

IN THE COUNTY COURT OF THE 6TH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

ADELE MOLINARO & MASSIMO MOLINARO

Plaintiffs,

CASE NO. 22-0034898-CI

vs.

UNIVERSAL PROPERTY & CASUALTY
INSURANCE COMPANY

Defendant.

_____ /

NON-BINDING ARBITRATION AWARD

A hearing in the above-styled action was held on January 11, 2024 via Video Conference on the Zoom application pursuant to the Notice and Engagement for Non-Binding Arbitration dated December 14, 2023. The undersigned, David S. Ehrlich, Esq., of Ehrlich Law, LLC, served as the sole Arbitrator and makes the following award and report:

Parties Present

Abedemi Oladipo, Esq., Mubarak, Sherik, & Oladipo, PLLC and Adele and Massimo Molinaro

Carlos Marante, Esq., Groelle & Salmon, P.A. and Jody Price as corporate representative for Universal Prop. & Cas. Ins. Co.

Findings

After considering the evidence, materials submitted by the parties, and oral arguments of counsel at the arbitration hearing, undersigned Arbitrator finds as follows:

1. This case arises from a first-party property insurance claim for benefits arising from an alleged water loss at a property insured under a policy issued by Defendant, Universal Prop. & Cas. Ins. Co. (“Universal”) to Plaintiff.

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2. The operative Complaint contains a sole count of breach of contract and alleges that Universal failed to remit the sums due and owing to Plaintiff for property damages arising from the water loss.
3. Universal filed an Answer and sixteen affirmative defenses, including various coverage exclusions and limitations. The primary crux of their case is that, minus a few specific line items relating to the replacement of some specific drywall and paint, that almost the entire protocols and need to perform work at the property was caused by “‘fungi’, wet or dry rot, or bacteria” and therefore subject to a \$10,000 limit which it paid.
4. Plaintiffs claim that a leaking condensation line in their HVAC unit caused damage and resulting mold to their Property.¹
5. Plaintiffs called Universal and asserted a claim related to a mold odor in their home in or around January 5, 2021 and estimated that the smell would have been caused in or around November 19, 2020.
6. Universal set up a claim and sent Field Adjuster (“FA”) Jim Smith to inspect the property in or around January 14, 2021. [Dep. Adele Molinaro, 29:1-4]. Smith testified that the only real “property damage” observed other than the mold conditions was a water stain on the ceiling and did not see any existing water present or dripping although it appeared “fresh.” [Dep. Smith at 33-34].
7. Smith testified specifically that, besides the ceiling, he did not observe any other “damage” to the Property.
8. Smith further testified that during his inspection, he walked the Property with Plaintiffs’ contractor who “explained to (him) what happened... and did not identify any other damage for (Smith) to document.” *Id.* at 34:10-19.
9. Universal accepted coverage for the loss and remitted payment to Plaintiffs for \$10,000 under the mold/fungal growth portion of the Policy and found that the property damage for the “water loss” was limited to \$824.29. This was under the “property damage” deductible for the dwelling.
10. The crux of this lawsuit is that Plaintiffs allege that there were significantly more benefits due and owing under the Dwelling Coverage for property damage than just the mold. Defendant stands by its estimate as to the “property damage” observed and that this is primarily just a mold claim and it did not breach the contract by dutifully tendering the mold limits.

¹ Plaintiffs argue that Universal acquiesced to this cause of loss because its adjuster testified he had “no reason to believe that the loss was caused by anything other than what was reported by Plaintiffs’ contractor.” [Dep. Jim Smith at 40:2-5.]

