United States Court of Appeals

for the

Fifth Circuit

Case No. 24-30722

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, NEW ORLEANS IN NO. 2:23-CV-1586, HONORABLE LANCE M. AFRICK, U.S. DISTRICT JUDGE

BRIEF FOR DEFENDANT-APPELLEE

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CERTIFICATE OF INTERESTED PERSONS
(in accordance with 5TH CIR. R. 28.2.1)

Record Number 24-30722

The Woodland Villas Condominiums v. Wright National Flood Insurance Company.

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 disqualifications or recusal.

- The Woodland Villas Condominiums – Plaintiff / Appellant
- Peter J. Wanek, Lindsay G. Faulker, Wanek Kirsch Davies LLC, 1340 Poydras Street, Suite 2000, New Orleans, LA 70112 – Counsel for Plaintiff / Appellant
- Wright National Flood Insurance Company – Defendant / Appellee
- Brown & Brown, Inc. – see numbered paragraph 2 below
- Federal Emergency Management Agency (FEMA) - see numbered paragraph 3 below
- Theodore I. Brenner, Joel W. Morgan, Butler Snow LLP, 919 E. Main Street, Suite 600, Richmond, VA 23219; Jim Letten, Butler Snow LLP, 201 St. Charles Ave., Suite 2700, New Orleans, LA 70170 – Counsel for Defendant / Appellee

Further responding:

1. Wright National Flood Insurance Company ("Wright") is a Write-Your-Own Program insurance carrier participating in the United States Government's National Flood Insurance Program, pursuant to the National Flood Insurance Act of 1968 ("NFIA"), as amended,[1] appearing in its "fiduciary"[2] capacity as "fiscal agent of the United States".[3]

2. Wright is part of The Wright Insurance Group, LLC. Effective May 1, 2014, 100% of the issued and outstanding membership interests of The Wright Insurance Group, LLC were acquired by Brown & Brown, Inc. Brown & Brown, Inc. is a publicly traded corporation whose shares are traded on the New York Stock Exchange under the ticker symbol BRO.

3. The party in interest in this matter is the Federal Emergency Management Agency (FEMA), as all claim payments under a Standard Flood Insurance Policy (SFIP) are paid for with United States Treasury funds, and all flood insurance premiums are funds of the Federal Government. *See Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386 (5th Cir. 2005) ("Payments on SFIP claims come ultimately from the federal treasury.")

/s/ Joel W. Morgan
Joel W. Morgan

[1] 42 U.S.C. § 4001, *et seq.*
[2] *See* 44 C.F.R. § 62.23(f).
[3] 42 U.S.C. §4071(a)(1); *Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir. 1998).

STATEMENT REGARDING ORAL ARGUMENT
(in accordance with 5TH CIR. R. 28.2.3)

The District Court's decision in this case was based on the application of settled principles of law to undisputed facts. The dispositive issue in this case—whether Plaintiff failed to strictly comply with the terms of a Standard Flood Insurance Policy ("SFIP") when it failed to provide timely Proofs of Loss, signed and sworn to by the insured, within the 180-day extended Proof of Loss deadline—involves the application of settled Fifth Circuit precedent. Wright maintains the facts and legal arguments are adequately presented in the briefs and record but wishes to participate in oral argument in the event the Court determines that the decisional process will be aided by oral argument.

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I. JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this matter "pursuant to 42 U.S.C. § 4072 which provides exclusive federal jurisdiction over litigation arising out of the NFIP." *Ferraro v. Liberty Mut. Fire Ins. Co.*, 796 F.3d 529, 531 (5th Cir. 2015); *see* 42 U.S.C. § 4072. The District Court also had jurisdiction as this case involves "a claim for benefits under a federal flood insurance policy over which the district court had federal-question jurisdiction." *Spong v. Fidelity Nat'l Prop. & Cas. Ins. Co.*, 787 F.3d 296, 303 (5th Cir. 2015) (internal citations omitted); *see* 28 U.S.C. § 1331.

The United States District Court for the Eastern District of Louisiana issued an Order and Reasons on October 9, 2024, and entered Judgment on October 9, 2024, granting Wright National Flood Insurance Company's Motion for Summary Judgment dismissing the Woodland Villa Condominiums' ("Woodland") claim. (*See* ROA.24-30722.2214 (Order and Reasons); ROA.24-30722.2229 (Judgment)). Woodland filed its Notice of Appeal on November 8, 2024. (ROA.24-30722.2305). This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

II. STATEMENT OF THE ISSUE

Whether the District Court correctly determined that Woodland failed to comply with the Proof of Loss requirement contained in the Standard Flood Insurance Policy?

III. STATEMENT OF THE CASE

Wright National Flood Insurance Company ("Wright"), appears solely in its capacity as a Write-Your-Own ("WYO") Program insurance carrier participating in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968 ("NFIA"), as amended,[1] in its "fiduciary"[2] capacity as the "fiscal agent of the United States."[3]

Wright, while acting in its capacity as a WYO Program carrier, issued six separate Standard Flood Insurance Policies ("SFIPs") purchased by Woodland to insure six properties located at 501 Indigo Parkway, LaPlace, Louisiana (the "Properties"). (ROA.24-30722.397–408, 426, 503, 2215 (hereinafter "(ROA.___)"). All six SFIPs were issued on the Standard Flood Insurance Policy ("SFIP") Residential Condominium Building Association Policy ("RCBAP") Form. (*Id*. at 397–408, 425–26, 503). Wright issued SFIP numbers 17 1150605193 10 for Building 1A, 17 1150649883 10 for Building 2A, 17 1150290497 11 for Building 3A, 17 1150290496 11 for Building 6A, 17 1150648866 10 for Building 7A, and 17 1150605194 10 for Building 8A (the "Policies") to Woodland as the named insured for the Properties. (*Id*. at 397–408, 426, 503).[4] The Policies each provided limits of

[1] *See* 42 U.S.C. § 4001 *et seq*.
[2] 44 C.F.R. § 62.23(f).
[3] 42 U.S.C. § 4071(a)(1); *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386 (5th Cir. 2005).
[4] The SFIP RCBAP Form is a codified federal regulation located at 44 C.F.R. Part 61, Appendix A(3) (2020) (ROA.503). A copy of the SFIP RCBAP Form is contained in ROA.370–96.

$638,900.00, subject to a $1,250.00 deductible for Coverage A (Building). (*Id*. at 397–408, 426, 504). The Properties sustained flood damage on or about August 29, 2021 during the passing of Hurricane Ida. (*Id*. at 12).

Wright was notified of the flooding and James Dwyer, II, an independent adjuster with Colonial Claims was assigned to inspect the Properties and assist Woodland in presenting its flood loss claims. (*Id*. at 426–27, 504). Mr. Dwyer inspected and photographed the Properties between September 3 and 6, 2021 and determined that a general condition of flooding, as defined by the SFIP, existed at the Properties on August 29, 2021. (*Id*.). Mr. Dwyer prepared estimates for Building damages for the Properties in the following amounts, after consideration of recoverable depreciation and the SFIP deductible ($1,250.00):

Property Address	**Coverage A (Building) Estimate**
501 Indigo Pkwy, Building 1A, LaPlace, LA 70068	$262,034.07
501 Indigo Pkwy, Building 2A, LaPlace, LA 70068	$274,738.29
501 Indigo Pkwy, Building 3A, LaPlace, LA 70068	$268,169.52
501 Indigo Pkwy, Building 6A, LaPlace, LA 70068	$287,823.61
501 Indigo Pkwy, Building 7A, LaPlace, LA 70068	$266,291.83
501 Indigo Pkwy, Building 8A, LaPlace, LA 70068	$276,536.58

(*Id*. at 427, 504). Mr. Dwyer prepared Proofs of Loss in accordance with the amounts contained in the estimates he prepared. (*Id*. at 409–20, 427, 505). Wright issued payments to Woodland for Building damages in accordance with Mr. Dwyer's estimates and FEMA Bulletin W-21020.[5] (*Id*. at 421–24, 427, 505).

