

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**BAY HAVEN AT COCO BAY  
CONDOMINIUM ASSOCIATION,  
INC.,**

**Plaintiff,**

**vs.**

**Case No.: 2:24-cv-00696-KCD-DNF**

**HARTFORD FIRE INSURANCE  
COMPANY, AND HARTFORD  
INSURANCE COMPANY OF THE  
MIDWEST,**

**Defendant.**

**MOTION FOR SUMMARY JUDGMENT AND  
INCORPORATED MEMORANDUM IN SUPPORT OF MOTION**

NOW INTO COURT, comes Defendant, Hartford Insurance Company of the Midwest (“Hartford”), a Write-Your-Own (“WYO”) Program<sup>1</sup>, which files its Motion for Summary Judgment to dismiss Hartford with prejudice because Plaintiff failed to submit a timely Proof of Loss for all eleven properties at issue. Additionally, Plaintiff’s claims arising from Building KK are time-barred. Finally, Plaintiff’s claims for attorney’s fees and demand for a jury trial are improper.

This Court should grant Defendant’s motion to dismiss because Plaintiff failed to submit a timely sworn Proof of Loss for all eleven properties at issue, as required by SFIP Art. VIII(G)(4). The Eleventh Circuit and Middle District of Florida have held

---

<sup>1</sup> WYO Program insurance carriers participate in the United States government’s National Flood Insurance Program (“NFIP”), pursuant to the National Flood Insurance Act of 1968 as amended (“NFIA”). 41 U.S.C. § 4001. WYO Program insurance carriers act as a fiscal agent of the United States.

that the failure to submit a timely Proof of Loss for SFIP benefits warrants dismissal.<sup>2</sup>

Additionally, Plaintiff's suit is barred by the SFIP's requirement that an insured "not sue us to recover money under this policy unless you have complied with all the requirements of the policy" by failing to submit a Proof of Loss prior to filing the lawsuit. *See Sanz*, 328 F.3d at 1318 and *Mazzula*, 2021 WL 252295, at \*2.

If the Court determines that there is a genuine issue of material fact or law regarding the foregoing, Building KK should be dismissed as Plaintiff's lawsuit to that claim is time barred. Plaintiff failed to file the lawsuit within one year of the date of the denial of all or part of the claims as required by SFIP Art. VIII(O). The Eleventh Circuit and courts within the Middle District of Florida have similarly held.<sup>3</sup>

Furthermore, this Court should dismiss Plaintiff's claim for attorney fees arising under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. §2412. Because Plaintiff did not file a timely Proof of Loss, Hartford was substantially justified in denying the

---

<sup>2</sup> *See*, *Shuford*, 508 F.3d at 1342-1343 and *Sanz*, 328 F.3d at 1320. *See also*, *Blochdahl Leasing, LLC v. American Strategic Ins. Corp.*, 2024 WL 5202783 (M.D.Fla. 12/23/2024); *Mazzula v. American Strategic Ins. Corp.*, 2021 WL 252295, at \*2-3 (M.D.Fla. 01/26/2021); *Sosa v. Wright Nat'l Flood Ins. Co.*, 2017 WL 1376170, at \*3 (M.D.Fla. 04/17/2017); *Debartolo v. Capital Preferred Ins. Co.*, 2014 WL 5307493, at \*2-3 (M.D.Fla. 10/10/2014); and *Faustin v. Fidelity Nat'l Prop. & Cas. Ins. Co.*, 2006 WL 8439530, at \*2 (M.D.Fla. 01/09/2006).

<sup>3</sup> *Hairston v. Travelers Cas. & Sur. Co.*, 232 F.3d 1348, 1350 (11th Cir. 2000); *See e.g.*, *Roop, as Power of Atty for Robert and Sheena Willing v. Wright National Flood Ins. Co.*, 2025 WL 2636390 (M.D.Fla. 09/21/25); *Glass v. ASI*, 2025 WL 2676077 (M.D.Fla. 09/18/25); *Ghai v. American Bankers Ins. Co. of Florida*, 2025 WL 2676373 (M.D.Fla. 09/18/25); *Zozo Invs. LLC v. First Cmty. Ins. Co.*, 2025 WL 1755199 (M.D. Fla. 6/25/2025); *Adams v. Allstate Ins. Co.*, 2025 WL 1555144 (M.D.Fla. 06/02/2025); *Bahama Club v. Hartford Ins. Co. of the Midwest*, 2025 WL 1476489, at \*1 (M.D.Fla. 5/22/25); *Rosario v. Occidental Fire and Cas. Co. of North Carolina*, 2025 WL 1425461 (M.D.Fla 5/16/2025); *Raulerson v. Am. Strategic Ins. Corp.*, 2025 WL 1133767 (M.D.Fla. 04/17/2025); *Matthies v. First Community Ins. Co.*, 2025 WL 1069307 (M.D.Fla. 4/9/2025); *Mercer v. American Bankers Ins. Co. of Fla.*, 2025 WL 1018390 (M.D.Fla. 4/4/2025); *Martini v. American Bankers Ins. Co. of Fla.*, 2025 WL 1018394 (M.D.Fla. 4/4/2025); *Price v. Wright*, 2025 WL 487627 (M.D.Fla. 02/13/25); *Caruso v. First Protective*, 2025 WL 448953 (M.D. Fla. 02/10/25); *4922 Management LLC v. Selective*, 2025 WL 417701 (M.D.Fla. 02/06/25); *Hawk v. Hartford Ins. Co. of the Midwest*, 2025 WL 326668 (M.D.Fla. 1/29/25); *Mazzula v. ASI*, 2021 WL 252295 (M.D.Fla. 01/26/2021).; and *Stratton v. Napolitano, et al*, 2013 WL 12149371 (M.D.Fla. 6/06/2013).

claim, irrespective of whether or not the EAJA applies to WYO carriers.

