OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION

B.K.[1],	*	
Plaintiffs,	*	
v.	*	**Case No. 27-1001-23-00019**
Liberty Insurance Corporation,	*	
Defendant.	*	

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DECISION

B.K. ("Plaintiff") has alleged that Liberty Insurance Corporation ("Defendant") breached its contractual duties by failing to pay Plaintiffs' first-party claim for damages under the terms of her homeowners' policy ("Policy") in connection with hail, wind, and flying debris damage from June 25, 2020 (the "Claim"). Pursuant to Section 27-1001 of the Insurance Article of the Annotated Code of Maryland ("Section 27-1001"), the Maryland Insurance Administration (the "Administration") concludes that Plaintiff has failed to demonstrate that Defendant breached any duties owed to Plaintiffs or otherwise failed to act in good faith in connection with Plaintiffs' claim.

I. STANDARD OF REVIEW

Section 3-1701 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland ("Section 3-1701") authorizes the award to an insured of certain statutory remedies if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured

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

may file an action pursuant to 3-1701, Section 27-1001 requires that the insured first submit a complaint to the Administration.

Section 27-1001 defines "good faith" as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim." The Administration in rendering a decision on the complaint is required by Section 27-1001(e)(1)(i) to focus on five issues:

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

Plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov't, § 10-217 (2020 Repl. Vol.); *Md. Bd. Of Physician v. Elliott,* 170 Md. App. 369, 435, *cert denied,* 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On March 6, 2023, the Administration received Complaint No. 27-1001-23-00019 (the "Complaint") stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged that Defendant breached its obligations under the Policy by intentionally and willfully underpaying Plaintiff's claim without giving justification or support from the policy for denying coverage. Plaintiff contends that Defendant breached its duty to act in good faith by failing to provide Plaintiff's adjuster a certified copy of the policy and hindered the adjuster's

assessments. Furthermore, Plaintiff also asserts that Defendant acted in bad faith by failing to provide full indemnification for Plaintiff's claim.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on March 9, 2023. Defendant provided a response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on May 9, 2023, and acknowledged the obligation to provide coverage on the claim.

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 she is entitled to additional coverage for the Claim under the Policy.

On June 25, 2020, a storm caused wind, hail, and flying debris damage to Plaintiff's residence in Rockville, Maryland. At the time of the loss, Plaintiff's residence was insured by a homeowner's insurance policy issued by Defendant ("Policy").

With respect to the personal property coverage under the Policy:

* * *

SECTION I – PERILS INSURED AGAINST

COVERAGE C – PERSONAL PROPERTY

1. **Fire or lightening**
2. **Windstorm or hail**
   This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening. This peril includes loss to watercraft and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.
3. **Explosion.**
4. **Riot or civil commotion.**
5. **Aircraft,** including self-propelled missiles and spacecraft.
6. **Vehicles.**

7. **Smoke,** meaning sudden and accidental damage from smoke.
   This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
8. **Vandalism or malicious mischief.**
9. **Theft,** including attempted theft and loss of property from a known place when it is likely that the property has been stolen. This peril does not include loss caused by theft:
   a. Committed by an "insured";
   b. In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied; or
   c. From that part of a "residence premises" rented by an "insured" to other than an "insured." This peril does not include loss caused by theft that occurs off the "residence premises" of:
      a. Property while at any other residence owned by, rented to, or occupied by an "insured" except while an "insured" is temporarily living there. Property of a student who is an "insured" is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss;
      b. Watercraft, and their furnishings, equipment and outboard engines or motors; or
      c. Trailers and campers.
10. **Falling objects.**
    This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.
11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.
12. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.
    This peril does not include loss:
    a. To the system or appliance from which the water or steam escaped;
    b. Caused by or resulting from freezing except as provided in the peril of freezing below; or
    c. On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises."
    In this peril, a plumbing system does not include a sump, sump pump or related equipment.
13. **Sudden and accidental tearing apart, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.
    We do not cover loss caused by or resulting from freezing under this peril.
14. **Freezing** of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance.
    This peril does not include loss on the "residence premises" while the dwelling is unoccupied, unless you have used reasonable care to:

    a. Maintain heat in the building; or
    b. Shut off the water supply and drain the system and appliances of water.

