.**

\* \* \* \* \*

**DECISION**

S.E. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Selective Auto and Fire Insurance Company of America (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a property insurance policy (the “Policy”) in connection with a hail loss that occurred on September 2, 2019 which caused damage to Plaintiff’s home (the “Property”) located in Falkner, Maryland (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiff has failed to demonstrate that the Defendant breached its duty of coverage owed to Plaintiff by not paying the full amount of the loss claimed by the Plaintiff.

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<sup>1</sup> The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s and other individuals’ privacy.

## **I. STANDARD OF REVIEW**

Section 3-1701 Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such complaint, the Administration must render a decision on the complaint that determines:

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.

“Good faith” is defined in § 27-1001 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.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

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

## **II. PROCEDURAL BACKGROUND**

On November 3, 2022, the Administration received Complaint No. 27-1001-22-00075 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged Defendant breached its obligations under the Policy by failing to provide full indemnification on Plaintiff's claim and failing to deal in good faith with the Plaintiff. Specifically, Plaintiff asserts Defendant has refused to provide Plaintiff with a certified copy of Plaintiff's policy, has ignored the facts reported by the Plaintiff, refused to justify its positions with regards to denying coverage on the Plaintiff's claim, refused to negotiate with or discuss the Plaintiff's claim in clear terms, and ultimately, failed to provide reasonable justification for denying full indemnification of the Plaintiff's claim. Plaintiff is seeking actual damages in the amount of \$59,350.81, legal expenses and litigation costs in the amount of \$19,616.93, and interest in the amount of \$21,417.43.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to the Defendant on October 4, 2022. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on October 27, 2022, and acknowledged that the Policy provided dwelling coverage for Plaintiff's home with policy limits of \$398,700 subject to a \$500.00 deductible.

## **III. FINDINGS**

Based on a complete and thorough review of the written materials submitted by the parties, the Administration finds that Plaintiff has failed by a preponderance of the evidence to

establish that he is entitled to additional damages for the Claim or that the Defendant failed to act in good faith in its handling of the Claim, based on the provisions under the Policy.

On September 1, 2019 a hail loss occurred at the Property. Plaintiff did not report the loss until May 13, 2020, when he contacted Defendant and reported damage to the roof and siding of the Property. On May 25, 2020, Defendant sent a field adjuster to conduct an inspection of the Property. The inspection confirmed storm damage to the roof, vinyl siding on the left, right, and rear of the house, as well as damages to the shed, office, and pool liner. The adjuster recommended total roof replacement with gutter and siding repairs, and replacement of the pool liner. On May 30, 2020, Defendant completed its coverage analysis and confirmed coverage for this loss. On June 2, 2020, Defendant completed its investigation of the Claim, and determined the value of the damages to be \$17,335.44, and after deductions for depreciation, paid when incurred items (“PWI”), and deductible, sent Plaintiff a check for the balance totaling \$6,833.64.

On July 22, 2020, Just Call Joe, LLC (“Just Call Joe”) sent an email to Defendant. This email included a certificate for completion for emergency services, an invoice for \$600 for emergency tarping, and pictures of the Plaintiff’s roof before and after the tarping. On July 28, 2020, the Defendant denied the claim for emergency tarping because the damage was caused on September 2, 2019, and Plaintiff previously confirmed there was no damage to the interior of the Property. Defendant advised that if emergency tarping was required in July of 2020 relating to new damage, then another claim would have to be filed.

On August 26, 2020 Just Call Joe submitted a supplemental scope of work dated July 29, 2020 totaling \$40,673.73 and claimed that all of the siding had to be replaced because the existing siding could not be matched. In response to the supplemental estimate, Defendant

requested that a sample of the siding be sent to ITEL<sup>2</sup> to determine the availability of a match and forwarded Just Call Joe an ITEL form and shipping label to forward the sample. Defendant also ordered another inspection of the property. On September 2, 2020, Defendant's field adjuster completed its re-inspection of the property. On September 9, 2020, Defendant received the ITEL report indicating that a similar match was in fact available. Based on Just Call Joe's supplemental estimate, the follow-up inspection, and the report from ITEL, Defendant increased its determination on the Claim to \$27,389.51, and after the deductions for depreciation, PWI, and prior payments, issued payment to Plaintiff for the balance.