Finally, because federal funds are at issue regarding the flood claim, Plaintiff's jury demand against it should be quashed. *See e.g., Grissom*, 678 F.3d at 402; and *Sosa v. Wright National Flood Ins. Co.*, 2016 WL 11618703, at \*1 (M.D.Fla. 6/28/2016); *Agostino v. Monarch Nat'l Ins. Co.*, 2025 WL 2770856 at \*1 (M.D.Fla. 09/26/2025) and *Haslam v. Monarch Nat'l Ins. Co.*, 2025 WL 2661508 at \*1 (M.D.Fla. 09/17/2025).<sup>4</sup>

## **I. NATURE AND STAGE OF THE PROCEEDINGS**

Plaintiff filed a lawsuit against Hartford Fire Insurance Company on August 2, 2024. [Doc. 1] On August 5, 2024, Plaintiff filed an Amended Complaint adding Hartford Insurance Company of the Midwest as a defendant [Doc. 3] and on August 22, 2024, a Rule 41(a) Stipulation of Partial Dismissal wherein Plaintiff voluntarily dismissed Hartford Fire Insurance Company, leaving Hartford Insurance Company of the Midwest as the only Defendant. [Doc. 11]

The Amended Complaint seeks damages for alleged breach of contract of eleven (11) SFIPs issued by Defendant, each covering a separate 4-unit condominium building as a result of flood damage sustained in Hurricane Ian on or about September 27, 2022. [Doc. 3, ¶¶ 2, 5, 7, 11, Ex. 2(A)-(K), Declarations Pages for SFIPs at issue].

The Court issued its Hurricane Ian Scheduling Order ("CMO") on August 6, 2024, and Hartford filed its Answer and Affirmative Defenses on March 13, 2024. [Doc. No. 5 & 15]. The parties conducted limited discovery and participated in

---

<sup>4</sup> *See also Gunter v. Farmers Ins. Co.*, 736 F.3d 768, 773 (8th Cir. 2013)

mediation as required by the CMO which was unsuccessful. The parties sought several adjournments of the mediation to allow the parties to continue to pursue settlement options [Docs. 23, 25, 28]; provided their Joint Status Report on July 2, 2025 [Doc. 31]; and participated in the Court's Rule 16 Conference on July 9, 2025 [Doc. 32]. Thereafter, the Court issued its Case Management and Scheduling Order on the same day which set the dispositive motion deadline for December 8, 2025. [Doc. 34]

Hartford now brings this motion for summary judgment seeking dismissal of all claims arising in accordance with this Court's Scheduling Order.

## **II. ISSUES PRESENTED**

1) Whether Plaintiff's failure to submit a timely Proof of Loss swearing to a sum certain for the additional amounts it is claiming in accordance with SFIP Art. VIII(G) is a complete bar to recovery as a matter of federal law?

2) Whether Plaintiff's failure to submit a pre-suit Proof of Loss, as required by SFIP Art. VIII(G) and (O) is a complete bar to recovery as a matter of federal law?

3) Whether Plaintiff failed to file the lawsuit as to Building KK (SFIP No. 8702226360), within one year of the date of the denial of all or part of the claim in contravention of Art. VIII(O)?

4) Whether claims for attorney fees under the EAJA should be dismissed?

5) Whether Plaintiff's jury demand should be dismissed.

The short answer to these questions is "Yes."

## **III. Legal Structure of the National Flood Insurance Program**

This is a lawsuit for federal funds under the NFIA. In *Sanz* and *Shuford*, *supra*,

the Eleventh Circuit explained in detail the legal structure of the NFIP; the relationship between the federal government and the WYO Program carriers; and finally, the constitutional impediments to court orders requiring payments under flood policies where plaintiffs have not established full and complete compliance with the conditions precedent to the making of a claim under the policy.

The NFIP is a creature of the U.S. Congress and underwritten by the United States. *Sanz*, 328 F.3d at FN1. *See also Gowland*, 143 F.3d at 955. Flood loss claims presented under the NFIP are paid directly with U.S. funds. *See “The Arrangement,”* Art. III(D)(1). *See also Gowland*, 143 F.3d at 955. The SFIP is written by the federal government and is codified federal law.

Hartford is a WYO Program carrier authorized to issue the SFIP. Hartford may not alter, amend, or waive any provision or condition of the SFIP. The sole authority is the Federal Insurance Administrator (“FIA”), and the waiver must be expressed in writing. *See*, 44 C.F.R. Pt. 61, App. A(3), Art. VIII(C); and 44 C.F.R. §61.13(d). Due to the statutory scheme of the NFIP and the fact that U.S. funds are at stake, strict adherence to the conditions precedent for payment of a claim is required. *Sanz*, 328 F.3d at 1317-18; *Gowland*, 143 F.3d at 953; and *Grissom*, 678 F.3d at 402. To make payments not in strict compliance with the SFIP would be contrary to Congress’ mandate and would violate the Appropriations Clause of the Constitution. *Sanz*, 328 F.3d at 1317-18; *Gowland*, 143 F.3d at 955; and *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 391 (9th Cir. 2000), *cert denied*, 531 U.S. 927 (2000).