15. **Sudden and accidental damage from artificially generated electrical current.** This peril does not include loss to a tube, transistor or similar electronic component.
16. **Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.

* * * *

On April 8, 2021, more than 9 months after the date of loss, Plaintiff initiated a claim with Defendant for damage to her roof caused by rain, hail, and flying debris ("Claim"). In response to the Claim, on April 9, 2021, Defendant scheduled for a claims adjuster to go to the residence for an inspection of the damage.

On April 13, 2021, Defendant sent an inspector to perform the roof inspection at Plaintiff's residence. Plaintiff was not present but her roofing contractor was present for the inspection. During the inspection, the inspector took pictures but did not get on the roof due to safety concerns. After the inspection, the inspector determined that storm damage was not present and that the roof damage was due to normal wear and tear as well as heavy deterioration due to the roof being 34 years old.

Also on April 13, 2021, given the results of the inspection, Defendant sent Plaintiff a letter stating that, based on the inspection, there was no storm damage and that it would be denying Plaintiff's claim.

On April 15, 2021, Plaintiff called Defendant to say she was unhappy with the inspection and disagreed with the determination of the inspection. Defendant explained to Plaintiff that it reviewed the inspection report and found that the damage was not from a storm but was a result of normal wear and tear or deterioration. On the same day, Defendant sent Plaintiff a claim denial letter explaining that the roof damage was from normal wear and tear, which was not covered in Plaintiff's policy. This letter included references to applicable policy provisions.

The next day, on April 16, 2021, Plaintiff again called Defendant to discuss her concerns and frustrations with the claim. Specifically, Plaintiff did not think the inspection was thorough since the inspector never went onto the roof. In response, Defendant agreed to hire an engineer to perform a second inspection of the roof.

On April 28, 2021, an engineer from Donan Engineering ("Donan") performed an inspection of Plaintiff's roof damage. Donan determined that there was no damage to the wood shakes, but that there were circular, cosmetic dents to the northwest downspouts and roof flashings at valleys, skylights, the chimney, sidewalls, and roof transitions that was caused by hail.

On May 6, 2021, Defendant contacted Plaintiff to discuss the Donan inspection report. Defendant also agreed to extend coverage to repair the damage that was caused by hail and advised Plaintiff that it was gathering an estimate for the repairs.

The next day, on May 7, 2021, Defendant sent Plaintiff a copy of the inspection report and the estimate for repairs. Defendant also noted that it would process the initial payment for the repairs after Plaintiff reviewed the estimate.

On May 13, 2021, Defendant talked to Plaintiff's contractor and was told that they could not do the repair without causing additional damage to the wood shakes and that they recommended a full roof replacement for $111,447.25.

In response, on July 6, 2021, Defendant sent Plaintiff a reservation of rights letter stating that it retained contractor Sedgwick Repair ("Sedgwick") to provide a comparative bid for the roof repairs.

On July 30, 2021, Sedgwick concluded that there was a need for a total roof replacement. Therefore, Defendant prepared a scope of work for a total roof replacement totaling $107,466.45.

However, Defendant noted that payment would be for $63,939.04, which was the cost of the repair, minus Plaintiff's $2,500 deductible, and minus $41,027.41 for recoverable depreciation that would be paid after completion. Defendant sent a letter extending this payment to Plaintiff on August 3, 2021.

On September 10, 2021, Defendant received a letter from public adjuster Joe Kriner ("Adjuster Kriner") with Semper Fi Public Adjusters ("Semper Fi") notifying Defendant that he was retained by Plaintiff. This letter noted that all communication, as well as payments, should be routed through Semper Fi and he requested the Defendant submit all documentation of the claim, including a copy of the policy, to Semper Fi.

