

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

**M.H and H.H ,<sup>1</sup>**

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**Plaintiff,**

\*

**v.**

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**Case No. 27-1001-23-00020**

**Erie Insurance Group,<sup>2</sup>**

\*

**Defendant.**

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\* \* \* \* \*

**DECISION**

M.H and H.H (“Plaintiffs”) have alleged that Erie Insurance Group (“Defendant”) breached its contractual obligations by failing to fully pay Plaintiffs’ first-party claim for damages under the terms of the homeowners policy (the “Policy”) issued to Plaintiffs by Defendant. Plaintiffs’ claim was for damage to their home (“the Dwelling”) located in Bel Alton, Maryland caused by a water loss that occurred on July 13, 2021 (the “Claim”). Pursuant to Section 27-1001 of the Insurance Article of the Annotated Code of Maryland, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs have not demonstrated that Defendant breached any duties owed to Plaintiffs or otherwise failed to act in good faith in connection with Plaintiffs’ Claim.

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

<sup>2</sup> Plaintiffs improperly named Erie Insurance Group as the Defendant in this matter. Here, the underlying policy was issued by Erie Insurance Exchange. As documents were produced in response to the Complaint on behalf of Erie Insurance Exchange, the company that issued the relevant policy to the Plaintiffs in this matter, I will nonetheless review the filings as if the Plaintiffs had named the proper Defendant. All references to “Defendant” contained herein should be construed as Erie Insurance Exchange.

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

## **II. PROCEDURAL BACKGROUND**

On March 6, 2023, the Administration received Complaint No. 27-1001-23-00020

(the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiffs alleged they submitted a Claim for damages to the Dwelling caused by a water loss on July 12, 2021. Plaintiffs further allege that during the investigation of the Claim, their public adjuster submitted an estimate to Defendant in the amount of \$99,648.42 as the amount required to restore the Dwelling to its pre-loss condition. However, Plaintiffs allege that the Claim remains severely underpaid as Defendant rejected the public adjuster’s estimate. Plaintiffs contend they have suffered damage within the scope of indemnity under the Policy and the Defendant refused to fairly indemnify. Plaintiffs further contend that the basis of Defendant’s denial is that the work is not required, because Defendant does not believe it is responsible for the damage beyond the direct physical loss. Plaintiffs assert that Defendant consistently failed to make a judgement on Plaintiffs’ claim based on honesty and diligence, willfully and consistently ignored facts of the claim; has underpaid the Plaintiffs’ claim by a substantial amount totaling \$87,388.55; refused to justify its position with regards to denying coverage; refused to negotiate and discuss the Claim in clear terms with Plaintiffs’ public adjuster; and refused to provide Plaintiffs’ public adjuster with a certified copy of Plaintiffs’ Policy. Plaintiffs contend that Defendant has attempted to avoid its indemnity obligation to the policyholder by taking a read of the policy that would be favorable to them, but is not accurate, fair or reasonable.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on March 10, 2023. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on April 6, 2023. Plaintiffs’ policy provided dwelling coverage in the amount of the replacement cost at the time of the loss, subject to a \$1,000.00 deductible. The Policy was issued to Michael Hulsey.

### **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 by a preponderance of the evidence that Defendant breached any obligation owed under the Policy or that they are entitled to any additional payment under the Policy.

On July 14, 2021, Plaintiffs' agent notified Defendant of a claim for water damage that occurred on July 13, 2021. Thereafter, Defendant assigned an adjuster to handle the Claim. From July 14, 2021 through July 16, 2021, Defendant's adjuster made three attempts to reach Plaintiffs by telephone and also sent a letter to Plaintiffs on July 16, 2021. Then, by email on July 16, 2021, Defendant received a letter of representation from Joseph Kriner ("Adjuster Kriner") of Semper Fi Public Adjusters ("Semper Fi").

On July 20, 2021, Defendant acknowledged the letter of representation. A certified policy was sent electronically and by mail to Adjuster Kriner on July 21, 2021. Defendant's adjuster spoke with Adjuster Kriner on July 20, 2021 and agreed to an inspection of the dwelling on July 21, 2021.

On July 21, 2021, Defendant's adjuster conducted an inspection of the dwelling and also discussed the need for a recorded statement. Defendant's adjuster determined that the loss stemmed from a HVAC system leak. Following the loss, Rapid Restoration, LLC ("Rapid Restoration") removed the flooring and drywall in the basement play room. Defendant's adjuster documented water intrusion in the adjacent recreation room, which only required carpet cleaning.

On August 6, 2021, Defendant's adjuster obtained the recorded statement from Plaintiff H.H., and described the damage in the basement as around the closet area where the water and

air conditioner are located. Plaintiff H.H. also stated that there was water damage to the floors and walls.