Hartford has absolutely no reason to avoid paying Plaintiff's flood insurance claims, because Hartford's profits are based upon the amount it pays out in claims. *See* 44 C.F.R. §62.23(i)(3). The more money Hartford pays out in claims, the higher the fee it receives under the Program. *Galt Ocean Manor Condominium Ass'n, Inc.*, 2014 WL 11531566 (S.D.Fla. 3/19/2014); *Eddins v. Omega Ins. Co.*, 825 F.Supp. 752, 753 (N.D. Miss. 1993). Thus, Hartford's only motive for not paying benefits to an NFIP participant is its belief that a claim cannot legally be paid under the Program's rules.

Finally, it is well settled that participants in federal insurance programs are charged with knowledge of the laws governing those programs. *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947). The Supreme Court went further in *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 64 (1984) and held that participants in federal benefit programs do so under a further legal duty to "familiarize" themselves with the requirements of those programs. Thus, Plaintiff is legally required to make certain that it fully understands the federal insurance program under which it seeks recovery, in this case the NFIP. *See Merrill*, and *Heckler*.

#### **IV. STATEMENT OF UNDISPUTED MATERIAL FACTS**

Hartford submits the following statement of undisputed facts:

1. At all times material to this lawsuit and the claims therein, Hartford was (and is) a WYO Program Carrier participating in the U.S. Government's NFIP pursuant to the NFIA. [Ex. 1, ¶5]

2. All primary policies of flood insurance issued by Hartford are SFIPs issued pursuant to the NFIA. The SFIPs at issue are the Residential Condominium

Association Form (“RCBAP”) SFIP, which is itself a codified federal law, found in its entirety at 44 C.F.R. Pt. 61, App. A(3). There are no other flood insurance policies at issue in Plaintiff’s Complaint. [Ex. 1, ¶7; Ex. 2(A)-3(K), SFIP Declarations Pages for the SFIPs at issue; Ex. 3- RCBAP SFIP]

3. As a Write-Your Own Program carrier, Hartford issued the following policies which were in effect on the date of the alleged loss:

<b>Exhibit No.</b>	<b>Policy Number</b>	<b>Building</b>	<b>Address</b>	<b>Building Limits</b>	<b>Deductible</b>
2(A)	8704472763	AA	16227 Coco Hammock Way	\$1,000,000	\$5,000
2(B)	8704620169	BB	16229 Coco Hammock Way	\$1,000,000	\$5,000
2(C)	870460209	CC	16237 Coco Hammock Way	\$1,000,000	\$5,000
2(D)	8704470184	DD	16245 Coco Hammock Way	\$1,000,000	\$5,000
2(E)	8704787337	EE	16253 Coco Hammock Way	\$1,000,000	\$5,000
2(F)	8704776397	FF	16261 Coco Hammock Way	\$1,000,000	\$5,000
2(G)	8702322484	GG	16269 Coco Hammock Way	\$1,000,000	\$5,000
2(H)	8704776391	HH	16277 Coco Hammock Way	\$1,000,000	\$5,000
2(I)	8702322490	II	16285 Coco Hammock Way	\$1,000,000	\$5,000
2(J)	8702322495	JJ	16293 Coco Hammock Way	\$1,000,000	\$5,000
2(K)	8702228360	KK	16301 Coco Hammock Way	\$1,000,000	\$5,000

Plaintiff did not purchase coverage for personal property. [*Id.*]



4. No part, provision, or requirement of the SFIP may be waived, altered, or amended by Hartford. Only the Federal Insurance Administrator may issue such a waiver, which must be in writing. [Ex. 1, ¶8; Ex. 3, SFIP Art. VIII(C)]

5. Hartford investigates, adjusts, settles, and defends all claims or losses arising from the SFIPs. [Ex. 1, ¶9]

6. All flood claims presented to Hartford under a SFIP are paid directly with federal funds. [Ex. 1, ¶10]

7. FEMA pays Hartford a percentage of the amount paid to the insured as the fee for handling an SFIP claim. The higher the claims payment to the insured, the greater the profit the WYO Carrier receives. Similarly, the independent adjuster is paid based upon a sliding fee-scale set by FEMA (not Hartford) for handling SFIP claims. The higher the claims payment to the insured, the greater the fee the adjuster/adjusting company receives from FEMA. *See* 44 C.F.R. §62.23(i)(3) [Ex. 1, ¶11].

