

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

**W.S. and T.S.,**

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**Plaintiffs,**

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**v.**

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**Case No. 27-1001-23-00011**

**STATE FARM FIRE AND CASUALTY  
COMPANY**

\*

**Defendant.**

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**DECISION**

W.S. and T.S. (“Plaintiffs”) allege that State Farm Fire and Casualty Company (“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”) in connection with alleged wind damage to their house that occurred on May 26, 2021 (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 Plaintiffs have not demonstrated that Defendant breached any duties owed to Plaintiffs or otherwise failed to act in good faith in connection with Plaintiff’s 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

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. 27-1001-23-00011 (the “Complaint”) stating a cause of action in accordance with Section 27-1001. In the Complaint, Plaintiffs alleged Defendant breached its obligations under the policy by failing to pay the entire amount sought in the Claim. Plaintiffs contend that Defendant failed to make a judgement on Plaintiff’s claim based on honesty and diligence, Defendant’s refusal to grant full indemnification for Plaintiffs is not supported by the evidence, Defendant willfully and consistently ignored facts of the claim, Defendant failed to cite a policy exclusion that would

deny full coverage under Plaintiff's policy, Defendant refused to negotiate the claim with Plaintiff's public adjuster, and that Defendant refused to provide a certified copy of the Policy. Plaintiffs contend that Defendant's failure to provide full indemnification of Plaintiff's claim demonstrates Defendant's refusal 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 13, 2023, acknowledging that the Policy provided dwelling coverage for Plaintiffs' home with policy limits of \$891,900, subject to a \$1,000 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 Plaintiffs have failed to establish that he is entitled to additional coverage for the Claim under the Policy.

On May 26, 2021, Plaintiffs notified Defendant of the Claim reporting wind damage to the roof, lattice on the deck, and downspout of the Dwelling. Upon receipt of the claim, Defendant scheduled an inspection for June 11, 2021. However, on the date of the inspection, Plaintiff's contractor, Just Call Joe, contacted Defendant to reschedule the inspection due to rain.

On June 16, 2021, Just Call Joe contacted Defendant to advise Plaintiffs were attempting to obtain a certified copy of their policy. Defendant contacted Plaintiff T.S. the same day and agreed to request a certified copy of the policy for their review.

Defendant inspected Plaintiff's house on June 28, 2021 and observed new wind damage to the front and rear roof slopes along with a damaged ridge vent. Defendant determined that the shingles were repairable and obtained photographs and measurements to determine availability

of replacement shingles. On the exterior elevations, Defendant noted wind damage to a ceiling fan globe, lattice work, solar post lights, downspout, and shed siding. Inside the Dwelling, Defendant observed water damage to a bedroom and hallway ceiling. On the same date, Defendant prepared a repair estimate and issued a payment to Plaintiffs under the dwelling coverage of the policy totaling \$6,085.26 (\$7,480.25 replacement cost, less \$394.99 recoverable depreciation, less the \$1,000 deductible).

Defendant determined the roof shingles were common laminated shingles available through multiple manufactures, but it was unable to identify the size or exact color using the photographs of the roof of the Dwelling. Just Call Joe advised Defendant that it would attempt to locate the shingles, but if it was not successful, a sample shingle would be provided to Defendant.

On July 1, 2021, Semper Fi Public Adjusters, LLC (“SFPA”) sent Defendant an email advising that it was representing Plaintiffs for the claim. Along with its email, SFPA provided a letter of representation, IRS form W-9, an assignment of insurance proceeds, and direction to pay form. SFPA also requested that Defendant provide a copy of its underwriting file, all communications with Plaintiff, a Proof of Loss, its recorded inspection, any reports, Defendants standard operating procedure in processing claims, all photos taken during the inspection, a certified copy of the policy, and prior claims documentation for Plaintiff. Upon receipt, Defendant sent SFPA a copy of its estimate for repairs to the Dwelling. On July 13, 2021, Defendant issued a \$750 payment to Plaintiff for the roof tarping invoice. It also provided SFPA with a certified copy of the policy previously provided to the Plaintiffs.

Approximately six months later, on January 18, 2022, SFPA sent an email to Defendant, including an estimate of repair costs to the Dwelling in the amount of \$149,405.08. The estimate

included a complete replacement of the roof and sheathing, interior repairs to multiple rooms, as well as a public adjuster's fee of \$24,734.18.

Based on the increased scope of SFPA's estimate, Defendant scheduled a re-inspection of Plaintiff's house for February 18, 2022. When Defendant arrived at Plaintiff's house, Plaintiff W.S. advised that SFPA cancelled the inspection that morning, and he would not allow Defendant to inspect the roof or interior of the house without SFPA present. Defendant also noted that the shingles on the roof appeared to be common laminated shingles available through multiple manufacturers. Defendant contacted SFPA the same day and advised if it was alleging that the shingle was discontinued, it would need to provide a sample shingle that Defendant could send to a roof shingle locator service. Defendant also requested that SFPA provide photos and measurements to support the increased scope of the interior water damage.

On February 25, 2022, Defendant received a letter of representation from Allan Poteshman, Esq. advising that he now represented Plaintiffs concerning the Claim. Defendant made multiple attempts to contact Mr. Poteshman and SFPA to obtain a shingle sample and discuss the status of the claim, but did not receive a response. No further correspondence was received until the filing of the Complaint.

#### **IV. DISCUSSION**

Despite the allegations in the Complaint, Plaintiffs have not offered any evidence that Defendant ignored the facts Plaintiffs presented, refused to justify its position, or refused to negotiate the Claim with Plaintiff's public adjuster. Plaintiffs have 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 SFPA's estimate.

Based on these findings, Plaintiffs have not met their burden of proving that the Defendant breached any obligation owed under the Policy or that they are entitled to any additional payment under the policy.

### **V. CONCLUSIONS OF LAW**

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

1. Plaintiffs established by a preponderance of the evidence that Defendant is obligated under the policy to cover the claim.
2. Plaintiffs did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the policy.
3. Plaintiffs did not establish by a preponderance of the evidence that they are entitled to additional damages as a result of the claim.
4. Plaintiffs 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, Plaintiffs did not establish a failure by Defendant to act in good faith.
6. Plaintiffs are 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, 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

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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).**