

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

**MARYLAND INSURANCE  
ADMINISTRATION  
EX. REL. C.K.<sup>1</sup>,**

**Complainant**

v.

**Case No. MIA 2022-07-006**

**STATE FARM FIRE AND  
CASUALTY COMPANY,**

**Licensee.**

\* \* \* \* \*

**MEMORANDUM AND FINAL ORDER**

Pursuant to §§2-204 and 2-214 of the Insurance Article of the Annotated Code of Maryland,<sup>2</sup> the Undersigned concludes that State Farm Fire and Casualty Company (“Licensee”) did not violate the Insurance Article in its handling of C.K.’s (“Complainant”) homeowner’s insurance claim.

**STATEMENT OF THE CASE**

This matter arose from an administrative complaint (“Complaint”) filed by Complainant with the Maryland Insurance Administration (the “MIA”) on August 18, 2021. (MIA Exhibit (“Ex.”) 1.) Complainant brought her Complaint regarding Licensee’s partial denial of her homeowner’s insurance claim for payment of damages to her home and personal property following a vehicle crashing into Complainant’s basement. (*Id.*) Specifically, Complainant argued that she is entitled to payment for damage to the upper levels of the house because the

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<sup>1</sup> The MIA uses initials to identify a Complainant and to protect the privacy of the Parties.

<sup>2</sup> Unless otherwise noted, all statutory citations are to the Insurance Article of the Annotated Code of Maryland.

damage was a result of the vehicle crashing into her home. (*Id.*) Additionally, Complainant asserts that Licensee has failed to properly reimburse her for damages to her personal property. (*Id.*) After investigating the Complaint, the MIA determined that Licensee had not violated the Insurance Article and notified the Parties of its findings by letter dated May 17, 2021<sup>3</sup> (“Determination”). (MIA Ex. 12.) The Determination included a notice of hearing rights for the Parties. (*Id.*) Complainant disagreed with this determination and filed a timely request for a hearing, which was granted. (MIA Exs. 13, 14.)

### **ISSUE**

The issue presented in this case is whether Licensee violated the Insurance Article in its handling of Complainant’s homeowner’s insurance claim.

### **SUMMARY OF THE EVIDENCE**

#### **A. Testimony**

A hearing was held using remote video technology on February 7, 2023, March 2, 2023, and March 16, 2023.

Complainant represented herself and provided sworn testimony on her own behalf. Additionally, Complainant called Nick Cappy (“Inspector Cappy”), inspector with FRSTeam, and Michael Jones (“Contractor Jones”), contractor with Snow Doctor, as witnesses and they provided sworn testimony on Complainant’s behalf.

Licensee was represented by Thomas F. Stowe, Esquire, with Budow and Noble, P.C. Licensee called Todd Ford (“Mr. Ford”), Vice President of Engineering with Forensic Analysis and Engineering, and Brandi Montgomery (“Claims Specialist Montgomery”), claims specialist with Licensee, as witnesses and they provided sworn testimony on Licensee’s behalf.

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<sup>3</sup> The Determination Letter in this matter was dated May 17, 2021, since the date of loss was not until June 11, 2021,

**B. Exhibits**

*MIA Exhibits<sup>4</sup> (In Record)*

1. Initial Complaint from Complainant to MIA, dated August 18, 2021
2. Letter from MIA to Licensee regarding Complaint, dated August 25, 2021
3. Response from Licensee to MIA and supporting documents, dated September 7, 2021
4. First letter from MIA to Licensee requesting information, dated October 7, 2021
5. Second response from Licensee to MIA and supporting documents, dated October 25, 2021
6. Second letter from MIA to Licensee requesting information, dated January 10, 2022
7. Third response from Licensee to MIA and supporting documents, dated January 13, 2022
8. Third letter from MIA to Licensee requesting information, dated March 9, 2022
9. Fourth response from Licensee to MIA and supporting documents, dated March 14, 2022
10. Fourth letter from MIA to Licensee requesting information, dated April 20, 2022
11. Fifth response from Licensee to MIA and supporting documents, dated April 26, 2022
12. Determination letter from MIA to Parties, dated May 17, 2021
13. Request for a hearing from Complainant, dated June 1, 2022
14. Letter Granting Hearing Request from MIA to Parties, dated June 2, 2022
15. Email Licensee's Counsel Notice of Appearance, dated July 7, 2022

*Complainant's Exhibits*

1. Email between Licensee and contractor, dated January 19, 2023
2. Response letter from Licensee to Complainant, dated January 19, 2023
3. Repair estimate and invoices from The Snow Doctor, dated January 19, 2023
4. Copy of restoration documents, dated January 20, 2023
5. Loss inventory, dated October 13, 2021
6. Policy Notice, dated January 5, 2021
7. Correspondences and supporting documents, dated January 20, 2023

*Licensee's Exhibits*

1. Complainant's homeowner's policy, dated February 28, 2021
- 1a. Updated Licensee claims log, dated December 2, 2022

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it is presumed that the Determination Letter was meant to be dated May 17, 2022.

<sup>4</sup> At the start of the Hearing, the Parties stipulated to the admission of all of the MIA exhibits.

2. Licensee claims log, dated June 17, 2021
- 2b. Updated Licensee claims log, dated January 11, 2023
3. Correspondences between Complainant and Licensee, dated June, 2021
4. Licensee building estimate and correspondences, dated July 13, 2021
5. Correspondences between Complainant and Licensee, dated August, 2021
6. Correspondences between Complainant and Licensee, dated September, 2021
7. Correspondences and Licensee building estimate, dated October, 2021
8. Correspondences and Licensee contents estimate, dated November, 2021
9. Correspondences and Licensee building estimate, dated December, 2021
10. Correspondences and Licensee building estimate, dated January, 2022
11. Correspondences and Licensee building estimate, dated February, 2022
12. Correspondences and Licensee building estimate, dated March, 2022
13. Correspondences between Complainant and Licensee, dated April, 2022
14. Correspondences between Complainant and Licensee, dated May 2, 2022
15. Correspondences and Licensee building estimate, dated June, 2022
16. Complainant's loss inventories, dated October, 2021 and January, 2022
17. Infinity Environmental Report, dated March 3, 2022
18. Forensic Analysis and Engineering Report, dated August 5, 2021
19. Complainant's estimates, dated June, 2021, July, 2021, and September, 2021
20. Claim payment history, dated December 2, 2022
21. Correspondences between Complainant and Licensee, dated June 17, 2022
22. Correspondences between Complainant and Licensee, dated July, 2022
23. Correspondences between Complainant and Licensee, dated August 31, 2022
24. Correspondences and estimates, dated October, 2022
25. Correspondences and estimates, dated November, 2022
26. Complainant's content replacement receipts, dated December 1, 2022
27. Correspondences and estimates, dated December, 2022
28. Correspondences and estimates, dated January, 2023
29. Complainant's content replacement receipts, dated January 9, 2023

#### **FINDINGS OF FACT**

These findings of fact are based upon a complete and thorough review of the entire record in this case, including the hearing transcript and all exhibits and documentation provided by the Parties. The credibility of the witnesses has been assessed based upon the substance of their testimony, their demeanor, and other relevant factors. To the extent that there are any facts in dispute, the following facts are found to be true by a preponderance of the evidence. Citations to

particular parts of the record are for ease of reference and are not intended to exclude, and do not exclude, reliance on the entire record.

