

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BAY HAVEN AT COCO BAY
CONDOMINIUM ASSOCIATION,
INC,

Plaintiff,

v.

CASE NO.: 2:24-cv-00696-JLB-KCD

HARTFORD INSURANCE
COMPANY OF THE MIDWEST,

Defendant.

_____ /

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Plaintiff, BAY HAVEN AT COCO BAY CONDOMINIUM ASSOCIATION, INC. ("Bay Haven" or "Plaintiff"), by and through undersigned counsel, files this Response in Opposition to Defendant HARTFORD INSURANCE COMPANY OF THE MIDWEST's ("Hartford" or "Defendant") Motion for Summary Judgment, and states as follows:

I. INTRODUCTION

This case arises from catastrophic Hurricane Ian flooding that caused Category-3 water damage to eleven condominium buildings at Bay Haven's property in Fort Myers, Florida. Hartford, acting as a Write-Your-Own ("WYO") carrier under the National Flood Insurance Program ("NFIP"), adjusted the claims through independent, NFIP-certified adjuster Michael Maroney, obtained

engineering opinions, requested FEMA waivers, issued multiple rounds of payments, and participated in FEMA's appeal process.

Hartford now seeks summary judgment based not on an absence of flood damage or coverage, but on technical arguments about proofs of loss and a one-year limitations period for Building KK. Hartford—in complete contradiction to its claims processing posture and coverage decisions—states that its “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.”

Hartford's motion ignores that Bay Haven submitted extensive supplemental documentation (including J.E.S. mitigation/build-back invoices, Gulf Shore Cooling HVAC invoices, environmental testing reports, and a detailed FEMA appeal) that Hartford and FEMA treated as part of the proof-of-loss and appeal process. Additionally, FEMA issued claim-specific waivers and a Final Appeal Decision that addressed Bay Haven's claims on the merits—especially tile, cabinetry, and HVAC line sets—without denying coverage based on any proof-of-loss timing defect, while guiding the insured to work with their adjuster and insurer and may submit amended proofs and supporting documentation.

The Middle District of Florida's decision in *Oliver v. American Bankers Insurance Co.*, Case No. 2:24-cv-01120-JES-NPM (June 6, 2025) (the “*Oliver Order*”) declined to dismiss a Hurricane Ian SFIP case on allegedly deficient proof-of-loss

grounds, holding that waiver, estoppel, and prejudice are factual issues that cannot be resolved as a matter of law.

On this record, at a minimum, genuine issues of material fact exist as to:

- Bay Haven’s substantial compliance with proof-of-loss requirements;
- Hartford and FEMA’s waiver and estoppel through their conduct, including adjuster guidance, waiver requests, and a merits-based FEMA Final Decision;
- Whether Hartford suffered any prejudice from the manner in which Bay Haven supplemented its proofs of loss; and
- Whether the January 7, 2023 correspondence regarding Building KK constitutes a final “denial of all or part of the claim,” given Hartford’s ongoing adjustment and later payments.

Hartford has not met its burden under Rule 56. Its motion should be denied.

II. PLAINTIFF’S RESPONSE TO DEFENDANT’S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Undisputed.
2. Undisputed.
3. Undisputed in substance. Hartford issued eleven SFIPs, one for each 4-unit building (AA-KK), with the policy numbers, addresses, and limits reflected in Hartford's motion. Plaintiff disputes any implication that the limits have been exhausted or that Hartford paid all amounts due under those limits.

4. Undisputed in part. FEMA, through the Federal Insurance Administrator, may waive or alter SFIP provisions in writing. Plaintiffs dispute that Hartford is unable to waive any requirement of the subject policy.

5. Undisputed.

6. Undisputed.

7. Undisputed.

8. Undisputed.

9. Undisputed.

10. Undisputed in part. Plaintiff does not dispute that Hartford assigned independent NFIP-adjuster Michael Maroney of Sweet Claims Services. Plaintiff disputes any implication that Maroney merely performed a limited "courtesy" function. Bay Haven's president, Lawrence L. Lokuta, Jr., attests that Maroney discussed presence of Category-3 floodwater and saturated drywall and communicated regarding additional J.E.S. billing (including tile and line-set work) and preparation of the proofs of loss. *See Lawrence Lokuta Declaration* attached as **Exhibit A** at 3-10; *Plaintiff's Verified Answers to Defendant's First Interrogatories* attached as **Exhibit B**; and *Deposition Transcript of Michael Maroney* attached as **Exhibit C** at 20:2 – 21:5; 24:3-25, 25:1 – 27:22.

