

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

<b>T.C.,</b>	*	
<b>Plaintiff,</b>	*	
<b>v.</b>	*	<b>Case No. 27-1001-23-00009</b>
<b>STATE FARM FIRE AND CASUALTY COMPANY,</b>	*	
<b>Defendant.</b>	*	
*   *   *   *   *   *	*	*   *   *   *   *

**DECISION**

T.C. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that State Farm Fire and Casualty Company (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a homeowner’s insurance policy (the “Policy”) in connection with wind and hail damage that occurred on June 7, 2021, which caused damage to Plaintiff’s home (the “Property”) located in Mechanicsville, Maryland (the “Claim”).

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

**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 January 5, 2023, the Administration received Complaint No. 27-1001-23-00009 (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 pay the entire

amount sought in the Claim. Plaintiff contends that Defendant, in doing so, breached its duty to act in good faith by failing to make an informed judgement on Plaintiff's Claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiff alleges that Defendant's decisions were not supported by evidence, that Defendant ignored the facts Plaintiff presented, refused to justify its position with regard to its Claim denial, refused to discuss or negotiate the Claim with Plaintiff's public adjuster, and failed to provide a certified copy of Plaintiff's Policy to the public adjuster in a timely manner.

On January 12, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. On February 13, 2023, Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4), acknowledging that the Policy provided dwelling coverage for Plaintiff's home with policy limits of \$243,100.

### **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 June 7, 2021, Plaintiff notified Defendant of the Claim reporting wind and hail damage to the roof with leaking into an interior hallway. At the time of the loss, the Policy provided coverage for accidental direct physical loss to the Property. The Policy also contained the following exclusion for loss resulting from the enforcement of a building code:

#### **SECTION I – LOSSES NOT INSURED**

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded

event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss.

- a. Ordinance or Law, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

Defendant inspected Plaintiff's house on June 12, 2021 and observed minor wind and hail damage to all roof slopes warranting repairs. Plaintiff further observed minor wind and hail damage to the aluminum siding and water damage to the living room ceiling. On June 19, 2021, based on its inspection, Defendant prepared an estimate that included roof tarping, shingle repairs, siding replacement on the front and left elevations, re-setting siding on the rear elevation, re-setting shutters, gutter guard replacement on the rear elevation, and interior repairs to the living room ceiling. On June 21, 2021, Defendant issued payment to Plaintiff totaling \$2,029.20 (\$4,562.74 replacement cost, less \$102.54 recoverable depreciation, less the \$2,431 deductible). On the same date, Defendant contacted Plaintiff to explain the dwelling estimate and basis for payment.

On July 2, 2021, Semper Fi Public Adjusters, LLC ("Semper Fi") sent Defendant a letter of representation on behalf of Plaintiff, an Assignment of Insurance Proceeds, and requested a certified copy of the Policy. On or about August 24, 2021, Defendant provided Semper Fi with a copy of the Policy.

On August 27, 2021 Semper Fi requested a certified copy of the Policy. On September 22, 2021, Defendant sent Semper Fi a confirmation of coverage for Plaintiff and another copy of the Policy.

On December 2, 2021, Semper Fi sent an email to Defendant advising it concluded its analysis of the claim and requesting that Defendant release all undisputed funds and depreciation

per the scope of work that will properly indemnify Plaintiff. However, Semper Fi did not attached any dwelling estimate or other documentation in support of its request.

On December 4, 2021, Defendant sent Plaintiff and Semper Fi a letter requesting that Semper Fi provide an itemized dwelling estimate. Defendant also advised that the Plaintiff's Policy did not contain an Option OL endorsement for ordinance or law coverage and would not cover any building code items that were not existing prior to the loss. Defendant further requested photographs documenting any additional damages being claimed. On the same date, Defendant attempted to contact Semper Fi to request a copy of its itemized estimate.

On December 10, 2021, Semper Fi provided Defendant with a direction to pay form; an IRS form W-9; building code rules 803, 905, and 703 regarding roof sheathing, rafter spacing, and exterior coverings; a demand for payment of all undisputed funds and depreciation; a Sworn Statement in Known Proof of Loss form; a letter of representation; and an itemized dwelling estimate totaling \$77,071.18. The estimate included a complete replacement of the roof sheathing and shingles, siding replacement on all elevations, interior repairs, and a \$12,440.03 public adjuster fee.

Upon review of the estimate provided by Semper Fi, Defendant determined that the Policy did not include an Option OL endorsement and would not provide coverage for building code upgrades. It further determined that Semper Fi did not provide any documentation supporting the expanded scope included in its dwelling estimate.

On December 28, 2021, after reviewing Semper Fi's estimate, Defendant issued payment to Plaintiff and Semper Fi totaling \$102.54 (\$4,562.74 replacement cost, less the \$2,431 deductible, less \$2,029.20 previously paid) for additional interior repairs. On the same date, Defendant sent a letter to Plaintiff and Semper Fi explaining the basis for the payment and a

copy of the updated dwelling estimate. There were no further communications from Plaintiff or Semper Fi until May 2022.

On May 26, 2022, Defendant received a letter of representation from Allan Poteshman advising he was representing Plaintiff for this Claim. The letter did not include any additional documentation supporting Semper Fi's claimed scope and amount of damages and did not request any additional information from Defendant.

There was no further activity on this Claim until January 5, 2023, when Plaintiff filed the subject 27-1001 Complaint. Included with the Complaint, was an estimate written by Semper Fi in the amount of \$77,071.18. This estimate included a complete replacement of the roof sheathing and shingles, siding replacement on all elevations, interior repairs, and a \$12,440.03 public adjuster fee.

#### **IV. DISCUSSION**

The evidence demonstrates that Defendant acted promptly to conduct an inspection of the Property on June 12, 2021, only five days after the Claim was reported to Defendant. Based on Defendant's inspection, a payment was issued. Moreover, the evidence demonstrates that Defendant communicated its initial coverage decision clearly and promptly to Plaintiff.

After receiving an estimate from Semper Fi, Defendant reviewed the estimate and issued an additional payment for interior repairs. Defendant also reviewed the estimate against the terms of the Policy and noted that the Policy did not provide coverage for building code upgrades. That same day, Defendant sent a letter to Plaintiff and Semper Fi explaining the basis for the payment and a copy of the updated dwelling estimate.

There were no further communications from Plaintiff or Semper Fi until May 2022. On May 26, 2022, Defendant received a letter of representation from Allan Poteshman advising he

was representing Plaintiff for this Claim. The letter did not include any additional documentation supporting Semper Fi's claimed scope and amount of damages and did not request any additional information from Defendant.

There was no further activity on this Claim until January 5, 2023, when Plaintiff filed the subject 27-1001 Complaint. Included with the Complaint, was an estimate written by Semper Fi in the amount of \$77,071.18. This estimate included a complete replacement of the roof sheathing and shingles, siding replacement on all elevations, interior repairs, and a \$12,440.03 public adjuster fee.

Plaintiff has not provided evidence documenting whether or how the additional repairs shown on Semper Fi's estimate were necessitated by wind and 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 – LOSSES INSURED  
COVERAGE A – DWELLING AND COVERAGE B – PERSONAL  
PROPERTY**

We insure for accidental direct physical loss to the property described in Coverage A and Coverage B, except as provided in Section I- Losses Not Insured.

\* \* \* \*

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 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 issued to Plaintiff a dwelling coverage policy obligating Defendant to pay a claim for damage to the Property caused by wind and hail damage on June 7, 2021.
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.

### **ORDER**

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

**ORDERED** on this 9<sup>th</sup> day of March, 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).**