

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-cv-10034-KMM

JAMES SHAWN BROWN,

Plaintiff,

v.

WRIGHT NATIONAL FLOOD  
INSURANCE COMPANY,

Defendant.

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**ORDER ON MOTION TO DISMISS**

THIS CAUSE came before the Court upon Defendant Wright National Flood Insurance Company's ("Defendant") Unopposed Motion to Dismiss Plaintiff James Shawn Brown's ("Plaintiff") claims for attorneys' fees and costs. ("Motion to Dismiss") (ECF No. 6).<sup>1</sup> The motion is now ripe for review.

**I. BACKGROUND<sup>2</sup>**

This case arises from a dispute regarding insurance coverage of Plaintiff's property located at 11548 6th Avenue Ocean, Marathon, Florida 33050 under a Standard Flood Insurance Policy ("SFIP") issued by Defendant. Compl. (ECF No. 1-1) at ¶ 2.<sup>3</sup> The property suffered

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<sup>1</sup> Plaintiff did not file a response to Defendant's Motion to Dismiss and the time to do so has passed.

<sup>2</sup> The background facts are taken from the Complaint ("Compl.") (ECF No. 1), and accepted as true for purposes of ruling on this Motion to Dismiss. *See Fernandez v. Tricam Indus., Inc.*, No. 09-cv-22089, 2009 WL 10668267, at \*1 (S.D. Fla. Oct. 21, 2009) ("On a motion to dismiss, the Court must construe the complaint in the light most favorable to the plaintiff and accept the factual allegations as true.").

<sup>3</sup> Though Plaintiff did not attach the insurance policy to the Complaint, the Court will consider the Flood Declarations Page of the Standard Flood Insurance Policy attached to Defendant's

damage from Hurricane Irma on or around September 10, 2017. *Id.* ¶ 4. Plaintiff filed the one-count Complaint in Florida State Court, which Defendant removed to federal Court in the Southern District of Florida based on federal jurisdiction. Notice of Removal (ECF No. 1).<sup>4</sup> In the Complaint, Plaintiff demands a money judgment against the insurer for all damages stemming from the flood, and demands all attorney’s fees and costs pursuant to Section 627.428 of the Florida Statutes. Defendant moves to dismiss Plaintiff’s claims for attorney’s fees and costs.<sup>5</sup>

## II. LEGAL STANDARD

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556

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Motion to Dismiss. (ECF No. 6-1). The Eleventh Circuit has “adopted the ‘incorporation by reference’ doctrine, under which a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is: (1) central to the plaintiff’s claim; and (2) undisputed.” *See Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002). “‘Undisputed’ in this context means that the authenticity of the document is not challenged.” *Id.* The Complaint alleges that “[t]he Defendant, Wright National Flood Insurance Company (Wright National) is an insurance company with a Florida Certificate of Authority who insured the home for, inter alia, property damage due to flooding.” Compl. at ¶ 3. The Complaint further states that “Wright National already has a complete copy of the insuring agreement, and the policy is hereby incorporated by reference.” *Id.* ¶ 11. Because the policy is incorporated into the Complaint by reference and is central to Plaintiff’s claim, the Court will consider the policy on Defendant’s Motion to Dismiss without converting the motion into a motion for summary judgment. Further, the authenticity of the document is undisputed.

<sup>4</sup> Defendant is a Write-Your-Own (“WYO”) insurance carrier participating in the United States Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”). Federal Courts have exclusive jurisdiction over suit brought pursuant to policies issued under the National Flood Insurance Act. *See Hairston v. Travelers Cas. & Sur. Co.*, 232 F.3d 1348, 1349 (11th Cir. 2000); *see also Roth v. Wright National Insurance Co. et al.*, Case No. 18-cv-21653 ECF No. 19 (S.D. Fl. June 22, 2018) (“federal courts have exclusive, original jurisdiction regarding claims arising under the [NFIA].”).

<sup>5</sup> Defendant does not seek dismissal of Plaintiff’s underlying breach of contract action in which it seeks payment under the insurance policy.

U.S. 662, 678 (2009). This requirement “give[s] the defendant fair notice of what the claim is and the grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (internal citation and alterations omitted). When considering a motion to dismiss, the court takes the plaintiff’s factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

### III. DISCUSSION

Defendant seeks dismissal of Plaintiff’s claims for attorney’s fees and costs brought pursuant to Section 627.428 of the Florida Statutes.

The Eleventh Circuit has stated that “*matters pertaining to the Standard Flood Insurance Policy, including issues relating to and arising out of claims handling must be heard in Federal Court and are governed exclusively by the federal law.*” *Shuford v. Fid. Nat. Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1344 (11th Cir. 2007). A plaintiff’s claim for attorney’s fees and costs under state law fails because SFIP claims are preempted by federal law. *See Chatman v. Wright Nat’l Flood Ins. Co.*, No. 17-cv-00125, 2017 WL 3730558, at \*2 (M.D. Fla. June 21, 2017) (dismissing federal claims for attorney’s fees and costs brought pursuant to the Equal Access to Justice Act (“EAJA”) and further stating that even “[i]f Plaintiff was asserting [it’s] claim under state law, it would fail as SFIP claims are preempted by federal law”).

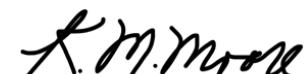
Other courts have also found that state law claims for attorney’s fees and costs are preempted. *See e.g., Woodson v. Allstate Ins. Co.*, 855 F.3d 628, 631 (4th Cir. 2017) (“federal law exclusively governs claims made on policies issued under the National Flood Insurance Program” and “because the district court’s award of attorneys fees to the Woodsons is premised on the same state law that we hold is preempted, the award too must be set aside”); *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 390 (5th Cir. 2005) (“holding that state law tort claims arising

from claims handling by a WYO are preempted by federal law. This conclusion is consistent with our holding in *West* that federal rather than state law governs entitlement to attorney's fees because the NFIP is a 'child of Congress, conceived to achieve policies which are national in scope, and [because] the federal government participates extensively in the program both in a supervisory capacity and financially.'"). Thus, Plaintiff's claim for attorney's fees and costs brought pursuant to Section 627.428 of the Florida Statutes is dismissed with prejudice.

**IV. CONCLUSION**

UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (ECF No. 6) is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of July, 2018.



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K. MICHAEL MOORE  
CHIEF UNITED STATES DISTRICT JUDGE

c: All counsel of record