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11. Throughout the claim, Plaintiffs retained several contractors and paid \$55,315 out of pocket as described in their arbitration brief as:
 - a. \$25,315 to Propack for pack out, storage, and pack back;
 - b. \$31,000 to Cornerstone Renovation Group (“Cornerstone”) for water mitigation/mold remediation and build back;
12. The Cornerstone estimate is dated January 5, 2021, the date that the Molinaros called in the claim. In a recorded phone call of that call, the Molinaro’s informed Universal that Cornerstone instructed them to make the claim itself.
13. Plaintiffs allege that these sums are all recoverable because, despite the mold, these damages arose from a water loss that must have predated the mold because mold does not happen without water.
14. Plaintiffs also assert that FA Smith failed to do an appropriate job ascertaining the damages to the Property, did not look at various areas of damage, the contents of damage caused by the water loss, and generally did not inspect all the damaged rooms.
15. Plaintiffs also highlight that the FA acquiesced to the theory that the water loss was caused by the HVAC condensation leak.
16. FA Smith testified he was not permitted to go up into the ceiling to ascertain the origin of the water staining because, as the Property is a condominium unit, he was not permitted to go outside the Property and any cause above the ceiling would have been the Association’s responsibility.
17. Indeed, the Condominium Association (“Association”) did remit payment to the Molinaros related to the HVAC water leak, though the Molinaros could not recall how much and no evidence was presented as to that payment.
18. At deposition, Adele Molinaro testified that, at or near the time of the loss, she was aware of “wet” areas in the home in the ceiling in the kitchen and the second bedroom closet.
19. However, Ms. Molinaro’s deposition also contained the following meaningful exchange about the work actually performed in the home vis a vis damage versus mold remediation:

Q · · Okay · · That was all related to the cleaning of

13 · · those contents?

14 · · · · A · · Yes.

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15. Q · · Mitigation, that was the work that
Cornerstone

16 · · performed?

17 · · · · A · · Yes.

18 · · · · Q · · Repairs, what repairs did you
have at done at

19 · · the property?

20 · · · · A · · The walls, they had to paint,
the air

21 · · conditioning unit. · The vents, I cannot
remember what

22 · · else that was the major stuff.

23 · · · · Q · · It mentions content
cleaning. · Is that also

24 · · what ProPack did?

25 · · · · A · · Content cleaning, it could be
that or it could

1 · · be Cornerstone with the, you know,
trying to clean the

2 · · mold spores, the humidity, the water. ·
I'm not sure what

3 · · they're referring to, which one.

4 · · · · Q · · So, is it fair to say there
was two cleanings

5 · · ProPack kind of did the content cleaning
and Cornerstone

6 · · did the unit cleaning?

7 · · · · A · · Yes.

8 · · · · Q · · Is that the way to put that?

9 · · · · A · · Yes, until ProPack brought
everything back in.

10 · · · · Q · · Okay. · Brings up the
storage. · Is that what

11 · · ProPack did? · They stored all the
contents or is there

12 · · anything else?

13 · · · · A · · Yes.

14 · · · · Q · · Okay. · And then pack in,
again that's

15 · · something ProPack handled?

16 · · · · A · · Yes.

20. Plaintiffs argue that the Cornerstone work and ProPack relate to a repairs arising from a water loss.

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21. Plaintiffs also argue that the concession that Universal “opened up coverage” for a water loss that seemingly any and all damages that flow from any such water loss is compensable.
22. Universal counters this by asserting that any and all of the Cornerstone and ProPack work arose out of and related to mold and fungi remediation, cleaning, or otherwise fell under that section of coverage.
23. Specifically, Universal argues that there simply was no other evidence of actual “property damage” from water or evidence of damage at all other than the mere staining for which they agreed to cover (and that fell below the deductible).
24. Universal points to, and the undersigned is significantly persuaded by, the fact that the line items in the Cornerstone and ProPack work performed primarily and not solely pertained to mold damage/remediation/cleaning.
25. For example, Cornerstone broke down its greater approximately \$33,000 full estimate for remediation and repair. It purportedly segregated just the “repair” work for “water damage” for \$17,779. Nonetheless, the estimate itself contains the word “Clean” in over 70 of the 123 line items on the Xactimate style estimate. The other items primarily relate to removing and resetting items, such as window treatments, to allow cleaning and painting.
26. I specifically asked at the arbitration what was the best evidence of water damage to the property, i.e., photos, compromised building materials, recommended scopes of repair of actual repairs to the property to fix water damage, etc. Plaintiffs responded that the best evidence of water damage is elevated moisture readings.
27. Universal counters this effectively by asserting that if there was any actual damage resulting from those moisture readings, Cornerstone would have included a scope of repair that included removing and replacing drywall down to the studs, cabinetry, etc. They also highlight that the Cornerstone estimate’s only reference to removal and replacement of drywall is the same areas where Universal’s original estimate did as well, albeit at a lower reimbursement rate.
28. The fact remains this is a breach of contract action for Universal allegedly failing to provide funds for water damage... not mold, for which Universal already tendered its limits.
29. The inescapable conclusion is that the Policy limits for mold were insufficient to fully rectify the damages here.
30. The Universal estimate related to “property damage” addressed a scope of repair for the kitchen that included removal and replacement of drywall, prep and paint (albeit it included eighty-four square feet for painting and allotted \$83.59) for a total RCV cost

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of \$820.97.

