

NO. 24-30722

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**THE WOODLAND VILLAS CONDOMINIUMS
Plaintiff/Appellant**

V.

**WRIGHT NATIONAL FLOOD INSURANCE COMPANY
Defendant/Appellee**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA, 23-01586, THE HONORABLE
JUDGE LANCE AFRICK, PRESIDING**

**BRIEF ON BEHALF OF
APPELLANT, THE WOODLAND VILLAS CONDOMINIUMS**

A CIVIL PROCEEDING

PETER J. WANEK (23353)
LINDSAY G. FAULKNER (33863)
WANEK KIRSCH DAVIES LLC
1340 Poydras St., Suite 2000
New Orleans, LA 70112
Telephone: (504) 324-6493
Facsimile: (504) 324-6626
ATTORNEYS FOR THE WOODLAND
VILLAS CONDOMINIUMS

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. The Woodland Villas Condominiums, Appellant
2. Wright National Flood Insurance Company, Defendant/Appellee
3. Federal Emergency Management Agency
4. Joel Morgan, attorney for Defendant/Appellee
5. James Letten, attorney for Defendant/Appellee
6. Peter J. Wanek, attorney for Plaintiff/Appellant
7. Lindsay G. Faulkner, attorney for Plaintiff/Appellant

/s/ Lindsay G. Faulkner

PETER J. WANEK (23353)

LINDSAY G. FAULKNER (33863)

WANEK KIRSCH DAVIES LLC

1340 Poydras St., Suite 2000

New Orleans, LA 70112

Telephone: (504) 324-6493

Facsimile: (504) 324-6626

ATTORNEYS FOR THE WOODLAND VILLAS CONDOMINIUMS

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument to afford the Court the opportunity to question counsel regarding the facts and legal arguments presented in the briefs. Appellant contends that the decision process would be significantly aided by oral argument.

CORPORATE DISCLOSURE STATEMENT

The Woodland Villas Condominiums is a non-profit corporation, incorporated in Louisiana with its principal place of business in Metairie, Louisiana. The Woodland Villas Condominiums has no parent corporation and no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIESiv

STATEMENT REGARDING ORAL ARGUMENT iii

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF CONTENTS.....iv

TABLE OF AUTHORITIES v

STATEMENT OF JURISDICTION..... vii

STATEMENT OF ISSUES PRESENTED FOR REVIEW vii

STATEMENT OF THE CASE..... 1

SUMMARY OF THE ARGUMENT8

STANDARD OF REVIEW13

LAW AND ARGUMENT14

CONCLUSION27

CERTIFICATE OF SERVICE viii

CERTIFICATE OF COMPLIANCE..... viii

TABLE OF AUTHORITIES

Cases

<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242, 255 (1986).....	13
<i>Carter v. Clark</i> , 616 F.2d 228, 230–31 (5th Cir. 1980).....	18
<i>Copeland v. FEMA</i> , No. 03-2704, 2004 WL 325577 (E.D.LA. February 18, 2004).....	26
<i>Clark v. Wright Nat'l Flood Ins. Co.</i> , 821 F. App'x 342 (5th Cir. 2020).....	9, 16, 18
<i>Davis v. Nationwide Mut. Fire Ins. Co.</i> , 811 F. Supp. 2d 1240 (E.D. Va. 2011).....	10, 19
<i>Gipson v. Weatherford Coll.</i> , No. 4:22-CV-0730-P, 2023 WL 3911210, at *1 (N.D. Tex. June 9, 2023).....	17
<i>Great Lakes Geophysical, LLLP v. Travelers Prop. Cas. Co.</i> , No. 13–10830, 2013 WL 3850938, at *8–10 (E.D.Mich. July 25, 2013).....	12, 24
<i>Griswold Props., LLC v. Lexington Ins. Co.</i> , 275 Mich.App. 543, 740 N.W.2d 659, 677 (Mich.Ct.App.2007) <i>vacated in part on other grounds</i> , 276 Mich.App. 551, 741 N.W.2d 549 (Mich.Ct.App.2007).....	12, 24
<i>Hanover Bldg. Materials, Inc. v. Guiffrida</i> , 748 F.2d 1011 (5th Cir. 1984).....	10, 19, 21
<i>Miller v. Michaels Stores, Inc.</i> , 98 F.4th 211 (5th Cir. 2024).....	13
<i>Mitchell v. Nat'l Flood Ins. Program</i> , No. CIV.A. 06-5070, 2008 WL 397756, (E.D. La. Feb. 8, 2008).....	25, 26
<i>Oechsner v. Hartford Life Ins. Co.</i> , No. CIV.A. 07-1436, 2008 WL 89514, at *2 (E.D. La. Jan. 7, 2008).....	26

Robin v. Fidelity National Property and Casualty Inc. Co., No. 06-5242 (E.D. LA. March 14, 2007).....26

Rodgers v. Allstate Ins. Co., No. CIV.A. 06-3685, 2007 WL 1029480.....11, 21

Westmoreland v. Fid. Nat. Indem. Ins. Co., No. 13-cv-564, 2015 WL 3456634, (M.D. La. May 29, 2015).....10, 19

White Hall on MS River, LLC v. Hartford Ins. Co. of the Midwest, No. 13-cv-218, 2015 WL 1540436, (S.D. Miss. Apr. 7, 2015).....10, 19

Worthen v. Fid. Nat'l Prop. & Cas. Ins. Co., 463 Fed. Appx. 422 (5th Cir. 2012).....10, 19

Statutes and Federal Law and Legislation

28 U.S.C. § 1291.....vii

28 U.S.C. § 1331.....viii

28 U.S.C. § 1391.....vii

28 U.S.C. § 1746.....9, 16, 17, 18

42 U.S.C. § 4001.....vii

Fed. R. Civ. P. 56.....10, 13, 18, 19, 25

44 C.F.R. pt. 61, app. A(3), art. II(A).....12, 19, 23

44 C.F.R. Pt. 61, App. A(1), Art. IX.....12, 19, 23

122 Cong. Rec. H11210-11211 (daily ed. Sept. 27, 1976).....18

FEMA Claim Manual:
https://www.fema.gov/sites/default/files/documents/fema_nfip_claims-manual_2021.pdf.....11, 20, 21

Legislative Materials:

PL 94–550 (HR 15531), PL 94–550, OCTOBER 18, 1976, 90 Stat 2534.....9, 17

122 Cong. Rec. H11210-11211 (daily ed. Sept. 27, 1976).....18

STATEMENT OF JURISDICTION

The District Court had jurisdiction over this matter under 28 U.S.C. § 1331 and the National Flood Insurance Act of 1968 42 U.S.C. § 4001 et seq. Venue was proper in the Eastern District of Louisiana under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims, including the location of the insured property, were located in that district. This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because it is an appeal from a final judgment of the District Court of the Eastern District of Louisiana. On November 8, 2024, The Woodland Villas Condominiums LLC appealed by filing its Notice of Appeal¹ within 30 days of the District Court's final judgment of October 9, 2024.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the District Court erred in granting Defendant’s Motion for Summary Judgment as there is a genuine issue of material fact as to whether the proof of loss submitted by Plaintiff satisfied the requirements of the SFIP.

¹ ROA 2305.

STATEMENT OF THE CASE

Plaintiff seeks appellate review by the United States Court of Appeals for the Fifth Circuit regarding the district court's judgment dated October 9, 2024, whereby the district court granted Defendants' Motion for Summary Judgment, dismissing all claims filed by Plaintiff.

Defendant is a Write-Your-Own Program carrier participating in the U.S. Government's National Flood Insurance Program ("NFIP"). In the Motion for Summary Judgment, Defendant claimed that Plaintiff was not entitled to recover pursuant to its Standard Flood Insurance Policy ("SFIP") because Plaintiff failed to comply with the SFIP's conditions precedent to the recovery. More specifically, Defendant alleged that Plaintiff failed to file a timely, signed, and sworn proof of loss.

Plaintiff purchased an SFIP from Defendant, Wright National Flood Insurance Company, under the NFIP to insure a multi-family residential building located at 501 Indigo Pkwy, Buildings 1A, 2A, 3A, 6A, 7A, 8A, Laplace, Louisiana 70068. At all times relevant hereto, Wright provided a policy of insurance providing flood insurance coverage for Woodland Villas for the above six buildings.² Plaintiff's property was damaged during Hurricane Ida during which time SFIP was in effect. When Wright refused to tender full payments under the SFIP, Plaintiff filed this

² ROA. 370.

lawsuit on May 12, 2023.³

Wright was first notified of the alleged flooding at the Properties on August 30, 2021. James Dwyer, II, an NFIP authorized independent flood adjuster with Colonial Claims Corporation, was assigned to the claim.⁴ Mr. Dwyer inspected the properties between September 3 and 6, 2021. On November 3, 2021, Wright paid the following amounts for flood damages to the properties: (1) Building 1(A): \$247,311.41; (2) Building 2(A), \$258,231.14; (3) Building 3(A) \$253,092.60; (4) Building 6(A): \$270,176.41; (5) Building 7(A): \$250,893.62 and (6) Building 8(A): \$258,186.91. Thereafter, on November 4, 2021, Wright made an additional payment for recoverable depreciation in the following amounts: (1) Building 1(A): \$14,722.66; (2) Building 2(A), \$16,507.16; (3) Building 3(A) \$15,076.92; (4) Building 6(A): \$17,647.20; (5) Building 7(A): \$15,398.21 and (6) Building 8(A): \$18,349.67. No proof of loss was signed by Plaintiff prior to this payment in accordance with NFIP Bulletin w-21020.

On February 18, 2022, Kel Kopecky, property manager for Woodland Villas, emailed a supplemental proof of loss to Jim Dwyer.⁵ The supplemental proof of loss included a report from Bob Bodet, Jr., registered architect, who was hired by Woodland Villas to assist with the rebuild of the condominiums and to assist with

³ ROA. 9.

⁴ ROA. 425.

⁵ ROA. 1364, ROA. 1373

the insurance claims for damage.⁶ The supplemental proof of loss report from Mr. Bodet included the amount still owed by Wright for flood damage to the property, totaling \$880,943.17.⁷ The supplemental proof of loss was also titled “sworn statement in proof of loss” and included: (1) a description of the damage to the cabinets, an invoice from Lakeview Construction for the work completed to replace the upper cabinets; (2) a description of the damage to the firewall, and an invoice from Lakeview Construction for the materials and labor to replace the firewall from Lakeview Construction and (3) an estimate from Lakeview Construction for the electrical work that still needed to be completed at the property.⁸ Further, the supplemental claim also included Mr. Bodet’s architect seal.⁹

Between February 28, 2022, and May 4, 2022, Mr. Kopecky, the property manager, Bob Bodet, the architect, and Jim Dwyer, the independent adjuster, had many conversations, whereby they discussed whether Wright would be making a supplemental payment for the electrical and firewall based on the information provided by Mr. Bodet.¹⁰

Thereafter, May 11, 2022, Wright sent denial letters in connection with all six policies.¹¹ However, nowhere in the denial letters did Wright indicate that the

⁶ ROA. 1364, ROA. 1373.

⁷ ROA. 1364, ROA. 1373

⁸ ROA. 1364, ROA. 1373

⁹ ROA. 1364, ROA. 1373

¹⁰ ROA. 1385, ROA. 1386, ROA. 1392, ROA. 1409, ROA. 1411, ROA. 1412, ROA. 1412.

¹¹ ROA. 1414.

supplemental proof of loss documents were not sufficient or had been rejected. Instead, the denial letters were based on alleged coverage issues, and included a description of items that Wright believed were not covered by the SFIP.

On May 17, 2022, Mr. Kopecky, the property manager, spoke with William Nemeth with Wright. In that call, Mr. Nemeth alleged that he was not in possession or “had not seen” the supplemental proof of loss.¹² On the same date, Mr. Kopecky again sent the supplemental proof of loss to William Nemeth, with Wright.¹³ On May 25, 2022, Mr. Kopecky, the property manager, again spoke with Jim Dwyer with Wright. Mr. Kopecky confirmed that in his conversation with Dwyer that Dwyer “he sees no issue with paying on the demising wall” and requested additional information related to the electrical.¹⁴ In fact, on May 27, 2022, Bill Nemeth, with Wright, sent correspondence to additional Colonial Claims and Wright adjusters, whereby he confirmed that Wright had not paid for the “extra two layers of drywall or insulation for the dismissing walls between units, and pricing will be above normal due to the difficulty factor.”¹⁵

Thereafter, there was no communication from Wright until August 5, 2022, when Mr. Dwyer informed Mr. Kopecky that he was having his “supervisor review

¹² ROA. 1434.