On September 15, 2021, Defendant called Plaintiff to discuss the status of the roof repairs. Plaintiff advised Defendant that she had already started ordering materials for the repair and Defendant told her that the next step was to submit an invoice after the repairs were completed.

On October 19, 2021, Adjuster Kriner prepared his own scope of work that incorporated the scope of work prepared by a contractor with Rapid Restoration. Defendant took exception to Adjuster Kriner's scope of work documentation because it used Rapid Restoration's generic, non-itemized water mitigation totaling $125,411.92, which contained add-ons, duplicates, no photographs and extra charges. Additionally, Adjuster Kriner added a $25,082.38 public adjuster fee that made the total estimate $150,494.30.

Also on October 19, 2021, Adjuster Kriner prepared an additional estimate based on his own inspection of the damage to Plaintiff's property that totaled $530,138.50. Defendant also took exception to this estimate because it included an inflated roof repair of $275,693.10, deck

repair, environmental testing, window and door replacements, and a public adjuster fee of $87,939.75.

On March 4, 2022, Semper Fi emailed Defendant requesting it release all undisputed funds for the claim and schedule an inspection to go over non-salvageable items.

On March 7, 2022, Defendant sent Plaintiff and Semper Fi an email that explained that the mitigation estimate would be sent to the Water Mitigation Department. Additionally, Defendant advised them that its partner, GenPact, would reach out to complete an inventory and estimate for damaged property items.

On March 10, 2022 and March 16, 2022, GenPact executed its loss inventory inspection at Plaintiff's residence.

On March 21, 2022, Defendant sent an email to Rapid Restoration requesting they send a detailed estimate and items log so that it can continue to process Plaintiff's claim. Additionally, Defendant noted that if these documents were not received by March 24, 2022, it will have to settle the claim based on the current documentation and Plaintiff's policy.

On March 22, 2022, Semper Fi submitted photos to Defendant for the basement mitigation.

On March 24, 2022, Rapid Restoration contacted Defendant and advised that the inventory was only half way completed and it's expected to be completed by March 31, 2022.

On March 29, 2022, Defendant received a completed detailed estimate and items log from Rapid Restoration. During Defendant's review of the documents, it noticed errors, including unnecessary add-ons and duplicates. Thus, Defendant requested that Rapid Restoration correct these errors on the estimate and items log.

On March 30, 2022, Semper Fi sent Defendant a letter demanding payment for all undisputed funds and to provide policy language as support for any items Defendant may be questioning or denying.

On April 8, 2022, Semper Fi emailed Defendant stating that since repairs had already been made and the costs for the repairs were incurred, it needed to release payment for the repairs immediately instead of intentionally delaying payment with a comparative estimate for the damage mitigation.

On April 10, 2022, after finishing its review of the estimate and items log, Defendant submitted an estimate offer of $19, 692.21 to Rapid Restoration.

On April 11, 2022, Defendant emailed Semper Fi its estimate and advised them that the reason for its estimate being lower than Rapid Restoration's estimate was because some items did not have any supporting documentation, like photographs. Semper Fi responded with an email to Defendant stating that it did not agree with the $19,692.21 estimate and that Defendant needed to release the payment of $150,494.30 immediately.

On April 15, 2022, Adjuster Kriner submitted photographs of additional damage to Defendant. In response, that same day, Defendant adjusted its estimate to $27,050.18 to account for the additional documented damage.

On April 18, 2022, Defendant emailed Semper Fi and Plaintiff advising them to complete the aging and pricing of the contents inventory list.

On April 19, 2022, Defendant emailed Semper Fi noting the discrepancy between the prices of Defendant's estimate and Adjuster Kriner's estimate of $395,621.87. Defendant advised Semper Fi that it would need additional documented support, like photographs, for additional damage to be covered.

On May 2, 2022, Adjuster Kriner contacted Defendant with frustration about Defendant's $27,050.18 estimate for the damage. Adjuster Kriner claimed that Defendant was egregiously mishandling the claim by not basing the estimate on actual cost that was incurred and failing to promptly pay Plaintiff for the cost of the damage. Additionally, Adjuster Kriner advised Defendant that since the claim wasn't being resolved, he would exercise the full rights of the policy on behalf of Plaintiff.

