

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

**J.K.M.,<sup>1</sup>** \*  
**Plaintiff,** \*  
**v.** \* **Case No. 27-1001-23-00005**  
**ERIE INSURANCE GROUP,<sup>2</sup>** \*  
**Defendant.** \*

\* \* \* \* \*

**DECISION**

J.K.M. (“Plaintiff”) has alleged that Erie Insurance Group (“Defendant”) breached its contractual obligations by failing to fully pay Plaintiff’s first-party claim for damages under the terms of a homeowner’s policy (the “Policy”) issued to Plaintiff by Defendant. Plaintiff’s claim was for damage to his home located in Callaway, Maryland (“the Dwelling”) caused by hail, wind and flying debris on June 17, 2019 (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 not demonstrated that Defendant breached any duties owed to Plaintiff or otherwise failed to act in good faith in connection with Plaintiff’s Claim.

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<sup>1</sup> The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s privacy.  
<sup>2</sup> Plaintiff improperly named Erie Insurance Group as the Defendant in this matter. Here, the underlying policy was issued by Erie Insurance Exchange. As documents were produced in response to the Complaint on behalf of Erie Insurance Exchange, 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 Erie Insurance Exchange.

## **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 may file an action pursuant to Section 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;
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.

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 5, 2023, the Administration received Complaint No. 27-1001-23-00005

(the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiff alleged that he submitted a Claim for damages to the Dwelling caused by hail and wind on June 17, 2019. Plaintiff further alleges that during the investigation of the Claim, his public adjuster submitted an estimate to Defendant in the amount of \$146,844.84, as the amount required to restore the Dwelling to its pre-loss condition. However, Plaintiff alleges that the Claim remains severely underpaid as Defendant rejected and denied the Claim. Plaintiff further contends that the basis of Defendant’s denial is that the work is not required, because Defendant does not believe it is responsible for the damage beyond the direct physical loss. Plaintiff asserts that Defendant consistently failed to make a judgement on Plaintiff’s Claim based on honesty and diligence, willfully and consistently ignored facts of the Claim; refused to justify its position with regards to denying coverage; refused to negotiate and discuss the Claim in clear terms with Plaintiff’s public adjuster; and refused to provide Plaintiff’s public adjuster with a certified copy of Plaintiff’s Policy. Plaintiff contends that Defendant has attempted to avoid its indemnity obligation to the policyholder and its failure to pay under the Policy is a breach of Defendant’s obligation and demonstrates Defendant’s failure to act in good faith.

As required by Section 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on January 12, 2023. Defendant provided a timely response to the Complaint and accompanying documents as required by Section 27-1001(d)(4) on February 9, 2023. In Defendant’s response, Defendant acknowledged that it issued a homeowner’s insurance policy to Plaintiff and Plaintiff’s spouse, (Policy # ending 2706586 M) which provides Dwelling coverage in the amount of the Replacement Cost at the time of the loss.

### **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 not established by a preponderance of the evidence that he is entitled to coverage for the Claim under the Policy.

On February 28, 2020, Plaintiff's spouse first reported a claim for alleged wind and hail damage to the Dwelling that occurred on June 17, 2019. Claims Specialist, Linda Hofe ("Adjuster Hofe") contacted Plaintiff on February 28, 2020. The evidence demonstrates that during the Plaintiff's initial call to Defendant, Plaintiff's spouse stated she did not report the claim immediately. Instead, Plaintiff's spouse reported that when she saw her neighbors getting new roofs, she had a contractor inspect her roof. Plaintiff's spouse advised there was no interior damage. Based on the reported loss, Defendant arranged for Hancock Claims Consultants ("Hancock") to conduct an initial inspection of the Dwelling.