¹³ ROA. 1445.

¹⁴ ROA. 1479.

¹⁵ ROA. 1480.

the final reports next week.”¹⁶ On August 12, 2022, Mr. Kopecky, property manager, again reached out to Jim Dwyer, asking for a status, and it had been six (6) months since Plaintiff provided their supplemental proof of loss and Wright had taken no action to make any additional payments.¹⁷ On the same date, Mr. Kopecky provided supplemental documentation to Wright, including the invoice, for the electrical work that had been completed by A-1 Developers and the electrical inspections.¹⁸

On August 22, 2022, Bill Nemeth, with Wright Flood, emailed Mr. Kopecky, and indicated that Wright would make no additional payments and also provided denial letters regarding same.¹⁹ Again, these denial letters failed to mention anything related to the proof of loss requirements and the denial was based on a determination that certain items were allegedly not covered by the policy.

However, less than a month later, on September 23, 2022, Jim Dwyer, independent adjuster, sent revised proofs of loss to Mr. Kopecky, property manager, for signature.²⁰ Mr. Dwyer also provided estimates to Mr. Kopecky and informed that Wright would be “increasing the firewall claim on each building by \$9,900 per building”²¹ On September 26, 2022, Kel Kopecky signed the supplemental proof of

¹⁶ *Id.*

¹⁷ ROA. 1486. .

¹⁸ ROA. 1486. .

¹⁹ ROA. 1496.

²⁰ ROA. 1516.

²¹ ROA. 2054.

losses for all of the buildings.²²

Thereafter, on October 13, 2022, Mr. Kopecky, the property manager, emailed Jim Dwyer and Bill Nemeth with Wright Insurance, with certain questions regarding the proof of loss. First, Mr. Kopecky questioned the following:

There is a concern with signing the Proof of Loss. Since there is still a dispute on the amounts we had requested, will signing these Proof of Loss affect the association's ability to appeal and/or file suit for the disputed amounts?

Mr. Nemeth responded on October 13, 2022, “**no, it will not.**” The second question by Mr. Kopecky was as follows:

Also, since these Proof of Loss and subsequent payments are for items that are included in the denial letter that has been sent, can we get a new Final Denial letter sent to us? Once we clear up the above issues and sign the Proof of Loss?

Mr. Nemeth responded on October 13, 2022, stating “Yes we can issue a new partial denial letter that will restart the clock for appeal and or suit.”²³ Two months later, on December 12, 2022, Wright sent supplemental denial letters.²⁴

On February 16, 2023, Woodland Villas filed an Appeal with FEMA regarding this claim.²⁵ Thereafter, on April 12, 2023, Wright obtained waivers from FEMA of the 180-day Proof of Loss deadline for Coverage A (Building) damages.²⁶

²² *Id.*

²³ ROA. 2060.

²⁴ ROA. 2066.

²⁵ ROA. 2090.

²⁶ ROA. 428.

On April 13, 2023 and April 17, 2023, Wright made supplemental payments as follows: (1) Building 1(A): \$9,424.27 and \$482.46 (recoverable depreciation); (2) Building 2(A): \$9,419.95 and \$482.02 (recoverable depreciation); (3) Building 3A: \$9,426.01; (4) Building 6A: \$9,426.01 and \$482.62 (recoverable depreciation); (4) Building 7(A): \$9,426.01 and \$482.62 (recoverable depreciation); (5) Building 8A: \$9,426.01 and \$482.62 (recoverable depreciation).

On May 12, 2023, Plaintiff filed the instant lawsuit as it had not received a response regarding the appeal.²⁷ On June 13, 2023, undersigned counsel received a letter from FEMA that the appeal would not be addressed as the lawsuit was filed and FEMA closed the appeal.²⁸

In the underlying lawsuit, Wright moved for Motion for Summary Judgment, alleging that Plaintiff failed to submit timely, signed and sworn Proofs of Loss to Wright for any of the six buildings within 180 days of the date of loss, as required by Article VIII(J)(4) of the SFIP, in support of any claim for additional damages exceeding the amounts paid by Wright for the damages to the Properties. Specifically, Wright alleged that neither the Bodet report nor the September 26, 2022 proof of loss constituted a compliant proof of loss. The district court agreed, granting the Motion for Summary Judgment and dismissing Plaintiffs claims.

²⁷ ROA. 9.

²⁸ ROA 2101.

However, as set forth herein, there is a genuine issue of material fact whether the supplemental proof of loss which includes the Bodet Report complies and satisfies the requirements of the SFIP. As such, for the reasons set forth herein, this Court should reverse the decision of the trial court granting the Motion for Summary Judgment.

SUMMARY OF THE ARGUMENT

In this case, the District Court granted Wright's Motion for Summary Judgment finding that Plaintiff was not entitled to recover any additional benefits pursuant to the SFIP because Plaintiff failed to comply with the SFIP's conditions precedent to the recovery. In particular, the District Court found that Plaintiff's supplemental proof of loss, which included the Bodet report was not "sworn to" within the meaning of the SFIP.²⁹

However, as discussed herein, Plaintiff submitted a timely proof of loss which included a report from Bob Bodet, architect and agent for Plaintiff, which provided an explanation of the alleged amount still owed by Wright for flood damage to the property, totaling \$880,943.17.³⁰ The report was titled "sworn statement in proof of loss" and included a a description of the damage still outstanding, invoices from

²⁹ ROA. 2222.

³⁰ ROA. 2222.

contractors for work completed to repair the damaged property, and estimates for work that was still outstanding.³¹ Further, the supplemental proof of loss was signed by Mr. Bodet and included Mr. Bodet’s architect seal.³²

However, in granting the Motion for Summary Judgment, the District Court found that the proof of loss submitted by Bodet did not comply with the SFIP, because, “[t]he Bodet report is not notarized. Nor does it contain any declaration—let alone one substantially similar to the archetype provided by the Fifth Circuit. Consequently, the Bodet report is not “sworn to” within the meaning of the SFIP.”³³ In support of this reasoning, the District Court cited to this Court’s opinion in *Clark v. Wright Nat’l Flood Ins. Co.*, 821 F. App’x 342, 346 (5th Cir. 2020).