1. At all relevant times, Licensee held, and currently holds, a Certificate of Authority from the State of Maryland to act as a property and casualty insurer.

2. At the time of the accident, Complainant held a homeowner's insurance policy under policy number 20-CX-C168-6 ("Policy") issued by the Licensee. (Licensee ("Lic.") Ex. 1, Complainant ("Com.") Ex. 6.) This Policy provided coverage for accidental physical loss to Complainant's dwelling and contents, but excluded damage resulting from wear and tear, deterioration, or the seepage/leakage of water over time. (*Id.*) This Policy was in effect from February 28, 2021, through February 28, 2022. (*Id.*) The Policy provided as follows, in pertinent part:

**SECTION I – LOSSES INSURED**

**COVERAGE A – DWELLING**

**We** will pay for accident direct physical loss to the property described in Coverage A, unless the loss is excluded or limited in **SECTION I – LOSSES NOT INSURED** or otherwise excluded or limited in this policy. However, loss does not include and **we** will not pay for, any **diminution in value**.

**COVERAGE B – PERSONAL PROPERTY**

**We** will pay for accident direct physical loss to the property described in Coverage B caused by the following perils, unless the loss is excluded or limited in **SECTION I – LOSSES NOT INSURED** or otherwise excluded or limited in this policy. However, loss does not include and **we** will not pay for any **diminution in value**.

\* \* \*

**6. Vehicles**, meaning accidental direct physical loss to covered property caused by the weight, force, power, or movement of a vehicle.

**a.** This includes:

(1) the impact of a vehicle;

\* \* \*

**SECTION I – LOSSES NOT INSURED**

1. **We** will not pay for any loss to the property described in Coverage A that consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs abruptly

or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

\* \* \*

f. seepage or leakage of water, steam, or sewage that occurs or develops over a period of time:

(1) and is:

- (a) continuous;
- (b) repeating;
- (c) gradual;
- (d) intermittent;
- (e) slow; or
- (f) trickling; and

(2) from a:

- (a) heating, air conditioning, or automatic fire protective sprinkler system;
- (b) household appliance; or
- (c) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings, or floors.

\* \* \*

g. wear, tear, marring, scratching, deterioration, inherent vice, latent defect, or mechanical breakdown;

\* \* \*

i. wet or dry rot;

\* \* \*

k. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations (including slabs, basement walls, crawl space walls, and footings), walls, floors, roofs or ceilings;

\* \* \*

3. **We** will not pay for, under any part of this policy, any loss consisting of one or more of the items below. Further, **we** will not pay for any loss described in paragraphs 1. and 2. immediately above regardless of whether one or more of the following: (a) directly or indirectly cause, contribute to, or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

\* \* \*

b. defect, weakness, inadequacy, fault or, unsoundness in:

\* \* \*

(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

\* \* \*

(4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the **residence premises** [.]

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## SECTION I – LOSS SETTLEMENT

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**COVERAGE B – PERSONAL PROPERTY**

**1. B1 – Limited Replacement Cost Loss Settlement.**

- a. We will pay the cost to repair or replace property covered under **Section I – PROPERTY COVERAGES, COVERAGE B- PERSONAL PROPERTY**, except for property listed in item b. below, subject to the following:
  - (1) Until repair or replacement is completed, we will pay only the actual cash value of the damaged property;
  - (2) After repair or replacement is completed, we will pay the difference between the actual cash value and the cost you have actually and necessarily spent to repair or replace the property; and
  - (3) If property is not repaired or replaced within two years after the date of the loss, we will pay only the actual cash value.
- b. We will pay market value at the time of loss for:
  - (1) Antiques, fine arts, paintings, statuary, and similar articles which by their inherent nature cannot be replaced with new articles;
  - (2) Articles whose age or history contribute substantially to their value including, but not limited to memorabilia, souvenirs, and collectors items; and
  - (3) Property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) Our cost to replace at the time of loss;
- (2) The full cost of repair;
- (3) Any special limit of liability described in this policy; or
- (4) Any applicable Coverage B limit of liability.

*(Id.)*

3. On June 11, 2021, a vehicle crashed into the basement of Complainant’s home in Lexington Park, Maryland. (MIA Ex. 3, Lic. Ex. 2.) Though the home remained habitable, the collision caused damage to the brick exterior, insulation, drywall, sliding glass door, water heater, and many personal contents. *(Id.)*

4. That same day, Complainant contacted Licensee to report the accident and initiate a claim. (MIA Ex. 3, Lic. Ex. 2.) Licensee then opened a claim and began its investigation. *(Id.)*

5. On June 12, 2021, Licensee and Complainant spoke by telephone to discuss the claim. (MIA Ex. 3, Lic. Ex. 2; Transcript day 2 March 2, 2023 (“Tr. 2”) at 149.) During this

conversation, Licensee advised Complainant that she had a duty to mitigate the damage and to start documenting the damage while Licensee worked on scheduling an inspection. (*Id.*) Also on this day, Licensee sent multiple letters that acknowledged receipt of the claim, provided directions to Complainant on how to create a Personal Property List, and summarized the phone conversation. (MIA Ex. 3, Lic. 3, Com. Ex. 6; Transcript day 1 February 7, 2023 (“Tr. 1”) at 85, Tr. 2 at 150.)

6. On June 14, 2021, Infinity Restoration, Inc. (“Infinity”) performed an initial inspection at Licensee’s request. (MIA Ex. 3, Lic. Exs. 2, 3.) The inspection listed the damage caused by the impact but also noted that the cracks throughout the rest of the house were from normal wear and tear. (*Id.*) Additionally, the inspection noted that because of the damage from the crash, and the amount of items in the basement, a pack out was needed. (*Id.*)

7. That same day, Licensee sent a letter to Complainant to confirm her participation in the Contractor Services Program as well as explaining that participation is completely voluntary, and Complainant may use a different contractor if she preferred. (Lic. Ex. 3, Tr. 2 at 154.)

