

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 24-2022

MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION,
Plaintiff

V.

SAVE THAT STUFF, INC.
Defendant

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2024 JUL 30 P 3:25
JOHN E. POWERS III
ACTING CLERK MAGISTRATE

COMPLAINT AND JURY DEMAND

PARTIES

1. Plaintiff, Massachusetts Department of Transportation ("MassDOT"), is an executive office of the Commonwealth of Massachusetts located in Boston, County of Suffolk, Commonwealth of Massachusetts.
2. Defendant, Save That Stuff, Inc. ("Save That Stuff"), is a Massachusetts corporation with a usual place of business in Charlestown, Massachusetts.

FACTS COMMON TO ALL COUNTS

3. On November 14, 2020, a rollback truck operated by Robert Caulfield ("Caulfield") and owned, controlled by, and registered to Save That Stuff was traveling southbound on Route 128 in Danvers, Massachusetts.
4. As the defendant's truck passed under the Endicott Street overpass, it exceeded the bridge's height limit, and struck the underside of the bridge.
5. Prior to the collision, Caulfield failed to lower the hydraulic rollback of the truck, leaving it extended in the air.
6. The impact of the collision caused substantial damage to the support beams of the overpass bridge. The force of the impact also caused the rear of the truck to be dislodged and fall onto the surface of the roadway.
7. As a result of the collision, MassDOT incurred over \$1,000,000 in damages for temporary and permanent repairs to the bridge.
8. The aforementioned overpass bridge is owned by MassDOT.

9. On November 25, 2020, to recover its repair costs, MassDOT's Accident Recovery Program submitted a property damage claim to Save That Stuff's insurance carrier, MAPFRE Insurance ("MAPFRE").
10. After MassDOT submitted its property damage claim to MAPFRE, the parties engaged in the insurance claims process, exchanging documents, discussing coverage limits, corresponding, and providing updates. Exhibit 1, Emails Between MassDOT and MAPFRE, December 3, 2020 - April 8, 2021. During this time, MassDOT worked with multiple MAPFRE adjusters, including Amy Julien, Kevin Shea, and Michael Hall.
11. In July 2021, the parties engaged in ongoing negotiations and settled the temporary repairs portion of MassDOT's claim. Exhibit 2, Emails Between MassDOT and MAPFRE, July 15 - July 21, 2021. Specifically, although the temporary repairs totaled \$22,485, MAPFRE agreed to pay \$17,000. On July 22, 2021, MAPFRE made payment in this amount to Total Highway Services on behalf of MassDOT's temporary repairs contractor, Kodiak Construction. Exhibit 3, \$17,000 Check From MAPFRE For Claimant MassDOT, July 22, 2021.
12. As of July 22, 2021, MAPFRE had accepted liability on the subject claim and had paid for the temporary repairs. The only remaining issue at this time concerned the amount that MAPFRE would be paying for the bridge's permanent repairs.
13. As plans for the permanent repairs were still being developed by MassDOT and construction had not commenced, it was understood by the parties that finalizing the payment amount for the permanent repairs would be a lengthy process. Given the complexity and nature of bridge reconstruction projects, damages can be undetermined for several years in property damage claims involving them. First, emergency repairs must be performed on damaged bridges to stabilize and ensure that they are safe for the public. Design plans for the permanent repairs must then be developed, reviewed, and approved. Then, the construction work must be performed, often under difficult conditions. After the work is completed, the total costs for the work can be calculated.
14. In November 2021, after plans for permanent repairs were finalized in this case, Kodiak Construction was instructed to repair the Endicott Street Bridge under an Extra Work Order.
15. On August 28, 2023, after the work was completed and final costs were calculated, MassDOT's Accident Recovery Program provided to MAPFRE an itemization of expenses totaling \$1,083,126.55. Exhibit 4, Email From MassDOT to MAPFRE, August 28, 2023.
16. On the following day, August 29, 2023, MAPFRE reassured MassDOT that it was actively working on the claim and would be in contact when new information became available. Specifically, Claims Adjuster Kevin Shea ("Adjuster Shea") wrote the

following to MassDOT: “our next step is to review the repairs to make sure the charges are in line for the work.” Exhibit 5, Email From MAPFRE to MassDOT, August 29, 2023. Therefore, the only item that remained at issue was the amount that MAPFRE would be paying MassDOT for its permanent repair costs, not whether MAPFRE was disputing the claim.

17. On September 5, 2023, Adjuster Shea informed MassDOT that its claim was being transferred from him to Michael Hall, SCLA, Senior Claim Consultant at MAPFRE’s Complex Claims Division. Exhibit 6, Email From MAPFRE to MassDOT, September 5, 2023.
18. On October 18, 2023, in response to MassDOT’s request for the status of its claim review, Senior Claim Consultant Hall replied as follows: The documentation is currently being reviewed by our experts. Authority to review was just provided to them on 9/26. Exhibit 7, Email From MAPFRE to MassDOT, October 18, 2023.
19. That was the last time that MAPFRE contacted MassDOT prior to the three-year anniversary of the subject accident on November 24, 2023.
20. November 22, 2023 was two days before the three-year anniversary of the subject accident.
21. On December 6, 2023, two weeks after the three-year anniversary, in response to an inquiry from MassDOT, Senior Claim Consultant Hall wrote the following: The documents are still in review. I should be receiving something shortly. As of 11/22 it was anticipated that I should have something within 2 weeks. Exhibit 8, Email From MAPFRE to MassDOT, December 6, 2023.
22. Senior Claim Consultant Hall made this representation even though this two-week period would be after the expiration of the statute of limitations.
23. Two days prior to and in the weeks following the three-year anniversary of the accident, MAPFRE was adjusting this claim under the assumption that it was not barred by the statute of limitations.
24. On Friday, January 19, 2024, two months after the three-year anniversary of the subject accident, MAPFRE represented that it was not only still reviewing the claim, but also requested additional engineering documentation. Specifically, Senior Claim Consultant Hall wrote the following: Our expert is still reviewing the documents that were submitted for the bridge repair. They are asking for the DOT repair/replacement engineering plans. Is this something you have? Thanks. Exhibit 9, Email From MAPFRE to MassDOT, January 19, 2024.
25. Two business days later, on January 23, 2024, MassDOT forwarded the plans to Senior