By email dated August 6, 2021, Defendant's adjuster requested that Adjuster Kriner provide any photographs taken before the mitigation work was completed, the itemized mitigation bill, and the drying logs.

By email dated August 9, 2021, Adjuster Kriner provided before and after mitigation photographs. Defendant's adjuster also requested the mitigation bill and drying logs. On August 13, 2021, Defendant created an initial estimate for a Replacement Cost Value of \$10,056.45, and issued an Actual Cash Value payment of \$7,501.87.

Again, on September 22, 2021 and September 30, 2021, Defendant's adjuster sent letters to Adjuster Kriner requesting the mitigation bill and drying logs.

By email dated October 14, 2021, Adjuster Kriner responded to Defendant's adjuster advising that Defendant had no right to receive drying logs. Adjuster Kriner also provided Rapid Restoration's photo deck, scope of work, and invoice, however, Defendant's adjuster noted that the scope contained no prices.

On November 22, 2021, Defendant wrote to Adjuster Kriner advising that the Policy requires insureds to cooperate with Defendant's claim investigation. Defendant again requested the itemized bill and drying logs. Defendant's adjuster subsequently notified Adjuster Kriner on December 20, 2021, that the Claim remained open because Defendant was still waiting for the itemized water mitigation bill and the drying logs.

By email dated December 28, 2021, Adjuster Kriner sent Defendant a demand package with a mitigation estimate, contents estimate, repair estimate, proof of loss, and Rapid Restoration's mitigation invoice attached. Defendant's adjuster noted that the proof of loss

contained many errors and claimed that Plaintiffs' actual cash value was equal to the replacement cost of the Claim. Further, Defendant's adjuster reviewed the Plaintiffs' estimate and disagreed with the scope of damages and repairs. Specifically, Defendant determined that the estimate contained inflated overhead and profit, including a 20% public adjuster surcharge on all amounts claimed.

On January 5, 2022, Defendant's adjuster sent a letter to Semper Fi and requested an itemized packout invoice, drying logs, and an itemized Rapid Restorations invoice. Further, Defendant's adjuster rejected the proof of loss.

On January 27, 2022, Defendant's adjuster and Adjuster Kriner re-inspected the dwelling. Defendant's adjuster found that Plaintiffs had completed all repairs except the floor replacement in the play room, as well as damage to the dwelling that was listed on adjuster Kriner's estimate, but was unrelated to the Claim. Based on the second inspection, on February 1, 2022, Defendant sent a revised estimate with a replacement cost value of \$15,080.05. Thereafter, Defendant issued a supplemental payment of \$4,758.00.

On March 17, 2022, Defendant notified Adjuster Kriner that the itemized water mitigation bill, the drying logs, and the itemized pack out invoice remained outstanding. On May 20, 2022, after receiving no response from Adjuster Kriner, Defendant sent a letter to Adjuster Kriner advising that the Claim was closed, but could be re-opened once the requested information was provided. Defendant received no further information concerning the Claim until the filing of the 27-1001 Complaint.

#### **IV. DISCUSSION**

As an initial matter, the Policy provides the following requirement, with respect to the Plaintiffs' obligation to cooperate during an investigation of a claim:

## COOPERATION

“You” agree to cooperate with “us” by:

1. truthfully completing and promptly returning questionnaires and audit forms about this insurance;
2. permitting and helping with inspections and audits; and
3. complying with specific recommendations to improve “your” risk.

....

Here, the evidence demonstrates that on several occasions, Defendant requested the itemized water mitigation bill, the drying logs, and the itemized pack out invoice, however, the documents remained outstanding during the pendency of the claim investigation. Further, while Defendant closed the Claim, Defendant indicated in its correspondence to Plaintiff that the Claim could be re-opened if the requested documents were provided.

Further, while Plaintiffs assert that Defendant is obligated under the Policy to return the dwelling to its pre-loss condition, the Policy specifically states that coverage will be provided for damage caused by “direct physical loss.” Specifically, the Policy states,

PERILS WE INSURE AGAINST – Dwelling And Other Structures Coverages

“We” pay for direct physical loss to property insured under Dwelling And Other Structures Coverages, unless the loss is excluded elsewhere under this policy.

....

The Policy does not provide blanket coverage to fix everything that is wrong with the Dwelling and is limited to those damages caused by direct physical loss. In this case, Plaintiffs have 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 Dwelling.

Based on these findings, Plaintiffs have not met their burden of proof that Defendant breached any obligation owed under the Policy or that they are entitled to additional payment under the Policy.

#### **IV. CONCLUSIONS OF LAW**

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

1. Plaintiffs established by a preponderance of the evidence that Defendant is obligated under the policy to cover the claim.
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. 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, 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 June 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



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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).**