

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

J.T.¹,

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Plaintiff,

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v.

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Case No. 27-1001-22-00085

**UNITED SERVICES AUTOMOBILE
ASSOCIATION,**

*

Defendant.

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* * * * *

DECISION

J.T. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that United Services Automobile Association (“Defendant”) breached its contractual obligations to him by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a rental property insurance policy (the “Policy”) in connection with wind and hail damage that occurred on August 8, 2020, which caused damage to Plaintiff’s rental home (the “Property”) located in Temple Hills, Maryland (the “Claim”).

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

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s and other individuals’ privacy.

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

II. PROCEDURAL BACKGROUND

On November 14, 2022, the Administration received Complaint No. 27-1001-22-00085 (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 in the 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 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 with regard to its claim denial, refused to discuss or negotiate the Claim with Plaintiff's public adjuster, and failed to provide a certified copy of Plaintiff's Policy to the public adjuster in a timely manner.

On December 8, 2022, 2022, 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) on January 6, 2023, acknowledging that the Policy provided dwelling coverage for Plaintiff's rental home with policy limits of \$328,000 subject to a \$500 deductible.

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.

On December 17, 2020, Plaintiff notified Defendant of the Claim reporting wind and hail damage to the roof and siding of the dwelling. Defendant acknowledged receipt of the Claim and assigned claim number 017070699-009 to the loss. That same day, Defendant contracted with Allcat, an independent inspection company, to complete an inspection and damage estimate of the Property.

On December 19, 2020, Allcat's Claims Representative and Estimator, Garrett Miller ("Estimator Miller") conducted an inspection of the Property. Plaintiff was present at the time of the inspection and stated that there were no interior damages to the dwelling. Estimator Miller took photographs of the damages and wrote an inspection report documenting his findings. Estimator Miller noted that the roof showed apparent signs of storm related damage to the front and back slopes and he recommended a full roof replacement to prevent further loss. Estimator Miller also found storm related damage to the downspouts and gutters on the exterior front, right, and left portions of the dwelling. Estimator Miller's report recommended a net claim payment in the amount of \$4,618.56 after subtracting out the deductible and recoverable depreciation.

Defendant reviewed the Allcat report on December 29, 2020 and issued a payment to Plaintiff in the amount of \$4,618.56 that day. The Claim was closed at that time.

There was no further activity on this Claim until April 5, 2021. On April 5, 2021, a representative from Just Call Joe, LLC ("Just Call Joe") contacted Defendant advising that the roof was not fully approved and requesting that a joint inspection be scheduled between

themselves and Allcat. Defendant requested that Just Call Joe submit an itemized estimate and photographs for Defendant to review prior to scheduling another inspection.

On April 28, 2021, Just Call Joe emailed Defendant an itemized estimate and photographs from its inspection of the Property. The Just Call Joe estimate included the removal and replacement of the sheathing, replacement of the entire roof's shingles, repairs to gutters and downspouts, and replacement of siding on the dwelling. Based on Just Call Joe's estimate, the Defendant determined a reinspection was proper and Defendant contacted Allcat again to conduct the reinspection.

The reinspection occurred on May 13, 2021, and the Allcat representative noted there was no additional storm damage and that the original estimate was correct. A report was generated in response to the re-inspection, but it was the same as the December 27, 2020, report. For reasons unknown, Defendant did not immediately receive the re-inspection report and so on June 7, 2021, the Defendant escalated the handling of this Claim to one of its senior property adjusters, Christopher Hall ("Adjuster Hall"). Adjuster Hall reached out to Allcat regarding the status of the outstanding re-inspection report and he also reached out to Plaintiff to advise of Defendant's efforts to obtain the re-inspection report.

Allcat submitted an updated inspection report on June 8, 2021. This report again stated that no additional storm damage was found and the report was the same as the December 27, 2020 and May 13, 2021, reports.

On June 14, 2021, Defendant contacted Just Call Joe and stated that no additional damages had been found during the re-inspection. During that telephone call, the Just Call Joe representative stated that at the time of the re-inspection the Allcat adjuster had stated that

changes would be made to the estimate based on the re-inspection. Based on this discussion, Defendant decided to preform another inspection of the Property.

On June 17, 2021, Adjuster Hall conducted a third inspection of the Property. At that time, both Plaintiff and a Just Call Joe representative were also present. During this inspection, the Just Call Joe representative pointed out additional damage to the Property to include damage to several windows and the metal awing on the front of the dwelling. Adjuster Hall asked Just Call Joe to submit photographs of these damages. Adjuster Hall also conducted an interior inspection that revealed “minor water damage to the attic insulation via deteriorated wood sheathing with exposed felt paper.”

At the end of the inspection, the Just Call Joe representative stated that the sheathing should be replaced due to its age based on county code. Adjuster Hall stated that he would speak with the Prince George’s County Code Enforcement Office to verify whether the sheathing needed to be replaced. After the re-inspection, Adjuster Hall called the Prince George’s County Code Enforcement Office multiple times and left messages attempting to confirm Just Call Joe’s statement regarding the sheathing.

Based on Adjuster Hall’s re-inspection the repair estimate was updated to include continuous ridge vent, steep charges, pipe boots, replacement of two aluminum windows, replacement of siding, and demolition costs. On June 28, 2021, Adjuster Hall issued a revised estimate that increased the total net claim to \$9,766.07. Thereafter, an additional payment was issued to Plaintiff in the amount of \$5,146.00 that day.