After receiving additional information, Mr. Dwyer prepared revised estimates of Building damages, after considering recoverable depreciation and the SFIP deductible ($1,250.00) in the following amounts:

Property Address	**Coverage A (Building) Estimate**
501 Indigo Pkwy, Building 1A, LaPlace, LA 70068	$271,940.80
501 Indigo Pkwy, Building 2A, LaPlace, LA 70068	$284,640.26
501 Indigo Pkwy, Building 3A, LaPlace, LA 70068	$278,078.15
501 Indigo Pkwy, Building 6A, LaPlace, LA 70068	$297,732.24
501 Indigo Pkwy, Building 7A, LaPlace, LA 70068	$276,200.46
501 Indigo Pkwy, Building 8A, LaPlace, LA 70068	$286,445.21

[5] Through FEMA Bulletin W-21020, FEMA authorized WYO carriers to exercise their option to evaluate and pay claims based upon "their adjuster's report" instead of requiring a signed and sworn Proof of Loss for these undisputed amounts. (ROA.421–24). Wright made payments to Plaintiff for all six buildings in accordance with Mr. Dwyer's reports and estimates. FEMA Bulletin W-21020 also extended the 60-day Proof of Loss deadline for Hurricane Ida claims to 180 days from the date of loss for insureds to submit a "compliant" Proof of Loss for any additional amounts sought. (*Id*.).

(*Id*. at 428, 505). Mr. Dwyer prepared Proofs of Loss consistent with the amounts contained in the revised Coverage A estimates that he prepared. (*Id*.). The Proofs of Loss based upon the estimates prepared by Mr. Dwyer were signed on September 26, 2022[6] and received by Wright on April 10, 2023. (*Id*. at 428, 505–06). Because the Proofs of Loss signed on September 26, 2022 were submitted to Wright after the extended, 180-day Proof of Loss deadline had expired, on April 12, 2023, Wright obtained limited waivers from FEMA of the 180-day Proof of Loss deadline for Building damages specific to the estimates and Proofs of Loss prepared by Mr. Dwyer for the undisputed, additional damages to the Properties. (*Id*. at 428, 506, 2217). After accounting for the amounts previously paid, Wright issued supplemental payments to Woodland for Building damages for the Properties in accordance with the September 26, 2022 Proofs of Loss and the April 12, 2023 limited waivers. (*Id*. at 428–29, 506, 2217). Wright has issued the following total payments to Woodland for Building damages for the Properties:

Property Address	**Coverage A (Building) Estimate**
501 Indigo Pkwy, Building 1A, LaPlace, LA 70068	$271,940.80
501 Indigo Pkwy, Building 2A, LaPlace, LA 70068	$284,640.26

[6] There is no evidence that Wright was aware that the September 26, 2022 Proofs of Loss were signed by Woodland's property manager. Regardless, Wright obtained limited waivers specific to the estimates and Proofs of Loss prepared by Mr. Dwyer for the undisputed, additional damages to the Properties. (ROA.428, 506, 2217).

501 Indigo Pkwy, Building 3A, LaPlace, LA 70068	$278,078.15
501 Indigo Pkwy, Building 6A, LaPlace, LA 70068	$297,732.24
501 Indigo Pkwy, Building 7A, LaPlace, LA 70068	$276,200.46
501 Indigo Pkwy, Building 8A, LaPlace, LA 70068	$286,445.21

(*Id*. at 429, 506). Wright has issued payments for the full amounts contained in the Proofs of Loss signed on September 26, 2022. (*Id*.).

As Woodland's date of loss was August 29, 2021, based upon FEMA's extension of the Proof of Loss deadline to 180 days, Woodland had until February 25, 2022, to submit proper signed and sworn Proofs of Loss, supported by specifications of damaged buildings and detailed repair estimates in support of the claimed damages. (*Id*. at 429, 506–07, 2215). 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. (*Id*. at 429, 507, 2224). Other than FEMA Bulletin W-21020 and the April 12, 2023 limited waivers from FEMA for the specific amounts identified, Wright is not aware of any other waivers from FEMA related to the claims or flood loss date. (*Id*. at 429, 507).

It is undisputed that Woodland identified only one other document that it asserted satisfied the SFIP Proof of Loss requirement. (*Id*. at 457, 492–98, 507–08). The document was entitled "Sworn Statement in Proof of Loss", but was signed by an architect, Robert Bodet (the "Bodet Document"). (*Id*. at 473–82, 492–98, 508). It is undisputed that the Bodet Document is not notarized. (*Id*. at 473–82, 2222). It is undisputed that the Bodet Document does not contain a "declaration substantially similar to 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct . . . .'"[7] (*Id*.). While the Bodet Document contains an architect seal, this is not sufficient. (*Id*. at 473–82, 2222–24). As such, there can be no dispute that the Bodet Document was not "sworn to" as required by the SFIP.

Although the District Court limited its decision to Woodland's failure to satisfy the "sworn to" requirement, the Proof of Loss is also deficient because it was not signed by the insured. (*Id*. at 473–482, 491–92). Mr. Bodet was an architect hired by the property manager to assist with the reconstruction of the Properties and with the insurance claims. App. Brief at pp. 9–10. Mr. Bodet was never a unit owner or a member of Woodland's association or board. (ROA.491). The Bodet Document was not signed by any member of Woodland's association or board.

[7] *Clark v. Wright Nat'l Flood Ins. Co.*, 821 F. App'x 342, 346 (5th Cir. 2020).

Because Woodland failed to strictly comply with the Proof of Loss requirement, the District Court correctly granted Wright's Motion for Summary Judgment.

IV. SUMMARY OF THE ARGUMENT

This is an action brought on six SFIP RCBAP Forms purchased by Woodland, which insured the Properties. While Woodland purchased the SFIPs from Wright, "the insurance was provided through the [NFIP], which is administered by the Federal Emergency Management Agency ('FEMA') under the NFIA." *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386 (5th Cir. 2005) ("*Wright I*").[8] "The terms of SFIP policies are dictated by FEMA." *Id*. (citing 44 C.F.R. §§ 61.4(b), 61.13(d)). "Payments on SFIP claims come ultimately from the federal treasury." *Id.* (citing *Gowland v. Aetna*, 143 F.3d 951, 955 (5th Cir. 1998)). Wright "is a fiscal agent of the United States and, in the parlance of the NFIP, a Write Your Own insurer ('WYO')." *Id.* (citing 42 U.S.C. §§ 4071(a)(1), 4081(a)).