8. On or about September 30, 2022, Plaintiff reported the flood losses which occurred on or about September 28, 2022. [Ex. 1, ¶12]

9. Hartford acknowledged the flood claims and assigned the losses to an independent adjuster pursuant to SFIP Art. VIII(G)(7). [Ex. 1, ¶14, Ex. 3]

10. Independent adjuster, Michael Maroney of Sweet Claims Service, was assigned as a courtesy to assist Plaintiff in presenting the claims. The independent adjuster is not authorized to approve or disapprove a claim. [Ex. 1, ¶¶14-15; Ex. 3, Arts. VIII(G)(7) and (8)]



11. On October 6, 2022, FEMA issued bulletin W-22012 in which the FIA extended the sixty-day proof of loss deadline for Hurricane Ian to 365 calendar days (one year) from the loss. The Bulletin advised that:

A policyholder may still submit a signed proof of loss when they disagree with the adjuster's report. When this occurs, the policyholder must provide their NFIP insurer with a signed proof of loss with supporting documentation, such as a contractor's estimate, bills, receipts, photographs, and other related documents. [Ex. 1, ¶16, Ex. 4, Bulletin W-22012]

12. Maroney inspected the properties on or about October 6, 2022. [Ex. 1, ¶17; Ex. 5(A)-(K) IA Preliminary Reports]

13. Each insured building is a two-story, 4-unit condominium, with a slab on grade foundation, constructed in 2005. [Ex. 1, ¶18; Ex. 5(A)-(K)]

14. Maroney determined that water heights were as follows:

<b>Exhibit No.</b>	<b>Building</b>	<b>Exterior</b>	<b>Interior</b>	<b>Duration</b>
5(A)	AA	25"	17"	20 hours
5(B)	BB	24"	16"	50 hours
5(C)	CC	27"	16"	20 hours
5(D)	DD	27"	20"	20 hours
5(E)	EE	27"	22"	20 hours
5(F)	FF	18"	12"	20 hours
5(G)	GG	21"	12"	20 hours
5(H)	HH	25"	15"	20 hours
5(I)	II	27"	20"	20 hours
5(J)	JJ	25"	15"	20 hours
5(K)	KK	25"	20"	20 hours

[Ex. 1, ¶19; Ex. 5(a)-5(k), IA Preliminary Reports]

15. Thereafter, Hartford commissioned engineering inspections to inspect the property to determine the cause of damage and to address Plaintiff's concerns regarding ceramic tile flooring. [Ex. 1, ¶20]

16. Upon receipt of the engineer's report, Maroney prepared estimates for covered flood damages based upon his findings and the engineer's conclusions. [Ex. 1, ¶21]

17. Hartford reviewed and verified the adjustment and recommendations of the independent adjuster in compliance with 44 C.F.R. §62.23(i)(2) and issued initial payments on all SFIPs. [Ex. 1, ¶22]

18. Thereafter, Plaintiff provided additional documents for review which were reviewed by the adjuster. The adjuster prepared a final estimate and prepared Proof of Loss for the total amount of each claim to address the additional payments, which were signed by Plaintiff's representative on November 4-5, 2023. [See Ex. 1, ¶23; Ex. 6(A)-(K), final estimates; and Ex. 7(A)-(K), Executed Proofs of Loss]

19. Hartford reviewed and verified the adjustment and recommendations of the independent adjuster in compliance with 44 C.F.R. §62.23(i)(2) and determined that the total covered and payable amount of the claim pursuant to the terms of the SFIP as set forth in the table below.

<b>Building</b>	<b>Exhibit No.</b>	<b>IA Final Est Totals</b>	<b>Exhibit No.</b>	<b>POL totals</b>
AA	6(A)	\$221,992.72	7(A)	\$221,992.72
BB	6(B)	\$223,371.14	7(B)	\$223,371.14
CC	6(C)	\$221,023.47	7(C)	\$221,023.47

DD	6(D)	\$231,862.26	7(D)	\$231,862.26
EE	6(E)	\$239,380.08	7(E)	\$239,380.08
FF	6(F)	\$231,998.05	7(F)	\$231,998.05
GG	6(G)	\$227,366.84	7(G)	\$227,366.84
HH	6(H)	\$235,966.41	7(H)	\$235,966.41
II	6(I)	\$234,439.29	7(I)	\$234,439.29
JJ	6(J)	\$262,655.50	7(J)	\$262,655.50
KK	6(K)	\$235,388.53	7(K)	\$235,388.53

[See Ex. 1, ¶24; Ex. 6(A)-(K), final estimates; and Ex. 7(A)-(K), Executed Proofs of Loss]

20. Because the additional payments were beyond the one-year extension of time to submit Proofs of Loss provided by Bulletin W-22012, Hartford sought a specific waiver of the Proof of Loss requirement for each claim to allow the additional payments, which were granted on December 12, 2023 and the additional payments were issued/paid on each claim. [Ex. 1, ¶25; Exhibit 8(A)-(K), FEMA Waivers]

21. Checks totaling the following amounts were issued on the claims:

<b>Building</b>	<b>Exhibit No.</b>	<b>Paid Check Totals</b>
AA	9(A)	\$221,992.72
BB	9(B)	\$223,551.14
CC	9(C)	\$211,023.47
DD	9(D)	\$231,862.26
EE	9(E)	\$239,379.98
FF	9(F)	\$231,988.05
GG	9(G)	\$227,366.84
HH	9(H)	\$235,966.41
II	9(I)	\$234,439.29
JJ	9(J)	\$262,655.50
KK	9(K)	\$235,388.53

[Ex. 1, ¶26; Ex. 9(A)-(K)]

22. Hartford has no record of receiving any signed and sworn Proof of Loss for the additional amounts being sought under the SFIPs at issue within the 365-day time limit granted by FEMA pursuant to W-22012. [Ex. 1, ¶27]

