

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

E.R.,¹

*

Plaintiff,

*

v.

*

Case No. 27-1001-22-00086

**THE TRAVELERS COMPANIES,
INC.,**

*

*

Defendant.

*

* * * * *

DECISION

E.R. (“Plaintiff”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that The Travelers Companies, Inc. (“Defendant”) breached its contractual obligations to her by failing to fully pay her first-party claim for damages under a homeowner’s insurance policy (the “Policy”) issued to Plaintiff by Defendant.² Plaintiff’s claim was for damage to her residence (the “Dwelling”) located in Prince George’s County, Maryland, allegedly caused by a hail storm on July 6, 2020 (the “Claim”).

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

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

² The Plaintiff improperly named The Travelers Companies, Inc. as the Defendant in this matter. Here, the underlying policy was issued by the Standard Fire Insurance Company. As documents were produced in response to the Complaint on behalf of the Standard Fire Insurance Company, the company that issued the relevant policy to the Plaintiff in this matter, I will nonetheless review the filings as if the Plaintiff had named the proper Defendant. All references to “Defendant” contained herein should be construed as the Standard Fire Insurance Company.

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 § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a 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).

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 (2014 Repl. Vol.); *Md. Bd. Of Physician v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On November 14, 2022, the Administration received Complaint No. 27-1001-22-00086 (the “Complaint”) stating a cause of action in accordance with § 27-1001. In the Complaint, Plaintiff alleges that Defendant breached its obligations under the Policy by failing to pay the entire amount of damages sought by Plaintiff.

Plaintiff alleges that while Semper Fi submitted an estimate to Defendant in the amount of \$79,807.32, as the amount required to restore the Dwelling to its pre-loss condition, the Claim remains severely underpaid as Defendant has only paid \$7,130.16. Plaintiff asserts that Defendant has incorrectly interpreted the Policy, as Defendant has failed to cover any damages to the Dwelling beyond the direct physical loss caused by the hail storm. As a consequence, Plaintiff contends that Defendant has breached its contractual duty to provide coverage required under the Policy. Further, Plaintiff asserts that Defendant’s refusal to provide full indemnification of Plaintiff’s Claim demonstrates that Defendant failed to act in good faith.

On December 8, 2022, as required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant. Defendant submitted a timely response to the Complaint and accompanying documents as required by § 27-1001(d)(4).

III. FINDINGS

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

At the time of the loss, the Dwelling was covered under a homeowner’s insurance policy with an effective date from February 6, 2020 through February 6, 2021. The Policy provided

Dwelling coverage limits in the amount of \$279,000, with a deductible in the amount of \$500.

The Policy states,

SECTION I - PERILS INSURED AGAINST

COVERAGE A DWELLING AND COVERAGE B OTHER STRUCTURES

We insure against risk of direct physical loss to property described in Coverages A and B.

* * * *

On July 6, 2020, a hail storm caused damage to the Dwelling. On August 14, 2020, Plaintiff contacted Defendant and reported damage to the roof of the Dwelling, as well as interior water damage to the ceiling and walls of the living room of the Dwelling, as a result of the July 6, 2020 storm.

On August 17, 2020, Joseph Kriner of Just Call Joe, LLC (“Just Call Joe”) contacted Defendant on behalf of Plaintiff stating that the roof of the Dwelling had been inspected. During the inspection, the inspector from Just Call Joe identified wind and hail damage to the Dwelling, including damage to the roof, gutters, and the ceiling of the living room. Defendant reviewed the coverages under the Policy and explained the \$500 deductible amount with the Plaintiff. Defendant also scheduled an inspection of the Dwelling on September 2, 2020.

On September 14, 2020, Defendant informed Plaintiff that it received a proposal from Just Call Joe and advised Plaintiff to obtain a proposal from at least two other contractors.