On March 4, 2020, Adjuster Hofe and Hancock inspected the Dwelling and found that the roof had Certainteed Horizon shingles. With respect to the loss claimed by the Plaintiff, Defendant determined that there was no soft metal damage and no wind damage. On the date of the inspection, representatives from Just Call Joe ("Complainant's Contractor"), including Mr. Joseph Kriner, arrived at the inspection and pointed out damage to the roof and siding that they assert was the result storm damage. Hancock, however, concluded that those areas were damaged as a result of manufacturer's defects. Defendant's representatives found a broken piece of siding near the rear of the Dwelling, but did not find that the damage was caused by a hail or wind storm. Hancock then prepared a report of its findings that there was no storm damage found on the roof of the Dwelling. Defendant then obtained a hail report from CoreLogic, which

revealed potential hail of 1.2 inches in the vicinity of the Dwelling on the date of the loss. On March 5, 2020, Defendant hired independent engineering firm, Vannoy and Associates to conduct another inspection of the Dwelling. Vannoy and Associates arranged for Mr. Thomas M. Krauth, P.E. (“Engineer Krauth”) to conduct the inspection of the Dwelling.

On March 16, 2020, Defendant received a letter of representation from Semper Fi Public Adjusters (Semper Fi”). While Adjuster Hofe attempted to coordinate with Semper Fi to be present on the date of the subsequent inspection, the second inspection of the Dwelling took place on March 17, 2020.

On March 20, 2020, Defendant received Engineer Krauth’s report. Engineer Krauth’s inspection found no storm damage on the Dwelling. On March 26, 2020, Defendant sent a denial letter to Adjuster Kriner and Plaintiff with a copy of Engineer Krauth’s report. Specifically, in the denial letter, Defendant stated,

Your client reported hail damage to the residence. We sent an engineer to determine if damage was caused by the June 17, 201 hailstorm. A copy of the report is attached.

Mr. Thomas M. Krauth, P.E. with Vannoy & Associates inspected the property. He concluded:

Based upon the information gained from others and its own examination and analysis, Vannoy & Associates concludes to a reasonable degree of engineering certainty the following:

1. There is no evidence of recent, substantial hail impact at the subject property.
2. There is no hail impact caused damage to the lightweight composition shingles at the property.
3. There are no hail impact caused soft metal roof component damages at the property.

....

In its denial letter, Defendant then cited to the following provisions of the Policy.

## PERILS WE INSURE AGAINST

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited therein.

## WHAT WE DO NOT COVER – EXCLUSIONS

Under the *Dwelling, Other Structures and Personal Property Coverages*:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

5. caused by:

b. mechanical breakdown, deterioration, wear and tear, marring, inherent vice, latent defect, tree roots, rust, smog, wet or dry rot, mold, fungus, or spores;

Under the *Dwelling Coverage and Other Structures Coverage*

We do not pay for loss:

1. by weather conditions if any peril excluded by the policy contributes to the loss in any way,
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance;

of property whether on or off the residence premises by any person, group, organization, or governmental body.

Under the HP-FP (Ed. 2/03) endorsement starting on page 1, it states:

*5.b. is deleted and replaced with the following:*

b. mechanical breakdown, deterioration, wear and tear, marring, inherent vice, latent defect, tree roots, rust, or smog.

Defendant then closed its file.

By email dated May 27, 2020, Adjuster Kriner requested Defendant's estimate, a certified copy of the policy, and all coverage correspondence. By email dated May 27, 2020,

Adjuster Kriner requested another inspection of the property. Adjuster Kriner additionally stated that he had not received notice of Engineer Krauth's inspection, and that the Dwelling had storm damage that Defendant's inspections had missed.

Defendant subsequently reopened the claim file. By email dated June 4, 2020, Adjuster Hofe responded to Adjuster Kriner's request for a third inspection. Adjuster Hofe declined to schedule another inspection. Specifically, Adjuster Hofe referenced Adjuster Kriner's presence at the first inspection and Engineer Krauth's report revealing no storm damage to the Dwelling.