23. Hartford has no record of receiving a Proof of Loss for the additional amounts for the claims at issue prior to the filing of the lawsuit as required by SFIP Art. VIII(O). [Ex. 1, ¶28]

24. Hartford is not aware of any waiver of the Proof of Loss requirement other than the waiver provided by FEMA in Bulletin W-22012 and those specific waivers granted for the last additional payments verified by Hartford after the one-year extension. [Ex. 1, ¶29, Ex. 4, Ex. 8(A)-(K)]

25. Plaintiff filed the Complaint on August 2, 2024. [Doc. No. 1]

26. Plaintiff submitted its Automatic Discovery Responses as per the Court's Hurricane Ian CMO and provided responses to written discovery, including Responses to Requests for Production of Documents. The responses did not include a timely signed and sworn Proof of Loss for the additional amounts Plaintiff is seeking for any of the flood claims at issue. [Ex. 1, ¶31]

27. Hartford issued Requests for Admissions to Plaintiff on March 25, 2025. Plaintiff admits it did not submit a Proof of Loss for the additional payments it seeks in this lawsuit. [Ex. 1, ¶32, Ex. 10 Responses to Request for Admissions, Number 8]

28. In addition to payments for covered damages, Hartford issued several denial letters on each of the eleven claims denying uncovered items. Specifically, as to SFIP No. 8702228360 (Bldg. KK), Hartford, in its regular course of business, mailed

a denial letter to Plaintiff at the address identified on the Declarations page dated January 7, 2023, with proper postage affixed, denying Plaintiff's claim for replacement of ceramic tile floors. [Ex. 1, ¶35, Ex. 11, Denial Letter dated January 7, 2023]

29. Plaintiff's lawsuit, filed on August 2, 2024, was filed more than one year after the denial letter dated January 7, 2023 was issued. [Ex. 1, ¶36; Ex. 11, Denial Letter dated January 7, 2023]

30. SFIP Art. VIII(O) requires that the lawsuit be filed within one year of the denial of all or part of the claim. [Ex. 1, ¶37; Ex. 3]

## **V. LAW AND ARGUMENT**

### **A. Summary Judgment Standard**

The United States Supreme Court has addressed the standard for summary judgment as set forth in Rule 56(c), as follows:

[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.

*Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

After the moving party has met this initial burden, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."

*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Fed.R.Civ.P. 56(e), however, does not permit the nonmoving party to avoid summary judgment by resting on the

pleadings, but “requires the nonmoving party to go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Celotex*, 477 U.S. at 324. Moreover, the mere existence of a scintilla of evidence in support of the non-movant’s position is insufficient; there must be evidence on which the jury could reasonably find for the non-movant. *Anderson*, 477 U.S. at 251-52.

In this case, there are no genuine issues as to any material facts. Therefore, Hartford is entitled to judgment as a matter of law.

#### **B. Policy Mandates are Strictly Construed**

The SFIP’s proof of loss requirement must be strictly enforced. *See Sanz*, 328 F.3d at 1317-1318 and *Shuford*, 508 F.3d at 1343. More importantly, “protection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of the law; respondent could expect no less than to be held to the most demanding standards in its quest for public funds.” *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 63 (1984). The reason why the SFIP provisions must be “strictly construed and enforced” is constitutional, as all payments are a direct charge on the public treasury. *Sanz*, 328 F.3d at 1317-1318 and *Shuford*, 508 F.3d at 1343. *See also*, *Gowland*, 143 F.3d at 955 and *Flick*, 205 F.3d at 394. As such, it is the “duty of all courts to observe the conditions defined by Congress for charging the public treasury.” *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947).

Further, the Appropriations Clause prohibits payment of U.S. funds in a manner not sanctioned by Congress. *Id.* at 391. Thus, if all the conditions precedent to payment of these flood claims are not met, Hartford is bound to strictly construe and enforce these requirements and is therefore prohibited from paying the claim.

### **C. Plaintiff's Breach of Contract Claim Fails as a Matter of Law**

It is undisputed that Plaintiff failed to timely submit a signed and sworn Proof of Loss to support any of the flood claims at issue for additional federal benefits as required by Art. VIII(G)(4) of its SFIPs. As a result, Plaintiff failed to comply with all conditions precedent prior to filing this lawsuit as required by SFIP Art. VIII(O) and therefore Plaintiff's claims against Hartford must be dismissed as a matter of law.

#### **1. Proof of Loss: SFIP Article VIII(G)(4)**

##### **a. Proof of Loss Requirement**

The proof of loss and documentation requirement is found at RCBAP form SFIP Art. VIII(G)(4):

##### *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 insurance 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 buildings and detailed repair estimates;
  - g. Names of mortgagees or anyone else having a lien, charge, or



- h. claim against the insured property;  
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.