In *Clark*, this Court held that the “sworn to” language “requires either notarization or a declaration substantially similar to ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).’” To support such holding in *Clark*, this Court relied on 28 U.S.C. § 1746.

However, as part of this appeal, Plaintiff requests that this Court revisit the decision in *Clark*, as the legislative history 28 U.S.C. § 1746, clearly reflects that the legislature enacted the statute as “[a]n Act to permit the use of unsworn declarations

³¹ ROA. 2222.

³² ROA. 2222.

³³ ROA. 2222.

under penalty of perjury *as evidence in Federal proceedings*.”³⁴ Here, Bodet’s proof of loss was submitted to satisfy the SFIP requirements; as set forth in the policy, and it was not submitted for inclusion in a judicial proceeding.

The flood insurance policy at issue is a SFIP, administered pursuant to the NFIP. The SFIP and all disputes arising from claims under it are governed by FEMA flood insurance regulations and federal common law.³⁵ Additionally, “[t]he FEMA Claims Manual ... is incorporated by reference into the FEMA regulations.”³⁶ While federal common law governs, this Court has applied “general principles of state insurance law” to aid the interpretation of the SFIP. These principles include:

(1) if the language of a policy is clear and unambiguous, it is accorded its natural meaning; (2) if the meaning of a policy provision is susceptible to different constructions, the one most favorable to the insured prevails; (3) insurance contracts are to be reasonably construed in accordance with the objective and intent of the parties; (4) in determining the most reasonable construction of contested provisions, the court may draw from the provisions, the policy as a whole, and the apparent objectives of the parties in entering the contract; and (5) in the end, if the meaning of the policy terms remains unclear, the policy is generally construed in the insured's favor to promote the policy's objective of providing coverage.³⁷

³⁴ PL 94–550 (HR 15531), PL 94–550, OCTOBER 18, 1976, 90 Stat 2534 (emphasis added).

³⁵ 44 C.F.R. Pt. 61, App. A(1), Art. IX.

³⁶ *White Hall on MS River, LLC v. Hartford Ins. Co. of the Midwest*, No. 13-cv-218, 2015 WL 1540436, at *2 (S.D. Miss. Apr. 7, 2015) (“The FEMA Claims Manual ... is incorporated by reference into the FEMA regulations.”) (quoting *Suopys v. Omaha Prop. & Cas.*, 404 F.3d 805, 811 (3d Cir. 2005)). *Westmoreland v. Fid. Nat. Indem. Ins. Co.*, No. 13-cv-564, 2015 WL 3456634, at *3 (M.D. La. May 29, 2015) (deGravelles, J.) (reading the Claims Manual in pari materia with the SFIP to resolve scope of coverage dispute); *Davis v. Nationwide Mut. Fire Ins. Co.*, 811 F. Supp. 2d 1240, 1248 n.8 (E.D. Va. 2011) (referencing the Claims Manual to clarify the SFIP's definition of “Post–FIRM Building”).

³⁷ *Worthen v. Fid. Nat'l Prop. & Cas. Ins. Co.*, 463 Fed. Appx. 422, 426 (5th Cir. 2012) (citing *Hanover Bldg. Materials, Inc. v. Guiffrida*, 748 F.2d 1011, 1013 (5th Cir. 1984)).

Thus, this Court should look to these principals when interpreting the “sworn to” language as set forth in the SFIP. Here, the SFIP does not define "sworn to" or require the proof of loss to include the phrase "under penalty of perjury" in order to satisfy the sworn-to requirement. Thus, under the plain terms of the policy, Plaintiff was not required to swear “under penalty of perjury” to the truthfulness of its statements in the poof of loss to satisfy the requirements under the policy. Further, the FEMA Claims Manual also does not define "sworn to" or require the proof of loss to include the phrase "under penalty of perjury" in order to satisfy the sworn-to requirement.³⁸ As set forth more fully herein, in this case, ambiguities should be construed in favor of the insured and against the insurer.”³⁹ In the absence of a specific definition, this Court is required to interpret “sworn” according to its ordinary usage which should encompass the sworn statement in proof of loss submitted by Plaintiff which included the Bodet Report.

Additionally, the District Court, in its opinion, noted that the Proof of Loss was “signed by Bodet, an architect hired by the insured, rather than the insured.”⁴⁰ However, the District Court did not expound on this issue or provide any further

³⁸ https://www.fema.gov/sites/default/files/documents/fema_nfip_claims-manual_2021.pdf. Also cited in Plaintiff’s Opposition, ROA 1362, Page 284 of Claims Manual.

³⁹ *Rodgers v. Allstate Ins. Co.*, No. CIV.A. 06-3685, 2007 WL 1029480 (*E.D. La. Mar. 30, 2007*) (citing, *Aschenbrenner v. United States Fidelity & Guar. Co.*, 292 U.S. 80, 84–85, 54 S.Ct. 590, 78 L.Ed. 1137 (1934)).

⁴⁰ ROA. 2221.

reasoning or analysis. In any event, FEMA has not, in the National Flood Insurance Act of 1968 nor its insurance regulations, regulated the use of agency authority, be it through mandate, procurement, or representation. FEMA's definition of “you,” allows for a signature by the “insured(s) shown on the Declarations Page of this policy.” 44 C.F.R. pt. 61, app. A(3), art. II(A). In this case, Plaintiff is a corporation. A corporation, as an entity, is incapable of signing without the use of an agent. If FEMA prohibited the use of all mandatory or representative authority to sign on behalf of an insured, FEMA would be obligated to deny any Proof of Loss signed on behalf of an insured's trust, succession representative, tutor, corporation, limited liability company, or curator for an insured property. Here, Bodet was vested with authority from the agent of the Plaintiff to sign the supplemental proof of loss. Thus, the District Court erred in denying summary judgment on this basis.⁴¹

Plaintiff, through this appeal, does not attempt to avoid application of the terms of the SFIP policy. Plaintiff is not arguing for the application of equitable estoppel from compliance with the terms of the SFIP Policy; and Plaintiff is not arguing that only substantial compliance with the terms of the SFIP Policy should be required. Rather, Plaintiff asserts that they strictly complied with the proof of loss

⁴¹ . (“[W]hether [a] proof of loss [is] satisfactory is a question of fact.” *Griswold Props., LLC v. Lexington Ins. Co.*, 275 Mich.App. 543, 740 N.W.2d 659, 677 (Mich.Ct.App.2007) *vacated in part on other grounds*, 276 Mich.App. 551, 741 N.W.2d 549 (Mich.Ct.App.2007); *Great Lakes Geophysical, LLLP v. Travelers Prop. Cas. Co.*, No. 13–10830, 2013 WL 3850938, at *8–10 (E.D.Mich. July 25, 2013)).

requirements, based language within the SFIP Policy itself. Here, the District Court should have found that material issues existed as to whether Plaintiff strictly complied with the proof of loss requirements, based language within the SFIP Policy itself.