On September 21, 2020, Defendant completed an inspection of the Dwelling. Based on the inspection, Defendant determined that the cause of loss was due to a hail storm. The inspection revealed excessive hail damage to all slopes of the roof of the Dwelling. Plaintiff also showed a video taken on the date of loss showing hail coming down on the front porch of the Dwelling. The inspection revealed hail dents to the gutters, downspouts, chimney flashing, and

soft metals around the roof of the Dwelling. The inspection also revealed interior damage to the living room ceiling, including a water stain and peeling paint on the ceiling below the affected area on the roof of the Dwelling. Further, the inspection identified damage to a window screen and two window frames on the front elevation of the Dwelling, as well as one window frame on the left elevation of the Dwelling.

On September 21, 2020, Defendant prepared an estimate for a full roof replacement based on the inspection findings, including coverage for code upgrades for the drip edge, gutters, downspouts, window screens, two window frames along the front elevation of the Dwelling, as well as on window frame on the left elevation of the Dwelling. Based on the damage to the Dwelling identified during the inspection, the estimate listed a replacement cost value of \$12,511.99, less recoverable depreciation in the amount of \$5,981.83 and the Deductible under the Policy in the amount of \$500.00, for a total net claim amount of \$6,030.16. For the code upgrades, the estimate listed a total amount of \$1,256.29, to be paid when incurred. Finally, on September 21, 2020, Defendant communicated the estimate totals and recoverable depreciation procedures to the Plaintiff. Plaintiff accepted the settlement and had no further questions at that time. Thereafter, Defendant sent a settlement letter, a copy of the estimate, and issued a check for the net claim amount of \$6,030.16 to Plaintiff on September 28, 2020.

Approximately three months later, on or about December 16, 2020, Defendant received a sheathing replacement request from Just Call Joe. On December 16, 2020, Defendant responded to the request from Just Call Joe and requested documentation to support the request. On December 19, 2020, Just Call Joe sent another email to Defendant requesting the sheathing replacement. Specifically, Mr. Kriner stated, “The county code, as attached, does not allow for regular shingled roof to be installed on skip sheathing. Since we are a licensed contractor, we

must follow this code.” Further, Mr. Kriner also informed Defendant that, “skip sheathing is not allowed for shingle installation by the county code as well as the manufacturer.” Defendant responded to Mr. Kriner’s email on the same date and advised that the request was not approved, as, “sheathing is not required to be replaced for a shingle replacement. At this time we would not approve the repairs unless a code of enforcement was provided by the county for the address.”

On December 23, 2020, Just Call Joe again contacted Defendant and requested that sheathing replacement must be added to the estimate. On the same date, Defendant responded and advised that the code upgrade coverage in the Policy requires enforcement from the local authority in Prince George’s County. Defendant then requested that Plaintiff’s contractor submit any permits or notice of enforcement.

On January 6, 2021, Defendant issued a supplement payment to Plaintiff in the amount \$600.00 for tarp repair. On January 8, 2021, and later on January 11, 2021, Plaintiff contacted Defendant again to requested coverage to replace the sheathing on the roof of the Dwelling, under the code upgrade coverage of the Policy. On January 13, 2021, Defendant sent a certified copy of the Policy to Plaintiff’s contractor.

On March 8, 2021, Defendant received photographs from Just Call Joe showing that the repairs to the Dwelling had been completed. Thereafter, Defendant began its review of the documentation to determine whether to release the recoverable depreciation amount. Three days later, on March 11, 2021, a supplemental payment for the recoverable depreciation in the amount of \$7,238.12 was paid to Plaintiff. As of March 11, 2021, Defendant had paid a total amount of \$13,868.28 on the Claim.

On March 17, 2021, Mr. Joseph Kriner, this time on behalf of Semper Fi Public Adjusters, LLC (“Semper Fi”), notified Defendant by email that it had been retained to represent Plaintiff and to assist with the adjustment of the Claim. Semper Fi also requested information related to the Claim, a certified copy of the Policy, and documentation of any prior claims made by Plaintiff for three years prior to the Claim.