Emphasis added. [Ex. 3, SFIP RCBAP Property Form]

Art. VIII(G)(4) requires the insured submit a Proof of Loss within 60 days of loss. However, on October 6, 2022, FEMA published WYO Bulletin W-22012 extending the ordinary 60-day “Proof of Loss” period to 365 days (one year) from the date of loss, thus giving Plaintiff 365 days from the date of loss, or until September 28, 2023, to submit a “compliant proof of loss” to Hartford (meeting all of the requirements of Art. VIII(G)(4)) to support its Hurricane Ian flood loss claims. [Ex. 4]

Courts, including the Eleventh Circuit, have specifically held that failing to submit a timely sworn Proof of Loss relieves the insurer of the obligation to pay what might otherwise be a valid claim. *See Sanz*, 328 F.3d at 1320 and *Shuford*, 508 F.3d at 1342-1343. *See also Phelps v. FEMA*, 785 F.3d 13, 19 (1st Cir. 1986); *Jacobson v. Metropolitan Prop. & Cas. Ins. Co.*, 672 F.3d 171, 175 2nd Cir. 2012); *Suopys v. Omaha Prop. & Cas.*, 404 F.3d 805, 810 (3rd Cir. 2005); *Dawkins v. Witt*, 318 F.3d 606, 612 (4th Cir. 2003); *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 387-388 (5th Cir. 2005); *Evanoff v. Standard Fire Ins. Co.*, 534 F.3d 516, 520-521 (6th Cir. 2008); *Mancini v. Redland Ins. Co.*, 248 F.3d 729, 731, 735 (8th Cir. 2001) and *Wagner v. Director, Federal Emergency Management Agency*, 847 F.2d 515, 518-521 (9th Cir. 1988).

Plaintiff cannot claim ignorance of this requirement because the SFIP is itself a codified federal law, and all persons are charged with knowledge of the published

federal laws - especially those participating in a U.S. funded insurance program. *Merrill*, 332 U.S. at 384-85. In addition, those citizens who elect to become actual participants in federal programs do so under a further legal duty to “familiarize” themselves with the requirements of those programs. *Heckler*, 467 U.S. at 64.

Further, the SFIP clearly states what information is to be provided in the Proof of Loss, and that the Insured must send a signed and sworn Proof of Loss to the Insurer within 60 days of the date of loss even if the adjuster does not provide him or her with the form. 44 C.F.R. Pt. 61, App. A(3), Arts. VIII(G)(4) and (7), respectively. Specifically, Art. VIII(G)(7) of the SFIP candidly warns potential claimants not to rely upon the insurer (or the independent adjuster who is provided as a “courtesy only”) to supply a Proof of Loss or for assistance in complying with the Proof of Loss requirement. The WYO Program carrier is not required to “demand” that a claimant comply with the requirements of the SFIP. The regulations themselves provide the necessary incentive and consequences for noncompliance. *Jamal v. Travelers Lloyds of Texas Ins. Co.*, 131 F.Supp.2d 910 (S.D. Tex. 2001) (*citing Riverdale Mills Corp. v. American Modern Home Ins. Co.*, 122 F.Supp.2d 114, 118 (D.Mass. 2000)).

Here, it is undisputed that Plaintiff did not submit a timely, signed and sworn Proof of Loss to Hartford for the additional amounts it is seeking under the SFIPs. [Ex. 1, ¶¶27-29, 31-33] Plaintiff admitted so. *See*, Ex. 10, Response No. 8].

Furthermore, Plaintiff did not provide any signed and sworn Proof of Loss to Hartford as required by the Court’s Case Management Order. [Doc. 6, at IV(C)(3)].

Finally, to date, there exists no waiver of the Proof of Loss filing requirement

in this case that the Defendant is aware of to support the additional payments Plaintiff is seeking [Ex 1, ¶29] Thus, Hartford respectfully contends that there is no means by which anything could be paid on the Plaintiff's claims. To do so would violate the Appropriations Clause of the U.S. Constitution. *Flick*, 205 F.3d at 390-91.

Because Plaintiff failed to submit a timely Proof of Loss for the amounts claimed within one year, and because Plaintiff has not provided any evidence to show that it was granted a specific waiver by the FIA of the Proof of Loss requirement for those additional amounts, summary judgment is warranted on this issue alone.

b. Substantial Compliance

A review of Plaintiff's Responses to Requests for Admissions indicates Plaintiff believes that substantial compliance with the SFIP's Proof of Loss requirements is enough to cure their Proof of Loss deficiency. In Response to Request for Admissions No. 7, Plaintiff admits that the Proofs of Loss discussed in this motion are "the only proofs of loss submitted by you in connection with the flood claims at issue." However, Plaintiff's response also provided that "Plaintiff also submitted other 'proofs of loss' to Defendant including but not limited to Mitigation and Build-Back invoices from J.E.S. Louisiana, Inc., prior to the subject lawsuit being filed." [Ex. 10, Response No.]

The Middle District of Florida has addressed identical arguments and found them unconvincing. In *Blocdahl Leasing, LLC v. American Strategic Ins. Co.*, 2024 WL 5202783 at \*2 (M.D.Fla. 12/23/2024), the court dismissed plaintiff's case where plaintiff submitted an estimate, but did not provide a signed and sworn POL. The court held, "[a]n insured must completely satisfy the POL requirement, *including the*

*requirement that the statement is signed and sworn*, before an insured can receive benefits under a SFIP.” *Id.* See also *Debartolo v. Capitol Preferred Ins. Co.*, 2014 WL 5307493 at \*3 (M.D.Fla. 10/16/2014).