8. On June 15, 2021, Complainant called Licensee regarding the claim. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 153.) During this call, which included Infinity, Licensee discussed the damages, cleanup of the glass by Infinity, inclusion of the damaged HVAC system in the estimate, Infinity boarding up the home for security, and Infinity’s role in the pack out. (*Id.*)

9. On June 16, 2021, Licensee received estimates with bids from specialty contractors as well as the invoices for the temporary boarding of the home. (MIA Ex. 3, Lic. Ex. 2) However, Licensee noted that the materials bought for the board up were not sufficient and would not keep the home secure. (*Id.*)



10. On July 7, 2021, Licensee reviewed the requested authority amount of \$27,591.67 to cover structural repairs as well as pack out, but found that it exceeded Licensee's scope of coverage. (MIA Ex. 3, Lic. Ex. 2) Thus, on the same day, Licensee sent Complainant a repair estimate based on estimated market pricing for the cost of materials, labor, and other factors at the time of the loss, which was \$16,542.50, the cost of the repair minus Complainant's deductible. (Lic. Ex. 4)

11. On July 13, 2021, Licensee and Complainant had a phone conversation during which Complainant expressed her frustration with the claim's process because she thought her concerns about damage to the upper levels of her home were not being addressed and that the ability to put up a temporary structure was not explained properly. (MIA Ex. 3, Lic. Ex. 2, Tr. 2 at 155-156.) Also, Complainant told Licensee that she would be using her own contractors because she was dissatisfied with Infinity. (MIA Ex. 3, Lic. Ex. 2; Tr. 1 at 73.) As a result, Licensee went over Complainant's claim in detail so she understood everything and Licensee had Infinity send Complainant a detailed estimate with pricing for review. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 155-156.) Based on Infinity's estimate, Licensee issued a payment of \$23,273.36 to Complainant. (MIA Ex. 3, Lic. Exs. 4, 20.)

12. On July 14, 2021, Licensee sent Complainant a claim status letter. (MIA Ex. 3, Lic. Ex. 2.) Unfortunately, there was an error with delivery, but the letter was successfully resent on July 29, 2021. (MIA Ex. 3, Lic. Exs. 2, 4.)

13. On July 27, 2021, per Complainant's request, Mr. Ford from Forensic Analysis and Engineering performed an engineering inspection of the home for structural safety and any damage. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 159.)

14. On August 9, 2021, Complainant called Licensee and requested to speak to a manager because she had been waiting for the engineering report for so long and was generally dissatisfied with Licensee's communication. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 162.) Licensee advised Complainant since she was using her own contractors, she would need to submit estimates for Licensee to review. (MIA Ex. 3, Lic. Ex. 2; Tr. 1 at 36, Tr. 2 at 160-161.) Additionally, Licensee noted that in order to be reimbursed for damaged items, Complainant must provide photographic documentation of the damage for review. (*Id.*) Licensee also followed up with Forensic Analysis and Engineering about the engineering report and was told that it would be submitted that day. (MIA Ex. 3, Lic. Ex. 2; Tr. 1 at 36, Tr. 2 at 162.)

15. On August 12, 2021, Licensee reviewed the engineering report from Forensic Analysis and Engineering and found that the damage to other areas (such as the upper levels) of the home that Complainant claimed were due to the accident were actually caused by normal wear and tear or were from a previous incident. (MIA Ex. 3, Lic. Exs. 2, 18; Tr. 2 at 99-100.)

16. On August 16, 2021, Licensee and Complainant held a phone conversation to go over the claim as a result of Complainant's frustrations. (MIA Ex. 3, Lic. Ex. 2.) Complainant expressed concerns that 2,000 items were still in the basement, but Licensee advised her to leave the items along until it completed an inspection of the damaged basement. (*Id.*) Complainant also noted that she disagreed with the engineering report that stated that the damage to the other areas of the home were not from the accident. (*Id.*) Licensee again advised Complainant to discuss these concerns with the Licensee when Licensee conducts its inspection of the basement damage. (*Id.*)

17. Also on August 16, 2021, Licensee sent Complainant a letter that outlined her Homeowners Policy Conditions, and specifically noted Complainant's duties after a loss. (MIA Ex. 3, Lic. Exs. 2, 5.)

18. On August 18, 2021, Complainant submitted a complaint to the MIA. (MIA Ex. 1.)

19. On August 20, 2021, having not been able reach Complainant on the phone, Licensee sent Complainant a letter requesting that she call Licensee to discuss the claim. (Lic. Ex. 5, Com. Ex. 7; Tr. 1 at 157-158.) On the same day, Licensee, per Complainant's request, rescheduled Licensee's inspection for August 23, 2021, at 11:00am. (MIA Ex. 3, Lic. Ex. 2.)

20. On August 23, 2021, Licensee conducted an inspection of Complainant's home. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 164.) During this inspection, Licensee documented the damage in the basement and offered to go through Complainant's bins to help with the inventory, but Complainant declined the offer. (MIA Ex. 3, Lic. Exs. 2, 5; Tr. 2 at 165-166.) While in the basement, Complainant asserted that the lids on the bins were knocked off during the accident and glass got into the bins. (MIA Ex. 3, Lic. Ex. 2; Tr. 2 at 164-165.) However, Licensee noted in the inspection report that it appeared the bins were not compromised by the glass since the lids remained intact. (*Id.*) Additionally, Complainant directed Licensee's attention to cracks in the walls of the upper levels and water stains, as well as water heater damage, and insisted that the damage was caused by the accident. (*Id.*) However, Licensee determined that this damage was normal wear and tear, and not caused by the accident. (*Id.*)

21. On August 27, 2021, Licensee conducted a second inspection of Complainant's home with Snow Doctor, the contractor Complainant independently hired. (MIA Ex. 3, Lic. Ex. 2.) During this inspection, Licensee discussed contents inventory and replacement cost benefits.

(*Id.*) Also on this day, Licensee sent Complainant a letter denying coverage for the damage that was determined to be from general wear and tear since it was not connected to the accident. (MIA Exs. 3, 7, Lic. Exs. 2, 5; Tr. 1 at 148, Tr. 2 at 76, 167.)

22. On August 30, 2021, Complainant called Licensee with frustrations about the denial of coverage letter. (MIA Ex. 4, Lic. Ex. 2.) During this conversation, Licensee again explained that it denied coverage because the damage was determined to be ongoing and not a result of the accident. (*Id.*) Licensee also went over what was needed when creating the inventory list. (*Id.*)

23. On September 7, 2021, Licensee sent Complainant a claim status letter that explained the status of the claim. (MIA Ex. 5, Lic. Ex. 6; Tr. 2 at 167.)

24. On September 21, 2021, Licensee called Complainant to discuss that it had received the contents cleaning estimate. (MIA Ex. 4, Lic. Ex. 2; Tr. 2 at 168; Transcript day 3 March 16, 2023 (“Tr. 3”) at 51-52.)

25. On September 30, 2021, Licensee sent Complainant an email noting that it received a contractor estimate from FRSTeam and that it needed to know if Complainant wanted to use them so that payment could be made. (MIA Ex. 4, Lic. Exs. 2, 6; Tr. 1 at 21-22, Tr. 2 at 170.)