- Claim Consultant Hall. Exhibit 10, Email From MassDOT to MAPFRE, January 23, 2024. On February 12, 2024, where MassDOT had not heard back from Mr. Hall since forwarding the design plans to him, it contacted him again. Exhibit 11, Email From MassDOT to MAPFRE, February 12, 2024.
26. On March 11, 2024, after MassDOT again followed up with MAPFRE regarding the claim, Senior Claim Consultant Hall replied as follows: This remains status quo. I requested a status as well from our people that are reviewing the documents, on Friday, and I haven't heard back yet. Exhibit 12, Emails Between MAPFRE and MassDOT, March 11, 2024.
 27. In light of this correspondence from Mr. Hall, nearly four months after the three-year anniversary of the accident, MAPFRE was continuing to process the claim under the assumption that it was an open matter, not a claim that was barred by a statute of limitations.
 28. On March 11, 2024, Mr. Hall also wrote, "Hasn't the statute already tolled as of 11/24/23?" Exhibit 13, Email From MAPFRE to MassDOT, March 11, 2024. In response, MassDOT replied, "It did. I have been waiting for you." Exhibit 14, Email From MassDOT to MAPFRE, March 11, 2024. Therefore, both parties also were operating at the time with the understanding that the statute of limitations had tolled as of November 24, 2023 while MAPFRE was reviewing MassDOT's damages documentation.
 29. On April 18, 2024, in response to another inquiry, MAPFRE'S Supervisor of Commercial/Complex Claims Division, Marcia Theriault, informed MassDOT that the "matter is currently being reviewed" and that MAPFRE expected to have an update to MassDOT shortly. Exhibit 15, Emails Between MAPFRE and MassDOT, April 18, 2024.
 30. Three business days later, on April 23, 2024, for the first time, MAPFRE, via correspondence from its counsel Kenneth Rosenberg, informed MassDOT that it is denying MassDOT's claim based on a statute of limitations defense. Exhibit 16, Correspondence From MAPFRE's Counsel, April 23, 2024.
 31. On June 4, 2024, MassDOT sent a detailed letter to MAPFRE, demanding that the carrier reconsider its position and setting forth grounds for why MAPFRE is estopped from asserting a statute of limitations defense. Exhibit 17, Correspondence From MassDOT's Counsel, June 4, 2024.
 32. On June 21, 2024, MAPFRE denied MassDOT's request. Exhibit 18, Correspondence From MAPFRE's Counsel, June 21, 2024
 33. At all relevant times, MAPFRE was an agent and/or otherwise acting on behalf of Save

That Stuff with respect to MassDOT's property damage claim against Save That Stuff.

34. MAPFRE, on behalf of Save That Stuff, repeatedly made statements and took actions which it knew or should have known would lull and/or induce MassDOT to refrain from filing suit prior to the three-year anniversary of the subject accident.
35. The repeated statements and actions by MAPFRE, on behalf of Save That Stuff, lulled and/or induced MassDOT to refrain from filing suit prior to the three-year anniversary of the subject accident.
36. MassDOT reasonably relied on the communications and actions by MAPFRE, on behalf of Save That Stuff.
37. MassDOT and MAPFRE, on behalf of Save That Stuff, agreed that the statute of limitations was tolled with respect to MassDOT's claim arising out of the subject accident.
38. MassDOT reasonably relied upon the communications and actions by MAPFRE, on behalf of Save That Stuff.
39. As a result of the statements and conduct by MAPFRE, on behalf of Save That Stuff, upon which MassDOT reasonably relied, Save That Stuff is estopped from asserting a statute of limitations defense in this matter.

COUNT I

Massachusetts Department of Transportation v. Save That Stuff, Inc.
Negligence

40. MassDOT repeats, re-alleges and incorporates all preceding paragraphs as if set forth herein.
41. At all relevant times, Caulfield was operating the vehicle for the benefit of defendant, Save That Stuff.
42. At all relevant times, Caulfield was an agent, servant, employee, within the scope of his authority and/or employment, and/or otherwise under the direction and control of Save That Stuff.
43. Save That Stuff owed MassDOT a duty of care while its vehicle was operating on Massachusetts roadways and consistent with the proper transaction of Save That Stuff's business.
44. Save That Stuff vicariously and/or independently breached its duty of care owed to MassDOT on the date of the alleged incident.

45. As a direct and proximate result, MassDOT was caused to sustain substantial property damage.

WHEREFORE, plaintiff, Massachusetts Department of Transportation, demands judgment against defendant, Save That Stuff, Inc., granting the plaintiff damages, costs, interest, and any other relief which this Court deems just and proper.

JURY DEMAND

Plaintiff, Massachusetts Department of Transportation, demands a trial by jury as to all claims, issues and defenses.

Respectfully Submitted,

Plaintiff
MASSACHUSETTS DEPARTMENT OF
TRANSPORTATION

By its Attorneys

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Patrick J. Johnston

Patrick J. Johnston
Special Assistant Attorney General
Johnston Law Office
141 Tremont Street, 3rd Floor
Boston, MA 02111
(617) 523-4808
BBO No. 634415
patrick@johnstonlawboston.com

Dated: July 30, 2024

EXHIBIT 1

From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Thursday, April 8, 2021 10:59 AM
To: Shea, Kevin <kshea@mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>; Julien, Amy <AJulien@mapfreusacom>
Subject: Re: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Kevin:

Effective today, April 8, 2021 I will be representing MassDOT on this claim. Going forward all communication should be directed to my attention.

I'm just getting up and running on the file and I am not in my office at the present time but will review the file when I get in today. I have been informed the District is working on the costs for the permanent repairs. I know you said in a previous e mail you were looking for some documentation. I will provide it if I have it.

I have also been informed THS representing Kodiak on the temporary repairs will be the contractor making the permanent repairs. THS informed me they submitted an Invoice to you back in February 2021 in the amount of \$22,481.00 for the temporary repairs. At your request they supplemented their claim with the documents you requested. Seeing that I am now assuming this claim I believe it would be easier for Mapfre to settle the temporary repairs portion with THS. Please advise if Mapfre is agreement

I have also been informed by the District there are costs for MassDot personnel and equipment on site on the day of the incident. I am waiting for those costs and will provide them upon receipt.

Do you have a copy of the inspection report?

Kim Kennedy, Supervisor
Accident Recovery

From: Kennedy, Kim A. (DOT)
Sent: Tuesday, March 30, 2021 10:56 AM
To: Shea, Kevin <kshea@mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn <lbrothers@mapfreusa.com>
Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Thank you. I'll get back to you.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Shea, Kevin <kshea@mapfreusa.com>

Sent: Tuesday, March 30, 2021 10:54 AM

To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>; Brothers, Lynn <lbrothers@mapfreusa.com>

Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn <lbrothers@mapfreusa.com>

Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

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Kim,

Our insured has an excess policy through Star Surplus, policy# 1000337259201, PD Limits \$10,000,000 (10 million) umbrella.

Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | 800 221 1605 Ext. 15158
Email | kshea@mapfreusa.com | Fax | 508 671-3158
www.mapfreinsurance.com

 **MAPFRE | INSURANCE**

PAPERLESS

From: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>

Sent: Monday, March 29, 2021 4:31 PM

To: Shea, Kevin <kshea@mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>

Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory

(DOT) <gregory.ogar@state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn
<lbrothers@mapfreusa.com>

Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Kevin:

So the answer to the simple question is "no" there is no excess policy. Is that correct?