In *Debartolo* 2014 WL 5307493 at \*3, the court reasoned:

A federal insurance contract, like this one, may not be interpreted with “charitable laxity.” *Sanz*, 328 F.3d at 1318 (quoting *Federal Crop Ins. Corporation v. Merrill*, 332 U.S. 380, 386, 68 S.Ct. 1, 92 L.Ed. 10 (1947)). “[T]he insured must adhere strictly to the requirements of the standard federal flood insurance policy before any monetary claim can be awarded against the government.” *Sanz*, 328 F.3d at 1318. The filing of a timely and complete proof of loss is among these requirements. *Shuford*, 508 F.3d at 1342. Therefore, “an insured’s failure to provide a complete, sworn proof of loss statement, as required by the flood insurance policy, relieves the federal insurer’s obligation to pay what otherwise might be a valid claim.” *Gowland v. Aetna*, 143 F.3d 951, 954 (5th Cir.1998).

Plaintiff cannot, and has not, shown actual and complete compliance with the SFIP because it did not submit a POL within one year of the flood. Plaintiff admits that it did not comply with the POL Requirement, and any claim of “substantial compliance” cannot rescue its claim. Summary judgment should be granted dismissing the lawsuit in its entirety.

## **2. Plaintiff Failed to Meet All Conditions Precedent Prior to Filing Suit as Per SFIP Article VIII(O)**

As a second basis for summary judgment, an NFIP participant cannot file a lawsuit seeking federal benefits under the SFIP unless the participant can show its prior compliance with “all” policy requirements. 44 C.F.R. Pt. 61, App. A(3), Art. VII(O). This is not some point buried deep within FEMA’s regulations, but rather it is a longstanding nationally uniform requirement found within the text of every flood

policy issued throughout the country. The rule is found within the SFIP at 44 C.F.R.

Pt. 61 App. A(3), Art. VIII(O) and reads as follows:

*You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the covered property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy. (Emphasis Added)*

Per *Sanz*, 328 F.3d at 1318, the Eleventh Circuit, relying on *Mancini*, 248 F.3d at 735, held that the failure to comply with all conditions precedent, *e.g.*, submitting a Proof of Loss, “divests a non-complying insured of the right to sue” by holding:

We agree with our sister circuits and conclude that the insured must adhere strictly to the requirements of the standard federal flood insurance policy before any monetary claim can be awarded against the government.

*See also Flick*, 205 F.3d at 395-396; and *Mazzula*, 2021 WL 252295, at \*2 (holding “[u]nder the SFIP, an insured may not sue under the policy unless they ‘have complied with all the requirements of the policy.’”)

In the present action, Plaintiff failed to comply with the Proof of Loss conditions precedent prior to filing suit in failing to submit a pre-suit Proof of Loss and documentation to support the amount claimed as required by SFIP Art. VIII(G)(4). Under these circumstances, because the conditions precedent of the filing of this lawsuit was never satisfied by Plaintiff, no benefits are payable under the SFIP. Accordingly, Plaintiff’s claims under the SFIP should be summarily dismissed.

## **2. Plaintiff's Lawsuit Related to Building KK is Time Barred Pursuant to SFIP Article VIII(O)**

Alternatively, should the Court find an issue of fact on the proof of loss issue, the claims as to Building KK should be dismissed as time barred. It is undisputed that Plaintiff failed to file the lawsuit within one year of the date of the denial of all or part of the claim for Building KK. To maintain a right of action for an NFIP SFIP claim dispute, Plaintiff must have timely filed suit pursuant to express terms of the SFIP (44 C.F.R. Pt. 61, App. A(3), Art. VIII(O)) and the NFIA (42 U.S.C. § 4072). SFIP Art. VIII(O) requires an NFIP insured to file suit within one year of the written denial of any part of an NFIP SFIP claim:

You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.

44 C.F.R. Pt. 61, App. A(3), Art. VIII(O). This language mirrors the NFIA's one-year statute of limitations enacted by the Congress at 42 U.S.C. § 4072. Furthermore, these provisions are both included in the Code of Federal Regulations 42 C.F.R. § 62.22(a).

The one-year limitations period of the SFIP is contained within SFIP Art. VIII, a section where courts have fully applied a strict construction standard. *See, Shuford*, 508 F.3d. at 1343; *Sanz*, 143 F.3d at 1317-18. Further, the statutory grant of original exclusive jurisdiction over lawsuits arising from the operation of the NFIP found at 42 U.S.C. § 4072, provides the same one-year time limitation. *See, Hairston*, 232 F.3d at

1350; *Flick v. Liberty Mutual Fire Ins. Co.*, 205 F.3d 386 (9th Cir. 2019); and *Van Holt*, 163 F.3d at 163. At 44 C.F.R. §62.22(a), FEMA reiterated Congress' one-year limitation in the Code of Federal Regulations, the very regulations that control the function of the NFIP. Accordingly, whether the Court looks to the NFIA or the SFIP, which is itself a part of the Code of Federal Regulations, Plaintiff's claims may only be heard if a lawsuit is filed in the United States District Court of the district where the property is located within the one-year of the written denial of all or part of a claim.

It is undisputed that Plaintiff filed its Amended Complaint naming Hartford on August 2, 2024, and that Hartford mailed a denial letter regarding Building KK on January 7, 2023. [Ex. 1, ¶34; Ex. 11] The Denial letter explicitly informed the insured that it was denying the claim for replacement of the ceramic tile floors:

Review of the engineer's report and findings tells us the ceramic tile flooring damages claimed were not structurally damaged by or from flood, but rather due to improper installation of the tile flooring and is unrelated to the flood event.