[8] As this Court has noted, "[t]he NFIP is controlled by federal regulations." *Monistere v. State Farm Fire & Cas. Co.*, 559 F.3d 390, 392 (5th Cir. 2009) (citing 44 C.F.R. § 61.4). The SFIP itself "appears in the regulations." *Id.* (citing 44 C.F.R. pt. 61, app. A(1)). "An SFIP is 'a regulation of [FEMA], stating the conditions under which federal flood-insurance funds may be disbursed to eligible policyholders.'" *Marseilles Homeowners Condo. Ass'n Inc. v. Fidelity Nat'l Ins. Co.*, 542 F.3d 1053, 1054 (5th Cir. 2008) (citation omitted). "Because the NFIP puts at stake the government's liability, its regulations implicate sovereign immunity." *Ferraro*, 796 F.3d at 531 (internal citation omitted). "Although WYO insurers administer SFIP policies, payments made pursuant to such policies are 'a direct charge on the public treasury.'" *Id.* at 531–32 (quoting *Gowland v. Aetna*, 143 F.3d 951, 955 (5th Cir. 1998)). "Therefore, 'the provisions of an insurance policy issued pursuant to a federal program must be strictly construed and enforced.'" *Id.* (citations omitted).

Woodland failed to submit a SFIP-compliant sworn Proof of Loss for the additional amounts sought. Wright moved for summary judgment on the grounds that the document relied upon by Woodland did not satisfy the Proof of Loss requirement because it was not signed and sworn to by the insured. The District Court found that the Bodet Document was not "sworn to" as required by the SFIP and therefore did not reach the question of who must sign and swear to the Proof of Loss on behalf of the insured condominium association.

Woodland claims that there "is a genuine issue of material fact as to whether the supplemental proof of loss submitted by Plaintiff satisfied the requirements of the SFIP." App. Brief at p. 7. While the document submitted to Wright by Woodland was entitled "Sworn Statement in Proof of Loss", that does not mean it is sworn to or that it otherwise satisfies the Proof of Loss requirement. It is undisputed that the Bodet Document was not notarized, nor does it contain a declaration that it was being signed under penalty of perjury. As such, there can be no dispute that the Bodet Document was not "sworn to" as required by the SFIP. The District Court correctly concluded from the face of the Bodet Document that it was not "sworn to" as required by the SFIP and the relevant jurisprudence. (ROA.2221–25). Based upon Woodland's failure to provide a timely sworn Proof of Loss, the District Court correctly found that Woodland failed to satisfy the Proof of Loss requirement and dismissed the Complaint. (*Id*.).

Because the District Court found that the Bodet Document was not "sworn to" it did not reach the question of whether the Proof of Loss was "also deficient because it is not signed by the insured." (ROA.2224). In its Brief, Woodland does not refute that the Bodet Document submitted to Wright before the extended Proof of Loss deadline was signed by architect Robert Bodet. Because the SFIP requires that a Proof of Loss be signed (and sworn to) by the insured, Wright submits that the Bodet Document fails to satisfy this requirement of the SFIP as well.

As such, and for the reasons set forth herein, there is no "issue of material fact" and can be no dispute that Woodland failed to strictly comply with the Proof of Loss requirement and this Court should affirm the District Court's decision.

V. ARGUMENT

A. BACKGROUND OF THE NATIONAL FLOOD INSURANCE PROGRAM

Congress created the NFIP pursuant to the NFIA to provide affordable flood insurance rates. *Ferraro*, 796 F.3d at 531; *see* 42 U.S.C. § 4001, *et seq.* The Administrator of the Federal Emergency Management Agency ("FEMA") is statutorily authorized to promulgate regulations "for general terms and conditions of insurability which shall be applicable to properties eligible for flood insurance coverage." 42 U.S.C. § 4013. The regulations also prescribe the methods by which approved losses under the NFIP may be adjusted and paid. 42 U.S.C. § 4019. The

SFIP itself is a federal regulation, providing the terms and conditions under which federal funds may be disbursed. *Ferraro*, 796 F.3d at 531.

In 1983, under the WYO Program, the Administrator of FEMA authorized the SFIP to be issued by private insurance companies, commonly referred to as WYO Program carriers ("WYO carriers") (e.g. Wright). 42 U.S.C. § 4071(a)(1). WYO carriers issuing flood insurance under the NFIP arrange for the adjustment, settlement, payment, and defense of all claims arising from the policy. 44 C.F.R. § 62.23(d). Congress underwrites all operations of the NFIP, including claims adjustment, through United States Treasury funds. 42 U.S.C. § 4017(d)(1). The federal government pays all flood insurance claims and reimburses WYO carriers their costs, including defense costs, for the adjustment and payment of claims. *Grissom v. Liberty Mut. Fire Ins. Co.*, 678 F.3d 397, 402 (5th Cir. 2012) (citing *Campo v. Allstate Ins. Co.*, 562 F.3d 751, 754 (5th Cir. 2009)); *see* 44 C.F.R. § 62.23(i); *see also Newton v. Capital Assur. Co., Inc.*, 245 F.3d 1306, 1312 (11th Cir. 2001).

Congress statutorily authorized FEMA to enter into arrangements with private insurance companies that operate as the "fiscal agent of the United States." 42 U.S.C. § 4071(a)(1). In effect, a suit against a WYO carrier is the functional equivalent of a suit against FEMA. *Van Holt v. Liberty Mut. Ins. Co.*, 163 F.3d 161, 166–67 (3d Cir. 1998); *see Shuford v. Fidelity Nat'l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1343

(11th Cir. 2007). Thus, a judgment against a WYO carrier constitutes a direct charge on the United States Treasury. *Shuford*, 508 F.3d at 1343; *Newton*, 245 F.3d at 1311–12; *Van Holt*, 163 F.3d at 167.

Federal law governs the interpretation of the provisions of the SFIP. Article X of the SFIP provides:

> This policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. §4001, *et seq.*), and Federal common law.

44 C.F.R. pt. 61, app. A(3), art. X (2020); *see Wright I*, 415 F.3d at 390; *West v. Harris*, 573 F.2d 873, 881 (5th Cir. 1978).

Because the federal government pays all claims, in order to receive benefits under a SFIP, all conditions precedent must be fulfilled. *Cohen v. Allstate Ins. Co.*, 924 F.3d 776, 780 (5th Cir. 2019) (citing *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 394 (9th Cir. 2000)). Strict compliance with the terms and conditions of the SFIP, including the Proof of Loss requirement, is mandated such that failure to submit a timely Proof of Loss prohibits a plaintiff from recovery. *Ferraro*, 796 F.3d at 531–34; *Gunter v. Farmers Ins. Co., Inc.*, 736 F.3d 768, 773–74 (8th Cir. 2013); *DeCosta v. Allstate Ins. Co.*, 730 F.3d 76, 83–86 (1st Cir. 2013); *Jacobson v. Metro. Prop. & Cas. Ins. Co.*, 672 F.3d 171, 175–76 (2d Cir. 2012); *Evanoff v. Standard Fire Ins. Co.*, 534 F.3d 516, 519–21 (6th Cir. 2008); *Shuford*, 508 F.3d at 1341–43; *Suopys v. Omaha Prop. & Cas.*, 404 F.3d 805, 809–10 (3d Cir. 2005); *Flick*, 205

F.3d at 394. This includes the requirement that a plaintiff provide an additional Proof of Loss to recover an additional amount on a preexisting claim. *Ferraro*, 796 F.3d at 531–34; *Gunter*, 736 F.3d at 773–76; *DeCosta*, 730 F.3d at 83–86.

