

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

<b>S.J.<sup>1</sup>,</b>	*	
<b>Plaintiff,</b>	*	
<b>v.</b>	*	<b>Case No. 27-1001-23-00003</b>
<b>Nationwide Mutual Fire Insurance Company</b>	*	
<b>Defendant.</b>	*	

\* \* \* \* \*

**DECISION**

S.J. (“Plaintiff”) has alleged that Nationwide Mutual Fire Insurance Company (“Defendant”) breached its contractual obligations by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a dwelling insurance policy (the “Policy”) in connection with alleged wind damage to his house that occurred on April 29, 2021 in Port Tobacco, MD (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 Plaintiff has failed to demonstrate that Defendant breached any duties owed to Plaintiff or otherwise failed to act in good faith in connection with Plaintiff’s 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 part, a first-party property insurance or disability insurance claim. However, before the insured

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<sup>1</sup> The Maryland Insurance Administration uses initials to protect the identity of the parties.

may file an action pursuant to Section 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.

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 Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

## **II. PROCEDURAL BACKGROUND**

On January 5, 2023, the Administration received Complaint No. 27-1001-23-00003 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleges to date the claim remains severely underpaid in the amount of \$144,263.70. Plaintiff also makes a clam for expenses and interest. Plaintiff contends that Defendant failed to make a judgement on Plaintiff’s claim based on honesty and diligence. Defendant’s refusal to grant full indemnification for Plaintiff is not supported by the evidence. Defendant willfully and consistently ignored facts of the claim, Defendant failed to cite a policy exclusion that would

deny full coverage under Plaintiff's policy. Defendant refused to negotiate the claim with Plaintiff's public adjuster, and that Defendant refused to provide a certified copy of the Policy. Plaintiff contends that Defendant's failure to provide full indemnification of Plaintiff's claim demonstrates Defendant's refusal to act in good faith. As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on January 12, 2023. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on February 27, 2023, acknowledging that the Policy provided dwelling coverage for Plaintiff's house with policy limits of \$485,700, subject to a \$1,000 deductible, and \$20,000 loss of rental income coverage.

### **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 Plaintiff has failed to establish that he is entitled to additional coverage for the Claim under the Policy.

On May 20, 2021, Plaintiff notified Defendant of the Claim reporting wind damage to the roof shingles that caused a leak into the house. Plaintiff further reported that the residence was a rental property that was currently unoccupied, and that Simple Solutions, the contractor that replaced the roof approximately two before, confirmed new roof damage. Upon receipt of the claim, Defendant retained Seek Now/Ladder Now ("Seek Now"), an independent inspection company, to complete an inspection of the property.

Seek Now inspected Plaintiff's house on May 25, 2021 and along with Simple Solutions. Seek Now noted that wind pulled the gutter away from the house on the front slope, but did not observe any wind damaged shingles. During the inspection, Simple Solutions advised that a cracked fascia board was the result of the shingle above catching the wind and slamming back

down cracking the board. It also advised that the wind picked up the cupola and dropped it back down allowing wind driven rain to enter the garage. Seek Now determined the cupola was installed incorrectly allowing water to leak in to the garage directly where the cupola was installed.

Based on its Seek Now's inspection, on June 8, 2021 Defendant completed a dwelling repair estimate totaling \$57.96 (\$1,087.60 replacement cost, less \$29.64 recoverable depreciation, less the \$1,000 deductible) that included gutter replacement and interior repairs to the garage. On the same date, Defendant sent Plaintiff a partial denial letter advising that the policy would not provide coverage for damage to the fascia board caused by wear and tear or improper installation of the cupola. Defendants letter cites the following policy language in support of its coverage position:

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*Perils insured against*

*Coverage A – Dwelling and Coverage B – Other Structures*

*We insure against risk of direct loss to property described in Coverage A and B only if that loss is a physical loss to property; however, we do not insure loss:*

2. *Caused by:*
  - h. (1) *wear and tear, marring, deterioration;*
  - (2) *inherent vice, latent defect, mechanical breakdown*
  - (3) *smog, rust or other corrosion, mold, wet or dry rot;*

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*General Exclusions*

2. *We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverage A and B not excluded or excepted in this policy is covered.*
  - c. *faulty, inadequate or defective:*
    - (2) *design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;*

- (3) *materials used in repair, construction, renovation or remodeling; or*
- (4) *maintenance;*

*of part or all of any property whether on or off the described location.*

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On June 10, 2021, Defendant advised Plaintiff that it did not observe any new damage to the roof, and that the leak damage resulted from wind driven rain entering the dwelling due to the improper installation of the cupola. Plaintiff advised Defendant of additional water damage to the stairs leading to the basement and sections of the basement walls and baseboards. Plaintiff further advised he did not wish to receive payment until Defendant evaluated the additional damage.

Seek Now re-inspected Plaintiff's house on June 15, 2021 and confirmed additional areas of removed drywall in various rooms in the basement and water stains on the floor. Seek Now determined the basement damage was not related wind loss, and that the flooring could be cleaned and did not require removal. On June 22, 2021, Defendant requested any additional photos or estimates from Plaintiff's contractor for review. Plaintiff responded on July 6, 2021 requesting a copy of the dwelling estimate from his contractor. Plaintiff also advised the house was currently vacant and requested loss of rental income coverage from May through July 2021.

On July 28, 2021, Plaintiff advised the water entered from the roof into the garage and down the wall into the basement. After reviewing the photos taken during the inspection, Defendant updated its estimate to include interior repairs to various rooms in the basement and floor cleaning. On July 30, 2021, Defendant issued an actual cash value payment to Plaintiff totaling \$7,457.15, along with a copy of the updated dwelling estimate.

