

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

N.A.,

*

Plaintiff,

*

v.

*

Case No. 27-1001-23-00012

**NATIONWIDE GENERAL
INSURANCE COMPANY,**

*

Defendant.

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* * * * *

DECISION

This proceeding was initiated by N.A. (“Plaintiff”) under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Nationwide General Insurance Company (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a homeowner’s insurance policy (the “Policy”) in connection with wind damage that occurred on August 28, 2019, which caused damage to the Plaintiff’s home (the “Dwelling”) located in Port Tobacco, Maryland (the “wind damage claim”).

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

I. STANDARD OF REVIEW

Section 3-1701 Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the

insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to Section 3-1701, the insured must first submit a complaint to the Administration under Section 27-1001. Within ninety (90) days of the receipt of such complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in § 27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

Further, an insurer may not be found to have failed to act in good faith under § 27-1001 “solely on the basis of delay in determining coverage or the extent of payment to which the insured is entitled if the insurer acted within the time period specified by statute or regulation for investigation of a claim by an insurer.” § 27-1001(e)(3).

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t Art., section 10-217; *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On January 9, 2023, the Administration received Complaint No. 27-1001-23-00012 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged Defendant breached its obligations under the Policy by failing to pay the entire amount sought for Plaintiff’s wind damage claim. Plaintiff contends that Defendant, in doing so, breached its duty to act in good faith by failing to make an informed judgement on Plaintiff’s wind damage claim based on honesty and diligence supported by evidence Defendant knew or should have known at the time it denied the Claim. Specifically, Plaintiff alleges that Defendant’s decisions were not supported by evidence, that Defendant ignored the facts Plaintiff presented, refused to justify its position, refused to discuss or negotiate the Claim with Plaintiff’s public adjuster, Semper Fi Public Adjusters, LLC (“Semper Fi”), and failed to provide a certified copy of Plaintiff’s Policy to Semper Fi in a timely manner.

On January 17, 2023, as required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4), acknowledging that the Policy provided dwelling coverage for the Dwelling.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, and by a preponderance of the evidence, the Administration finds that Plaintiff has failed to establish that he is entitled to additional coverage for the Claim under the Policy.

At all relevant times, the Dwelling was covered under a homeowner’s policy issued by Defendant to Plaintiff and Plaintiff’s spouse, under policy number ending 39892 (“Policy”). The Policy provides,

SECTION I – PERILS INSURED AGAINST

A. Coverage A – Dwelling And Coverage B – Other Structures

1. We insure against *direct physical loss* to property described in Coverages A and B. (Emphasis added)

....

On October 29, 2019, Plaintiff reported that a wind storm caused damage to the Dwelling on August 28, 2019. On the same day, Defendant sent a letter to Plaintiff notifying him that the wind storm claim had been assigned to James Robison, (“Adjuster Robison”). Adjuster Robison subsequently spoke with Plaintiff’s spouse and was informed that the roof of the Dwelling was damaged due to a storm and that there were missing shingles.

Adjuster Robison conducted an inspection of the roof on October 30, 2019, and at that time, wind damage to the roof of the Dwelling was confirmed. Thereafter, Adjuster Robison prepared an estimate for repairs to the roof including general demolition, framing and carpentry, masonry, and roofing materials. Defendant then issued a check to Plaintiff in the amount of \$11,783 (\$14,669.48 Replacement Cost Value, less depreciation in the amount of \$1,886.48 and the deductible in the amount of \$1,000), for the actual cash value of the wind damage claim.

Defendant also prepared a letter to Plaintiff stating,

About your payment

The payment is for the actual cash value. of property covered by your policy at the time of loss less your deductible. The actual cash value is: the amount it would cost to repair or replace covered property with material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.

You may be eligible for additional payment because your policy includes “replacement cost” coverage. You may make a claim within 180 days after the loss for any added loss based on the cost to repair or replace the damaged property, not to exceed the applicable policy limits.

....

Subsequently, on November 11, 2019, Semper Fi sent a letter to Defendant advising that it had been retained by Plaintiff and was hired to assist the Plaintiff in the adjustment of the claim arising from the wind damage loss. Semper Fi also submitted “Hover Pro” measurements of the Dwelling to Defendant, as well as an estimate in the amount of \$24,993.06, including \$19,047.59 for the repairs to the Dwelling, as well as \$5,945.47 for code upgrades.