Because there are genuine issues of material facts with respect to whether Plaintiff's proof of loss was submitted in strict compliance with the SFIP's requirements, Plaintiff respectfully requests that this Honorable Court reverse the District Court's Judgment granting Defendant's Motion for Summary Judgment and remand this matter to the District Court for further proceedings.

STANDARD OF REVIEW

The standard of review on summary judgment is de novo.⁴² Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law."⁴³

A party asserting that a fact cannot be genuinely disputed must support the assertion by citing materials in the record, including "depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, [and] interrogatory answers" or that an adverse party cannot produce admissible evidence to support the presence of a

⁴² *Miller v. Michaels Stores, Inc.*, 98 F.4th 211, 215 (5th Cir. 2024)

⁴³ Fed. R. Civ. P. 56(a).

genuine dispute.⁴⁴ On a motion for summary judgment, the court views the evidence and resolve all inferences in the light most favorable to the nonmoving party.⁴⁵

ARGUMENT

I. The Supplemental Proof of Loss with the Report from Bob Bodet, Architect, and The Supporting Documentation Submitted Therewith Satisfied the Requirements of the SFIP

a. The Proof of Loss was “Sworn To” in Compliance with the SFIP

In this case, the District Court granted Wright’s Motion for Summary Judgment finding that Plaintiff was not entitled to recover any additional benefits pursuant to the SFIP because Plaintiff failed to comply with the SFIP's conditions precedent to the recovery. In particular, the District Court found that Plaintiff’s supplemental proof of loss, which included the Bodet report was not “sworn to” within the meaning of the SFIP.⁴⁶

Article VII(J)(4) of the SFIP provides that within 60 days after the loss, the claimant must send the insurer a proof of loss, which is “your statement of the amount you are claiming under the policy signed and sworn to by you...” Following Hurricane Ida, on September 16, 2021, FEMA published WYO Bulletin W-21020 extending the ordinary 60-day “Proof of Loss” period to one hundred eighty (180) days from the date of loss to submit a compliant proof of loss to support their flood

⁴⁴ See Fed. R. Civ. P. 56(c)(1).

⁴⁵ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

⁴⁶ ROA. 2222.

loss claim. Thus, Plaintiff in this case had until February 25, 2022 to submit its proof of loss.

As set forth above, on February 18, 2022, Kel Kopecky, property manager for Woodland Villas, emailed a supplemental proof of loss to Jim Dwyer.⁴⁷ The supplemental proof of loss included a report from Bob Bodet, Jr., registered architect, who was hired by Woodland Villas to assist with the rebuild of the condominiums and assist with the insurance claims for damage.⁴⁸ The report from Mr. Bodet included an explanation of the alleged amount still owed by Wright for flood damage to the property, totaling \$880,943.17.⁴⁹ The report was titled “sworn statement in proof of loss” with (1) a description of the damage to the cabinets, an invoice from Lakeview Construction for the work completed to replace the upper cabinets; (2) a description of the damage to the firewall, and an invoice from Lakeview Construction for the materials and labor to replace the firewall from Lakeview Construction and (3) an estimate from Lakeview Construction for the electrical work that still needed to be completed at the property.⁵⁰ Further, the supplemental claim also included Mr. Bodet’s architect seal.⁵¹

However, in granting the Motion for Summary Judgment, the District Court

⁴⁷ ROA. 1364, 1373.

⁴⁸ ROA. 1364, 1373.

⁴⁹ ROA. 1364, 1373.

⁵⁰ ROA. 1364, 1373.

⁵¹ ROA. 1364, 1373.

found that the proof of loss submitted by Bodet did not comply with the SFIP, because, “[t]he Bodet report is not notarized. Nor does it contain any declaration—let alone one substantially similar to the archetype provided by the Fifth Circuit. Consequently, the Bodet report is not “sworn to” within the meaning of the SFIP.”⁵² In support of this reasoning, the District Court cited to this Court’s opinion in *Clark v. Wright Nat’l Flood Ins. Co.*, 821 F. App’x 342, 346 (5th Cir. 2020).

However, *Clark v. Wright Nat’l Flood Ins. Co.*, 821 F. App’x 342, 346 (5th Cir. 2020), is distinguishable from the instant case, because in *Clark*, the plaintiff consistently refused to sign proofs of loss that were provided by the insurer, who is the same Defendant herein.⁵³ In contrast, in this case, at no time did Wright inform Plaintiff that its supplemental proof of loss was non-compliant, or that it had been rejected. Also, in *Clark*, in affirming the district court’s granting of summary judgment, *inter alia*, this Court found, unlike the matter *sub judice*, that the plaintiff failed to state the amount claimed, and that the plaintiff’s proofs of loss were untimely.⁵⁴ Here, Plaintiff’s detailed proof of loss was submitted within one hundred eighty (180) days from the date of loss and set forth in sufficient detail the amount claimed.

However, in *Clark v. Wright Nat’l Flood Ins. Co.*, 821 F. App’x 342, 346 (5th

⁵² ROA. 2222.

⁵³ *Id.* at 343.

⁵⁴ *Id.* at 344.

Cir. 2020), this Court held that the “sworn to” language “requires either notarization or a declaration substantially similar to ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).’” To support such holding, this Court relied on 28 U.S.C. § 1746, which provides in pertinent part:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
(Signature)”.

(2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature)”.

