

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

**J.C. and T.C.,**

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**Plaintiffs,**

\*

**v.**

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**Case No. 27-1001-23-00015**

**ERIE INSURANCE EXCHANGE,**

\*

**Defendant.**

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\* \* \* \* \*

**DECISION**

This proceeding was initiated by J.C. and T.C., (“Plaintiffs”) under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Erie Insurance Exchange (“Defendant”) breached its contractual obligations to Plaintiffs by rejecting and denying Plaintiffs’ first-party claim for damages under the terms of their homeowner’s insurance policy (the “Policy”). Plaintiffs allege that the claim arose from a July 6, 2020 storm that caused damage to the Plaintiff’s home (the “Dwelling”) located in La Plata, Maryland. (“Claim”)

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs have not demonstrated that Defendant breached its duty of coverage owed to Plaintiffs by rejecting and denying Plaintiffs’ Claim.

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

## **II. PROCEDURAL BACKGROUND**

On January 19, 2023, the Administration received Complaint No. 27-1001-23-00015 (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 rejecting and denying their storm damage claim. In doing so, Plaintiffs contend that Defendant breached its

duty to act in good faith by failing to make an informed judgement on Plaintiffs' storm damage claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiffs allege that Defendant's decisions were not supported by evidence, Defendant ignored the facts Plaintiffs presented, Defendant refused to justify its position and refused to discuss or negotiate the Claim with Plaintiffs' public adjuster, Semper Fi Public Adjusters, LLC ("Semper Fi"). Further, Plaintiffs allege that Defendant failed to provide a certified copy of Plaintiffs' Policy to Semper Fi in a timely manner. Finally, Plaintiffs allege that the Policy is an indemnity contract and Defendant has refused to fairly indemnify Plaintiffs for the Claim.

On January 26, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. On February 24, 2023, Defendant requested an extension of time to submit its response to the Complaint and accompanying documents as required by Section 27-1001(d)(4). On February 28, 2023, Plaintiff's attorney consented to the Defendant's request for an extension of time to submit the response until March 3, 2023. Defendant submitted its response to the Complaint on March 2, 2023.

### **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 not established that they are entitled to additional coverage for the Claim under the Policy.

At all relevant times, the Dwelling was covered under an Erie Secure Home Insurance Policy issued by Defendant to Plaintiffs, under policy number ending 8356 ("Policy"). The Policy provides,

RIGHTS AND DUTIES – CONDITIONS – SECTION 1

WHAT TO DO WHEN LOSS HAPPENS

In case of loss, “anyone we protect” must:

1. give “us” or “our” Agent immediate notice of the loss.
  - a. Hail losses must be reported within one year from the date the hail loss occurred.
  - b. If the loss is due to criminal activity or theft, “you” must also notify the police;

....

On November 17, 2020, Plaintiff J.C. first reported that a storm caused damage to the Dwelling on July 6, 2020. On the same day that Plaintiff J.C. reported the Claim, Defendant assigned the Claim to Adjuster Joel Drew (“Adjuster Drew”). During the initial intake conversation between Adjuster Drew and Plaintiff J.C., Plaintiff J.C. reported that he did not notice the damage until he observed evidence of water leaking in his attic. Adjuster Drew then scheduled the inspection of the Dwelling to occur on November 24, 2020.

On November 24, 2020, Adjuster Drew conducted an inspection of the Dwelling with the assistance of Erik Judy of Ladder Now. The November 24, 2020 inspection revealed that there was widespread damage on the roof of the Dwelling, however, the damage was inconsistent with wind from a storm. Instead, Adjuster Drew determined that the damage was man-made. Adjuster Drew also determined that an engineer was needed to conduct a re-inspection of the Dwelling to determine whether the damage was man-made. Further, Adjuster Drew confirmed that there was a water stain present on the stairway leading from the garage to the attic area of the Dwelling, with no other interior damage present. Adjuster Drew also determined that the

shed roof showed notable wear and tear due to age, but there was no evidence of wind damage caused by a storm.

On December 1, 2020, Adjuster Drew provided a status update to Plaintiff J.C. and stated that the inspection did not find damage to the roof of the dwelling consistent with wind. Further, Adjuster Drew informed Plaintiff J.C. that an engineer would be needed to confirm the cause of the damage.

Thereafter, on December 9, 2020, an inspection was conducted by Thomas M. Krauth, a Registered Professional Engineer, (“Inspector Krauth”) of Vannoy & Associates, LLC. The purpose of the inspection was to provide an engineer assessment of the roof of the Dwelling. Inspector Krauth prepared a report of his findings, including the following conclusions,

Based upon the information gained from other and its own examination and analysis, Vannoy & Associates, Inc. concludes, to a reasonable degree of engineering certainty that:

1. The roof covering at the insured property is in generally fair overall condition evidencing deterioration related to age, wear, and installation.
2. Although there is evidence of recent hail activity at the property, hail was of minimal size and aside from isolated damage to flashing at the front porch roof, did not result in damage to the roof covering at the property,
3. Roof covering damages (i.e., widespread shingle creasing) at the insured property are generally inconsistent with wind damage and are characteristic of a man-made attempt at replicating wind damage.

....

On January 8, 2021, Defendant received the engineer report. Adjuster Drew contacted Plaintiffs and notified them of the engineer report findings. Adjuster Drew explained that coverage could still be extended under a vandalism claim, however, Plaintiffs would need to file a police report as required by the Policy. On January 11, 2021, Investigator Alan Blisick (“Investigator Blisick”) attempted to contact Plaintiff J.C. to discuss the Claim. Then, on January 12, 2021, Adjuster Drew sent a letter to Plaintiff J.C. stating,

This letter is a follow-up to our conversation regarding your property on January 11, 2021. At your request the [Claim] has been closed without payment or further investigation.