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Shea, Kevin <kshea@mapfreusa.com>

Sent: Monday, March 29, 2021 4:29 PM

To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>; Brothers, Lynn
<lbrothers@mapfreusa.com>

Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory
(DOT) <Gregory.Ogar@dot.state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn
<lbrothers@mapfreusa.com>

Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

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Kim,

On the policy there is a Combined Single Limit of \$1,000,000.00.

Hope this is helpful,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | 800 221 1605 Ext. 15158
Email | kshea@mapfreusa.com | Fax | 508 671-3158

www.mapfreinsurance.com

 **MAPFRE | INSURANCE**

PAPERLESS

MASSDOT, 800-342-9333, www.mass.gov

From: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>
Sent: Monday, March 29, 2021 4:26 PM
To: Shea, Kevin <kshea@mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <gregory.ogar@state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn <lbrothers@mapfreusa.com>
Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Kevin:

Nice to meet you Lynn.

You still haven't answered my simple question.

Lynn/Lex: Can you provide me with an answer please.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Shea, Kevin <kshea@mapfreusa.com>
Sent: Monday, March 29, 2021 4:24 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn <lbrothers@mapfreusa.com>
Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

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Kim,

Lynn Brothers is my supervisor, & thought it would be appropriate to keep her in the loop.

As far as supports, when they become available, ... what is helpful is receiving the scope of work & on-site photos, have Bob pass them along when available.

Thanks again,
Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | 800 221 1605 Ext. 15158
Email | kshea@mapfreusa.com | Fax | 508 671-3158
www.mapfreinsurance.com



From: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>
Sent: Monday, March 29, 2021 4:10 PM
To: Shea, Kevin <kshea@mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <gregory.ogar@state.ma.us>; Julien, Amy <AJulien@mapfreusacom>; Brothers, Lynn <lbrothers@mapfreusa.com>
Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Kevin:

I haven't gotten that far yet. As indicated in my e mail right now all I need to know if there is an excess policy. If there is I would like to know what the limits are.

I noticed your e mail did not include Amy Julien in your response. It did included Lynn Brothers. I am not sure who that is? Did she take over for Amy?

Kind regards,

Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Shea, Kevin <kshea@mapfreusa.com>
Sent: Monday, March 29, 2021 3:57 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>; Brothers, Lynn <lbrothers@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>
Subject: RE: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

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Kim,

My concerns are with the total damages & incomplete paperwork submitted on behalf of THS.

My review on March 8, 2021, I question Kodiak the sub-contractors supports & itemization of the work involved. Bob Lima forwarded the Kodiak itemization today.

My experience with bridge hits is they are expensive & very costly, & while there is & should be adequate coverage for the repair, however without the full scope of work & billing incomplete, it is an unknown at this juncture.

Any assistance is appreciated...
Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | **800 221 1605 Ext. 15158**
Email | kshea@mapfreusa.com | Fax | **508 671-3158**
www.mapfreinsurance.com



PAPERLESS

From: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>
Sent: Monday, March 29, 2021 3:40 PM
To: Julien, Amy <AJulien@mapfreusa.com>; Shea, Kevin <kshea@mapfreusa.com>
Cc: Llopiz, Alberto <allopiz@mapfreusa.com>; Bob Lima <bob@totalhighway.com>; Ogar, Gregory (DOT) <gregory.ogar@state.ma.us>
Subject: Your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Good Afternoon:

I am not sure who is handling this claim. On the day of the Accident Recovery contacted Mapfre and was advised Amy was assigned to the claim. I know Bob from THS has been dealing with Kevin. Just want to make sure everyone is on the same page.

Is there an excess policy? If so, please advise of the limits.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Julien, Amy <AJulien@mapfreusa.com>
Sent: Thursday, December 10, 2020 5:34 AM
To: Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>
Subject: RE: your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

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I am not able to provide a copy of my insured's DEC, but as I have previously stated, the property damage limits are a Combined Single Limit of \$1,000,000.

Warm Regards,

Amy Julien, AIT
Senior Claim Representative
Commercial Auto Physical Damage
MAPFRE Insurance
11 Gore Rd, Webster MA 01570
Phone. 800.221.1605 Ext. 15689 | Text Messaging is now available – please inquire!
Fax. 508.671.1110
Email. claimsmail@mapfreusa.com



PAPERLESS

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From: Ogar, Gregory (DOT) <gregory.ogar@state.ma.us>
Sent: Thursday, December 03, 2020 10:02 AM
To: Julien, Amy <AJulien@mapfreusa.com>
Cc: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>; Fox, Ruth E. (DOT) <ruth.fox@state.ma.us>
Subject: your claim # TVCH50 , Danvers Bridge Hit Endicott Street DOI 11/24/2020 , 20-BRI-114

Good Morning Amy,

Per our conversation last Wednesday, November 25, 2020, please provide a copy of your insured's "DEC" page

Thank You,

Greg Ogar

MassDOT – Operations Administration
Highway Department- Business Management Specialist
Phone: 857-368-6146
Email: Gregory.Ogar@dot.state.ma.us
185 Kneeland St.
Boston, MA 02111



EXHIBIT 2

From: Kennedy, Kim A. (DOT)
Sent: Wednesday, July 21, 2021 11:21 AM
To: Shea, Kevin <kshea@mapfreusa.com>; Non-Task Mass/cgi <Non-TaskMass@notes.mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>; Llopiz, Alberto <allopiz@mapfreusa.com>
Cc: 'Bob Lima' <bob@totalhighway.com>
Subject: Your Claim TVCH50 - Save That Stuff Inc. - 11/24/20 ****Danvers Bridge**** - Endicott St

Kevin:

In response to your e mail of Tuesday July 20, 2021, I am assuming your settlement offer of \$12,857.81 is for the temporary repairs because you offered no explanation as to what the settlement offer was for. You also didn't explain how your arrived at your settlement offer. It is my understanding THS submitted documentation for temporary repair costs to you in the amount of \$22,485.25. Your counter offer doesn't seem reasonable and again offers no explanation as to how you arrived at your settlement offer. I suggest you reach out to Bob Lima at THS regarding settlement of the temporary repairs.

On another "footnote", just about everybody in the state is aware of the bridge strike in Medford on July 20, 2021. Mapfre isn't the insurer.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery

<image002.png>

From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Tuesday, July 20, 2021 8:44 AM
To: Shea, Kevin <kshea@mapfreusa.com>; Non-Task Mass/cgi <Non-TaskMass@notes.mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>; Llopiz, Alberto <allopiz@mapfreusa.com>
Subject: Re: TVCH50 - Save That Stuff Inc. - 11/24/20 ****Danvers Bridge****

Kevin:

I'll get back to you.

With respect to the bridge hit in Medford yesterday I have no idea if it is insured by Mapfre at this point in time. You're getting ahead of yourself.