However, the legislative history 28 U.S.C. § 1746, reflects that the legislature enacted the statute as “[a]n Act to permit the use of unsworn declarations under penalty of perjury *as evidence in Federal proceedings.*”⁵⁵ Moreover, as noted by the

⁵⁵ PL 94–550 (HR 15531), PL 94–550, OCTOBER 18, 1976, 90 Stat 2534 (emphasis added).

District Court in *Gipson v. Weatherford Coll.*, No. 4:22-CV-0730-P, 2023 WL 3911210, at *1 (N.D. Tex. June 9, 2023), the main purposes of § 1746 were to: “(1) ease the logistical difficulties that foreign and prisoner litigants face in procuring the presence of a notary; and (2) relax the formalism associated with the presentation of evidence in federal proceedings.” *Id. citing* 122 Cong. Rec. H11210-11211 (daily ed. Sept. 27, 1976) (statement of Rep. William L. Hungate, cosponsor of the bill) (discussing the main purposes of the rule); and *citing Carter v. Clark*, 616 F.2d 228, 230–31 (5th Cir. 1980).

The history of § 1746 was also discussed by this Court in *Carter*, whereby this Court struck down a local rule that required all pleadings of prison inmates to be notarized, stating that the rule was in conflict with this § 1746. In *Carter*, this Court held:

Section 1746 of Title 28, United States Code, was passed in 1976 for the purpose of permitting “the use in Federal proceedings of unsworn declarations given under penalty of perjury in lieu of affidavits” H.R. Rep. No. 94-1616, 94th Cong., 2d Sess. 1, reprinted in (1976) U.S. Code Cong. & Admin. News, pp. 5644, 5644. The only exceptions to the application of the statute are that “unsworn written declaration(s) given under penalty of perjury may not be substituted for (1) deposition(s), (2) an oath of office, or (3) a document required to be signed before a specified official other than a notary.” *Id.* at 2, reprinted at (1976) U.S. Code Cong. & Admin. News, p. 5645.⁵⁶

Further, Fed. R. Civ. P. 56 advisory committee's note (2010), provides further

⁵⁶ *Id.* at 230.

support that § 1746 was enacted for the purpose of submitting evidence in federal proceedings, stating that the purpose of 28 U.S.C. § 1746 was “to allow a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.” Here, Bodet’s proof of loss was submitted to satisfy the SFIP requirements; as set forth in the policy, and it was not submitted for inclusion in a judicial proceeding.

The flood insurance policy at issue is a SFIP, administered pursuant to the NFIP. The SFIP and all disputes arising from claims under it are governed by FEMA flood insurance regulations and federal common law.⁵⁷ Additionally, “[t]he FEMA Claims Manual ... is incorporated by reference into the FEMA regulations.”⁵⁸

While federal common law governs, this Court has applied “general principles of state insurance law” to aid the interpretation of the SFIP. These principles include:

(1) if the language of a policy is clear and unambiguous, it is accorded its natural meaning; (2) if the meaning of a policy provision is susceptible to different constructions, the one most favorable to the insured prevails; (3) insurance contracts are to be reasonably construed in accordance with the objective and intent of the parties; (4) in determining the most reasonable construction of contested provisions, the court may draw from the provisions, the policy as a whole, and the

⁵⁷ 44 C.F.R. Pt. 61, App. A(1), Art. IX.

⁵⁸ *White Hall on MS River, LLC v. Hartford Ins. Co. of the Midwest*, No. 13-cv-218, 2015 WL 1540436, at *2 (S.D. Miss. Apr. 7, 2015) (“The FEMA Claims Manual ... is incorporated by reference into the FEMA regulations.”) (*quoting* *Suopys v. Omaha Prop. & Cas.*, 404 F.3d 805, 811 (3d Cir. 2005)). *Westmoreland v. Fid. Nat. Indem. Ins. Co.*, No. 13-cv-564, 2015 WL 3456634, at *3 (M.D. La. May 29, 2015) (deGravelles, J.) (reading the Claims Manual in pari materia with the SFIP to resolve scope of coverage dispute); *Davis v. Nationwide Mut. Fire Ins. Co.*, 811 F. Supp. 2d 1240, 1248 n.8 (E.D. Va. 2011) (referencing the Claims Manual to clarify the SFIP’s definition of “Post-FIRM Building”).

apparent objectives of the parties in entering the contract; and (5) in the end, if the meaning of the policy terms remains unclear, the policy is generally construed in the insured's favor to promote the policy's objective of providing coverage.⁵⁹

Thus, this Court should look to these principals when interpreting the “sworn to” language as set forth in the SFIP. Here, the SFIP does not define “sworn to” or require the proof of loss to include the phrase “under penalty of perjury” in order to satisfy the sworn-to requirement. Thus, under the plain terms of the policy, Plaintiff was not required to swear “under penalty of perjury” to the truthfulness of its statements in the proof of loss to satisfy the requirements under the policy. Further, the FEMA Claims Manual also does not define “sworn to” or require the proof of loss to include the phrase “under penalty of perjury” in order to satisfy the sworn-to requirement.⁶⁰ Instead the Claims Manual only provides:

Proof of loss forms do not require a Notary. Electronic signatures are acceptable (see NFIP Insurers’ Acceptance of Electronic Signatures in this Manual).

The Claims Manual also goes on to provide an explanation of the phrase “signed and sworn” but again, the manual does not define “sworn to” or require the proof of loss to include the phrase “under penalty of perjury” in order to satisfy the sworn-to requirement.

⁵⁹ *Worthen v. Fid. Nat'l Prop. & Cas. Ins. Co.*, 463 Fed. Appx. 422, 426 (5th Cir. 2012) (citing *Hanover Bldg. Materials, Inc. v. Guiffrida*, 748 F.2d 1011, 1013 (5th Cir. 1984)).

⁶⁰https://www.fema.gov/sites/default/files/documents/fema_nfip_claims-manual_2021.pdf. Also cited in Plaintiff’s Opposition, ROA 1362, Page 284 of Claims Manual.