[Ex. 11]

Furthermore, the Denial Letter and FEMA Policyholder Rights form advised Plaintiff of its right to appeal Hartford's decision to FEMA and/or "file suit in the Federal District Court where the damage occurred within one year of when your insurer first denied all or part of your claim." [Ex. 11, pp. 2-3] As such, the claims asserted under SFIP 8702228360 (Building KK) are time barred and should be dismissed.

### **3. Plaintiff's Extra-Contractual Claims and Claims under the EAJA**

Plaintiff seeks attorney fees and case expenses incurred in filing and prosecuting this action payable under the EAJA. [Doc. 1, Prayer]



The EAJA is found at 28 U.S.C. §2412. (d)(1)(A). It provides:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses ... incurred by that party in any civil action (other than cases sounding in tort) ... brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

The Eleventh Circuit has not decided whether the EAJA applies to WYO Program carriers. The Fifth Circuit has addressed this issue, which held that attorney fees under EAJA are not recoverable against a private insurance company in the context of the NFIP. *See, Dwyer v. Fidelity National Property and Cas. Ins. Co.*, 565 F.3d 284 (5th Cir. 2009). The Middle District of Florida has held that EAJA fees are plausible and have dismissed early Motions to Dismiss EAJA claims. *See, Arevelo v. American Bankers Ins. Co. of Florida*, 2019 WL 2476644 at \*4 (M.D.Fla. 6/13/2019) and *Shapiro v. Wright Nat'l Flood Ins. Co.*, 2020 WL 224538 at \* (M.D.Fla. 1/15/1999).

Even if this Court determines that there is an issue of fact/law regarding the availability of EAJA fees, it is undisputed that Plaintiff has not alleged any basis to support a claim under the EAJA because Hartford was substantially justified in denying the claim for damages. Plaintiff breached the SFIP by failing to submit a timely signed and sworn Proof of Loss for the amount it is seeking in contravention to SFIP Art. VIII(O). Despite Plaintiff's breach of the SFIP, it claims (as per the EAJA), that Hartford was not substantially justified in its position to not pay part of the claim. By federal law, the WYO Program carrier cannot waive program requirements and must strictly construe the provisions of the SFIP, which it did in these claims. As such,

Plaintiff's EAJA claims are impossible of success and should be dismissed.

#### **4. Plaintiff is not Entitled to a Jury Trial**

Finally, Defendant seeks dismissal of Plaintiff's jury demand. WYO companies are "fiscal agents of the United States." *Newton*, 245 F.3d at 1311. The Seventh Amendment right to a jury trial does not apply to actions to recover money from the federal government. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). A plaintiff may retain the right if the United States has unequivocally expressed a waiver of immunity. *Id.* This is not the case with the NFIA. Although the Eleventh Circuit has not ruled on this issue, other circuit courts of appeal and this Court, have similarly held. *See, e.g., Gunter*, 736 F.3d at 773 (affirming district court's order quashing jury demand); *Grissom*, 678 F.3d at 402) ("The right to a jury trial has not been extended by the government to WYO cases."); *Agostino*, 2025 WL 2770856 at \*1, *Haslam*, 2025 WL 2661508 at \*1, and *Sosa*, 2016 WL 11618703, at \*1. Because the SFIPs at issue in this case were issued by a WYO Program carrier, the federal government would be responsible for any damages awarded, thus a jury trial is not allowed. Similarly, Plaintiff does not have a right to a jury trial in this breach of contract action and the jury demand should be dismissed.

### **CONCLUSION**

Plaintiff's breach of contract claims should be dismissed because Plaintiff failed to submit a timely Proof of Loss and failed to comply with the conditions precedent of the SFIP prior to filing this suit. SFIP Art. VIII(G)(4); SFIP Art. VIII(O). Further,

Plaintiff's claims for attorney fees under the EAJA and jury demand are unwarranted.

WHEREFORE, Defendant, Hartford Insurance Company of the Midwest, respectfully prays that for the reasons stated herein this Honorable Court grant the Motion for Summary Judgment and dismiss Plaintiff's lawsuit with prejudice.

Dated: November 20, 2025.

Respectfully Submitted,

/s/John A. Unzicker, Jr.

John A. Unzicker, Jr., FB No. 320366

Ryan M. Bennett, Esq., FB No. 72988

NIELSEN & TREAS, LLC

3838 North Causeway Blvd., Suite 2850

Metairie, Louisiana 70002

P: 504-837-2500; F: 504-603-0730

Email: junzicker@nt-lawfirm.com

rbennett@nt-lawfirm.com

*Attorney for Defendant*

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2025, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ John A. Unzicker, Jr.

John A. Unzicker, Jr.

**SERVICE LIST**

**Case No.: 2:24-cv-0696-JLB-KCD**

Matthew Struble  
Struble Cohen  
325 Fifth Avenue, Suite 103  
Indialantic, Florida 32903  
mstruble@strublelawfirm.com  
service@claimappeals.com

John M. Miller  
Boy Agnew Potanovic Miller, PLLC  
23 Barkley Circle  
Ft. Myers, Florida 33907  
JohnM@bapfirm.com  
service@bapfirm.com  
*Attorneys for Plaintiff*