K

From: Shea, Kevin <kshea@mapfreusa.com>

Sent: Tuesday, July 20, 2021 8:38 AM

To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>; Non-Task Mass/cgi <Non-TaskMass@notes.mapfreusa.com>; Brothers, Lynn <lbrothers@mapfreusa.com>

Subject: FW: TVCH50 - Save That Stuff Inc. - 11/24/20 ****Danvers Bridge****

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Kim,

Good morning...

I am following up on my email from July 15, 2021....

Mapfre Insurance will extend an offer of settlement for \$12,857.81 on the safety set up, please advise on MassDOT position.

On a quick footnote, I am aware of another bridge hit from this morning, July 20, 2021 in Medford, Rte 93 South, Roosevelt Circle. Appears to have significant damage compared to the Danvers loss, & the news report(s) indicate two days for the repair!

My question, at these early stages of that loss, is Mapfre Insurance the insurer for the truck? If so, are we able to secure a Police Report, so we can set up the loss & appropriate claim for MassDOT.

Link to the news report here...

<https://boston.cbslocal.com/2021/07/19/93-south-truck-bridge-crash-traffic-lanes-closed-medford-roosevelt-circle/>

I appreciate the assistance,
Stay well,

Kevin Shea

Physical Damage Claim Adjuster

Claims Department

MAPFRE Insurance

11 Gore Rd Webster MA 01570

Phone | **800 221 1605** Ext. **15158**

Email | kshea@mapfreusa.com | Fax | **508 671-3158**

www.mapfreinsurance.com

<image003.png>

From: Shea, Kevin

Sent: Thursday, July 15, 2021 1:52 PM

To: Kennedy, Kim A (DOT) <kim.a.kennedy@state.ma.us>; Non-Task Mass/cgi <Non-TaskMass@notes.mapfreusa.com>

Subject: TVCH50 - Save That Stuff Inc. - 11/24/20 ****Danvers Bridge****

Kim,

Good afternoon...

Mapfre Insurance will extend an offer of settlement for \$12,857.81. (the offer reflects the billing for the safety set up)

Please review & contact me to discuss at your convenience.

Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | **800 221 1605 Ext. 15158**
Email | kshea@mapfreusa.com | Fax | **508 671-3158**
www.mapfreinsurance.com

<image003.png>

<CCE07212021_0005.pdf>

EXHIBIT 3

EXPLANATION OF BENEFIT:

5-13
110

0028631108



The Commerce Insurance Company SM
11 Gore Road, Webster, MA 01570 (508) 949-1500

5-13
110

0028631108

Insured: SAVE THAT STUFF INC
Claimant: COMMONWEALTH OF MASS
MASSDOT - HIGHWAY DIVISION
Loss No: TVCH50
Claim No: RTVXK4
Loss Date: 11/24/20
Paid To:

If you have any questions concerning this payment or claim contact: 20 KEVIN SHEA

At: (508) 949-1500 Ext. 15158
or toll free 1-800-221-1605

Date: 07/22/21
Amount Paid: ***17,000.00

NON-NEGOTIABLE

TOTAL HIGHWAY SERVICES

Explanation Of Payment: PROPERTY DAMAGE

Co. Use Area 12375

Sincerely,
Claims Service Center

C60 Detach And Retain For Your Records

THE FACE OF THIS CHECK IS PRINTED RED. THE BACK CONTAINS A SIMULATED WATERMARK.

C60
Date Issued: 07/22/21
Void If Not Presented Within
180 Days Of Date Of Issue



The Commerce Insurance Company SM
11 Gore Road, Webster, MA 01570 (508) 949-1500

5-13
110

0028631108

Insured:	Policy #	Loss #	Claim #	Date of Loss	Pay Type	Reinsp	Ded
SAVE THAT STUFF INC	BJDWNW	TVCH50	RTVXK4	11/24/20	FIN	N/A	N/A
Claimant:	In Payment Of:	PROPERTY DAMAGE					
COMMONWEALTH OF MASS MASSDOT - HIGHWAY DIVISION							

Pay To The Order Of:

TOTAL HIGHWAY SERVICES

The Sum Of: Seventeen Thousand and 00/100 Dollars

PAY \$***17,000.00

Bank of America
BOSTON, MA

TOTAL HIGHWAY SERVICES
285 SALEM STREET
WOBURN MA 01801

The Commerce Insurance Company

Authorized Signature

Agent: GETCHELL COMPANIES INS. SRVCS, INC 323

⑈0028631108⑈ ⑆011000138⑆ 000051157674⑈

EXHIBIT 4

From: Kennedy, Kim A. (DOT)
Sent: Monday, August 28, 2023 2:06 PM
To: kshea@mapfreusa.com
Cc: Collins, Erin <ecollins@mapfreusa.com>
Subject: RE: Your Claim: TVCH50 - D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Kevin:

Please advise if your insured has an umbrella/excess policy.

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Kennedy, Kim A. (DOT)
Sent: Monday, August 28, 2023 2:03 PM
To: kshea@mapfreusa.com
Cc: Collins, Erin <ecollins@mapfreusa.com>
Subject: Your Claim: TVCH50 - D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Kevin:

Please accept this e mail as formal notice the Massachusetts Department of Transportation ("MassDOT") is seeking reimbursement in the amount of \$1,083,126.55. Below is a breakdown of the costs in three (3) parts. All supporting documentation is attached.

Part 1:	\$ 107,712.00
Part 2:	\$ 33,477.68
Part 3:	<u>\$ 941,936.87</u>
Total:	\$1,083,126.55

I have been informed by the District the repairs have been completed by Kodiak under an extra work order (EWO) for MassDOT Contract 97931 for which MAPFRE will receive the benefit of contracting pricing.

You informed me in your e mail of November 16, 2022 your policy had a CSL of 1mil. MassDOT may supplement this claim with a Reimbursable and will advise you.

Please review the attached documentation and contact me, in writing, if you have any questions.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



EXHIBIT 5

From: Shea, Kevin <kshea@mapfreusa.com>
Sent: Tuesday, August 29, 2023 4:07 PM
To: Kennedy, Kim A. (DOT); NON-TASK NATIONAL
Subject: RE: TVCH50 - D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

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Kim,

The email, as far as notice, so thank you for your response.

As far as the umbrella policy, I have not reached out, & two factors have played into that equation. Yesterday, August 28, 2023 was the 1st time we have reviewed the itemization for the repairs, our next step is to review the repairs to make sure the charges are in line for the work.

I can reassure you we are actively working the file, & when new information becomes available, I will be back in contact.

Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | 800 221 1605 Ext. 15158
Email | kshea@mapfreusa.com | Fax | 508 671-3158
www.mapfreinsurance.com

 **MAPFRE | INSURANCE**

PAPERLESS

MAPFRE works to preserve the environment

From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Tuesday, August 29, 2023 3:53 PM
To: Shea, Kevin <kshea@mapfreusa.com>; NON-TASK NATIONAL <Non-TaskNational_old@mapfreusa.com>
Subject: RE: TVCH50 - D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Kevin:

Confirm receipt of what?

Has the excess carrier been put on notice?

EXHIBIT 6

From: Shea, Kevin <kshea@mapfreusa.com>
Sent: Tuesday, September 5, 2023 3:47 PM
To: Kennedy, Kim A. (DOT)
Subject: TVCH50 - Save that Stuff Inc. - 11/24/20

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Kim,

This file is now being transferred to adjuster Michael Hall. Please reference Mike's extension of 15918.

Stay well,

Kevin Shea
Physical Damage Claim Adjuster
Claims Department
MAPFRE Insurance
11 Gore Rd Webster MA 01570
Phone | 800 221 1605 Ext. 15158
Email | kshea@mapfreusa.com | Fax | 508 671-3158
www.mapfreinsurance.com

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PAPERLESS

MAPFRE helps to protect your environment

EXHIBIT 7

From: Hall, Michael <mihall@mapfreusa.com>
Sent: Wednesday, October 18, 2023 3:58 PM
To: Kennedy, Kim A. (DOT)
Subject: RE: TVCH50 - Save that Stuff Inc. - 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

The documentation is currently being reviewed by our experts. Authority to review was just provided to them on 9/26.

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

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From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Wednesday, October 18, 2023 3:46 PM
To: Hall, Michael <mihall@mapfreusa.com>
Subject: FW: TVCH50 - Save that Stuff Inc. - 11/24/20

Michael:

I was advised by Kevin Shea this claim has been reassigned to you.

Please advise status.

Kind regards,

EXHIBIT 8

From: Hall, Michael <mihall@mapfreusa.com>
Sent: Wednesday, December 6, 2023 9:40 AM
To: Kennedy, Kim A. (DOT)
Subject: RE: TVCH50 - Save that Stuff Inc. - 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

The documents are still in review. I should be receiving something shortly. As of 11/22 it was anticipated that I should have something within 2 weeks.

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

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From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Monday, December 04, 2023 12:11 PM
To: Hall, Michael <mihall@mapfreusa.com>
Subject: RE: TVCH50 - Save that Stuff Inc. - 11/24/20

Michael:

Please advise status of your review.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance

EXHIBIT 9

From: Hall, Michael <mihall@mapfreusa.com>
Sent: Friday, January 19, 2024 9:43 AM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Subject: TVCH50 Save that Stuff, Inc

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning. Our expert is still reviewing the documents that were submitted for this bridge repair. They are asking for the DOT repair/replacement engineering plans. Is this something you have? Thanks

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

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EXHIBIT 10

From: Kennedy, Kim A. (DOT)
Sent: Tuesday, January 23, 2024 12:39 PM
To: Hall, Michael <mihall@mapfreusa.com>
Cc: Patrick J. Johnston, Esq. <patrick.j.johnston@verizon.net>
Subject: RE: TVCH50 Save that Stuff, Inc

Hello Michael:

Please refer to the attached and advise if you need anything further.

K

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



EXHIBIT 11

From: Kennedy, Kim A. (DOT)

Sent: Monday, February 12, 2024 12:57 PM

To: Hall, Michael <mihall@mapfreusa.com>

Cc: Patrick J. Johnston, Esq. <patrick.j.johnston@verizon.net>

Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

Michael:

Following up on status of your review.

Please advise.

Kimberly A. Kennedy, Supervisor
Accident Recovery



EXHIBIT 12

From: Hall, Michael <mihall@mapfreusa.com>
Sent: Monday, March 11, 2024 12:25 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

This remains status quo. I requested a status as well from our people that are reviewing the documents, on Friday, and I haven't heard back yet.

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

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From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Monday, March 11, 2024 12:12 PM
To: Hall, Michael <mihall@mapfreusa.com>
Cc: Johnston, Patrick J (EXT) <patrick.j.johnston@verizon.net>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

Michael:

I haven't received from my last e mail.

Please advise status of claim.

Kimberly A. Kennedy, Supervisor
Accident Recovery



EXHIBIT 13

From: Hall, Michael <mihall@mapfreusa.com>
Sent: Monday, March 11, 2024 3:09 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hasn't the statute already tolled as of 11/24/23?

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

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EXHIBIT 14

From: Kennedy, Kim A. (DOT)
Sent: Monday, March 11, 2024 3:38 PM
To: Hall, Michael <mihall@mapfreusa.com>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

Michael:

It did. I have been waiting for you.

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Hall, Michael <mihall@mapfreusa.com>
Sent: Monday, March 11, 2024 3:09 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hasn't the statute already tolled as of 11/24/23?

Mike Hall, SCLA
Senior Claim Consultant
Complex Claims Division
MAPFRE Insurance
11 Gore Road
Webster, MA 01570
Tel: 800.221.1605 Ext: 15919
mihall@mapfreusa.com

Follow us on:



EXHIBIT 15

From: Theriault, Marcia <mtheriault@mapfreusa.com>
Sent: Thursday, April 18, 2024 2:43 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Cc: Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Kim,

This matter is currently being reviewed and we expect to have a communication out to you shortly with an update.

Thank you,

Marcia Theriault, FCLA, CCLA
Supervisor, Commercial/Complex Claims Division
MAPFRE Insurance
11 Gore Road, Webster, MA 01570
Phone. 800.221.1605 Ext. 15195
Email. mtheriault@mapfreusa.com

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From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Thursday, April 18, 2024 2:11 PM
To: Theriault, Marcia <mtheriault@mapfreusa.com>
Cc: Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>
Subject: FW: TVCH50 Save that Stuff, Inc - DOI 11/24/20

Good Afternoon Marcia:

Can you assist with this claim please

Kind regards,
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division

Kimberly A. Kennedy, Supervisor
Accident Recovery



From: Collins, Erin <ecollins@mapfreusa.com>
Sent: Thursday, April 18, 2024 2:06 PM
To: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Subject: RE: TVCH50 Save that Stuff, Inc - DOI 11/24/20

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Kim – this one is not handled in my department so I no oversite on this claim. Mike Halls is the handling adjuster, and his supervisor is Marcia Theriault.

Erin M. Collins, SCLA
Supervisor, Auto Physical Damage
MAPFRE Insurance
11 Gore Road, Webster MA 01570
Phone. 800.221.1605 Ext. 15372 | Fax. 508.671.3372 | Text Messaging is now available – please inquire!
Email. ecollins@mapfreusa.com

Follow us on:
    

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recipient and have received the message in error, or if you have become aware of its contents for whatever reason, please let us know by replying to this message and then destroying or deleting it. In any event, you must refrain from using, reproducing, altering, storing or forwarding this message and any attached files to a third party, or you will incur legal liability.