26. On October 13, 2021, Licensee received inventory submissions for items that Complainant alleged were damaged by glass. (MIA Ex. 4, Lic. Ex. 2; Tr. 2 at 32.) After reviewing the submitted inventory list, Licensee issued payment to Complainant for \$4,122.96 on October 14, 2021. (MIA Ex. 5, Lic. Ex. 7.)

27. Also on October 14, 2021, Licensee called Complainant to discuss the claim. (MIA Ex. 4, Lic. Ex. 2.) During this call, Licensee and Complainant discussed the repairs that

Contractor Jones from Snow Doctor would be doing, including additional plumbing and electric work. (MIA Ex. 4, Lic. Ex. 2; Tr. 1 at 46-47.) Licensee also discussed what was still needed for the contents list to be completed. (MIA Ex. 4, Lic. Ex. 2; Tr. 3 at 34.) At the end of the call, Licensee reminded Complainant that it would only pay for repairs or replacements of items that were damaged directly from the accident. (*Id.*)

28. Additionally, on October 14, 2021, Licensee sent Complainant a claim status letter that explained what status of her claim. (MIA Ex. 5, Lic. Ex. 7, Com. Ex. 7; Tr. 1 at 144, Tr. 2 at 175.)

29. On October 14, 2021, Licensee erroneously paid Complainant \$10,105.62 for pack out, which had not occurred. (MIA Ex. 4, Lic. Ex. 2; Tr. 1 at 81, 84-85, 141, Tr. 2 at 177-178, Tr. 3 at 86.) To address the error, on October 18, 2021, Licensee emailed Complainant stating that the payment was a mistake and should not have been authorized until the expenses were incurred. (Lic. Ex. 7.) Licensee further explained that the amount paid would be deducted from the personal property inventory payment in order to correct the mistake. (*Id.*)

30. On October 19, 2021, Complainant called Licensee for a status update of the claim. (MIA Ex. 5, Lic. Ex. 2.) Complainant told Licensee at that time that items from the basement had been moved to storage so that basement repairs could be finished and to aid in creating an inventory list. (*Id.*) Licensee reminded Complainant that under her Policy, pack out would not be reimbursed for non-salvageable items. (*Id.*) Additionally, Complainant stated that the prices for materials to repair the basement had increased and Licensee advised Complainant that the contractor would need to submit a supplemental estimate. (*Id.*)

31. On October 28, 2021, Licensee noted that every item on Complainant's inventory list was marked as "new". (MIA Ex. 5, Lic. Ex. 2; Tr. 2 at 181.) Therefore, Licensee reviewed

pictures of the items along with the item's description and made changes to the inventory condition column, if necessary, to more accurately depict the inventory. (*Id.*) Claims Specialist Montgomery testified that generally, Licensee has authority to adjust the contents inventory list so that depreciation and price verification can be accurately calculated when adjusting the claim. (Tr. 2 at 181-182.)

32. Similarly, on October 29, 2021, Licensee found that many prices and quantities on the inventory list were inaccurate. (MIA Ex. 5, Lic. Ex. 2; Tr. 2 at 181.) Thus, Licensee updated the inventory list to more accurately reflect prices and quantities of items on the list. (*Id.*)

33. On November 19, 2021, Licensee reviewed the contents inventory list. (MIA Ex. 5, Lic. Ex. 2; Tr. 3 at 42-43.) Licensee noted that there was no damage documented to certain items, including a table leaf, wedding dress, weed eater, and lawnmower. (*Id.*) Licensee also verified prices for books and game controllers. (*Id.*) Also on this date, Licensee issued payment of \$8,367.13 for personal property based on its contents list review. (MIA Exs. 5, 7, Lic. Exs. 2, 8, 20.)

34. On December 18, 2021, Licensee received an updated estimate from Contractor Jones to cover the sliding glass door and insulation. (MIA Ex. 5, Lic. Ex. 2; Tr. 2 at 185.) In response, on December 19, 2021, Licensee issued payment of \$762.39 to Complainant to cover the increased price in the repair estimate. (MIA Exs. 5, 7, Lic. Exs. 2, 9, 20; Tr. 2 at 185.)

35. On December 27, 2021, Licensee sent Complainant a claim status letter that explained the status of her claim. (MIA Ex. 7; Tr. 2 at 186.)

36. On January 10, 2022, Licensee sent Complainant a follow-up letter reminding Complainant that she was responsible for assembling an additional personal property list with photographic documentation of damage for Licensee to review. (MIA Exs. 7, 11.)

37. On January 14, 2022, Licensee received a new contents inventory list from Complainant. (MIA Ex. 9, Lic Ex. 2; Tr. 1 at 84, Tr. 2 at 187, Tr. 3 at 89.) During its review, Licensee determined that some of the items that were claimed as damaged were not thoroughly documented and Complainant had not allowed Licensee to inspect the property to verify the damages. (MIA Ex. 9, Lic Ex. 2.)

38. Also on January 14, 2022, Licensee issued payment of \$13,050.28 to Complainant for settlement of the claim. ((MIA Exs. 9, 11, Lic Exs. 2, 10, 20.)

39. Additionally, on January 14, 2022, Licensee sent Complainant a letter stating that it may not be obligated to indemnify Complainant under the Policy due to her possible lack of cooperation in the claim and the question of whether the loss was caused by a peril included in the Policy. (MIA Ex. 11, Com. Ex. 5; Tr. 2 at 187, Tr. 3 at 77.)

40. On January 17, 2022, Complainant called Licensee with confusion about the inclusion of the mortgagee on the claim payments. (MIA Ex. 9, Lic Ex. 2; Tr. 2 at 188.) Licensee explained that the mortgagee was included on the claim payments because her Policy included a mortgagee clause. (*Id.*) Specifically, the mortgagee clause states that if a mortgagee is named in the Policy, any payable loss under the Policy will be paid to the mortgagee and Complainant as their interests appear. (Lic. Ex. 1, Com. Ex. 6.) After the call, Licensee sent Complainant a letter that outlined the explanation for including the mortgagee on the claim payments. (MIA Ex. 11, Lic. Ex. 10.)

41. On January 18, 2022, Licensee and Complainant held a phone call with Complainant's mortgage company. (MIA Ex. 9, Lic Ex. 2.) The mortgage company noted that it did not need to be included in payments until the amount exceeded \$40,000. Since this threshold was not met yet, Licensee noted that it would stop including the mortgagee and reissued payment

of \$13,050.28 to Complainant. (MIA Ex. 9, Lic Exs. 2, 10.) Also on this day, Licensee and Complainant scheduled an inspection of the damaged personal property for January 27, 2022. (MIA Ex. 9, Lic Ex. 2; Tr. 2 at 256.)