31. In contrast, Cornerstone allotted \$4,085.75 for the kitchen. However, again \$1,075.61 was allotted for cleaning – akin to mold remediation or a staggering sum.
32. Within this remaining sum of \$3010.14, \$1,202.52, was allotted for removal and replacing the drywall on the kitchen walls and ceiling. This is based on \$2.89/sq feet and 342.27 sq/ft (40 extra feet - presumably for wastage). Cornerstone also allotted an additional \$273.10 for texturing the drywall.
33. Universal allotted \$287.77 for R&R the drywall in the kitchen at \$1.28 for 224.82 sq/ft. Cornerstone and did not have a separate line item for texturing.
34. Therefore, the total difference in drywall allotment in the kitchen is \$1,187.85. Universal denied a portion of this difference on the basis this segment of the drywall was owned and covered by the Condo Association.
35. The other disagreements as to the kitchen are comprised of the following:

<u>Cornerstone Estimate</u>	<u>Universal Estimate</u>	<u>Difference</u>
R&R Lighting Fixture - \$423.74	R&R Lighting Fixture - \$330.95	\$92.79
Prep and Masking Walls - \$409.73	Prep & Masking Walls - \$49.49	\$360.24
Floor Protection - \$50.45	N/A	\$50.45
R&R Batt Insulation \$352.63	N/A	\$352.63
Paint walls and ceiling - \$271.01	Paint walls and ceiling - \$83.59	\$187.42
Heat/A/C Register remove/reset - \$14.78	Heat/A/C Register remove/reset - \$18.09	-\$3.31
N/A	Content Manipulation	-\$41.82
		\$998.40

36. In response to these items and the other drywall items not covered by the Condo Association, Universal agreed to remit \$529.03 for at least some of these items.
37. As a last argument, Plaintiffs argue that the Policy’s mold limiting exclusion is ambiguous in that it can be interpreted as *not* limiting recovery . It is stated, in whole:

13. “Fungi”, Wet Or Dry Rot, Or Bacteria

a. Subject to c. Each Covered Loss and d. Policy Aggregate below, we will pay for:

(1) The total of all loss payable under Section I – Property Coverages caused by “fungi”, wet or dry rot, or bacteria;

(2) The cost to remove “fungi”, wet or dry rot, or

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bacteria from property covered under Section I – Property Coverages;

(3) The cost to tear out and replace any part of the building or other covered property as needed to gain access to the “fungi”, wet or dry rot, or bacteria; and

(4) The cost of testing of air or property to confirm the absence, presence, or level of “fungi”, wet or dry rot, or bacteria whether performed prior to, during or after removal, repair, restoration or replacement. The cost of such testing will be provided only to the extent that there is a reason to believe that there is the presence of “fungi”, wet or dry rot, or bacteria.

b. The coverage described in 13.a. only applies when such loss or costs are a result of a Peril Insured Against that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at and after the time the Peril Insured Against occurred.

c. Each Covered Loss: \$10,000 is the most we will pay for the total of all loss or costs payable under this Additional Coverage resulting from any one covered loss.

d. Policy Aggregate \$20,000 is the most we will pay for the total of all loss or costs payable under this Additional Coverage for all covered losses, regardless of the:

- (1) Number of locations insured; or
- (2) Number of claims made.

e. If there is covered loss or damage to covered property not caused, in whole or in part, by "fungi", wet or dry rot, or bacteria, loss payment will not be limited by the terms of this Additional Coverage, except to the extent that "fungi", wet or dry rot, or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Additional Coverage. This coverage does not increase the limit of liability applying to the damaged covered property. (emphasis added).

38. Universal rejects the ambiguity argument and argues the plain meaning of the policy language and highlights the lack of case law invalidating it.