From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>

Sent: Thursday, April 18, 2024 2:01 PM

To: Collins, Erin <ecollins@mapfreusa.com>

Cc: Ogar, Gregory (DOT) <Gregory.Ogar@dot.state.ma.us>

Subject: FW: TVCH50 Save that Stuff, Inc - DOI 11/24/20

Erin:

Could you provide assistance regarding this please.

Thank you

Kimberly A. Kennedy, Supervisor
Accident Recovery



EXHIBIT 16

FULLER, ROSENBERG, PALMER & BELIVEAU, LLP
COUNSELORS AT LAW
6 PARK AVENUE
WORCESTER, MASSACHUSETTS 01605

ALBERT E. FULLER
(1931-2004)
KENNETH F. ROSENBERG
PETER A. PALMER
THOMAS W. BELIVEAU*

TELEPHONE (508) 755-5225
FACSIMILE (508) 757-1039

WRITER'S DIRECT DIAL
NUMBER (508) 751-5117

MARK C. DARLING
BRIAN F. WELSH

JOHN P. DONOHUE
CYNTHIA A. WELTER
MARK T. RUMSON

*Of Counsel

April 23, 2024

Via Email and First Class Mail

Ms. Kimberly A. Kennedy, Supervisor
Massachusetts Department of Transportation
Statewide Operations & Maintenance
Highway Division
10 Park Plaza
Boston, MA 02116

Re: Insured: Save That Stuff, Inc.
Claimant: Massachusetts Department of Transportation
Date of Loss: 11/24/2020
Subject: D4 Bridge Strike Route 128 at Endicott Street, Danvers, MA

Dear Ms. Kennedy:

I have been retained by MAPFRE Insurance Company on behalf of its insured, Save That Stuff, Inc., to review the DOT claim regarding the accident which occurred at the D4 Bridge on Route 128 at Endicott Street in Danvers, Massachusetts, on November 24, 2020.

Unfortunately, as you know, the statute of limitations has expired since it is now three plus years since the date of the accident. Under Massachusetts law, the claim by DOT is barred as a matter of law since the statute of limitations has expired.

It would also appear from the materials I reviewed that the DOT was aware as to the statute of limitations issue and that suit would have had to be brought within the three-year statute of limitations.

Should you wish to discuss this matter, please do not hesitate to contact me, but I will be advising MAPFRE Insurance on behalf of its insured that it can close out its file.

Very truly yours,


Kenneth F. Rosenberg

KFR/jtb

cc: Michael Hall, MAPFRE Insurance Co.
(Loss No.: TVCH50-RTVXK4)

EXHIBIT 17

JOHNSTON LAW OFFICE

Patrick J. Johnston, Esq.

patrick@johnstonlawboston.com

June 4, 2024

Via Electronic and First-Class Mail

Kenneth Rosenberg, Esq.
Fuller, Rosenberg, Palmer & Beliveau, LLP
6 Park Avenue
Worcester, MA 01605

Re: Massachusetts Department of Transportation v. Save That Stuff, Inc.
Date of Loss: 11-24-20
MAFRE Insurance Company Loss No. TVCH50/Claim No. RTVXK4

Dear Mr. Rosenberg:

This office serves as outside counsel for the Massachusetts Department of Transportation ("MassDOT") in connection with the above-referenced matter. I am writing in response to your correspondence of April 23, 2024 to MassDOT's Accident Recovery Program.

The subject claim arises out of an incident which occurred on November 24, 2020 when a vehicle owned by Save That Stuff, Inc. and insured by MAFRE Insurance Company ("MAPFRE") collided into MassDOT's Endicott Street Bridge at Route 128 in Danvers, Massachusetts. As a result of the collision, MassDOT incurred over \$1,000,000 in damages for temporary and permanent repairs to the bridge. On November 25, 2020, to recover its repair costs, MassDOT submitted this property damage claim to MAPFRE. However, in your recent correspondence, you indicate that MAPFRE is now denying the claim based on a statute of limitations defense. Please be advised that MAPFRE is estopped from asserting this defense because MassDOT refrained from commencing litigation here in reliance upon MAPFRE's statements and conduct during the claims process.

After MassDOT submitted its property damage claim to MAPFRE in November 2020, the parties engaged in the insurance claims process, exchanging documents, discussing coverage limits, corresponding, and providing updates. During this time, MassDOT worked with multiple MAPFRE adjusters, including Amy Julien, Kevin Shea, and Michael Hall. In July 2021, the parties engaged in ongoing negotiations and settled the temporary repairs portion of MassDOT's claim. Specifically, although the temporary repairs totaled \$22,485, MAPFRE agreed to pay \$17,000. On July 22, 2021, MAPFRE made payment in this amount to Total Highway Services on behalf of MassDOT's temporary repairs contractor, Kodiak Construction. Therefore, as of July 2021, MAPFRE had accepted liability on the subject claim and had paid for the temporary repairs. The only remaining issue at this time concerned the amount that MAPFRE would be paying for the bridge's permanent repairs.

Kenneth Rosenberg, Esq.
June 4, 2024
Page Two

As plans for the permanent repairs were still being developed by MassDOT and construction had not commenced, it was understood by the parties that finalizing the payment amount for the permanent repairs would be a lengthy process. Given the complexity and nature of bridge reconstruction projects, damages can be undetermined for several years in property damage claims involving them. First, emergency repairs must be performed on damaged bridges to stabilize and ensure that they are safe for the public. Design plans for the permanent repairs must then be developed, reviewed, and approved. Then, the construction work must be performed, often under difficult conditions. After the work is completed, the total costs for the work can be calculated.

In November 2021, after plans for permanent repairs were finalized in this case, Kodiak Construction was instructed to repair the Endicott Street Bridge under an Extra Work Order. On August 28, 2023, after the work was completed and final costs were calculated, MassDOT's Accident Recovery Program provided to MAPFRE an itemization of expenses totaling \$1,083,126.55. On the following day, MAPFRE reassured MassDOT that it was actively working on the claim and would be in contact when new information became available. Specifically, Claims Adjuster Kevin Shea wrote, "our next step is to review the repairs to make sure the charges are in line for the work." Therefore, the only item that remained at issue was the amount that MAPFRE would be paying MassDOT for its permanent repair costs, not whether MAPFRE was disputing the claim.

On September 5, 2023, Adjuster Shea informed MassDOT that its claim was being transferred from him to Michael Hall, SCLA, Senior Claim Consultant at MAPFRE's Complex Claims Division. On October 18, 2023, in response to MassDOT's request for the status of its claim review, Senior Claim Consultant Hall replied as follows:

The documentation is currently being reviewed by our experts. Authority to review was just provided to them on 9/26.