42. On January 21, 2022, Licensee contacted Complainant to request the address for the storage facility where the inspection would take place. (MIA Ex. 9, Lic Ex. 2.) Complainant said she did not have that information at that time and that she would send it to Licensee later. (*Id.*) To follow up, on January 25, 2022, Licensee sent a letter to Complainant again asking for the address of the storage facility. (MIA Ex. 11, Lic. Ex. 10.) Complainant provided the address via email later that day. (MIA Ex. 11; Tr. 3 at 19.)

43. On January 27, 2022, Licensee conducted an inspection of the personal property items located in the storage facility, looking specifically for glass damage. (MIA Ex. 9, Lic Ex. 2; Tr. 2 at 189-191, Tr. 3 at 25.) The only items that were noted to be damaged during the inspection were a bag with three outside folding chairs and a bin that included a basketball, exercise mat, rugs, speakers, and some documents. (*Id.*) However, other items that were claimed to be damaged, like a laptop, PlayStation One and Xbox, did not exhibit any damage. (*Id.*) As a result, Licensee noted that Complainant would not receive any additional payments for personal property since she had already been paid \$18,472.75 and additional payment would constitute an over payment of the actual damages. (*Id.*)

44. On February 14, 2022, Complainant submitted three estimates from Snow Doctor for plumbing, HVAC, and electrical work. (MIA Ex. 9, Lic Ex. 2; Tr. 2 at 193-194, Tr. 3 at 9-10.) However, Licensee noted that it needed to confirm that the damage was caused by the accident. (*Id.*)



45. Previously, Licensee had been reviewing the contents inventory and making changes to any age or condition errors it noted on the list. (MIA Ex. 9, Lic Ex. 2.) On February 23, 2022, Licensee noted that there were duplicated items on the list. (*Id.*)

46. On February 24, 2022, Licensee finished reviewing the summary of loss. (MIA Ex. 9, Lic Ex. 2.) Licensee concluded that the total due to Complainant for personal property damage was \$14,958.10, which was less than what Complainant had already been paid. (*Id.*)

47. On March 1, 2022, Licensee sent Complainant a letter explaining that it would not be issuing any additional payments for the loss because it had already paid \$18,472.75 for the personal property loss, which Licensee noted was sufficient to replace what it had determined to be damaged. (MIA Ex. 9, Lic Exs. 2, 12.)

48. Also on March 1, 2022, Licensee talked to Complainant and explained that she would receive an additional payment for the HVAC, plumbing, and electrical work, but would not receive any more payments for personal property damage given that she had been sufficiently paid based on Licensee's inspection and inventory review. (MIA Exs. 9, 11, Lic Ex. 2, Com. Ex. 5; Tr. 2 at 195-196.) Complainant expressed her disagreement as to the personal property damage conclusions. (*Id.*)

49. On March 2, 2022, Licensee issued payment of \$14,958.10 to Complainant to cover the cost of plumbing, HVAC, and electrical work. (MIA Exs. 9, 11, Lic Exs. 2, 12, 20.)

50. On March 14, 2022, Licensee was notified by Complainant's contractor that they found mold due to a water leak in the HVAC system. (MIA Ex. 11, Lic Ex. 2.) However, Licensee noted that mold is not covered under the Policy. (*Id.*) Licensee notified Complainant that mold was not covered under the Policy via letter dated March 16, 2022. (MIA Exs. 9, 11, Lic Exs. 2, 12.)

51. On March 26, 2022, as a result of reconciling Contractor Jones's estimate for the fence, downspout, and blinds, Licensee updated the summary loss by \$5,591.84 to be payable to Complainant. (MIA Ex. 9, Lic Ex. 2.)

52. On March 29, 2022, Licensee sent a letter to Complainant that stated the review of the contents reconciliation was complete and that she may start logging the cost of what she replaced into the system using the Contents Collaboration account. (MIA Ex. 9, Lic Exs. 2, 12.)

53. On Mach 31, 2022, Licensee sent Complainant a letter explaining that it would not be issuing additional payments for the blinds, downspout and wood fence<sup>5</sup> that were submitted in Snow Doctor's estimate. (MIA Ex. 9, Lic Exs. 2, 12.)

54. On April 1, 2022, Complainant sent an email to Licensee requesting a status update on the fence, blinds and downspout estimates. (MIA Ex. 11.) Complainant also requested payment for those repairs promptly when approved. (*Id.*)

55. On April 3, 2022, Licensee issued payment of \$5,591.84 to Complainant for personal property damage and building repairs. (MIA Exs. 9, 11, Lic Exs. 2, 13, 20; Tr. 2 at 199.)

56. On May 5, 2022, Contractor Jones submitted estimates for kitchen flooring and carpet as well as supporting pictures of the damage. (Lic. Ex. 2; Tr. 2 at 200.)

57. On May 17, 2022, the MIA concluded its investigation into Complainant's Complaint and determined that Licensee had not violated the Insurance Article in its handling of Complainant's claim. (MIA Ex. 12.)

58. On May 18, 2022, Licensee updated the summary of loss to include additional repairs to Complainant's home and rental storage fees. (Lic. Ex. 2.) The additional payment was \$10,714.31. (*Id.*)

59. Complainant was not satisfied with the MIA's determination and requested the instant hearing. (MIA Ex. 13.) The hearing was granted in this matter by letter dated June 2, 2022. (MIA Ex. 14.)

60. On June 9, 2022, Licensee sent payment of \$10,714.31 to Complainant for the increased summary of loss that included landscaping and structural repair costs. (Lic. Exs. 2, 15, 20; Tr. 2 at 202.)

61. On June 14, 2022, Licensee issued payment of \$1,571.41 to Complainant for storage rental fees. (Lic. Exs. 2, 15, 20; Tr. 2 at 203.)

62. On June 16, 2022, Licensee and Complainant discovered a \$23.92 deficit for a Christmas tree replacement. (Lic. Exs. 2, 20.) Licensee updated the inventory list and summary of loss to reflect the correct price of the Christmas tree. (Lic. Ex. 2.)

63. On June 17, 2022, Licensee sent a second email to Complainant that stated the review of the contents reconciliation was complete and that she may start logging the cost of what she replaced into the system using the Contents Collaboration account. (Lic. Exs. 1a, 21.) Also on this day, Licensee issued payment of \$23.92 to Complainant to cover the Christmas tree discrepancy. (*Id.*)

64. On July 1, 2022, Licensee sent Complainant a claim update letter noting the status of the claim and what additional items were still outstanding. (Lic. Exs. 1a, 22.)

65. On July 20, 2022, Licensee sent Complainant another claim update letter noting the status of the claim and what additional items were still outstanding. (Lic. Exs. 1a, 22.)