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CONCLUSIONS

- 1) Despite Plaintiffs' counsel's excellent presentation and arguments, I find that Plaintiff has not met the burden to show that Universal breached the contract in failing to provide additional benefits under the Policy for any covered loss for "property damage" for any accidental sudden discharge of water.
- 2) The alleged "water loss" under the Dwelling coverage was a slow drip leak from the condensation line that resulted from the HVAC from constantly running for which the policy has applicable exclusion(s) and not a sudden and accidental discharge of water. Despite being an "all risk" policy, a covered water "loss" does not beget coverage for all related work to restore the property to its pre-loss condition.
- 3) The Policy delineates a separate coverage limit for mold, remediation, and tear out and access efforts related thereto.
- 4) It should not be ignored that the claim was reported due to mold and not from any apparent water loss, wetness, or even dampness.
- 5) When asked for the best evidence of actual water damage, Plaintiffs argued, albeit creatively, that any change to the nature of building material is damage. So, to Plaintiffs, anything in the estimate to manipulate *anything* is evidence of damage regardless if it is indicative of mold remediation. Plaintiffs also conceded that Cornerstone did not have any other photos than the ones provided, which did not reveal anything especially persuasive about actual water damage. Finally, Plaintiffs ultimately concede that the best evidence of water intrusion in the walls or anything were elevated moisture readings.
- 6) Ultimately, at all times relevant, there was no apparent water damage at all, i.e., to the Molinaros, to Universal, to the Contractors, to anyone.
- 7) The specific protocols and build-back estimate are replete with references to "cleaning" (71 out of 126 line items) and detaching/reattaching and items consistent with mold remediation.
- 8) I feel for the Molinaros as I would imagine they detrimentally relied on the anticipated recovery of their outlay to these contractors despite the \$10,000 mold limits on their policy. Typically, mold remediation contractors are aware of these limits and accept Assignments of Benefits or budget their protocols accordingly.
- 9) Finally, I do not find any aspect of the "Additional Coverage" as to mold coverage vis a vis the "property damage" to the Dwelling ambiguous. Subsection

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(a) defines what is covered under the mold coverage; it merely references Coverage A so the policyholder knows that it covers the same premises, only a different peril. Subsection (b) is a limitation to this coverage that Plaintiffs surely do not want to apply anyway (and which Universal was generous in not relying on²). Subsection (c) simply sets the per loss limit. Subsection (d) sets the aggregate annual limit.

Finally, subsection (e) states that that an actual covered loss will NOT be limited by the mold coverage section as long as the damage was not caused by mold, wet or dry rot or bacteria. However, it will not serve to limit an “increase” in the loss. This means situations, like here, where there is property damage AND a mold component. This is consistent with Plaintiff’s position that, because mold is created by water. Finally, the last sentence clarifies this as saying that this potential to increase a recovery is not an increase in the limit of the main property damage coverage... again stating that this mold coverage is an “Additional Coverage” and stands alone.

I find no ambiguity, especially without any citation to a District Court of Appeal case finding any.

RULING AND AWARD:

Plaintiff has not established the burden to prove that Defendant breached the Policy. Defendant did not fail to provide additional benefits for property damage under Coverage A. There is no evidence that sudden and accidental discharge of water caused additional property damage to the property other than the minimal repairs that Universal already agreed to cover. The remaining damages were “caused by fungi, wet or dry rot, or bacteria” and the other protocols and recommended repairs all flowed therefrom.

Unfortunately, the condition festered due to the passage of time without redress and the policy’s mold limit, which was dutifully paid out, was insufficient to pay for the damages.

Ruling for Defendant, and Defendant shall go henceforth without day.

ARBITRATOR FINDS BY THE GREATER WEIGHT OF THE EVIDENCE FOR

² Subsection (b) is a duty of property preservation on the policyholder. In this case, the insured property was the policyholder’s non-homestead residence and the underlying loss (a condensation leak and resulting mold) occurred due to the HVAC unit being left on “high” after the policyholders had not visited the residence for extended periods and the conditioned festered).

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THE DEFENDANT.

If demand for a Trial is not filed pursuant to Rule 1.820, Florida Rules of Civil Procedure, within twenty (20) days of service of this award, a civil judgment will be entered embodying the terms of the award.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record on the below Service List, the following counsel of record on this 12th day of February, 2024 and will be filed under seal and/or consistent with the Court's referral order through the E-Portal system or otherwise.

Respectfully submitted,

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