As an insured under a SFIP, Woodland had a duty to read and understand the policy and understand its terms. *Richmond Printing LLC v. Dir., FEMA*, 72 F. App'x 92, 98 (5th Cir. 2003) (citing *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385, 68 S. Ct. 1 (1947)); *see also Cohen*, 924 F.3d at 781 (citing *Heckler v. Cmty. Health Svcs.*, 467 U.S. 51, 63, 104 S. Ct. 2218 (1984) ("as a participant in the federal flood insurance program, Cohen is presumed to have constructive knowledge of all rules and regulations associated with it.").

B. THE TRIAL COURT PROPERLY GRANTED WRIGHT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56 OF THE FEDERAL RULES OF CIVIL PROCEDURE

1. Standard for Summary Judgment and Standard of Review

Rule 56(a) of the Federal Rules of Civil Procedure provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." "The court views all evidence in the light most favorable to the nonmoving party and grants summary judgment if there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *Lofton v. McNeil Consumer & Specialty Pharm.*, 672 F.3d 372, 375 (5th Cir. 2012); *see Constr. Funding, L.L.C. v.*

Fidelity Nat'l Indem. Ins. Co., 636 F. App'x 207, 209 (5th Cir. 2016) (citing *Savant v. APM Terminals*, 776 F.3d 285, 288 (5th Cir. 2014)). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, affidavits and admissions show there is no genuine issue of material fact. *Stephens ex rel. R.A. v. Wallace*, 575 F. App'x 357, 358 (5th Cir. 2014) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986)).

> If the dispositive issue is one on which the nonmoving party will bear the burden of persuasion at trial, the moving party may satisfy its burden of production by either (1) submitting affirmative evidence that negates an essential element of the nonmovant's claim, or (2) demonstrating there is no evidence in the record to establish an essential element of the nonmovant's claim.

Team Contractors, LLC v. Waypoint NOLA, LLC, 2017 WL 568805, at *1 (E.D. La. Feb. 13, 2017).

In the face of a properly supported motion for summary judgment, the nonmoving party must show there is "sufficient evidence favoring the nonmoving party for [the trier of fact] to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 2422, 248–49, 106 S. Ct. 2505, 2510–11 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249–50, 106 S. Ct. at 2511 (internal citations omitted). Awarding summary judgment in favor of a WYO carrier like Wright is appropriate where (as here) the record demonstrates that the insured has failed to strictly comply with the SFIP's Proof of Loss requirement and perfect its claim by submitting a

SFIP-compliant Proof of Loss, signed and sworn to by the insured, within the extended 180-day deadline. *See Ferraro*, 796 F.3d at 534; *Marseilles Homeowners Condo. Ass'n Inc. v. Fidelity Nat'l Ins. Co.*, 542 F.3d 1053, 1056 (5th Cir. 2008); *Gowland*, 143 F.3d at 955; *Clark v. Wright Nat'l Flood Ins. Co.*, 821 F. App'x 342, 344–46 (5th Cir. 2020).

The appellate court "reviews a district court's grant of summary judgment de novo, applying the same standards as the district court." *Marseilles*, 542 F.3d at 1055. "Summary judgment is proper if the record reflects 'that there is no genuine issue as to any material fact and that the movant is entitled to a judgment as a matter of law.'" *Id*. (quoting Fed. R. Civ. P. 56(c)).

2. The SFIP Proof of Loss Requirement

Article VIII(J)(4) of the SFIP provides as a condition precedent that within 60 days after a flood loss, the insured must submit a Proof of Loss, "signed and sworn to by you." Article VIII(J)(4) clearly outlines the insured's duties:

> J. Requirements in Case of Loss
> In case of a flood loss to insured property, you must:
> . . . .
>
> 4. Within 60 days after the loss, **send us a Proof of Loss which is your statement of the amount you are claiming** under the policy **signed and sworn to by you**, and which furnishes us with the following information:
>
> a. The date and time of loss;
>
> b. A brief explanation of how the loss happened;

c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

d. Details of any other insured that may cover the loss;

e. Changes in title or occupancy of the covered property during the term of the policy;

f. Specifications of damaged insured buildings and detailed repair estimates;

g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;

h. Details about who occupied any insured building at the time of loss and for what purpose; and

i. The inventory of damaged personal property described in J.3. above.

44 C.F.R. pt. 61, app. A(3), art. VIII(J)(4) (2020) (emphasis added). Following Hurricane Ida, FEMA issued Bulletin W-21020 which extended the Proof of Loss deadline to 180 days. (ROA.2221).

The plain language of the SFIP requires that the Proof of Loss be "sworn to by you." 44 C.F.R. pt. 61, app. A(3), art. VIII(J)(4) (2020). As defined by the SFIP, "'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy." *Id*. at art. II(A). The SFIP provides that "**[y]ou** may not sue us to recover money under this policy unless **you** have complied with all the requirements of the policy." *Id*. at art. VIII(R) (emphasis added); *see also*, *id.* at art. I (providing in part

that "We will pay **you** for direct physical loss by or from flood to your insured property if **you** . . . Comply with all terms and conditions of this policy . . . .").

Courts have consistently mandated strict compliance with the terms and conditions of the SFIP, including the Proof of Loss requirement. *Ferraro*, 796 F.3d at 532; *Marseilles*, 542 F.3d at 1057–58. The courts have cited constitutional grounds, as well as the desire for "uniformity of decisions," as the framework for finding that strict compliance is necessary to recover under the SFIP.

Federal law has "long recognized that an insured must comply strictly with the terms and conditions of a federal insurance policy." *Flick*, 205 F.3d at 390 (citing *Merrill*, 332 U.S. at 384–85, 68 S. Ct. at 3). In *Merrill*, the Supreme Court held that the terms of the Federal Crop Insurance Act and the Wheat Crop Insurance Regulations were binding upon those that sought coverage. 332 U.S. at 385, 68 S. Ct. at 3. The Supreme Court found that to recover, an insured must comply with all terms and conditions of a federal insurance policy. *Suopys*, 404 F.3d at 809 (citing *Merrill*, 332 U.S. at 384–85, 68 S. Ct. at 3 and *Flick*, 205 F.3d at 390). The Court also recognized the "duty of all courts to observe the conditions defined by Congress," along with those prescribed by the agency with rule-making authority, "for charging the public treasury." *Merrill*, 332 U.S. at 385, 68 S. Ct. at 3–4 (that one "'must turn square corners when they deal with the Government,' does not reflect a callous outlook.").