On January 28, 2021, Just Call Joe notified Defendant that the repairs were completed and requested the status of the depreciation payment. The next day, on January 29, 2021, Defendant issued the final payments for recoverable depreciation and PWI, and closed the file.

There was no further claim activity until June 8, 2021, when Defendant received a call from Just Call Joe claiming there were code issues relating to the house wrap on the front of the house and additional damages to the shed. On June 9, 2021, Defendant sent an email to Just Call Joe advising that it would allow for the code upgrade requirement for the house wrap as a PWI, but needed photographs showing that the work was completed. No additional information was provided by Just Call Joe for Defendant to review. There was no additional claim activity on this Claim until November, 2021.

On November 11, 2021, Defendant received a letter of representation from Joseph Kriner at Semper Fi Public Adjusters ("Semper Fi"). At that time, Defendant reopened the claim and ordered a re-inspection of the Property. On December 9, 2021, after reviewing Just Call Joe's scope of work, Defendant emailed Mr. Kriner and offered to pay the balance of the estimate to

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<sup>2</sup> ITEL is a third party organization that matches materials on homes including siding, roofing, flooring, and cabinets.

settle the Claim if Semper Fi would remove the overhead and profit on Just Call Joe's estimate, which Defendant determined was not necessary in view of the fact that this was not a complex Claim.

On December 24, 2021, Mr. Kriner responded to the Defendant's offer by submitting to the Defendant a new estimate written by Semper Fi totaling \$102,723.62, which included, among other things, a public adjuster fee of \$17,037.27.

On January 28, 2021, Defendant emailed Semper Fi and advised that it received the final invoice and request for release of depreciation from Just Call Joe back in January 2020 and that it had released the depreciation. Defendant also stated that it was waiting for a signed contract from Just Call Joe for the supplement it requested in June 2021.

On November 3, 2022, Plaintiff filed the subject 27-1001 Complaint.

#### **IV. DISCUSSION**

Plaintiff asserts that the Defendant breached its duty under the Policy by refusing to fairly indemnify the Plaintiff's damages and willfully and consistently failing to make a judgment on Plaintiff's claim in good faith. Specifically, Plaintiff asserts that the Defendant wrongfully ignored the facts of the claim and has underpaid the Plaintiff's claim by \$59,350.81.

Additionally, Plaintiff asserts that the Defendant has refused to negotiate with or discuss in clear terms the Claim with the Plaintiff, and refuses to justify its decision to deny coverage over portions of the Claim. However, the Plaintiff's complaint fails.

Md. Code Ann., Ins. §27-1001(a) requires the Plaintiff to show that the Defendant breached its duty to act in good faith by producing evidence that the Defendant failed to make an "informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on the claim." Moreover, "[a]n

insurer may not be found to have failed to act in good faith under this section solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.”

The record shows that Defendant at all times acted with good faith by making appropriate efforts to investigate the loss, accurately and honestly assessed the information obtained in its investigation; and reasonably evaluated the Claim based on the information it obtained, within the statutorily proscribed timeframe.

Beginning May 25, 2020, the Defendant communicated and maintained a reasonable accounting of the damage caused and the scope of the work eligible for coverage. A cost assessment was promptly sent to the Plaintiff on June 2, 2020 and a first payment was sent soon after.

On July 28, 2020 the Parties came to a first disagreement over the scope of the work covered, when Just Call Joe requested emergency tarping. The Defendant promptly explained its justification and the conditions by which the tarping may be approved.

On August 26, 2020 Just Call Joe made a request for additional coverage claiming suitable replacements for the siding could not be found. However, after a timely re-inspection on September 2, 2020, the Defendant was able to find suitable replacements by September 9, 2020, and increased the determination on the Plaintiff’s Claim accordingly.

The record shows that when Just Call Joe submitted its supplemental estimate dated July 29, 2020 for additional siding replacements, Defendant immediately ordered a re-inspection of the Property, and sought an ITEL report to determine the availability of matching replacement vinyl siding. After the re-inspection and the ITEL report, the Defendant re-evaluated the loss,

updated its determination on the Claim, and issued supplemental payment. Additionally, on January 28, 2021, Licensee immediately released the recoverable depreciation and PWI once it received notice that the repairs were completed.

