OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

G.W.[1],	*	
Plaintiff,	*	
v.	*	**Case No. 27-1001-22-00070**
STATE FARM MUTUAL AUTOMOBILE INSURANCE, COMPANY	*	
	*	
Defendant.		

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DECISION

G.W ("Plaintiff") initiated this proceeding under §27-1001 of the Insurance Article, Md. Code Ann., Ins. §27-1001 (2017 Repl. Vol.), alleging that State Farm Mutual Automobile Insurance Company ("Defendant") breached its contractual obligations by failing to pay Plaintiff's first-party claim for damages under the terms of an automobile policy in connection with an automobile accident (the "Accident") that occurred in Howard County on December 6, 2021.

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

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

[1] The Maryland Insurance Administration (MIA) uses initials to protect plaintiff's privacy.

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."

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).

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).

PROCEDURAL BACKGROUND

On October 3, 2022, the Administration received Complaint No. 27-1001-22-00070 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged that Defendant breached its obligation under the Policy by denying Plaintiff's claim for

damages discovered in connection with an automobile accident that occurred on December 6, 2021. Specifically, Plaintiff asserts that after the Accident, Defendant failed to act in good faith, when after receiving documents confirming repair costs associated with a replacement air conditioner compressor, recharged air conditioner lines, and a leak inspection, Defendant denied Plaintiff's claim to reimburse those costs. Defendant alleges the compressor was not damaged as a result of the Accident. Plaintiff is seeking $7,470.09 in actual damages and $2,529.91 in expenses and legal fees.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on October 19, 2022. Defendant provided a timely response to the Complaint and accompanying documents, as required by Section 27-1001(d)(4), on October 27, 2022, and acknowledged the obligation to provide coverage on the claim. Plaintiff submitted photos related to the accident via Defendant's online portal, after failing to successfully schedule a visit with an in-person representative. After receiving an estimate for the repairs from Brown's Toyota of Glen Burnie ("Brown's"), Plaintiff continued to experience failures in the vehicle's operation. An estimate conducted by Antwerpen Toyota ("Antwerpen") determined that the vehicle would require a replacement air conditioner compressor, and also cited possible debris blockage related to the accident. Plaintiff submitted documents confirming repair costs associated with a replacement air conditioner compressor, recharged air conditioner lines, and a leak inspection. Defendant denied Plaintiff's claim to replace the compressor, citing that the compressor was not damaged as a result of the Accident.

FINDINGS

Based on a complete and thorough review of the written materials submitted by the parties, the Administration finds that Plaintiff has failed by a preponderance of the evidence to establish

Plaintiff is entitled to additional damages for the Claim or that Defendant failed to act in good faith in its handling of the Claim.

On December 6, 2021, Plaintiff contacted Defendant to report that Plaintiff's spouse was involved in an accident that day. The Accident occurred southbound on Route 29 at or near its intersection with Rivers Edge Road. Plaintiff 's wife was driving a 2011 Toyota Corolla, and was unable to see the traffic light as the bus in front was obstructing her view. When the bus abruptly stopped, Plaintiff's wife rear-ended the bus. There were no passengers on the bus.

At the time of the Accident, Plaintiff was insured under an automobile insurance policy issued by Defendant providing collision coverage with a $1,000 deductible. The insured also purchased rental car coverage which paid a maximum of 80% of the daily rental rate and maximum amount of $1,500.

On December 6, 2021, the day of the Accident, Defendant scheduled an appointment with Maryland Collision Center in Silver Spring. Plaintiff was also forwarded a link to a mobile platform allowing Plaintiff to submit photographs of the damage. On December 9, 2021, a second link was forwarded to the Plaintiff.

On December 27, 2021, a preliminary repair estimate was arranged by Defendant on Plaintiff's behalf. The repair estimate set the total cost of repairs at $2,945.25. A copy of the estimate and a check for the adjusted total of $1,945.25 for total damages minus the $1,000 deductible was mailed to the insured the same day. Plaintiff then requested a ten-day extension of the rental reservation, and requested that Defendant issue a stop payment on the paper check and transfer the funds electronically. Defendant approved the rental extension.