Approximately nine months later, on March 19, 2021, Adjuster Kriner requested several documents including a certified policy and all communications with Plaintiff, Defendant's underwriting file and claims operating procedures. Additionally, Adjuster Kriner requested a Proof of Loss and a recorded inspection. Adjuster Hofe responded providing a copy of the denial letter dated May 26, 2020. In response, Adjuster Kriner requested another inspection of the Dwelling. Additionally, Adjuster Kriner asserted that Semper Fi had rights as an assignee despite the policy containing an anti-assignment clause. Adjuster Kriner further asserted that Defendant needed to send a licensed insurance adjuster to re-inspect the Dwelling with him. Additionally, While Defendant's March 26, 2020 letter denied the Plaintiff's claim in its entirety, Adjuster Kriner requested a line item explanation of Defendant's denial. Adjuster Kriner's email also requested the Curriculum Vitae for Engineer Krauth.

By email to Adjuster Hofe dated March 23, 2021, Adjuster Kriner sent another request for a line by line explanation of Defendant's denial. By email dated July 7, 2021, Adjuster Kriner again requested a certified policy. Adjuster Hofe responded by email the denial letter to Plaintiff directly. On March 28, 2022, Adjuster Kriner again requested a certified copy of the policy. At that time, Defendant re-assigned the Claim from Adjuster Hofe to Adjuster Conaway.

A certified copy of the Policy, as well as a copy of the March 26, 2020 letter denying the claim, was then sent to Mr. Kriner on April 4, 2022.

On April 22, 2022, Adjuster Kriner sent Defendant a demand package. The package included a meteorologist report, an estimate, and Mr. Kriner's photographs from its inspection of the Dwelling. Defendant acknowledged receipt of the demand package by email dated April 22, 2022 and reopened the claim. However, based on Adjuster Conaway's review of the additional information submitted by Adjuster Kriner, a second denial letter was sent on May 10, 2022. In its letter, Defendant stated, "ERIE is in receipt of the documents you have forwarded over to us on April 25, 2022 by email. Please be advised that ERIE stands by their coverage decision as outlined in our prior letter of March 26, 2020 and reaffirmed in our correspondence of June 4, 2020, March 19, 2021 and April 4, 2022.

On September 16, 2022, Defendant received a letter of representation from Plaintiff's attorney, Allan Poteshman, Esquire of Chevy Chase Law, PLLC ("Plaintiff's attorney"). No further correspondence was received until the filing of the Complaint.

#### **IV. DISCUSSION**

The evidence demonstrates that Defendant conducted a prompt, thorough and diligent investigation of the Plaintiff's claim. Specifically, the initial inspection of the Dwelling was scheduled within days of the Plaintiff's initial report of loss. Of note, the claim was reported to Defendant eight after the hail storm and was prompted due to Plaintiff's observations that her neighbors were getting new roofs. At the time the initial inspection was conducted by Hancock, there was no damage observed to the roof of the Dwelling. At the initial inspection, Mr. Kriner, at that time representing himself as Plaintiff's contractor, was present and pointed out areas of the roof that he asserted were damaged as a result of the June 17, 2019 hail storm. However,



Hancock did not find any evidence of damage caused by the June 17, 2019 hail storm. Based on Plaintiff's dissatisfaction with the inspection findings, a second inspection was scheduled and conducted by Engineer Krauth of Vannoy and Associates. Again, based on Engineer Krauth's inspection, he determined that there was no evidence of recent, substantial hail impact at the subject property; there was no hail impact caused damage to the lightweight composition shingles at the property; and there was no hail impact caused soft metal roof component damages at the property. Based on the second inspection findings, Defendant issued a denial letter on March 26, 2020, stating the specific basis for its denial of the claim from the inspection findings, as well as the relevant policy language. While Semper Fi subsequently requested a line-by-line explanation, the March 26, 2020 letter specifically stated that basis for the denial and the relevant policy language. Finally, while Semper Fir sent a demand package to Defendant on April 22, 2022, Defendant reaffirmed its prior position that there was no evidence of damage to the Dwelling based on two inspections, resulting from the June 17, 2019 hail storm.

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

#### **IV. CONCLUSIONS OF LAW**

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

1. Plaintiff established by a preponderance of the evidence that Defendant is obligated under the policy to cover the claim.
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 5<sup>th</sup> 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

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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).**