66. On August 31, 2022, Licensee sent Complainant a claim update letter noting the status of the claim and what additional items were still outstanding. (Lic. Exs. 1a, 23.) This letter

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<sup>5</sup> Prior to the loss on June 11, 2021, Complainant's property did not have a fence.

also stated that Licensee would be pursuing subrogation against the responsible party once all payments in Complainant's claim has been made. (*Id.*)

67. On September 28, 2022, Licensee received a receipt submission report for replaced items from Complainant. (Lic. Ex. 1a.)

68. On October 7, 2022, Licensee issued payment of \$1,536.49 to Complainant for storage fees. (Lic. Exs. 1a, 20, 24; Tr. 2 at 207.) Licensee also paid Complainant \$10,771.79 for replacement cost benefits for carpet, vinyl plank flooring, and painting. (*Id.*)

69. On October 10, 2022, Complainant submitted additional receipts for replaced items to Licensee. (Lic. Ex. 1a.) Also on this day, Licensee issued payment of \$669.97 to Complainant for personal property damage. (Lic. Exs. 1a, 20, 24; Tr. 2 at 208.)

70. On October 12, 2022, Licensee sent Complainant an additional email that stated its review of the contents reconciliation was complete and that she may start logging the cost of what she replaced into the system using the Contents Collaboration account. (Lic. Exs. 1a, 24.)

71. On October 13, 2022, Licensee issued payment of \$597.76 to Complainant for personal property damage. (Lic. Exs. 1a, 20, 24.)

72. Later, on October 20, 2022, Licensee contacted Complainant and advised her that she was still owed money from the submitted receipts, but that the items were still being reviewed and payment will be made when the review is complete. (Lic. Exs. 1a, 24.)

73. On October 24, 2022, Licensee issued payment of \$1,223.41 to Complainant for replacement cost benefits. (Lic. Exs. 1a, 20, 24.) Also on this day, Licensee paid Complainant \$411.76 for settlement of the personal property claim. (*Id.*)

74. On November 1, 2022, Licensee issued payment of \$1,848.55 to Complainant to cover personal property damage. (Lic. Exs. 1a, 20, 25.) Furthermore, Licensee received additional receipts for replaced items from Complainant. (Lic. Ex. 1a.)

75. On November 8, 2022, Licensee paid Complainant \$1,134.75 in settlement of the personal property claim. (Lic. Exs. 1a, 20, 25.) Also on this date, Licensee sent Complainant a letter advising her that it would not be making any additional payments to cover Snow Doctor's services because the estimates were increased without cause when compared to work of similar companies in the area. (Lic. Exs. 1a, 25; Tr. 2 at 209.)

76. On November 21, 2022, Licensee issued payment of \$1,106.31 to Complainant for personal property damage. (Lic. Exs. 1a, 20, 25.)

77. On November 30, 2022, Licensee paid Complainant \$1,189.36 to cover replacement items for damaged personal property. (Lic. Exs. 1a, 20, 25.)

78. On December 9, 2022, Licensee issued payment of \$1,700.85 for replacement items and storage fees. (Lic. Exs. 2b, 27.) Also on this date, Licensee received and reviewed additional receipts for replacement items submitted by Complainant. (Lic. Ex. 2b.)

79. On December 12, 2022, Licensee paid Complainant \$305.69 for replacement cost benefits. (Lic. Exs. 2b, 27.)

80. On December 14, 2022, Complainant contacted Licensee to advise that she did not receive full payment for a few items on the replacement list. (Lic. Ex. 2b, Com. Ex. 7; Tr. 1 at 110.) Upon investigation, Licensee found that Complainant did not receive full payment for three items on the replacement list. (Lic. Ex. 2b)

81. As a result, on December 19, 2022, Licensee paid Complainant \$2,112.42 for replacement cost benefits, which included the items she previously did not receive full payment for. (Lic. Exs. 2b, 27.)

82. On December 20, 2022, Licensee sent Complainant a letter explaining that the Policy only allows replacement costs for replacement items that are of like kind and quality to the original item. (Lic. Exs. 2b, 27, Com. Ex. 7; Tr. 1 at 104, Tr. 2 at 85, 211-212.) This letter also noted that Licensee believed that repairs to the structure were finished and that it would, therefore, not be issuing further payment for storage fees after December 26, 2022. (Lic. Exs. 2b, 27, Com. Ex. 7; Tr. 1 at 60, 105, Tr. 2 at 64, 212.)

83. On January 2, 2023, Complainant submitted more receipts for replacement items for Licensee's review. (Lic. Ex. 2b.) Licensee determined that Complainant was entitled to \$279.03 as repayment for the replacement items. (*Id.*) Also on this day, Complainant asserted that Licensee should reimburse Complainant for additional storage fees of \$173.00 because Complainant never indicated that repairs to the home were complete. (Lic. Ex. 2b, Com. Ex. 7.)

84. On January 9, 2023, Licensee paid Complainant \$279.03 for replacement cost benefits. (Lic. Exs. 2b, 28, Com Ex. 7.) Additionally, Licensee sent a letter to Complainant explaining that it notified her that Licensee would not be covering additional storage costs because based on its review, the repairs should have been completed and there was no explanation for any delays. (Lic. Exs. 2b, 28, Com Ex. 7; Tr. 1 at 107, Tr. 2 at 68.)

85. On January 10, 2023, Complainant sent Licensee an email with concerns that Licensee was miscalculating the payment amount and thus not giving full payments on the claim. (Lic. Ex. 2b, Com. Ex. 7.)

86. On January 12, 2023, Licensee sent Complainant a letter explaining that the discrepancy between the replacement list and the payments was due to replacement items not being of like kind and quality. (Lic. Ex. 28, Com. Ex. 7; Tr. 1 at 135, Tr. 2 at 213-214.)

87. Also on January 12, 2023, Licensee sent Complainant a letter stating that it may not be obligated to indemnify Complainant under the Policy due to her possible material misrepresentation of the loss. (Lic. Ex. 28, Com. Ex. 7; Tr. 1 at 132, Tr. 2 at 215.)

88. On January 14, 2023, Complainant sent Licensee an email stating that replacement cost benefits were owed because FRSTeam's inspection noted that her PlayStation was damaged during the accident. (Lic. Ex. 28, Com. Ex. 7; Tr. 2 at 85-86.)

89. In response, on January 19, 2023, Licensee sent Complainant a letter explaining that it did not issue replacement cost benefits for the PlayStation because FRSTeam did not document any evidence of damage and Complainant did not replace it with an item of like kind and quality. (Lic. Ex. 28, Com. Exs. 2, 7; Tr. 1 at 63-64, Tr. 2 at 215.) Specifically, Licensee noted that Complainant had an original PlayStation One game system and that she had replaced it with a PlayStation Five game system. (Lic. Ex. 28, Com. Exs. 2,7.)