That was the last word from MAPFRE prior to November 24, 2023, the three-year anniversary of the subject accident. On December 6, 2023, two weeks after the three-year anniversary, in response to an inquiry from MassDOT, Senior Claim Consultant Hall wrote:

The documents are still in review. I should be receiving something shortly. As of 11/22 [which was two days before the three-year anniversary] it was anticipated that I should have something within 2 weeks.

He made this representation even though this two-week period would be after the expiration of the statute of limitations. Clearly then, in the days immediately prior two and the weeks following the three-year anniversary of the accident, MAPFRE was adjusting this claim under the assumption that it was not barred by the statute of limitations.

Kenneth Rosenberg, Esq.

June 4, 2024

Page Three

On Friday, January 19, 2024, two months after the three-year anniversary of the subject accident, MAPFRE represented that it was not only still reviewing the claim, but also requested additional engineering documentation. Specifically, Senior Claim Consultant Hall wrote the following:

Our expert is still reviewing the documents that were submitted for the bridge repair. They are asking for the DOT repair/replacement engineering plans. Is this something you have? Thanks.

Two business days later, on January 23, 2024, MassDOT forwarded the plans to Senior Claim Consultant Hall. On February 12, 2024, where MassDOT had not heard back from Mr. Hall since forwarding the design plans to him, it contacted him again. On March 11, 2024, after MassDOT again followed up with MAPFRE regarding the claim, Senior Claim Consultant Hall replied as follows:

This remains status quo. I requested a status as well from our people that are reviewing the documents, on Friday, and I haven't heard back yet.

In light of this correspondence from Mr. Hall, nearly four months after the three-year anniversary of the accident, MAPFRE clearly was continuing to process the claim under the assumption that it was an open matter, not a claim that was barred by a statute of limitations. In fact, Mr. Hall also wrote, "Hasn't the statute already **tolled** as of 11/24/23?" (emphasis added). In response, MassDOT replied, "It did. I have been waiting for you." Therefore, both parties also were operating at the time with the understanding that the statute of limitations had tolled as of November 24, 2023 while MAPFRE was reviewing MassDOT's damages documentation.

On April 18, 2024, in response to another inquiry, MAPFRE'S Supervisor of Commercial/Complex Claims Division, Marcia Theriault, informed MassDOT that the "matter is still being reviewed" and that MAPFRE expected to have an update to MassDOT shortly. However, only three business days later, on April 23, 2024, for the first time, MAPFRE, via your correspondence, informed MassDOT that it is denying the claim based on a statute of limitations defense.

MAPFRE is estopped from asserting a statute of limitations defense in this case because its adjusters repeatedly made representation which they "knew or should have known would induce [MassDOT] to put off bringing a suit and that [MassDOT] did in fact delay in reliance on the representations." *White v. Peabody Construction Co., Inc.*, 386 Mass. 121, 134 (1982); see also *Libman v. Zuckerman*, 33 Mass. App. Ct. 341, 345-347 (1992) (developer estopped from raising statute of limitations defense where plaintiffs relied on developer's promise to repair defective work and delayed commencement of legal action).

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Massachusetts courts have long held that defendants may be estopped from relying upon a statute of limitations defense where their words and/or conduct lulled a plaintiff into delaying filing suit until the limitations period has passed. *McLearn v. Hill*, 276 Mass. 519, 525-527 (1931) ("Estoppel is an equitable doctrine which is available to meet a defense founded on the statute of limitations"); *Baglio v. New York Cent. RR Co.*, 344 Mass. 14, 19 (1962). Moreover, a statute of limitations defense may be estopped even where the defendant made no express promise to satisfy the claim or waive the limitations defense if the defendant's conduct would lead a reasonable person to rely upon it. *Id.* at 526. The estoppel doctrine also applies where a plaintiff has several months to commence litigation after the defendant made the statement which lulled them into not filing suit. *La Bonte v. New York, N. H. & H. R. Co.*, 341 Mass. 127, 131 (1960).

In *MacKeen v. Kasinskas*, 333 Mass. 695, 697 (1956), the plaintiff postponed commencing litigation until after the statute of limitations had run because an insurance adjuster repeatedly assured the plaintiff that the claim would be "taken care of" after she was fully recovered from her injuries. The Supreme Judicial Court held that the defendant was estopped from relying on the statute of limitations defense because the adjuster had led the plaintiff to believe that her damages would be paid without litigation. *See also Baglio v. New York Central Railroad Company*, 344 Mass. 14, 19 (1962) (equitable estoppel precluded statute of limitations defense where the defendants made repeated assurances that the plaintiff's claim would be settled when he was discharged from the hospital); *Hayes v. Gessner*, 315 Mass. 366, 368 (1944) (statute of limitations precluded where insurance adjuster said to the claimant, "why don't you let things lie this summer, and then in the fall we can take the matter up"); *Kofinke v. Maranhos*, 375 Mass. 141 (1978) (estoppel precluded statute of limitations defense where defense counsel represented to plaintiff's counsel that it would not be necessary to refile a claim against a decedent's estate).

In the present matter, MAPFRE is estopped from relying on a statute of limitations defense because its adjusters repeatedly made representations they knew or should have known would induce MassDOT to refrain from filing suit, and MassDOT relied on the representations. After MassDOT and MAPFRE were navigating the claims process for nearly three years, on August 29, 2023, Adjuster Shea assured MassDOT that MAPFRE was actively working on the claim and that it only had to "make sure the charges are in line for the work." This alone was enough to lull MassDOT into not filing suit. *McLearn v. Hill*, 276 Mass. 519, 525-527. In addition, however, when Mr. Shea informed MassDOT on September 5, 2023, that its claim was being transferred to a more senior adjuster, Mr. Hall, it was reasonable for MassDOT to conclude that the claim was being elevated to an adjuster with the requisite settlement authority to resolve the claim. MassDOT certainly had no reason to believe at that time that MAPFRE would be relying on a statute of limitations defense. If it had, MassDOT obviously would have filed suit.

MassDOT's reliance upon MAPFRE is further understood in light of MAPFRE's email of October 18, 2023 when Mr. Hall informed MassDOT that its repair costs were being reviewed

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by MAPFRE's experts. MAPFRE is responsible for these words, which it knew or should have known would be relied upon by MassDOT. *McLearn v. Hill*, 276 Mass. at 527. Based on this email, MassDOT reasonably believed that MAPFRE was simply confirming its construction costs for the subject bridge repairs. Similar to the plaintiffs in *MacKeen* and *Baglio, supra*, who were caused by insurers to believe that their claims would be settled when their medical treatment concluded, here MassDOT was caused to believe that its permanent repair costs would be paid after MAPFRE's experts had the opportunity to "make sure the charges are in line for the work," as Mr. Shea stated.