On January 14, 2022, Plaintiff requested another extension of the rental reservation, and it was granted by Defendant.

On January 21, 2022, an internal communication between agents for the Defendant insurance company was conducted to discuss the status of the rental car coverage and Defendant's review of a supplement submitted by Brown's. It was advised by the Defendant's agent that Plaintiff's remaining balance under the rental car coverage was $8.58 of $1,500.00, and that the insured vehicle may be deemed a total loss.

On January 25, 2002, Brown's contacted Defendant to inquire about its review of the supplement request. According to the record, Brown's vaguely referenced "the condition" of the insured vehicle when it arrived at Brown's. A supplemental estimate totaling $794.66 was prepared and transferred to Defendant on January 28,2022.

On January 28, 2022, Defendant explained the supplemental estimate to Plaintiff and agreed to pay Plaintiff's out-of-pocket expenses for six days, which represented the time period from December 9, 2021, when the damage photos were submitted to Defendant, and December 15, 2021, when the photos were attached to the file. Defendant agreed to pay Plaintiff's out-of-pocket expenses as the claim representative had not explained how to send the photos through the Defendant's internet application. Defendant then instructed Plaintiff to submit the invoice for the out-of-pocket rental expense incurred for review and consideration.

On February 3, 2022, Defendant received a phone call from Plaintiff, who advised the insured vehicle was brought to yet another repair facility, Bob's Automotive Collision ("Bob's Automotive"). Bob's Automotive advised Defendant; however, that the insured vehicle was not yet at their facility. According to Bob's Automotive, the insured was referred by Brown's because Brown's did not perform body work, which was contained in Defendant's supplemental estimate dated January 25, 2022. Notably, Bob's Automotive advised the repairs performed to date were done poorly. Defendant recommended Plaintiff have the insured vehicle moved to Bob's Automotive for inspection and

submission of a supplemental estimate for any additional or missed damages. Plaintiff requested Defendant contact Brown's to obtain a refund of the payment issued to it in the amount of $794.66 since Brown's did not complete any of the repairs in the January 25, 2022 supplemental estimate. Defendant further explained that it would not pay for the same repairs a second time. The record reflects that Plaintiff removed the insured vehicle from Brown's and brought it to Bob's Automotive.

On February 9, 2022, Plaintiff contacted Defendant requesting reimbursement for out-of-pocket rental expenses. Defendant advised Plaintiff to submit the invoice for out-of-pocket rental expenses incurred for its consideration. The Defendant received the Enterprise rental invoice for the out-of-pocket rental car expense incurred by the Plaintiff the same day for an additional ten (10) days (January 19, 2022 to January 28, 2022) in the amount of $266.48. Payment in the amount of $127.91 was electronically transferred to Plaintiff on February 15, 2022, representing 80% of six (6) additional days of rental car coverage.

Plaintiff also inquired about whether Defendant would be reimbursed its prior payment of $794.66 paid to Brown's, since it was not able to complete the body work contained in the Defendant's first supplement estimate. Defendant contacted Brown's to discuss refunding the prior payment of $794.66. Brown's advised they completed mechanical work which was needed so the insured vehicle could be operated safely. Defendant then conducted a conference call with Bob's Automotive and Plaintiff. Defendant and Plaintiff spoke with a manager at Bob's Automotive, who advised they would check whether the insured vehicle was at their shop and call Plaintiff back. Defendant issued a check in the amount of $794.66 to Bob's Automotive the same day.

On February 9, 2022, an estimator for Defendant reviewed an assignment but realized Bob's Automotive had not yet submitted a supplemental estimate. Instead, the insured vehicle was brought to Bob's Automotive to perform the repairs contained in Defendant's supplement estimate dated

January 25, 2022, because Brown's was unable to do so. Defendant's estimator prepared a second supplemental estimate that slightly added parts and repairs to the first supplemental estimate and sent it to Bob's Automotive. Defendant's estimator advised a complete teardown could be necessary if additional damages were identified. The total cost of repairs in the second supplement was $894.84. On February 12, 2022, Defendant issued a payment in the amount of $894.84 to Bob's Automotive.