The *Flick* Court further discussed the limitations imposed by the Supreme Court upon litigants seeking treasury funds in *Office of Personnel Management v. Richmond*, 496 U.S. 414, 420, 110 S. Ct. 2465, 2469 (1990). 205 F.3d at 391. The Supreme Court "acknowledged that the Appropriations Clause prohibits the judiciary from granting any money claim against the federal government that is not authorized by statute." *Id.* at 391 (citing *Richmond*, 496 U.S. at 424, 434, 110 S. Ct. at 2471, 2476). The purpose of the Appropriations Clause is to ensure that "'public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to . . . the individual pleas of litigants.'" *Id.* at 391 (quoting *Richmond*, 496 U.S. at 428, 110 S. Ct. at 2473). Thus, when Congress utilizes the Appropriations Clause to provide a statutory method by which a litigant can recover funds from the U.S. Treasury, the litigant must follow the method approved by Congress and the courts are bound to uphold those limitations imposed by Congress. *Id.* at 391. The courts cannot, in the face of such limitations, make an authorized award of money "based on theory of substantial compliance or notice prejudice." *Id.* (*cited in DeCosta*, 730 F.3d at 83–84. The *Flick* Court held that the strict compliance mandated by the Appropriations Clause must be applied to the SFIP, and that failure to file a timely signed and sworn Proof of Loss bars a claim under a SFIP. *Flick*, 205 F.3d at 391–92.

Courts have also cited to the need for a nationally-uniform rule of law governing claims disputes involving the NFIP as a basis for requiring strict compliance with the terms and conditions of the SFIP. *DeCosta,* 730 F.3d at 84; *see Linder & Associates, Inc. v. Aetna Cas. & Sur. Co.*, 166 F.3d 547, 550 (3d Cir. 1999). Courts have found that "'[t]here is a compelling interest in assuring uniformity of decision in cases involving the NFIP.'" *Jacobson,* 672 F.3d at 175 (quoting *Flick,* 205 F.3d at 390). The circuit courts' adherence to the principle of "uniformity of decisions" is evident from the consistent holdings that failure to submit a Proof of Loss as required by the SFIP is fatal to such claims. *See Ferraro,* 796 F.3d at 531–34; *DeCosta*, 730 F.3d at 83–86; *Jacobson*, 672 F.3d at 175–76; *Evanoff*, 534 F.3d at 519–21; *Suopys*, 404 F.3d at 809–10; *Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1317–19 (11th Cir. 2003); *Dawkins*, 318 F.3d 606, 610–12 (4th Cir. 2003); *Mancini v. Redland Ins. Co.*, 248 F.3d 733–35 (8th Cir. 2001); *Flick*, 205 F.3d at 390–95.

3. The District Court Correctly Granted Wright's Motion Because Woodland Failed to Strictly Comply with the Requirement that the Proof of Loss be "Sworn To"

The District Court properly granted Wright's Motion for Summary Judgment and dismissed Woodland's Complaint, finding that the Bodet Document did not satisfy the Proof of Loss requirement of the SFIP. The SFIP mandates the Proof of Loss must be "sworn to by you." 44 C.F.R. pt. 61, app. A(3), art. VIII(J)(4) (2020).

It is clear from the face of the Bodet Document that it does not meet the "sworn to" requirement contained in the SFIP.

The decision by this Court in *Clark v. Wright National Flood Insurance Company* demonstrates that a plaintiff must strictly adhere to the "sworn to" aspect of the Proof of Loss requirement. 821 F. App'x at 344–46. In *Clark*, the plaintiffs allegedly sustained damages from flooding that occurred on March 11, 2016 and again on August 12, 2016. *Id*. at 343. Plaintiff Clark had purchased a SFIP that was issued by Wright. *Id*. For the March 2016 flood claim, "Clark [timely] submitted a letter he represented as his proof of loss ('POL') on April 27, showing building and contents losses over the policy limits. The POL also contained the statement, 'I hereby declare and attest that the information contained in this letter is true and correct to the best of my knowledge.'"[9] *Id*. For the August 2016 flood claim, Clark timely submitted a letter on December 7, 2016, purporting to serve as his Proof of Loss, containing the "same declaratory statement found in the April 27, 2016 POL for the March flood." *Id*. Wright ultimately moved for summary judgment, which the District Court granted. *Id*. at 344. The District Court found that the "April and December 2016 POLs were not sworn claims as required by the SFIP" and that later

[9] Clark later submitted a Proof of Loss for "undisputed" damages which Wright paid after obtaining a limited waiver of the SFIP's Proof of Loss requirement from FEMA to pay the undisputed damages. *Id*. at 343–44.

Proofs of Loss submitted in "January and February 2018 . . . were untimely . . . ." *Id*. The plaintiffs appealed.

Similar to Woodland's arguments, the plaintiffs in *Clark* contended that the "declarations [signed by Clark] satisfied the sworn-to requirement because they declared and attested that the information was true and correct," arguing that the SFIP provides no definition of the term "'sworn' and does not require the phrase 'under penalty of perjury' or notarization." *Id*. at 345. While this Court agreed that the SFIP does not define "sworn," and does not specifically require a Proof of Loss be signed under penalty of perjury, this Court held that since claims are paid out of the federal treasury, "SFIP policy provisions must be strictly construed, and that would include the sworn-to requirement." *Id*. (citing *Gowland*, 143 F.3d at 954). The Court further stated:

> To understand the phrase "sworn to" in a federal regulation, we rely on a statute explaining that when under any federal regulation a matter is required to be sworn to in writing, it may be supported by an unsworn, signed writing declaring the matter to be "true under penalty of perjury," in a form substantially similar to "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date)." FEMA's model POL form includes an attestation whereby policyholders "declare under penalty of perjury" that the information in their POL is "true and correct."
>
> . . . .
>
> **Strictly construing the SFIP, we conclude that "sworn to" 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)."** Neither of Clark's 2016 POLs satisfy the SFIP's sworn-to requirement because neither POL was notarized nor included the phrase "under penalty of

> perjury." The district court did not err in concluding the same. Because Clark's 2016 POLs failed to comply with the SFIP's sworn-to requirement, the 2016 POLs cannot support a claim for breach of contract.

Id. at 345–46 (internal citations omitted) (emphasis added); *see Mancini*, 248 F.3d at 735; *see Hagstotz v. Nationwide Mut. Ins. Co*. 2018 WL 5005000 at *2–3 (D.N.J. Oct. 16, 2018) (holding that a document entitled "Sworn Statement in Proof of Loss" failed to comply with the SFIP Proof of Loss requirement where it failed to contain a clause acknowledging that it had been signed by the insured under penalty of perjury). This Court also affirmed the District Court's determination that the untimely Proofs of Loss submitted in January and February 2018 could not support the plaintiffs' claims under the SFIP because they were submitted to Wright after the expiration of the Proof of Loss deadline. *Id*. at 346.

Woodland attempts to distinguish *Clark* by asserting that this Court found that the April 2016 and December 2016 letters submitted by "plaintiff[s] failed to state the amount claimed and that the plaintiffs' proofs of loss were untimely."[10] App. Brief at p. 23. Woodland's Brief misstates this Court's holding in *Clark*. This Court noted that the "April 2016 POL for the March 2016 flood and the December 2016 POL for the August 2016 flood **were timely**. **At issue is whether these POLs satisfied the SFIP's 'sworn-to' requirement.**" *Clark*, 821 F. App'x at 345

[10] Woodland actually cites to the portion of the decision that recited the District Court's findings.

(emphasis added). Although on appeal the plaintiffs argued that the District Court erred in finding that the December 2016 Proof of Loss failed to "state an amount claimed as required by the SFIP," this Court specifically declined to address this issue. *Id*. at 346. This Court stated "[w]e need not consider this alternative basis for concluding the December 2016 POL failed to comply with the SFIP because **we have already concluded that the December 2016 POL failed to comply with the SFIP's sworn-to requirement** and any noncompliance obviates a policyholder's right to recover losses." *Id*. (emphasis added). As such, Woodland's attempt to distinguish *Clark* fails. This Court based its affirmation of the District Court's decision on the grounds that the April 2016 Proof of Loss and December 2016 Proof of Loss were not sworn.