90. Also on January 19, 2023, Contractor Jones from Snow Doctor emailed Licensee explaining that repairs to Complainant's home were not finished and he would let Licensee know when the home was fully restored to Complainant's satisfaction. (Com. Ex. 1; Tr. 1 at 50, 59.) Repairs to Complainant's home are still ongoing and include painting and a final cleaning. (Tr. 1 at 38-39, 52-53.)

## DISCUSSION

### A. Positions of the Parties.

Complainant argues that she is entitled to additional payment from Licensee for damage to the upper levels of her home because it was also damaged by the car crashing into her basement. Specifically, Complainant contends that under her Policy, she is entitled to full payment of the repairs to the dwelling and for all the damaged personal property. Lastly, Complainant argues that Licensee has improperly handled her claim throughout the process and acted arbitrarily and capriciously in its claims handling, specifically noting, for example, that Licensee made changes to almost all of her personal property items that were damaged.

Licensee argues that it properly handled Complainant's claim after performing a full investigation. Licensee contends that, after completing its investigation, it determined that the damage to the upper levels of the home was from normal wear and tear and that it properly adjusted the damaged personal property. Lastly, Licensee avers that Complainant has failed to meet her burden to show that the claim was improperly handled in this case.

### B. Statutory Framework

The Notice of Hearing in this case states that specific attention at the hearing shall be directed to §§4-113 and 27-303 of the Insurance Article.

Section 4-113 states, in pertinent part:

- (b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

\* \* \*

- (5) refuses or delays payment of amounts due claimants without just cause [.]

\* \* \* \*

(Westlaw 2023.)

Section 27-303 states in pertinent part:



It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization to:

- (1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;
- (2) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

\* \* \*

- (6) fail to provide promptly on request a reasonable explanation of the basis for a denial of a claim [.]

\* \* \* \*

(Westlaw 2023.)

In *Berkshire Life Insurance Co. v. Maryland Insurance Administration*, the Court of Special Appeals adopted the Insurance Commissioner's interpretation of the "arbitrary and capricious" standard as articulated in an earlier case. *See* 142 Md. App. 628 (2002). As the Court explained:

The Commissioner has previously construed [Section] 27-303(2) as requiring a licensee insurer to show that it refused to pay the claim at issue based on: (1) an otherwise lawful principle or standard which the insurer applies across the board to all claimants; and (2) reasonable consideration of "all available information."

*Id.* at 671. (*internal citations omitted*). Complainant bears the burden of proof. The Court explained a Complainant's burden of proof as follows:

[A] claimant must prove that the insurer acted based on "arbitrary and capricious reasons." The word "arbitrary" means a denial subject to individual judgment or discretion, ... and made without adequate determination of principle. .... The word "capricious" is used to describe a refusal to pay a claim based on an unpredictable whim. .... Thus, under Ins. Art. §27-303, an insurer may properly deny a claim if the insurer has an otherwise lawful principle or standard which it applies across the board to all claimants and pursuant to which the insurer has acted reasonably or rationally based on "all available information."

*Id.* at 671-72 (*citations omitted*).

Therefore, "[t]he claimant must... prove by a preponderance of the evidence that the insurer acted arbitrarily and capriciously." *Id.* at 672. In other words, the burden of proof rests

with Complainant to demonstrate by a preponderance of the evidence that Licensee acted without adequate factual support, in a "nonrational' and '[w]illful and unreasoning... [manner] without consideration and regard for facts and circumstances presented' . . .," *Hurl v. Board of Educ. of Howard Co.*, 107 Md.App. 286, 306 [ 667 A.2d 970] (1995) (quoting Black's Law Dictionary, 6<sup>th</sup> Ed.); *see also Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996); Md. Code Ann., State Gov't §10-217 (Westlaw 2023); and *Berkshire, supra*, 142 Md. App at 672. To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel County Police Dep't*, 369 Md. 108, 125 n. 16 (2002) (quoting Maryland Pattern Jury Instructions) (*internal citations omitted*). Under this standard, if the supporting and opposing evidence is evenly balanced on an issue, the finding on that issue must be against the party who bears the burden of proof. *Id.*

**C. Licensee did not violate §§4-113 or 27-303 in its handling of Complainant's homeowner's insurance claim.**

After investigating Complainant's Complaint concerning Licensee's handling of her homeowner's insurance claim, the MIA determined that Licensee did not violate the Insurance Article. For the reasons set forth below, I affirm.

In this instance, my determination in this matter is based on whether the Licensee had a reasonable basis for its refusal to pay part of Complainant's claim. Here, Complainant requested that Licensee investigate her claim for damages resulting from a vehicle crashing into her basement. Initially, Licensee investigated this claim by having Infinity conduct an inspection of the damage on June 14, 2021, and sending Complainant multiple letters immediately after the accident providing instructions on how to create a personal property inventory list. After the

initial inspection, Licensee facilitated two additional inspections within months of the accident. First, at Complainant's request, on July 27, 2021, Forensic Analysis and Engineering performed an engineering inspection of the home for structural safety and any damage. Second, on August 23, 2021, Licensee conducted another inspection of Complainant's home and documented the damage that resulted from the accident. Additionally, on January 27, 2022, Licensee conducted an inspection of the personal property Complainant claimed was damaged in the accident. Licensee also did multiple reviews of Complainant's contents inventory and cost replacement benefits on October 13, 2021, October 28, 2021, October 29, 2021, November 19, 2021, January 14, 2022, February 24, 2022, March 26, 2022, May 18, 2022, September 28, 2022, October 10, 2022, November 1, 2022, and January 2, 2023, at a minimum. As a result of Licensee's review, it determined that Complainant was not entitled to payment for repairs to the upstairs levels of the home because the damage was a result of normal wear and tear, not the accident. Licensee also concluded that Complainant was not entitled to payment for items that were not documented as damaged or for replacement items that were not of like kind and quality to the original items.

During its review of the claim, Licensee noted the basis for its decision multiple times. First, on August 12, 2021, Licensee reviewed the engineering inspection report and found that the damage to other areas in the home were from normal wear and tear or previous incidents, and not damage from the underlying accident. Second, on January 27, 2022, following an inspection of the personal property items, Licensee noted that not all the items claimed to be damaged were actually damaged. Third, on March 1, 2022, Licensee stated that it was not obligated to pay Complainant anything additional for personal property damage because it had already paid Complainant an amount that would cover the cost of the items that were actually damaged. Fourth, on December 20, 2022, Licensee determined that certain items that had been replaced

would not be covered by the Policy because the damaged items were not replaced with items of like kind and quality. Therefore, I find that Licensee had a reasonable basis for its partial denial of Complainant's claim and did not act in an arbitrary or capricious manner, and thus, did not violate §27-303(2).