Please note that your policy does require you to mitigate the damages and protect the property from further damage.

....

However, in response, Plaintiff J.C. responded by text message to Adjuster Drew stating,

Joel, I received the above letter from you today...I DID NOT REQUEST for my claim to be cancelled... In our conversation I chose not to report my damage as vandalism...and am in the process of obtaining 2<sup>nd</sup> opinions (which is within my rights) on the damage to my roof. I will be contacting ERIE tomorrow.

On January 27, 2021, Adjuster Drew then sent a letter to Plaintiff J.C. stating that,

As you are aware we have completed the investigation for the [Claim] for damage to the roof of your property...Following the initial inspection an engineer was utilized to determine the cause of the damage to the roof. Their inspection found the damage to the roof was consistent with man-made attempts at replicating wind damage. As we discussed, man-made attempts at replicating wind damage would be considered vandalism, which is covered under your policy; however, your policy requires you to file a police report for claims involving vandalism in order for coverage to be available for the damage. Please refer to your Erie Secure Home Insurance Policy – Maryland, ESHMD (Ed. 2/18), which states:

#### RIGHTS AND DUTIES – CONDITIONS – SECTION 1

##### WHAT TO DO WHEN LOSS HAPPENS

In case of loss, “anyone we protect” must:

2. give “us” or “our” Agent immediate notice of the loss.
  - a. Hail losses must be reported within one year from the date the hail loss occurred.
  - b. If the loss is due to criminal activity or theft, “you” must also notify the police;

We would also like to remind you of your duties following a loss:

#### RIGHTS AND DUTIES – CONDITIONS – SECTION 1

##### LAWSUITS AGAINST US

“We” may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within three years from the date the cause of action accrues.

You have indicated you will not file a police report for this damage so unfortunately the damage sustained to your residence cannot be covered under the Homeowners Policy. Please be advised that nothing in this letter is intended to waive or alter any of the terms, conditions or defenses of the policy in question, all of which are expressly reserved and reaffirmed.

....

Approximately three months later, on April 8, 2021, Defendant received a letter from Semper Fi stating that Semper Fi now represented Plaintiff in connection with the Claim. On April 15, 2021, Adjuster Drew received an email from Semper Fi requesting a certified copy of the Policy.

On June 18, 2021, Semper Fi sent an estimate in the amount of \$112,000 seeking a full roof replacement including removal of all roofing components as well as the plywood sheathing under the shingles. The Semper Fi estimate also included fees to Semper Fi in the amount of \$18,519.25. On June 18, 2021, Adjuster Drew sent a letter stating that Defendant was still awaiting notice that Plaintiffs had filed a police report, as required by the Policy.

On July 14, 2021, Defendant received a letter of representation from Plaintiffs’ attorney. In response, on July 15, 2021, Adjuster Drew acknowledged receipt of the letter of representation and forwarded the June 23, 2021 letter to Plaintiff stating that the Policy requires that Plaintiffs file a police report in order for vandalism coverage to be available under the Policy. On July 23, 2023, in response to the letter of representation from Plaintiffs’ attorney, Adjuster Drew sent another letter to Plaintiffs stating,

To date, we have not received any documentation from your office or the insured confirming that a police report was filed. As outlined in the letter sent to the insured on January 27, 2021, since the damage present to the roof occurred as a result of vandalism, the Erie Insurance Policy requires the insured to file a police report in order for coverage to be available for the damage from this loss.

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On September 20, 2021, Defendant received notice that an administrative complaint had been filed with the Property & Casualty Complaints Unit regarding a notice of non-renewal of the policy sent to Plaintiffs by Defendant.

The record does not include any subsequent correspondence between the parties until the filing of the Complaint.

#### **IV. DISCUSSION**

Plaintiffs assert that Defendant improperly rejected and denied Plaintiffs' Claim. Specifically, Plaintiffs allege that Semper Fi's estimate to restore the Dwelling to its pre-loss condition is \$112,115.49 and that the full amount of the estimate remains in dispute. Further, Plaintiff also asserts that the Policy was issued on an indemnity basis.

First, the evidence demonstrates that Defendant diligently and promptly conducted its investigation of the Claim. Specifically, Adjuster Drew conducted the inspection of the Dwelling within days after Plaintiff J.C. reported the loss. Based on the initial inspection of the Dwelling, Adjuster Drew observed evidence of man-made damage. Then, based on the initial inspection findings, a second engineer inspection was scheduled. On December 9, 2020, an engineer inspection was conducted by Inspector Krauth of Vannoy & Associates, LLC. Inspector Krauth prepared a report of his findings and concluded that the roof covering at the Dwelling was generally in fair overall condition, but there was evidence of deterioration related to age, wear, and installation. Further Inspector Krauth determined that there was no hail damage to the roof of the Dwelling. Finally, while there was widespread shingle creasing, the damage was inconsistent with wind damage and characteristic of a man-made attempt at replicating wind damage.



Plaintiff has offered no evidence that Defendant ignored the facts Plaintiff presented, refused to justify its position, or refused to negotiate the Claim with Semper Fi. Rather, the evidence demonstrates that Defendant conducted an initial inspection and later sought a second inspection by an engineer for the purpose of verifying the cause of the damage to the roof of the Dwelling. Further, Defendant sent two letters to Plaintiff, on June 23, 2021 and July 23, 2021, stating the specific factual findings from the inspections, as well as the Policy language supporting its denial of the Claim.

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

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

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

1. Plaintiffs have not established by a preponderance of the evidence that Defendant is obligated to pay a claim for damage to the Dwelling alleged caused by the July 6, 2020 storm.
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 any 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 19<sup>th</sup> day of April, 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

signature on original

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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).**