On April 7, 2021, Plaintiff contacted Defendant by email stating that the payment for the recoverable depreciation in the amount of \$7,238.12 had not been received. Thereafter, based on the Plaintiff’s request, Defendant requested a stop payment for the previous check issued on March 11, 2021. On April 12, 2021, the stop payment was accepted. On or about April 13, 2021, Defendant again sent the supplemental payment for the recoverable depreciation in the amount of \$7,238.12 to Plaintiff. The check was cashed on or about April 26, 2021.

On April 21, 2021, Defendant sent another certified copy of the Policy to Semper Fi. On April 23, 2021, Semper Fi requested all communication between Defendant and Plaintiff, as well as any photographs taken of the Dwelling. On April 26, 2021, Defendant responded to Semper Fi’s request and sent the requested documentation. As Defendant had not received any further response from Semper Fi by May 20, 2021, Defendant closed its claim file.

Approximately seven months later, on December 28, 2021, Semper Fi contacted Defendant and submitted a Demand for Payment, requesting that Defendant immediately release all depreciation and undisputed amounts and to pay the balance according to the scope of work provided within 10 days of the date of the email. The scope of work submitted by Semper Fi including a total replacement cost value of \$79,807.32, less the deductible in the amount of \$500.00. The scope of work submitted by Semper Fi included a public adjuster fee in the

amount of \$13,217.89, as well as costs for repairs to the interior drywall, electrical, HVAC, insulation, light fixtures, masonry, soffit, fascia, painting, roofing, siding, windows, and gutter,

On December 29, 2021, Semper Fi notified Defendant that it was having trouble submitting their final invoice to Defendant. Defendant advised Semper Fi of an alternate method to submit their documentation. However, the record does not reflect that any further documentation was submitted for Defendant to review. Thereafter, on April 20, 2022, Chevy Chase, PLLC, contacted Defendant advising that it now represented Plaintiffs in connection with the Claim. Again, the record does not reflect that any further documentation was submitted for Defendant to review, and on May 20, 2022, Defendant closed the Claim.

IV. DISCUSSION

The evidence demonstrates that Defendant acted promptly to conduct its inspection of the Dwelling and issued an initial payment in the amount of \$6,030.16 on September 28, 2020, based on the Defendant's inspection findings. Thereafter, the evidence demonstrates that on January 6, 2021, Defendant issued a check for \$600 for the tarp. Then, on March 8, 2021, Defendant submitted photographs demonstrating that the repairs had been completed. Three days later, on March 11, 2021, a supplemental payment for the recoverable depreciation in the amount of \$7,238.12 was paid to Plaintiff. When Defendant became aware that the check was lost, it requested a stop payment on the March 11, 2021 check and reissued a check for the same amount on April 13, 2021. In total, the evidence demonstrates that Defendant paid \$13,868.28 to Plaintiff to resolve the Claim.

While Semper Fi submitted a scope of work with a total replacement cost value of \$79,807.32, this amount includes a \$13,217.89 public adjuster fee which is plainly disallowed

under the Policy. Moreover, Plaintiff has provided no documentation supporting other damage reflected in the Semper Fi scope of work, including costs to repair the HVAC system, masonry, soffit, fascia, and siding. Finally, the Policy language specifically states that, “[w]e insure against risk of direct physical loss to property described in Coverages A and B.”

Based on these findings, the evidence reflects a dispute between the parties regarding the value of the Claim. However, Plaintiff has not demonstrated that Defendant breached any obligation owed under the Policy or that she is entitled to any additional payment under the Policy.

V. CONCLUSIONS OF LAW

In accordance with § 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 the July 6, 2020 hail storm.
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 Plaintiff 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. Since Plaintiff did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address the issue of special damages.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration’s Decision on

This 13th day of February, 2023 that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.).

This Decision shall take effect as a Final Decision if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

KATHLEEN A. BIRRANE

Insurance Commissioner

BY:

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, or to appeal the decision to the Circuit Court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. § 27-1001(f) and (g) (2017 Repl. Vol.).