On February 23, 2022, Defendant's estimator spoke with Bob's Automotive and verbally approved a third supplement. Defendant wrote a third supplemental estimate the same day and issued payment to Bob's Automotive in the amount of $298.33.

There was no further communication with Plaintiff until nearly six months later, on August 4, 2022. According to the record, Plaintiff contacted Defendant advising the air conditioning in the insured vehicle no longer worked, and that it was working prior to the Accident. Plaintiff took the insured vehicle to Antwerpen and was advised the compressor unit needed to be replaced. Plaintiff believed the compressor unit problems were a direct result of the Accident. Defendant contacted an Antwerpen body shop in Clarksville, MD and was told they had no record of the insured vehicle. Defendant was referred to Antwerpen body shop in Randallstown, MD.

On August 9, 2022, Defendant contacted the Antwerpen body shop in Randallstown, MD, and was advised it had no record of the insured vehicle and recommended the Defendant contact the Antwerpen body shop in Clarksville, MD. Since Defendant had already contacted the Clarksville location, the Defendant then attempted to contact Plaintiff to determine which body shop wrote the supplement to replace the compressor unit. The same day, Defendant sent written correspondence to Plaintiff requesting they contact it to discuss the potential supplement.

On August 10, 2022, Plaintiff contacted Defendant requesting an update on whether it would pay for the compressor unit to be replaced. Defendant advised it had not yet received a supplemental

estimate from Antwerpen and when it contacted both Antwerpen locations, Antwerpen advised the insured vehicle was not at either location. Defendant then contacted the Antwerpen service department at the Clarksville, MD location via conference call with Plaintiff, per Plaintiff's request. The Antwerpen representative who answered advised that a service advisor would need to call Defendant to discuss the supplemental estimate. Plaintiff then expressed frustration with the process as he already had an estimate from Antwerpen. Defendant requested that Plaintiff provide a copy of Antwerpen's estimate for review. The same day, Plaintiff e-mailed the Antwerpen estimate to the Defendant for review. Significantly, the document listed recommended services which required "immediate attention." There was no explanation or opinion as to why the recommended services were related to the subject accident. Moreover, some of the recommended services were maintenance related, such as the fuel injection service, cleaning the fuel system, as well as replacing the cabin air filter and performing a vent service "at the customer's request."

On August 11, 2022, Defendant spoke with Plaintiff who advised the air conditioning never worked after the repairs were initially performed after the subject accident. Defendant's proffered exhibits suggest that Plaintiff did not notice the problem when he picked up the insured vehicle after the first shop completed the repairs since the weather was cold. Once the weather warmed, Plaintiff turned on the air conditioning and discovered the problem. Plaintiff then advised he would contact the original body shop who performed the repairs.

On August 15, 2022, Defendant received a phone call from Plaintiff requesting a conference call with a service advisor at Antwerpen. Defendant requested the service advisor submit the supplemental estimate for review and consideration. Antwerpen e-mailed a document titled "Vehicle Condition Report" which showed the mileage for the insured vehicle was 216,618 miles. The estimated cost of the compressor repair was $1,199.30. Importantly, the Antwerpen estimate stated:

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EVAC and recharged AC System. AC had zero Freon in system upon arrival. AC still does not work after charging system. Health check reported an issue with AC flow sensor circuit (B1479) AC compressor will not activate with active test. Possibility of debris from accident causing blockage in AC compressor flow sensor.

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On August 18, 2022, Defendant advised Plaintiff by telephone that an in-person inspection for the insured vehicle was scheduled for August 22, 2022. On August 23, 2022, Defendant's adjuster sent the results of his inspection to the service advisor at Antwerpen, who submitted the estimate to replace the compressor unit. It was confirmed there was no Freon in the air conditioner system when it arrived at Antwerpen, and Antwerpen performed a dye test to determine if there were any leaks, but none were seen. It was further noted at this time, that some of the repairs from Defendant's original estimate were not performed. According to the record, no physical impact to the compressor was discovered. Therefore, Defendant denied the portion of Plaintiff's claim requesting payment to replace the compressor. The written denial is dated August 23, 2022.