Estoppel may be found when "one has been induced by the conduct of another to do something different from what otherwise would have been done and which has resulted to his harm and that the other knew or had reasonable cause to know that such consequence might follow . . ." *Id.* at 524. Where MAPFRE's repeated representations that it was reviewing MassDOT's claim and construction documents induced the claimant to refrain from bringing suit, the insurer is estopped from asserting a statute of limitations defense here. Moreover, MassDOT has operated in good faith in this matter. To deny its claim on the basis of a statute of limitations defense at this time would be an unfair practice by MAPFRE where the insurer represented to MassDOT in the weeks before and for nearly four months after the three-year anniversary of the subject accident that it was in the process of adjusting the claim.

Based on the above, and to avoid unnecessary protracted litigation, MassDOT requests that MAPFRE reconsider its position regarding a statute of limitations defense in this matter. Please provide your response to this request by Friday June 21, 2024.

Very truly yours,

/s/ Patrick Johnston

Patrick Johnston

EXHIBIT 18

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CYNTHIA A. WELTER
MARK T. RUMSON

June 21, 2024

Via Email and First Class Mail

Patrick J. Johnston, Esquire
Johnston Law Office
141 Tremont Street, 3rd Floor
Boston, MA 02111

Re: Massachusetts Department of Transportation v. Save that Stuff, Inc.
Date of Loss: 11/24/2020
MAPFRE Insurance Company Loss No. TVCH50/Claim No. RTVXK4

Dear Attorney Johnston:

I am in receipt of your letter dated June 4, 2024 and please consider this to be a response to that correspondence

I have read your letter along with the case law which you cite and respectfully disagree with the analysis. This is not a situation in which discovery of a defect occurred after the statute of limitations nor is it a situation in which the DOT was lulled into not filing a lawsuit due to not having knowledge or advice of counsel.

The Supreme Judicial Court in Pagliarini v. Iannaco, 440 Mass. 1032, 800 N.E. 2d 696 (2003) describes the burden upon the plaintiff to prove that the defendant is estopped from asserting the statute of limitations as a bar to the claim. The Pagliarini court ruled that to meet the burden, the Plaintiff must show that statements of the defendant lulled the plaintiff into the false belief that it was not necessary to commence an action within the statute of limitations. It must further provide that the plaintiff was induced by these statements to refrain from bringing suit as otherwise would have been done and was thereby harmed and the defendant knew or had reasonable cause to know that such consequence might follow. The court goes on to state that implicit in these requirements is that the defendant's inducements caused the plaintiff to delay taking appropriate, timely legal action.

It is clear that the DOT through emails which are attached to this correspondence was well aware of the statute of limitations issue. On June 2, 2023, Kim Kennedy wrote an email to Christopher Leahy at the DOT stating: "This one is coming up on statute as well as the previous

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one I just sent you.” The email then states: “I got yelled at by Kathleen in litigation because we have put a lot into suit and a lot with Tolling Agreements.” There is then another email from Kim Kennedy on August 24, 2023, to Mr. Leahy and Mr. John Flaherty referencing the bridge claim stating: “Statute is coming up.”

Your correspondence discusses interactions with MAPFRE before and after the statute of limitations date. Respectfully, any discussions with MAPFRE after the statute of limitations expired is not relevant since the statute of limitations expired on November 24, 2023 and there was no Tolling Agreement in place. As far as any discussions which took place prior to November 24, 2023, you reference a date of October 18, 2023, which was still in excess of one month before the statute of limitations expired and yet the DOT chose not to place this matter in suit despite its knowledge of the statute expiring.

Pursuant to Pagliarini v Iannaco, it is our position that the Plaintiff cannot meet the burden to show that the defendant lulled the plaintiff into the false belief that it was not necessary to commence action within the statute of limitations. DOT is a sophisticated entity and its emails reveal that it knew the statute was approaching and MAPFRE did nothing to lull the plaintiff into any false sense of security. Additionally, there is nothing in the statements made by any MAPFRE employee that DOT was induced to refrain from bringing suit, rather, the contrary is that DOT was well aware that the statute was approaching. Finally, DOT cannot show that MAPFRE knew or had reasonable cause to know that such consequence of DOT’s failure to file suit on a timely basis would ensue.

As stated in my prior correspondence of April 23, 2024, to Ms. Kimberly Kennedy, DOT was well aware as to the statute of limitations issue and simply neglected to file suit on a timely basis. Your reference in your letter of an allegation as to an unfair practice by MAPFRE is unfounded when it is the plaintiff who failed to bring the suit on a timely basis. If a suit is brought, we would consider it not to have been brought in good faith since it is clear that the statute of limitations has expired.

Thank you for your attention to this matter.

Very truly yours,

/s/ Kenneth F. Rosenberg

Kenneth F. Rosenberg

KFR/jtb
Attachments
cc: Michael Hall, MAPFRE Insurance Co.

From: Kennedy, Kim A. (DOT) <Kim.A.Kennedy@dot.state.ma.us>
Sent: Thursday, August 24, 2023 3:40 PM
To: Leahy, Christopher J. (DOT) <Christopher.Leahy@dot.state.ma.us>
Cc: Flaherty, John C. (DOT) <John.Flaherty@dot.state.ma.us>
Subject: RE: D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Bridge411/24/2020DanversRt. 128	SaveN/A	UnknownCommerceMassDOTS	979,774.13	Open
@ That		- Kevin bridge		
EndicottStuff		Shea - struck by		
Street		Claim vehicle		
		TVCH50		

Hey U:

Statute is coming up.

Kimberly A. Kennedy, Supervisor

Accident Recovery

highway logo

From: Kennedy, Kim A. (DOT)
Sent: Wednesday, July 12, 2023 4:33 PM
To: Leahy, Christopher J. (DOT) <Christopher.Leahy@dot.state.ma.us>
Subject: FW: D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Hey:

Yoo Hoo!

I didn't hear back from you from the June 2, 2023 e mail.

Hellooooooooooooo!

I know you're just back. Trying to give you some time to catch up. This one is coming up on statute as well as the previous one I just sent you.

I got yelled at by Kathleen in litigation because we have put a lot into suit and a lot with Tolling Agreements.

K

Kimberly A. Kennedy, Supervisor

Accident Recovery

highway logo

From: Kennedy, Kim A. (DOT)
Sent: Friday, June 2, 2023 12:29 PM
To: Leahy, Christopher J. (DOT) <Christopher.Leahy@dot.state.ma.us>
Subject: D4 Bridge Strike Rt 128 @ Endicott St Danvers - DOI 11/23/2020

Bridge411/24/2020DanversRt. 128	SaveN/AUnknownCommerceMassDOT	Reed copy of	3/26/21	\$	9
@ That	- Kevin bridge	EWO from	Kodiak		
EndicottStuff	Shea - struck by	District	sent costs		
Street	Claim vehicle	Kodiak	breakdown		
	TVCH50	making			
		repairs under			
		Contract No.			
		97931 -			
		Pending -			
		10/19/2022			
		Chris to			
		porvide a			
		status			