Just Call Joe informed the Defendant that repairs were completed on January 28, 2021, and on January 29, 2021 the Defendant rendered its final depreciation payment on the claim. Nearly six months later on June 8, 2021, Just Call Joe informed the Defendant there were code issues relating to the house wrap on the front of the house and additional damages to the shed. Promptly the next day, Defendant sent an email to Just Call Joe advising that it would allow for the code upgrade requirement for the house wrap as a PWI, and requesting photographs showing that the work was completed. According to the record, Just Call Joe never produced the additional information, which would have allowed the Defendant to update its valuation of the Claim.

In spite of never receiving the information necessary for an accurate valuation from the Plaintiff, on November 11, 2021, Defendant reopened the claim and ordered a re-inspection of the Property. Moreover, the Defendant immediately attempted to negotiate with Mr. Kriner to resolve the Claim.

On November 12, 2021 Plaintiff hired Semper Fi to represent him and Semper Fi performed its own inspection. On December 24, 2021, Semper Fi responded to the Defendant's offer by submitting to the Defendant a new estimate, totaling \$102,723.62, which included, among other things, a public adjuster's fee of \$17,037.27. Semper Fi offered no additional documentation of damage nor provided additional justification for the increase in the estimate.

Plaintiff has not provided evidence documenting whether or how the additional repairs shown on Semper Fi's estimate were necessitated by hail damage, nor has he provided any



explanation for the substantial difference in the extent of the alleged damages and therefore in the scope of repairs included in Semper Fi's estimate. Plaintiff also has not identified specific repairs he contends were improperly denied by Defendant, but simply contends that Defendant is obligated to indemnify Plaintiff based on the scope of work prepared by Semper Fi. Despite the allegations in his Complaint, Plaintiff has failed to offer any proof that Defendant's decisions were not supported by evidence, that Defendant ignored the facts he presented, refused to justify its position with regards to its claim denial, failed to provide him with a certified copy of the subject policy, and/or refused to discuss or negotiate the Claim with Plaintiff's public adjuster. Rather Plaintiff simply contends that Defendant is incorrect in its interpretation that Defendant only owes for "direct physical loss" under the Policy.

In Maryland, insurance policies are construed like other contracts. *North River Ins. Co. v. Mayor & City Council of Balto.*, 343 Md. 34, 39, 680 A.2d 480, 483 (1996). Maryland follows the objective law of contract interpretation, and the rights and liabilities of the parties are determined by the terms of the agreement. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694-95, 114 A.3d 676, 681 (2015).

The Policy at issue in this case includes the following pertinent terms and conditions:

**SECTION I – PROPERTY COVERAGES**

**BUILDING PROPERTY WE COVER**

**COVERAGE A – DWELLING**

We cover:

1. The dwelling on the residence premises shown in your Policy Declarations used principally as a private residence, including structures attached to the dwelling other than fences, driveways or walkways;
2. Attached carpeting, built-in appliances; fixtures; and
3. Materials and supplies located on or next to the residence premises used to construct, alter or repair the dwelling or other structures on the residence premises.

**COVERAGE B – OTHER STRUCTURES**

We cover:

1. Fences, driveways and walkways; and

2. Other structures on the residence premises, separated from the dwelling by clear space. This include retaining walls, decorative or privacy walls and other structures connected to the dwelling by only a fence, utility line, plumbing, or similar connection.

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#### BUILDING PROPERTY LOSSES WE COVER

We cover accidental direct physical loss to property described in Building Property We Cover except as limited or excluded.

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Here the Policy specifically states that coverage will be extended for damages caused by “accidental direct physical loss”. The Policy does not provide blanket coverage to fix everything that is wrong with the insured’s property and is limited to those damages caused by accidental direct physical loss. In this case, Plaintiff has also not referenced any provision of the Policy that would require Defendant to provide coverage for additional repairs not resulting from direct physical loss to the covered dwelling or for the public adjuster fees included in Semper Fi’s estimate.

Based on these findings, Plaintiff has failed to meet his burden to prove that Defendant breached any obligation owed to him under the Policy or that he is entitled to any additional payment under the policy.

### **V. CONCLUSIONS OF LAW**

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

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover the Claim.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that he is entitled to additional damages as a result of the claim.
4. Plaintiff 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, Plaintiff did not establish a failure by Defendant to act in good faith.

6. Plaintiff is not entitled to expenses and litigation costs.

## **VI. DECISION**

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

**ORDERED** on this 31<sup>st</sup> 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/ Lisa Larson  
LISA LARSON  
Director 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).**