The decision in *Ferraro* is also instructive. In *Ferraro*, the defendant issued a SFIP pursuant to the NFIP to the plaintiffs. 796 F.3d at 530. The plaintiffs sustained flood damage during Hurricane Isaac and made a claim with the defendant. *Id.* The defendant sent an independent adjuster to inspect the property, who determined the covered damages to be $103,826.83. *Id.* The plaintiffs signed a Proof of Loss in this amount and handwrote on the form "'Will send supplement later.'" *Id.* The defendant issued payment in the amount contained on the Proof of Loss. *Id.* Thereafter, the plaintiffs hired a public adjuster who inspected the property and estimated flood damages of $320,436.55. *Id.* The public adjuster's damage estimate

was submitted to the WYO carrier, but the plaintiffs did not submit a signed, sworn Proof of Loss form for the additional amounts claimed in the public adjuster's estimate. *Id*. An adjuster for the WYO carrier told the plaintiffs that "no additional forms were necessary to support their claims." *Id*. The plaintiffs never submitted an additional Proof of Loss consistent with the public adjuster's estimate. *Id.* The defendant made no further payment to the plaintiffs. *Id.*

The plaintiffs filed suit in the Eastern District of Louisiana and the defendant ultimately moved for summary judgment. *Id*. at 531. The District Court granted the defendant's motion for summary judgment, "noting that the NFIP requires strict compliance and holding that the [plaintiffs'] failure to provide a second proof of loss to accompany [the public adjuster's] loss valuation barred their suit." *Id*. The plaintiffs appealed the District Court's decision to the Court of Appeals for the Fifth Circuit. *Id.*

In affirming the decision, this Court confirmed that strict compliance with the policy conditions was required. *Id*. at 532 (citing *Gowland*, 143 F.3d at 954). The Court concluded that even where an insured submits an initial Proof of Loss for undisputed damages, an additional Proof of Loss is required to support the insured's claim for additional, disputed damages. *Id* at 533. The Court stated: "An insured's failure to strictly comply with the SFIP's provisions—including the proof-of-loss requirement—relieves the federal insurer's obligations to pay the non-complaint

claim." *Id.* at 534. "Because the [plaintiffs'] additional claim for $320,436.55 was neither signed **nor sworn-to**, it cannot serve as a proof of loss under the plain terms of the SFIP." *Id*. (emphasis added).

In *Evanoff*, plaintiff's property (a condominium unit) sustained damage from flooding that occurred on June 22, 2006. 534 F.3d at 518. Plaintiff timely notified his WYO carrier of the flooding and the WYO carrier denied the claim on the ground that the unit was covered by a SFIP issued to the condominium association. *Id*. After it was determined that the association had not purchased a SFIP, plaintiff's insurance agent notified the WYO carrier of this information and submitted a "loss notice and an estimate of $39,752.36 that he had received from a contractor." *Id*. The WYO carrier's adjuster inspected the property and prepared an estimate of covered flood damages in the amount of $3,440.93, but the plaintiff refused to sign the Proof of Loss form for that amount. *Id*. After the WYO carrier issued a subsequent denial letter, plaintiff filed suit. *Id*. at 518–19. The District Court granted the WYO carrier's motion for summary judgment on the grounds that the plaintiff had failed to provide a timely signed and sworn Proof of Loss as required by the SFIP and the plaintiff appealed. *Id*. at 519–20.

On appeal, plaintiff argued that he had "provided 'each and every item required' by the SFIP, including a letter that contained his signature." *Id*. at 520. The Court of Appeals for the Sixth Circuit found that the plaintiff "essentially concedes

that his letter was not notarized or otherwise sworn, but contends that because any false statement made to [the WYO carrier] (acting as an agent of the government) would be subject to criminal penalties under 18 U.S.C. § 1001, his signed and faxed letter satisfied the policy's requirement." *Id.* Relying on the decision in *Mancini*, the Court noted that plaintiffs bringing an action under a SFIP "were required to 'show actual and complete compliance with [the Proof of Loss requirement]: it is not sufficient to show that they substantially complied or that the insurer suffered no prejudice.'" *Id*. (quoting *Mancini*, 248 F.3d at 734). Signing a letter accompanying the figures was not sufficient to satisfy the Proof of Loss Requirement. *Id*. (citing *Mancini*, 248 F.3d at 734–35). "'[F]ederal courts have consistently held that the proof of loss requirement is to be strictly enforced . . . .' [and] [t]here is no evidence in the record that [plaintiff] returned a signed and sworn proof of loss form to [the WYO carrier] before the expiration of the 60-day period." *Id*. at 521 (internal citations omitted).

The Sixth Circuit further relied upon *Mancini* in rejecting the argument that the Proof of Loss did not need to be "sworn" due to the "possibility of criminal penalties attendant to any material false statements made" in the information sent to the WYO carrier:

> "Nor are we persuaded that the proof of loss was sworn. A false statement, to be sure, would have been punishable as a crime under 18 U.S.C. § 1001, but that is true of any material false statement to a federal agency with respect to a matter within its jurisdiction. The mere

> existence of this statute does not mean that every such statement is 'sworn.' The District Court held that 'sworn' means 'verified,' and that the proof of loss was verified by the adjuster. We respectfully disagree with this reasoning. Apart from any other reason, it is the insured, not the adjuster, who must swear to the proof of loss."

Id. at 520–21 (quoting *Mancini*, 248 F.3d at 735). The Court found that the District Court correctly determined that the plaintiff failed to satisfy the Proof of Loss requirement, that no additional discovery was required and affirmed the judgment of the District Court granting the motion for summary judgment. *Id*. at 521–22.

Woodland asserts that it provided a SFIP-compliant Proof of Loss when it submitted the Bodet Document, signed by architect Robert Bodet and stamped with his architectural seal. It is undisputed that the Bodet Document is not notarized. It is undisputed that the Bodet Document does not contain a "declaration substantially similar to 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct . . . .'" While the Bodet Document contains an architect seal, this is not sufficient to satisfy the "sworn-to" requirement. As such, there can be no dispute that the Bodet Document was not "sworn to" as required by the SFIP.

Woodland asserts various arguments in support of its contention that it satisfied the Proof of Loss requirement. Woodland asserts that Wright did not inform Woodland that the Bodet Document was non-compliant or had been rejected (waiver or estoppel), that the "sworn to" requirement is ambiguous (a contention raised for the first time on appeal), that the NFIP Claims Manual does not define "sworn to,"

and that the Bodet Document included the architect seal. These arguments are ineffective.

Although Woodland specifically indicates it is not claiming waiver or estoppel, it asserts that Wright did not "inform Plaintiff that its supplemental proof of loss was non-compliant, or that it had been rejected." App. Brief at p. 23. The consistent jurisprudence places the obligation to comply with the SFIP requirements squarely on the policyholder:

> Those seeking public funds are held to a demanding standard and are expected to comply with statutory requirements. "Where federal funds are implicated, the person seeking those funds is obligated to familiarize himself with the legal requirements for receipt of such funds." Claimants dealing with the government are presumed to have full knowledge of the law and cannot rely on the conduct of government officials to the contrary.