SIGNED AND SWORN: FEMA encourages the use of electronic signatures on proof of loss and other NFIP related submissions. FEMA will not deny the legal effect, validity, or enforceability of a signature solely because it is in electronic form. Insurers should accept electronic signatures in accordance with their general business practices and applicable laws.⁶¹

Moreover, the Claims Manual provides that if the examiner reviews the proof of loss and it is not compliant in content or form, “the examiner should reject the proof of loss and communicate the decision directly to the policyholder.”⁶² As discussed above, at no time did Wright or its independent adjuster ever communicate to Plaintiff that the proof of loss was being rejected or it was not compliant in content or form.

Here, it is clear that the definition of “sworn” in the SFIP is ambiguous and susceptible to different constructions. This Court has made clear that “if the meaning of [an SFIP] is doubtful and the language used is susceptible of different constructions, the one most favorable to the insured is adopted.”⁶³ Thus, here, ambiguities should be construed in favor of the insured and against the insurer.”⁶⁴ In the absence of a specific definition, this Court is required to interpret “sworn” according to its ordinary usage which should encompass the sworn statement in

⁶¹ https://www.fema.gov/sites/default/files/documents/fema_nfip_claims-manual_2021.pdf. Also cited in Plaintiff’s Opposition, ROA 1362, Page 68 of Claims Manual.

⁶² https://www.fema.gov/sites/default/files/documents/fema_nfip_claims-manual_2021.pdf. Also cited in Plaintiff’s Opposition, ROA 1362, Page 284, of Claims Manual

⁶³ *Hanover Bldg. Materials, Inc. v. Guiffrida*, 748 F.2d 1011, 1013 (5th Cir.1984).

⁶⁴ *Rodgers*, 2007 WL 1029480, *4 (citing, *Aschenbrenner v. United States Fidelity & Guar. Co.*, 292 U.S. 80, 84–85, 54 S.Ct. 590, 78 L.Ed. 1137 (1934)).

proof of loss submitted by Plaintiff which included the Bodet Report.

Here, the Bodet Report was titled “sworn statement in proof of loss”, it was signed by Bob Bodet and it included Mr. Bodet’s architect seal. Such seal is an attestation by Mr. Bodet, as provided by Louisiana Administrative Code (“LAC”) 46:I.1305(A), which states that “[a]n architect shall affix his or her seal or stamp to all contract drawings and specifications requiring the services of an architect which were prepared by the architect or under the architect's responsible supervision.”

In this case, the District Court refused to consider Mr. Bodet’s signature and seal to satisfy the legal requirement of being “sworn to.”⁶⁵ However, all that is explicitly required by the SFIP, is that the Proof of Loss statement be sworn-to, and Plaintiff complied with this requirement under the language of the SFIP. For these reasons, the District Court erred in granting Defendant’s Motion for Summary Judgment.

b. Bodet Was Vested with Authority as an Agent of Plaintiff to Sign the Supplemental Proof of Loss

Next, in the Motion for Summary Judgment, Defendant argued that the supplemental proof of loss prepared by Mr. Bodet does not comply with the SFIP alleging that “Bodet was not a unit owner and not part of the insured condominium association. As such, the Bodet Document was not signed by “you” or, as that term

⁶⁵ ROA. 2222.

is defined by the SFIP.”⁶⁶ The District Court, in its opinion, noted that the Proof of Loss was “signed by Bodet, an architect hired by the insured, rather than the insured.”⁶⁷ However, the District Court did not expound on this issue or provide any further reasoning or analysis.

In any event, FEMA has not, in the National Flood Insurance Act of 1968 nor its insurance regulations, regulated the use of agency authority, be it through mandate, procurement, or representation. FEMA's definition of “you,” allows for a signature by the “insured(s) shown on the Declarations Page of this policy.” 44 C.F.R. pt. 61, app. A(3), art. II(A).

In Support of its Motion for Summary Judgment, Defendant cited to numerous cases whereby various District Courts granted Summary Judgment when a proof of loss was signed by “attorney” on behalf of an individual insured. However, these cases are factually distinguishable because in this case, Plaintiff is a corporation. A corporation, as an entity, is incapable of signing without the use of an agent. If FEMA prohibited the use of all mandatory or representative authority to sign on behalf of an insured, FEMA would be obligated to deny any Proof of Loss signed on behalf of an insured's trust, succession representative, tutor, corporation, limited liability company, or curator for an insured property.

⁶⁶ ROA. 370.

⁶⁷ ROA. 2221.

In this case, management agreement provides that NOLA Property Managers,

Inc. was appointed as agent and:

Agent shall manage the Property to the extent, for the period, and upon the terms of this Agreement. Agent shall perform the following services in the name of and on behalf of the Association, and the Association hereby gives Agent the authority and powers required to perform these services.⁶⁸

As part of the services:

Agent shall hire, pay, negotiate collective bargaining agreements with (if necessary), supervise, and discharge whatever personnel may be required to maintain and operate the Property on behalf of the Association and in accordance with the budget, job standards and wage rates previously approved by the Association. All such personnel shall be employees of the Association and not of Agent, and all salaries, taxes and other expenses payable to or on account of such employees shall be operating expenses of the Property. Any employment shall be done at the request and approval of the Board of Directors of the Association.

In this case, NOLA Property Managers, Inc. hired Bob Bodet, Jr., registered architect to assist with the rebuild of the condominiums and assist with the insurance claims for damage.⁶⁹ In accordance with the management agreement, Mr. Bodet was given authorization from NOLA Property Managers, Inc. to sign the supplemental proof of loss.⁷⁰ Kel Kopecky, property manager for Woodland Villas, then emailed that supplemental proof of loss, to Jim Dwyer, independent adjuster for the

⁶⁸ ROA. 2197.

⁶⁹ ROA. 2197.

⁷⁰ ROA. 2197.

Defendant, on February 18, 2022.⁷¹ Therefore, the fact that “Bodet was not a unit owner and not part of the insured condominium association”⁷² is irrelevant, as Mr. Bodet was vested with authority from the agent of the Plaintiff to sign the supplemental proof of loss. Thus, the District Court erred in denying summary judgment on this basis.⁷³

C. Material Issues Exist as To Whether Plaintiff’s Proof of Loss Complied With The Requirements Of The SFIP, Which Precludes Summary Judgment

Plaintiff, through this appeal, does not attempt to avoid application of the terms of the SFIP policy. Plaintiff is not arguing for the application of equitable estoppel from compliance with the terms of the SFIP Policy; and Plaintiff is not arguing that only substantial compliance with the terms of the SFIP Policy should be required. Rather, Plaintiff asserts that they strictly complied with the proof of loss requirements, based language within the SFIP Policy itself. As set forth herein, the District Court should have found that material issues existed as to whether Plaintiff strictly complied with the proof of loss requirements, based language within the SFIP Policy itself.