Complainant also argues that Licensee acted arbitrarily and capriciously in reviewing and making changes to her inventory list. I find this argument faulty. Licensee is not required under the terms of the Policy to pay for the damages as claimed by Complainant without having the ability to review the list of items and verify the damages or condition. Specifically, the terms of the Policy state that Licensee will only pay for items that were damaged by the accident and that Licensee is only required to pay the lower amount of either (1) the cost to replace the item at the time of the loss or; (2) the cost to repair the item. (Lic. Ex. 1) Here, for several of the items claimed by Complainant, the cost to replace the item at the time of the loss was less than the cost Complainant was seeking. One such example is the PlayStation gaming system. The value of a PlayStation One gaming system at the time of the loss was less than the cost to purchase a new PlayStation Five gaming system. Licensee has a right under the terms of the Policy to review the items listed on the contents inventory and determine the value of the items when adjusting the value of the loss.

Additionally, Claims Specialist Montgomery testified that Licensee only considers items to be classified as "new" if they are less than a year old. (Tr. 2 at 182.) On Complainant's list of damaged inventory, she includes items that she marked as "new," that were actually several years old. Based on Claims Specialist Montgomery's testimony, it was not arbitrary or capricious for Licensee to review these items and determine that an item that is several years old is not likely to be new and, therefore, adjust the condition of the damaged property. While Complainant might

not agree with the Licensee's assessment of her damaged items, no evidence has been provided to demonstrate that Licensee's review and evaluation of these items was arbitrary or capricious or done without a reasonable basis.

I also find that Licensee did not fail to promptly provide on request a reasonable explanation of the basis for handling of the claim in violation of §27-303(6) of the Insurance Article. The record before me demonstrates that Licensee communicated with Complainant numerous times over the course of this claim. Part of this communication included an explanation of the reason why Licensee partially denied Complainant's claim. Licensee sent explanations to Complainant regarding the denial of coverage for damage to the upstairs levels and certain replacement items for damaged personal property.

Specifically, on August 27, 2021, following the engineering inspection, Licensee sent Complainant a letter denying coverage for the upstairs damage and explained the reasoning was that the damage was determined to be caused by normal wear and tear, and thus not a result of the accident. Similarly, after the inspection of the personal property items on January 27, 2022, Licensee explained to Complainant which of the claimed items were not determined to be damaged and that she would not be receiving additional payment for damaged personal property because Licensee had already paid Complainant \$18,472.75, and any additional payment would constitute an overpayment of the actual damages. Additionally, Licensee explained the denial of additional payments for damaged personal property again via letter to Complainant on March 1, 2022. Lastly, after reviewing Complainant's cost replacement benefits list, on December 20, 2022, Licensee sent Complainant a letter explaining that the Policy only allows replacement costs for replacement items that are of like kind and quality to the original item. Again, after Complainant questioned a discrepancy between the replacement list and the payments, on

January 12, 2023, Licensee sent a letter explaining the discrepancy was due to replacement items not being of like kind and quality to the original items. Therefore, I find that Licensee did not violate §27-303(6).

I also find that Licensee did not misrepresent pertinent facts or policy provisions that relate to the claim in violation of §27-303(1). The language of the Policy in this case reads:

**SECTION I – LOSSES NOT INSURED**

1. We will not pay for any loss to the property described in Coverage A that consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs abruptly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

f. seepage or leakage of water, steam, or sewage that occurs or develops over a period of time:

(1) and is:

- (a) continuous;
- (b) repeating;
- (c) gradual;
- (d) intermittent;
- (e) slow; or
- (f) trickling; and

(2) from a:

- (a) heating, air conditioning, or automatic fire protective sprinkler system;
- (b) household appliance; or
- (c) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings, or floors.

\* \* \*

g. wear, tear, decay, marring, scratching, deterioration, inherent vice, latent defect, or mechanical breakdown;

\* \* \*

i. wet or dry rot;

\* \* \*

k. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations (including slabs, basement walls, crawl space walls, and footings), walls, floors, roofs or ceilings;

\* \* \*

3. We will not pay for, under any part of this policy, any loss consisting of one or more of the items below. Further, we will not pay for any loss described in paragraphs 1. and 2. Immediately above regardless of whether one or more of the following: (a) directly or indirectly cause, contribute to, or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

\* \* \*

b. defect, weakness, inadequacy, fault or unsoundness in:

\* \* \*

(2) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, or compaction;

\* \* \*

(4) maintenance;

of any property (including land, structures, or improvements of any kind)

whether on or off the **residence premises**.

\* \* \* \*

The Policy specifically states that Licensee will not compensate for damage, especially water damage, that is normal, continuous, or occurs over time. Licensee's investigation determined that the damage to the upper levels of Complainant's home was from normal wear and tear, and not a result of the accident. Specifically, Licensee relied on the engineering inspection on July 27, 2021, as well as the Licensee's inspections on August 23, 2021, and August 27, 2021. All three inspections determined that the upstairs damage was from normal wear and tear and would not be covered under the Policy since it was not caused by the accident. Therefore, I find that there was no misrepresentation of the Policy provisions related to the claim, and Licensee did not violate §27-303(1).

Finally, I find that Licensee did not refuse or delay payment of amounts due to the Complainant without just cause in violation of §4-113(b)(5). In this case, Licensee clearly explained to Complainant multiple times the reasoning for its partial denial of her claim. Licensee first explained via letter on August 27, 2021, that she would not receive payment for damage to the upstairs level of the home because the damage was the result of normal wear and tear, not the accident. Additionally, after the personal property inspection on January 27, 2022,

Licensee notified Complainant that it had determined that some of the claimed items were not damaged and that she would not be receiving additional payment for damaged personal property because Licensee had already paid Complainant \$18,472.75, and any additional payment would constitute an overpayment of the actual damages. Furthermore, in a letter dated March 1, 2022, Licensee again explained why it denied additional payment for damaged property because it had already paid enough to cover the actual damage. Lastly, Licensee explained twice, once on December 20, 2022, and once on January 12, 2023, that it did not authorize the full requested price for cost replacement benefits because Complainant did not replace all damaged items with items of like kind and quality. While the Parties might not agree on the outcome of the claim, Licensee had a reasonable basis for not issuing full payment to Complainant as requested in this case. Therefore, I find that Licensee did not violate §4-113(b)(5).

#### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, it is found as a matter of law that Licensee did not improperly handle Complainant's homeowner's insurance claim in violation of §§4-113 or 27-303, or otherwise violate the Insurance Article.

#### **FINAL ORDER**

**IT IS HEREBY ORDERED** that the determination issued by the Maryland Insurance Administration is **AFFIRMED**; and it is further

**ORDERED** that the records and publications of the Maryland Insurance Administration reflect this decision.

It is so **ORDERED** this 31<sup>st</sup> day of March, 2023.

**KATHLEEN A. BIRRANE**  
Insurance Commissioner



/S/ Lisa Larson  
LISA LARSON  
Director of Hearings