Cohen, 924 F.3d at 780 (internal citations omitted). Courts have consistently rejected claims of waiver and estoppel, even when an insurer represents that a Proof of Loss is not required or pays a claim without receiving a compliant Proof of Loss. *Marseilles*, 542 F.3d at 1055–56 (citing *Richardson v. Am. Bankers Ins. Co.*, 279 F. App'x 295, 299 (5th Cir. 2008)) (rejecting claims of waiver (based upon the insurer accepting and paying a claim without a Proof of Loss), substantial compliance and estoppel (based upon the insurer's attorney's representation that no Proof of Loss was needed)); *Gowland*, 143 F.3d at 955 ("We find that the theories of substantial compliance, waiver, and equitable estoppel are inapplicable to the facts presented

herein. While this result may seem harsh in light of the [plaintiffs'] ongoing negotiations with [defendant], we must remind that the [NFIP] is federally subsidized . . . . Requiring the [plaintiffs] to turn square corners when dealing with the Treasury 'does not reflect a callous outlook.'").

Woodland's claim that the Proof of Loss requirement is ambiguous is without merit. *See Dawkins*, 318 F.3d at 612. Woodland suggests that this Court should not have utilized 28 U.S.C. § 1746 to interpret the term "'sworn to' in a federal regulation." Woodland essentially argues that because "sworn to" was not defined in the SFIP and the SFIP does not include the phrase "under penalty of perjury", only a signature is required to support a claim for federal funds under a SFIP. Such a reading would render the "sworn to" requirement meaningless.

Whether the SFIP is ambiguous is a question of law and subject to de novo review. *Carneiro Da Cunha v. Standard Fire Ins. Co.*, 129 F.3d 581, 584–85 (11th Cir. 1997). "Under ordinary rules of contract construction, 'a court must first examine the natural and plain meaning of a policy's language,' and an 'ambiguity does not exist simply because a contract requires interpretation or fails to define a term.'" *Id*. at 585 (quoting *Key v. Allstate Ins. Co.*, 90 F.3d 1546, 1548–49 (11th Cir. 1996)). That this Court turned to federal law to interpret the "sworn to" requirement does not mean the SFIP is ambiguous. This Court correctly utilized 28 U.S.C. § 1746

in *Clark*, which provides clear instructions under federal law to parties submitting sworn declarations. The statute provides:

> [A]ny matter is required or permitted to be supported . . . by sworn declaration, verification, certificate, statement, oath, or affidavit . . . such matter may, with like force and effect, be supported . . . 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:
> . . . .
> (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)."

28 U.S.C. § 1746 (emphasis added).

In support of its suggested interpretation of the SFIP, Woodland relies upon the application of "'general principles of state insurance law . . . .'" App. Brief at p. 26. Woodland misreads the clear and consistent jurisprudence. It is "[f]ederal common law, not state law, [that] governs the interpretation of the SFIP." *Lowery v. Fidelity Nat'l Prop. & Cas. Ins. Co.*, 805 F.3d 204, 207 (5th Cir. 2015); *see Linder*, 166 F.3d at 550. The SFIP only "'directs courts to employ standard insurance principles **when deciding coverage issues under the policy.**'" *Lowery*, 805 F.3d at 207 (quoting *Wright v. Allstate Ins. Co.*, 500 F.3d 390, 394 (5th Cir. 2007)) (emphasis added). Woodland's failure to adhere to the Proof of Loss requirement is not a "coverage issue." Courts have consistently held that policyholders must strictly comply with all terms and conditions of the SFIP. *Ferraro*, 796 F.3d at 532;

Marseilles, 542 F.3d at 1057 (citing *Forman v. Fed. Emergency Mgmt. Agency*, 138 F.3d 543, 545 (5th Cir. 1998)). "Although exclusions and ambiguities in the policy are strictly construed against the insurer, we must give effect to the '[c]lear policy language,' and refrain from 'tortur[ing] the language to create ambiguities.'" *Linder*, 166 F.3d at 550 (quoting *Selko v. Home Ins. Co.*, 139 F.3d 146, 152 n.3 (3d Cir. 1998)).

Woodland asserts that the NFIP Claims Manual indicates that a Proof of Loss does not have to be notarized and that electronic signatures are acceptable. While this is an accurate recitation of the language in the Claims Manual, this does not change the requirement in the SFIP that the Proof of Loss be "sworn to." *Clark*, 821 F. App'x at 344–46 ("Strictly construing the SFIP, we conclude that 'sworn to' 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).'"); *Evanoff*, 534 F.3d at 520–21; *Hagstotz*, 2018 WL 5005000 at 3–4; *Morin v. Am. Bankers Ins. Co.*, 2014 WL 949424 at *2–3 (E.D. La. Mar. 10, 2014); *see Ferraro*, 796 F.3d at 534. Indeed, the standard FEMA Proof of Loss form includes the sentence, "I declare under penalty of perjury that the information contained in the foregoing is true and correct to the best of my knowledge and belief." (*E.g.*, ROA.409). Requiring an insured attest to the accuracy of the Proof of Loss deters fraudulent claims. *See DeCosta*, 730 F.3d at 85–86; *Moore v. Tex.*

Farmers Ins. Co., 2019 WL 10093972 at *3–4 (S.D. Tex. Dec. 2, 2019); *Miller v. Am. Strategic Ins. Corp.*, 2015 WL 3902790 at *3 (W.D. La. June 23, 2015); *Smith-Pierre v. Fidelity Nat'l Indem. Ins. Co.*, 2011 WL 3924178 at *3 (S.D. Fla. Sept. 7, 2011). Additionally, it ensures that a plaintiff has carefully considered the information submitted to the Government in support of a claim for U.S. Treasury funds. *Miller*, 2015 WL 3902790, at *3; *Smith-Pierre*, 2011 WL 3924178, at *3. As such, there can be no dispute that in order to comply with the SFIP, a Proof of Loss submitted in support of a claim **must** be signed and sworn to by the insured. *Cothren v. Am. Strategic Ins. Corp.*, 572 F. Supp. 3d 238, 241–42 (M.D. La. 2021); *Roussell v. Allstate Ins. Co.*, 26 F. Supp. 3d 552, 554–60 (E.D. La. 2014) (holding that submission of invoices and estimates "could not substitute for submission of a sworn proof of loss") (citing *Richardson*, 279 F. App'x at 298); *Greer v. Owners Ins. Co.*, 434 F. Supp. 2d 1267, 1277 (N.D. Fla. 2006).

Although the Bodet document is entitled "SWORN STATEMENT IN PROOF OF LOSS", this is not sufficient. *Hagstotz*, 2018 WL 5005000 at 3–4; (ROA.473–82). The document is not notarized, nor does it contain any indication that it is being signed "under penalty of perjury" as required by the SFIP. *Id.*; *Clark*, 821 F. App'x at 344–46; *Morin*, 2014 WL 949424 at *2–3. And, as found by the District Court and admitted in Woodland's Brief, the application of Mr. Bodet's architect seal or stamp simply indicates that the drawings or specifications were

prepared by the architect or prepared under the architect's supervision. (ROA.2222–23); App. Brief at p. 29.