⁷¹ ROA. 2197.

⁷² ROA. 360.

⁷³ . (“[W]hether [a] proof of loss [is] satisfactory is a question of fact.” *Griswold Props., LLC v. Lexington Ins. Co.*, 275 Mich.App. 543, 740 N.W.2d 659, 677 (Mich.Ct.App.2007) *vacated in part on other grounds*, 276 Mich.App. 551, 741 N.W.2d 549 (Mich.Ct.App.2007); *Great Lakes Geophysical, LLLP v. Travelers Prop. Cas. Co.*, No. 13–10830, 2013 WL 3850938, at *8–10 (E.D.Mich. July 25, 2013)).

Moreover, District Courts in Louisiana have held that summary judgment should be denied when determining whether an insured complied with the requirements of the NFIP and SFIP. In *Mitchell v. Nat'l Flood Ins. Program*, No. CIV.A. 06-5070, 2008 WL 397756, at *1 (E.D. La. Feb. 8, 2008), a decision before the Eastern District of Louisiana, FEMA sought to dismiss the plaintiff's case with a Motion for Summary Judgment on the grounds that the plaintiff's proof of loss was deficient for a number of reasons, including a failure to identify an amount for the full cost of repair or replacement of building and contents, an applicable depreciation, the actual cash value of the loss, and a net amount being claimed. Perhaps most notably, the supplemental proof of loss was not signed by the insured plaintiff.⁷⁴ Rather, the plaintiff's proof of loss was signed by her attorney, who had been granted a verbal power of attorney.⁷⁵ FEMA argued that plaintiff was barred from recovering pursuant to her SFIP, because she failed to comply with the conditions precedent of the SFIP.⁷⁶ This Court rejected this argument and denied FEMA's Motion for Summary Judgment, concluding that a genuine issue of material fact existed as to whether the information provided by plaintiff was in fact enough for FEMA to evaluate the merits of her claim.⁷⁷

⁷⁴ *Id.*

⁷⁵ *Id.* at *2.

⁷⁶ *Id.* at *1.

⁷⁷ *Id.* at *4.

The Court in *Mitchell* cited *Copeland v. FEMA*, No. 03-2704, 2004 WL 325577 (E.D.LA. February 18, 2004), whereby the Court refused to grant summary judgment to a defendant insurer when the issue before the Court was plaintiff's failure to submit adequate proofs of loss. This Court reasoned that where plaintiff had "provided at least enough information for FEMA to evaluate the merits of the claim," and the proof of loss was adequate. *Id.* at 2; see also *Robin v. Fidelity National Property and Casualty Inc. Co.*, No. 06-5242 (E.D. LA. March 14, 2007) (refusing to enter summary judgment in favor of the insurer on the basis that material issues existed as to whether plaintiffs had filed a proper proof of loss); *Oechsner v. Hartford Life Ins. Co.*, No. CIV.A. 07-1436, 2008 WL 89514, at *2 (E.D. La. Jan. 7, 2008).

In the present matter, it is undisputed that the supplemental Proof of Loss contained a detailed breakdown of all damages not initially addressed by Wright in its initial payment and estimate. As set forth above, Wright even admitted that it had not paid enough for the claim and had omitted damages to the property caused by flood. Moreover, Wright relied on the supplemental proof of loss from Mr. Bodet to issue the supplemental payment and requested that Mr. Kopecky sign another supplemental proof of loss based on the information submitted by Mr. Bodet.

The supplemental proof of loss signed and submitted by Kel Kopecky, on September 26, 2022 satisfied the requirements of the SFIP. Here, Plaintiff complied

with its duty under the SFIP to submit a *signed and sworn* proof of loss. As such, summary judgment should have been denied.

CONCLUSION

As explained above, Plaintiff submitted a valid proof of loss to Defendant for consideration. The proof of loss was signed and sworn to by Plaintiff's agent, Bob Bodet. Further, Plaintiff provided Defendant with sufficient documentation, including estimates and invoices supporting their claim. Because there are genuine issues of material facts with respect to whether Plaintiff's proof of loss was submitted in strict compliance with the SFIP's requirements, Plaintiff respectfully requests that this Honorable Court reverse the District Court's Judgment granting Defendant's Motion for Summary Judgment and remand this matter to the District Court for further proceedings.

Respectfully submitted,

/s/ Lindsay G. Faulkner

PETER J. WANEK (23353)

LINDSAY G. FAULKNER (33863)

WANEK KIRSCH DAVIES LLC

1340 Poydras St., Suite 2000

New Orleans, LA 70112

Telephone: (504) 324-6493

Facsimile: (504) 324-6626

ATTORNEYS FOR THE WOODLAND

VILLAS CONDOMINIUMS

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 15th day of January, 2025, I served a copy of the foregoing Brief on counsel for all parties to this proceeding, by filing this pleading electronically using the United States 5th Circuit Court of Appeals ECF system.

/s/ Lindsay G. Faulkner

PETER J. WANEK (23353)

LINDSAY G. FAULKNER (33863)

WANEK KIRSCH DAVIES LLC

1340 Poydras St., Suite 2000

New Orleans, LA 70112

Telephone: (504) 324-6493

Facsimile: (504) 324-6626

ATTORNEYS FOR THE WOODLAND VILLAS CONDOMINIUMS

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of FED. R. APP. P. 32, because this document contains 8040 words, as determined by the word count function of Microsoft Word 2016.

This brief complies with the typeface requirements of FED. R. APP. P. 32 and type style requirements of FED. R. APP. P. 32 because it has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ Lindsay G. Faulkner

PETER J. WANEK (23353)

LINDSAY G. FAULKNER (33863)

WANEK KIRSCH DAVIES LLC

1340 Poydras St., Suite 2000

New Orleans, LA 70112

Telephone: (504) 324-6493

Facsimile: (504) 324-6626

ATTORNEYS FOR THE WOODLAND VILLAS CONDOMINIUMS