On August 24, 2022, Plaintiff contacted Defendant inquiring whether it would cover the cost to replace the compressor unit. Plaintiff expressed dissatisfaction with the claim process once told that Defendant would not cover the cost of the damaged compressor.

On August 25, 2022, a payment in the amount of $2,282.90 was mistakenly issued to Bob's Automotive, even though the Defendant did not receive a supplement estimate in this amount which it approved. The payment was voided. On August 26, 2022, an auto technician working for Defendant reviewed the photos of the insured vehicle to re-evaluate Plaintiff's request to replace the air conditioner compressor unit. The technician stated the compressor was in the engine bay, mounted to

the side of the engine and not in the front of the engine where the impact occurred. Further, the compressor was housed on the passenger side behind the passenger side frame rail, which was not damaged. Therefore, Defendant's auto technician agreed there was no evidence the compressor unit was damaged in the subject accident. The same day, Defendant's auto technician attempted to reach Plaintiff by telephone to discuss the findings.

On August 27, 2022, the Defendant reiterated its partial denial of coverage to replace the compressor unit by telephone to the Plaintiff. Plaintiff was dissatisfied with the is decision and advised he would seek legal advice.

DISCUSSION

Plaintiff asserts that Defendant breached its duty under the Policy by not paying the amount of damages claimed by Plaintiff. Specifically, Plaintiff asserts that Defendant failed to repair Plaintiff's air conditioner compressor after it was damaged in the Accident. Plaintiff contends that Defendant violated the Maryland Insurance Code by acting in bad faith by unnecessarily failing to timely pay on the claim for the damaged air conditioner compressor. However, Plaintiff has failed to produce sufficient evidence supporting the contention that the Accident caused the damage to the compressor.

Plaintiff makes the argument that the air conditioner worked before the damage caused by the Accident but has failed to produce any evidence to refute Defendant's position that the damage to the air conditioner compressor was caused by wear and tear or mechanical failure, as illustrated by the zero level of Freon. Also, there is no evidence that the Accident caused damage air conditioner compressor or it's mounting.

The Policy exclusions state:

> THERE IS NO COVERAGE FOR:
>
> ***
>
> 13. ANY PART OR EQUIPMENT OFA COVERED VEHICLE IF THAT PART OR EQUIPMENT
>
> a. FAILS OR IS DEFECTIVE; OR
>
> b. IS DAMAGED AS A DIRECT RESULT OR:
>
> (1) WEAR AND TEAR;
>
> (2) FREEZING; OR
>
> (3) MECHANICAL, ELECTRICAL, OR ELECTRONIC BREAKDOWN OR MALFUNCTION OF THAT PART OR EQUIPMENT
>
> This exclusion does not apply if the loss is the result of theft of the covered vehicle.

In light of the above, Plaintiff has provided insufficient evidence to conclude that this evaluation reaches the threshold of a failure to deal in good faith, or that Defendant ignored the facts he presented, and/or refused to justify its position with regards to its partial claim denial. Accordingly, I find that Plaintiff has not demonstrated that Defendant breached its obligations under the Policy or failed to act in good faith in connection with the Claim.

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 an automobile insurance policy obligating Defendant to pay a claim for damage to the Plaintiff's insured vehicle after a December 6, 2021 automobile accident.

2. Plaintiff did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.

3. Plaintiff did not establish by a preponderance of the evidence that he is entitled to additional damages as a result of the claim.

4. Plaintiff did not establish by a preponderance of the evidence that Defendant breached its obligation under the policy to cover and pay the claim.

5. Since a breach is a necessary element of a failure to act in good faith, Plaintiff did not establish a failure by Defendant to act in good faith.

6. Plaintiff is not entitled to expenses and litigation costs.

DECISION

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

ORDERED on this 16th day of March, 2023, that Defendant did not violate Section 27-1001 of the Insurance Article of the Maryland Annotated Code; and it is further

ORDERED that pursuant to Section 27-1001(f)(3), this Final Order shall take effect if no administrative hearing is requested in accordance with Section 27-1001(f)(1).

KATHLEEN A. BIRRANE
Insurance Commissioner

signature on original

TAMMY R.J. LONGAN
Associate Commissioner, 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).