On May 3, 2022, Defendant left a voicemail for Adjuster Kriner stating that it had not received the ages and prices for the contents inventory list yet. Adjuster Kriner returned the call and stated that the contents inventory list with ages and prices was already sent but he would resend a copy to Defendant. Also on this day, Adjuster Kriner sent a demand letter for payment on the amount of $678,132.80 for the rebuild, mitigation, and public adjusting fees. Defendant reviewed the claim and determined the undisputed amount it could pay was $134,516.63 and that it may pay more if its investigation of the claim warranted additional payment. As a result of this review, Defendant contacted Plaintiff to advise her that it could pay the undisputed amount and that it would be sending a follow-up letter regarding such payment.

On May 4, 2022, Defendant notified Plaintiff and Semper Fi via email that it initiated the appraisal clause in the policy where both the Defendant and Plaintiff submit the claim to their own independent appraisers. Defendant's letter also named Sam Laskey as its appraiser and advised Plaintiff that she needed to name her appraiser within 20 days. In response, Semper Fi sent Defendant a letter denying Defendant's request for an appraisal, stating that the appraisal clause is only used when there is a disagreement in price and, in this case, the disagreement is about the scope of the repairs.

On May 6, 2022, Plaintiff called Defendant with questions about the appraisal clause in the policy. Defendant answered her questions and provided a requested copy of Plaintiff's policy for her to review the appraisal clause.

Similarly, on May 10, 2022, Defendant held a call with Adjuster Kriner and Plaintiff to explain the policy's appraisal clause as well as advise them of the 20-day deadline to name Plaintiff's appraiser. Defendant also sent Semper Fi a follow-up email that outlined the appraisal clause and what Plaintiff needed to do since the appraisal clause was invoked.

Also on May 10, 2022, Semper Fi sent a letter to Defendant denying the request for an appraisal again and averring that Defendant has mishandled Plaintiff's claim.

On May 26, 2022, Adjuster Kriner emailed Defendant stating that the claim should have been resolved by now and Plaintiff should have received payment. In this email, Adjuster Kriner also noted that if Defendant fails to perform its duties under Maryland law, Plaintiff could pursue legal remedies. In response, Defendant replied by notifying Adjuster Kriner that since him and the Plaintiff refused to conduct an appraisal, the claim had been sent to its legal counsel for review.

On June 10, 2022, Defendant received the on-site inventory, including photographs, from GenPact.

On June 21, 2022, a re-inspection of Plaintiff's residence took place with Defendant, Plaintiff, Plaintiff's attorney, and Adjuster Kriner present. The goal of the inspection was to gain an account of the current damage to the property and allow both Defendant and Plaintiff to update repair estimates and possibly find common ground with the price of repairs.

On July 18, 2022, Defendant issued payment of $114, 714.07 to Plaintiff. This payment included the new estimate of total dwelling damage of $201,692.13 less $20,539.02 of recoverable depreciation, $63,939.04 of prior payments, and Plaintiff's $2,500 deductible.

On July 20, 2022, Plaintiff's attorney contacted Defendant with concerns that accepting the payment would waive rights to any additional payments on the claim. Defendant advised Plaintiff's attorney that accepting the payment would not indicate a full and final settlement of the claim.

On July 29, 2022, Plaintiff's attorney confirmed via email receipt of payment from Defendant.

On August 15, 2022, Plaintiff called Defendant to advise that her attorney was no longer representing her and that all communication going forwards should go through Semper Fi.

On August 18, 2022, Defendant finished reviewing the claimed contents damage and determined there was no coverage for the items since they were not damaged by a covered peril. Thus, Defendant sent Plaintiff a denial letter for contents coverage on August 19, 2022.

On August 23, 2022, Adjuster Kriner sent Defendant an email stating that the denial of the contents coverage was incorrect and that he would be sending a formal response.