The law leaves no room for doubt—Woodland's failure to submit timely Proofs of Loss for the amounts sought, signed and sworn to by the insured that otherwise complies with the requirements of the SFIP is fatal to its claims under the SFIPs. The courts that have addressed this issue, including this Court, have all reached this conclusion. Policyholders of a SFIP must strictly comply with all requirements mandated by Congress and FEMA, including submitting a timely Proof of Loss, signed and sworn to by the insured, for the amounts sought.

As demonstrated above, Woodland failed to timely submit SFIP-compliant Proofs of Loss, signed and sworn to by the insured, in support of its claimed additional damages to the Properties. The initial payments made by Wright to Woodland were based upon the estimates prepared by the independent adjuster and permitted without signed and sworn Proofs of Loss by Bulletin W-21020. Woodland later submitted untimely signed and sworn Proofs of Loss for supplemental, undisputed damages based upon revised estimates prepared by the independent adjuster. Wright obtained waivers from FEMA specific to these untimely, but undisputed, Proofs of Loss and made payments to Woodland in accordance with these Proofs of Loss. However, in order to maintain a lawsuit for additional damages under the SFIPs, Woodland was required to submit signed and sworn Proofs of Loss

for the amounts sought for each building. The document signed by Bodet does not satisfy the Proof of Loss requirements, including the requirement that any Proof of Loss submitted in support of a SFIP claim be "signed and sworn to by you." 44 C.F.R. pt. 61, app. A(3), art. VIII(J)(4) (2020). As Woodland's failure to supply a Proof of Loss is fatal to its claims, the District Court correctly granted summary judgment and this Court should affirm.

4. Woodland's Action for Breach of the SFIPs Fails Because the Proof of Loss was not Signed by the Insured

The District Court did not reach the question of whether the Proof of Loss was also deficient because it was not signed by the insured. Wright submits that because the Bodet Document was not signed (or sworn to) by the insured and was instead signed by Mr. Bodet, this provides an additional basis for affirming the District Court's dismissal of Woodland's claim.

The Proof of Loss is "a statement of the insured, not of some third party, and [the SFIP] does require that the insured sign and swear to that statement." *Mancini*, 248 F.3d at 734. "It is the insured, not the adjuster, who must swear to the proof of loss." *Id*. at 735; *see Hon v. Allstate Fire & Cas. Co.*, 2020 WL 3798942 at *2–3 (S.D. Tex. July 7, 2020) (granting WYO defendant's motion for summary judgment where Proof of Loss was not signed and sworn to by the insured); *Moore*, 2019 WL 10093972 at *3–4 (granting WYO defendant's motion for summary judgment where Proof of Loss was signed and sworn by plaintiff's attorney, but not by plaintiff). The

SFIP requires that the Proof of Loss must be "signed and sworn to by **you** . . . ." 44 C.F.R. pt. 61, app. A(3), art. VIII(J)(4) (2020). As defined by the SFIP, "'you' and 'your' refer to the insured(s) shown on the Declarations Page of this policy." *Id*. at art. II(A) (2020). Here, the insured under the SFIPs is the Woodland Villas Condominiums. (ROA.397–408). The SFIP defines the "Condominium Association" as the "entity, formed by the **unit owners**, responsible for the maintenance and operation of: a. Common elements owned in undivided shares by unit owners; and b. Other real property in which the unit owners have use rights; where membership in the entity is a required condition of unit ownership." 44 C.F.R. pt. 61, app. A(3), art. II(B)(9) (2020) (emphasis added).

Mr. Bodet was an architect hired by the property manager. There is no dispute that Mr. 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 is defined by the SFIP, the insured.

Woodland argues that Mr. Bodet was hired by the property manager to assist with the reconstruction of the Properties and with the insurance claims. App. Brief at pp. 9–10. "[A]n agency relationship cannot be presumed, it must be clearly established." *Richard A. Cheramie Enter., Inc. v. Mt. Airy Refining Co.*, 708 F.2d 156, 158 (5th Cir. 1983). There is no evidence in the way of testimony, affidavits or contracts that Mr. Bodet was expressly granted authority to bind Woodland.

Apparent authority does not apply because that theory exists to protect third parties and permit them to bind a principal based upon the acts of an agent. *River Parish Contr., Inc. v. Black Diamond Cap. Mgmt. L.L.C.*, 2024 WL 3066623 at *4 (E.D. La. June 20, 2024). Regardless, even assuming, *arguendo*, that Woodland established that Mr. Bodet had authority to bind Woodland as its agent, Woodland has cited to no case to demonstrate that a signature by an "agent" is sufficient to satisfy the "sworn to by you" requirement of the Proof of Loss.

Strictly construed, the Bodet Document fails to satisfy the "you" requirement contained in the SFIP Proof of Loss provision.

5. There Are No Issues of Material Fact as the Facts Demonstrate that the Proof of Loss was Neither Signed nor Sworn To by the Insured

Finally, Woodland asserts that it is not "arguing for the application of equitable estoppel" or in favor of "substantial compliance", but that the District Court should have denied the motion on the grounds that "material issues existed" regarding whether Woodland strictly complied with the SFIP. Woodland's Brief then references several unreported District Court decisions that found fact questions existed as to whether the information submitted to the WYO carrier was sufficient to permit the WYO carrier to evaluate the insured's claim. *Cothren*, 572 F. Supp. 3d at 247–50.

The *Cothren* Court noted that the decisions in *Mitchell* and *Copeland* implicated the theory of "'substantial compliance,'" which has been "undermined"

by more recent cases. *Cothren*, 572 F. Supp. 3d at 248. The theory of substantial compliance with the Proof of Loss requirement has been consistently rejected by this Court. *Constr. Funding*, 636 F. App'x at 210; *Richardson*, 279 F. App'x 299. Woodland's Brief requests that this Court ignore its prior decisions, which all hold that the provisions of the SFIP must be strictly construed and enforced. *Ferraro*, 796 F.3d at 531–32; *Marseilles*, 542 F.3d at 1056 (5th Cir. 2008) (holding that a theory of "substantial compliance" with the SFIP conditions is contrary to the caselaw); *see Clark*, 821 F. App'x at 344. As such, Woodland's assertion here that a document, signed by an architect and not sworn to, satisfies the Proof of Loss requirement is without merit. Whether the Bodet Document satisfies the SFIP Proof of Loss Requirement is clearly a legal question for the Court and no further discovery is required.

VI. CONCLUSION

The Bodet Document submitted by Woodland does not satisfy the SFIP Proof of Loss requirement as it was neither sworn to nor signed by the insured. A policyholder must strictly comply with the Proof of Loss requirement in order to maintain a claim under the SFIP, including the requirement to submit a policy-compliant Proof of Loss for the additional amounts sought.

As there was no error in the judgment below, Wright National Flood Insurance Company prays that this Honorable Court affirm the judgment of the District Court.

Respectfully submitted,

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WRIGHT NATIONAL FLOOD
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CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2025, a true and correct copy of the foregoing Brief for Defendant-Appellee was served via electronic filing with the Clerk of Court and all registered ECF users.

Dated: March 14, 2025

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CERTIFICATE OF COMPLIANCE

This brief has been prepared using 14-point, proportionately spaced, serif typeface, in Microsoft Word. Excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 9,552 words.

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