That same day, Defendant received a letter of representation from Joseph Kriner of Semper Fi Public Adjuster, LLC (“Semper Fi”). On July 15, 2021, Adjuster Hall sent a letter to Plaintiff regarding this Claim. This letter stated that Adjuster Hall had determined that

Defendant did not owe for the replacement of the sheathing per county code as the county code requirements only applied to new construction. Additionally, the letter stated that Defendant would therefore not be paying for the sheathing, but that if Plaintiff had any other supplemental items to submit, Defendant would review them.

On August 22, 2021, Adjuster Hall emailed Semper Fi advising that if the Plaintiff wished to add the roof sheathing to the estimate, then Semper Fi should provide a letter from the Prince George's County Code Enforcement Office "indicating the property was inspected and the sheathing needs to be removed and replaced because of code regulations." Adjuster Hall also included a copy of the certified policy with that email. After that email, Defendant closed the Claim.

There was no further activity on this Claim until March 28, 2022, when Adjuster Hall wrote to Semper Fi requesting an update as to whether the repairs had been completed. Semper Fi did not respond.

Approximately two months later on May 26, 2022, Plaintiff's counsel sent a letter of representation to Defendant. Upon receipt, Adjuster Hall noted the file and noted that Semper Fi had not responded to Adjuster Hall's inquiry of whether the repairs had been made.

On November 14, 2022, Plaintiff filed the subject 27-1001 Complaint. Included with the Complaint, was an estimate written by Semper Fi in the amount of \$86,453.45. This estimate included a public adjuster's fee in the amount of \$14,408.91 and replacement of the sheathing among other things.

IV. DISCUSSION

The evidence demonstrates that Defendant acted promptly to hire Allcat who conducted an inspection of the Property on December 19, 2020, and that the inspection occurred just two

days after the loss was reported to Defendant. Based on Allcat's initial inspection, a payment was issued on December 29, 2020. Moreover, the evidence demonstrates that Defendant communicated its initial coverage decision clearly and promptly to Plaintiff.

After receiving an estimate from Just Call Joe, Defendant decided a re-inspection was proper and Defendant requested that Allcat perform a second inspection. Allcat's re-inspection found no additional damages and Defendant advised Just Call Joe of the results. When Defendant spoke to a Just Call Joe representative, the representative noted that the Allcat inspector had stated that the original estimate would be updated and Defendant decided to perform a third inspection.

Adjuster Hall performed another inspection with Plaintiff and the Just Call Joe representative and based on his inspection, increased the original repair estimate and issued a supplemental check. At that time, the Just Call Joe representative mentioned that the sheathing in the attic needed to be replaced based on the county code and Defendant stated that it would reach out to the Prince George's County Code Enforcement Office to verify whether the sheathing needed to be replaced. Defendant attempted to reach out to the Prince George's Code Enforcement Office multiple times and eventually determined that the code requirements only applied to new construction projects.

In June 2021 Defendant received notification from Semper Fi that it was representing the Plaintiff and Defendant sent Semper Fi a copy of the certified policy and stated that if Semper Fi was requesting that the sheathing be replaced to provide a letter from Prince George's County Code Enforcement Office "indicating the property was inspected and the sheathing needs to be removed and replaced because of code regulations." Semper Fi never responded to this request. There was no further activity on this Claim for seven months until Defendant sent a follow up

email in March 2022 asking if repairs had been made to the Property. Semper Fi did not respond. In November 2022, Plaintiff submitted the subject Complaint, which included an estimate from Semper Fi in the amount of \$86,453.45. This estimate included a public adjuster's fee in the amount of \$14,408.91 and replacement of the sheathing among other things.

Plaintiff has not provided evidence documenting whether or how the additional repairs shown on Semper Fi's estimate were necessitated by wind and hail damage, nor has he provided any explanation for the substantial difference in the extent of the alleged damages and therefore in the scope of repairs included in Semper Fi's estimate. Plaintiff also has not identified specific repairs he contends were improperly denied by Defendant, but simply contends that Defendant is obligated to indemnify Plaintiff based on the scope of work prepared by Semper Fi. Despite the allegations in his Complaint, Plaintiff has failed to offer any proof that Defendant's decisions were not supported by evidence, that Defendant ignored the facts he presented, refused to justify its position with regards to its claim denial, failed to provide him with a certified copy of the subject policy, and/or refused to discuss or negotiate the Claim with Plaintiff's public adjuster. Rather Plaintiff simply contends that Defendant is incorrect in its interpretation that Defendant 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).

The Policy at issue in this case includes the following pertinent terms and conditions:

SECTION I – LOSSES WE COVER
COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES

We insure against “**sudden and accidental**” direct physical loss to tangible property described in SECTION I – PROPERTY WE COVER - COVERAGES A and B unless excluded in SECTION I – LOSSES WE DO NOT COVER.

* * * *

Here the Policy specifically states that coverage will be extended for damages caused by “direct physical loss”. The Policy does not provide blanket coverage to fix everything that is wrong with the insured’s property and is limited to those damages caused by sudden and accidental 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 covered dwelling or for the public adjuster fees included in Semper Fi’s estimate.

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 Property caused by wind and hail damage on August 8, 2020.
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.

ORDER

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

ORDERED on this 30th day of January, 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

/S/ Lisa Larson
Lisa Larson
Director 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).