On November 25, 2019, Defendant spoke with a representative of Semper Fi regarding the status of the repairs to the Dwelling from the wind damage claim. From that conversation, Defendant was also notified of damage to the Dwelling caused by flying debris from a more recent storm on October 31, 2019.¹

From November 29, 2019 through December 9, 2019, Defendant engaged in conversations with Semper Fi and Defendant prepared revised estimates for the damage to the Dwelling caused by the wind storm. On December 9, 2019, Adjuster Robison sent an email to Semper Fi, stating,

Good afternoon, I have reviewed the emailed documents and have made changes to our estimate as approved. There are a few line items I need additional documentation for in order to release any additional payments, they are as follows;

The masonry bid item for the step flashing and chimney etching, this should also include photos before and after with any local county / state code documentation

Carpentry bid item for the installation of a cricket and should include before and after photos with any local county / state code documentation

Asphalt starter is not covered if it was not in place prior to the claim and date of loss
Overhead and profit is triggered when the repairs are complex and require additional managing, these repairs do not trigger the requirement

¹ In Defendant’s response to the Complaint, Defendant noted that Plaintiff submitted a second claim to Defendant on November 25, 2019 for damage caused by flying debris to the Dwelling on October 31, 2019. As part of Defendant’s responsive documents, Defendant also submitted certain documents pertaining to the second claim for damage to the Dwelling caused by flying debris. As the Plaintiff’s Complaint refers only to the wind damage claim under claim number 780678-GJ, this Decision addresses only Defendant’s handling of the claim for wind damage caused by the August 28, 2019 storm.

or need for this charge

....

Thereafter, on December 9, 2019, Adjuster Robison submitted a revised estimate to Semper Fi in the amount of \$13,413.74 (\$16,315.49 Replacement Cost Value, less depreciation in the amount of \$1,901.75 and the deductible in the amount of \$1,000) for damage to the Dwelling caused by the August 28, 2019 wind storm.

On January 21, 2020, Adjuster Robison sent a letter to Semper Fi stating,

We're writing to let you know we settled your Homeowners claim and have sent a final payment in the amount of \$6,109.12. This amount covers all of the estimated repair costs for your damages.

....

Thereafter, Defendant closed Plaintiff's wind damage claim.

IV. DISCUSSION

Plaintiff asserts that the wind damage claim remains severely underpaid. Specifically, Plaintiff alleges that Semper Fi's estimate to restore the Dwelling to its pre-loss condition is \$45,739,013, of which, Defendant only agreed to pay \$16,990.37. Plaintiff also asserts that the Policy was issued on an indemnity basis and that Defendant has acted improperly by only paying for direct losses.

First, the evidence demonstrates that Defendant diligently and promptly conducted its investigation of the wind damage claim. Specifically, Defendant conducted the inspection of the Dwelling within days after the Plaintiff reported the loss and provided a copy of the inspection findings to Plaintiff. Based on the inspection of the Dwelling conducted by Adjuster Robison, an initial payment was issued to Plaintiff on October 30, 2019.

After Semper Fi was retained by Plaintiff, the evidence demonstrates that Adjuster Robison engaged in conversation with representatives of Semper Fi, and on December 9, 2019, Adjuster Robison prepared a revised estimate based on additional information he received from Semper Fi.

Furthermore, despite the conclusory allegations in the Complaint, Plaintiff has not offered any evidence that Defendant ignored the facts Plaintiff presented, refused to justify its position, or refused to negotiate the Claim with Semper Fi. Instead, the crux of Plaintiff's Complaint is that Defendant was incorrect in stating that it only owes for "direct physical loss" under the Policy.

In Maryland, insurance policies are construed like other contracts. *North River Ins. Co. v. Mayor & City Council of Balto.*, 343 Md. 34, 39, 680 A.2d 480, 483 (1996). Maryland follows the objective law of contract interpretation, and the rights and liabilities of the parties are determined by the terms of the agreement. *Maryland Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 694–95, 114 A.3d 676, 681 (2015).

Here, the Policy specifically states that coverage will be provided for damage caused by "direct physical loss."

SECTION I – PERILS INSURED AGAINST

A. Coverage A – Dwelling And Coverage B – Other Structures

1. We insure against ***direct physical loss*** to property described in Coverages A and B.

....
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, Plaintiff has also not referenced any provision of the Policy that would require Defendant to provide coverage for additional repairs not resulting from direct physical loss to the Dwelling.

Based on these findings, Plaintiff has failed to meet his burden to prove that Defendant breached any obligation owed to him under the Policy or that he is entitled to any additional payment under the Policy.

V. CONCLUSIONS OF LAW

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

1. Plaintiff established by a preponderance of the evidence that Defendant issued to Plaintiff a dwelling coverage Policy obligating Defendant to pay a claim for damage to the Dwelling caused by a wind storm on August 28, 2019.
2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiff did not establish by a preponderance of the evidence that she is entitled to additional damages as a result of the claim.
4. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.
6. Plaintiff is not entitled to expenses and litigation costs.

ORDER

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

ORDERED on this 10th 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

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).