On August 20, 2021, Defendant contacted Plaintiff to discuss various concerns including his failure to receive the loss payment and additional damage to the house. Plaintiff agreed to provide an updated address to receive payment, as well as the contact information for his contractor. Plaintiff also requested coverage for three months of lost rental income. Defendant advised that the loss would not qualify for loss of rental income as the property was not unfit for its normal use. However, Defendant agreed the property could not be rented for full value in its current condition and agreed to issue payment for one month of lost rental income totaling \$2,450. Plaintiff also provided an invoice from DABCO Construction for mitigation completed at the time of the loss. On August 23, 2021, Defendant re-issued the July 30, 2021 initial loss payment, as well as a \$1,750 payment for the mitigation invoice and \$2,450 payment for one month of lost rental income.

On September 21, 2021, a public adjuster from Semper Fi Public Adjusters, LLC (“SFPA”) contacted Defendant to discuss the claim. Defendant attempted to contact the public adjuster the same day and left a message. Defendant did not receive any further response from the public adjuster regarding the claim.

It should be noted Defendant has not received a letter of representation from SPFA. Moreover, the Plaintiff advised Defendant in July 2021 that Plaintiff had not retained the services of a public adjuster.

Defendant did not receive any further contact regarding the claim until it received Complaint No. 27-1001-22-00017 S.J. v. Nationwide General Insurance Company<sup>2</sup> filed by Plaintiff’s attorney Allan Poteshman, Esq. Attached to the complaint was a dwelling repair

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<sup>2</sup> Complaint No. 27-1001-22-00017 S.J. v. Nationwide General Insurance Company was improperly filed against the incorrect insurer. Nationwide Mutual Fire Insurance is the proper carrier.

estimate prepared by SFPA totaling \$149,463.70. The estimate included complete replacement of the roof and sheathing, interior repairs to the garage and basement, and public adjuster fees of \$24,743.95.

#### **IV. DISCUSSION**

Upon receipt of the claim, Defendant retained Seek Now to complete an inspection of the property. Seek Now inspected Plaintiff's house on May 25, 2021 and along with Simple Solutions.

Based on its Seek Now's inspection, on June 8, 2021 Defendant completed a dwelling repair estimate totaling \$57.96. On the same date, Defendant sent Plaintiff a partial denial letter advising that the policy would not provide coverage for damage to the fascia board caused by wear and tear or improper installation of the cupola. Plaintiff advised he did not wish to receive payment until Defendant evaluated the additional damage.

Seek Now re-inspected Plaintiff's house on June 15, 2021 and confirmed additional areas of removed drywall in various rooms in the basement and water stains on the floor. Seek Now determined the basement damage was not related wind loss, and that the flooring could be cleaned and did not require removal. On June 22, 2021, Defendant requested any additional photos or estimates from Plaintiff's contractor for review. Plaintiff responded on July 6, 2021 requesting a copy of the dwelling estimate from his contractor. Plaintiff also advised the house was currently vacant and requested loss of rental income coverage from May through July 2021.

On July 28, 2021, Plaintiff advised the water entered from the roof into the garage and down the wall into the basement. After reviewing the photos taken during the inspection, Defendant updated its estimate to include interior repairs to various rooms in the basement and

floor cleaning. On July 30, 2021, Defendant issued an actual cash value payment to Plaintiff totaling \$7,457.15.

On August 20, 2021, Defendant contacted Plaintiff to discuss various concerns including his failure to receive the loss payment and additional damage to the house. Plaintiff agreed to provide an updated address to receive payment, as well as the contact information for his contractor. Plaintiff also requested coverage for three months of lost rental income. Defendant advised that the loss would not qualify for loss of rental income as the property was not unfit for its normal use. However, Defendant agreed the property could not be rented for full value in its current condition and agreed to issue payment for one month of lost rental income totaling \$2,450. Plaintiff also provided an invoice from DABCO Construction for mitigation completed at the time of the loss. On August 23, 2021, Defendant re-issued the July 30, 2021 initial loss payment, as well as a \$1,750 payment for the mitigation invoice and \$2,450 payment for one month of lost rental income.

On September 21, 2021, a public adjuster from SFPA contacted Defendant to discuss the claim. Defendant attempted to contact the public adjuster the same day and left a message. Defendant did not receive any further response from SPFA regarding the claim.

Defendant did not receive any further contact regarding the claim until it received Complaint No. 27-1001-22-00017 filed by Plaintiff's counsel. Attached to the complaint was a dwelling repair estimate prepared by SFPA totaling \$149,463.70. The estimate included complete replacement of the roof and sheathing, interior repairs to the garage and basement, and public adjuster fees.

Upon review of the estimate, Defendant determined the additional exterior repairs were not warranted as the roof, sheathing, and accessories were not damaged by wind. Defendant



further determined that the basement flooring could be cleaned and did not require replacement. To date, Defendant has not received any letter of representation or public adjuster contract evidencing SFPA's representation of Plaintiff for this matter. SFPA has also not provided Defendant with any additional documentation disputing the applicability of the policy exclusions relied on by Defendant, or support for the significant differences in scope and amount of dwelling repairs. Despite the allegations in the Complaint, Plaintiff has not offered any evidence that Defendant ignored the facts Plaintiff presented, refused to justify its position, or refused to negotiate the Claim with Plaintiff's alleged public adjuster. 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 SFPA'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 Plaintiff 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.

**ORDER**

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

**ORDERED** on this April 5, 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

*Tammy R. J. Longan*

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Tammy R.J. Longan  
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).**