On November 1, 2022, Defendant's attorney sent a letter to Plaintiff notifying her that he was retained to represent Defendant. This letter also stated Defendant's position that it was entitled to enact the appraisal clause under Plaintiff's policy and that it is proper that the claim remains under investigation since Plaintiff refuses to cooperate in the appraisal clause process. In response, Adjuster Kriner again states that the appraisal clause is not an appropriate option for resolving the claim because the disagreement is in relation to scope of work.

On March 6, 2023, Plaintiffs filed the instant Section 27-1001 Complaint with the Administration.

IV. DISCUSSION

Plaintiff assert that Defendant failed to act in good faith in its handling of the Claim because it failed to make a judgement on the Claim based on an honest and diligent investigation. Additionally, Plaintiff contends that Defendant also failed to act in good faith by failing to provide justification or support from the policy for its decisions in handling the Claim.

Defendant asserts that it has made an appropriate effort to investigate from the moment Plaintiff initiated the Claim. Further, Defendant maintains that it accurately assessed the Claim using information obtained through its claim investigation process.

The crux of Plaintiff's Complaint is that Defendant failed to pay the amounts owed to Plaintiff under the personal property coverage of the Policy. In Plaintiff's Complaint, she also contends that Defendant did not offer support from the policy for its decisions on the Claim. However, Plaintiff has not satisfied her burden of demonstrating that Defendant violated the policy or otherwise failed to handle the claim properly. After Plaintiff reported the loss, Defendant immediately scheduled and executed an inspection of the damage and originally denied the claim because the inspection found that the damage was not from a peril listed in the policy. Defendant notified Plaintiff of this denial with a letter, containing relevant policy language, that explained the damage was due to deterioration and was not a covered under the policy. However, after Plaintiff questioned the original inspection, Defendant continued to investigate and initiated an engineering inspection of Plaintiff's roof damage. As a result, Defendant agreed to extend coverage to repair the damage that was caused by hail and advised Plaintiff that it was gathering an estimate for the repairs. Additionally, after Plaintiff's contractor

provided an estimate of $111,447.25 for a total roof replacement, Defendant continued its work on the Claim by retaining its on contractor for a comparative bid and offered to pay $63,939.04.

Still frustrated with Defendant's offer, Plaintiff had Rapid Restoration and Adjuster Kriner submit estimates of $150,494.30 and $530,138.50, respectively. Based on a review of the provided estimates, Defendant offered Plaintiff $19, 692.21. Defendant explained to Plaintiff and Adjuster Kriner that its offer was significantly lower because there was a lack of supporting documentation and that it would reconsider the offer if they provided additional support for the damage. Thus, when Adjuster Kriner submitted additional damage photos, Defendant increased its offer to $27,050.18. Similarly, when Adjuster Kriner eventually demanded payment of $678,132.80 to cover all costs for repairs, Defendant again reviewed the Claim and offered to pay the undisputed amount of $134,516.63. Additionally, after Defendant initiated the appraisal clause in Plaintiff's policy because of the disagreement in price, Defendant both explained the appraisal clause and provided a copy of the language to Plaintiff as well as Adjuster Kriner. Lastly, after doing a thorough review of the claimed contents damage, Defendant sent a denial letter explaining, with appropriate policy language, that coverage for the personal contents was denied because the damage was not caused by a covered peril under the policy.

Plaintiff has not demonstrated that Defendant breached its obligations under the Policy or failed to act in good faith. Instead, based on the evidence in this case, the dispute between the Parties is based solely on a disagreement as to the Parties' valuation of the Claim. 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.

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 a homeowner's insurance policy to Plaintiff providing personal property coverage and obligating Defendant to pay a claim for damage to Plaintiff's personal property caused by hail, wind, and flying debris on June 25, 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 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.

ORDER

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

ORDERED on this 5th day of June 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/ *Tammy R.J. Longan*
Tammy R.J. Longan
Acting Deputy Commissioner

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).