11. Undisputed.

12. Undisputed.

13. Undisputed.

14. Undisputed in part. Plaintiff does not dispute Hartford's chart of water heights and durations. Plaintiff notes that Maroney testified the water exposure and durations created Category-3 ("grossly contaminated") conditions requiring substantial demolition and replacement of saturated drywall and affected building components, including tile and line sets. (Ex. C at 20:2 – 21:5; 24:3-25, 25:1 – 27:22).

15. Undisputed in part. Plaintiff does not dispute that Hartford retained engineering or consulting professionals and received written reports. Plaintiff disputes that those reports conclusively determine the necessary scope of covered flood repairs or preclude the replacement of ceramic tile, line sets, and other components in Category-3 conditions.

16. Undisputed.

17. Undisputed.

18. Undisputed in part. Plaintiff does not dispute that Bay Haven executed eleven signed and sworn proofs of loss in early November 2023. Plaintiff disputes Hartford's assertion that the November 2023 proofs of loss encompassed all covered damages. Plaintiff's verified interrogatory answers identify substantial additional mitigation and build-back charges (J.E.S.) and HVAC line-set charges (Gulf Shore) by building that were not included in the November 2023 proof-of-

loss amounts but were submitted to Hartford as additional claimed loss. (**Ex. B**, Resp. Nos. 3, 5, 6, 7, 9, 11.)

19. Undisputed in part. Plaintiff does not dispute that Hartford issued initial and supplemental payments after Maroney's estimates and subsequent engineering/building-consultant input. Plaintiff disputes Hartford's assertion that the November 2023 proofs of loss encompassed all covered damages.

20. Undisputed that Hartford sought a specific waiver of the Proof of Loss requirement for each claim and that they were granted.

21. Undisputed in part. Plaintiff does not dispute that Hartford issued initial and supplemental payments after Maroney's estimates and subsequent engineering/building-consultant input. Plaintiff disputes Hartford's assertion that the November 2023 proofs of loss encompassed all covered damages.

22. Disputed. Plaintiff disputes this conclusion and the factual premise to the extent Hartford suggests no additional proof-of-loss materials were submitted. Bay Haven provided extensive supporting documentation-including J.E.S. invoices, Gulf Shore invoices, environmental reports, and a detailed FEMA appeal letter-as "additional proofs of loss for the claim," as stated in Plaintiff's sworn statements. Plaintiff as never told by Hartford that additional FEMA forms were required for each incremental amount or that failing to execute such forms would forfeit all supplemental claims. (**Ex. B**, Resp. Nos. 3 & 5; **Ex. A**, at ¶¶ 8-13.)

FEMA's Final Decision letter further confirms FEMA evaluated Bay Haven's "proof of loss and appeal documentation" on the merits and "rejected the policyholder's proofs of loss" for tile and related items because, in FEMA's view, the documentation did not sufficiently support the amount—not because Bay Haven failed to submit a proof of loss. *See* FEMA'S Final Decision Letter attached as **Exhibit D**.

23. Disputed. See No. 22, *supra*.

24. Disputed in part. Plaintiff does not dispute FEMA's issuance of claim-specific waivers on December 12, 2023. Plaintiff disputes Hartford's narrow characterization of those waivers as limited to previously-identified amounts. The waivers, combined with Hartford's continued adjustment, the November 2023 proofs of loss, Bay Haven's supplemental documentation, and FEMA's Final Decision, create factual disputes as to waiver, estoppel, and the scope of the proof-of-loss requirement.

25. Undisputed. Bay Haven filed suit on or about August 2, 2024.

26. Disputed in part. Plaintiff does not dispute that in response to a discovery it acknowledged the eleven November 2023 forms as the only SFIP-style proofs of loss completed. Plaintiff disputes Hartford's attempt to convert that narrow admission into a concession that no other documents, invoices, or sworn submissions can be considered as part of the proof-of-loss process, particularly

where Plaintiff's verified interrogatories expressly identify J.E.S. invoices, Gulf Shore invoices, and FEMA appeal materials as additional proofs of loss submitted to Defendant. (Ex. B, Resp. Nos. 3 & 5.)

27. Disputed. See No. 26, *supra*.

28. Disputed. Plaintiff does not dispute that Hartford sent a letter dated January 7, 2023 addressing denial of tile replacement in Building KK or that more than one year elapsed before suit was filed. Plaintiff disputes that the January 7, 2023 letter constituted a final "denial of all or part of the claim" for Building KK in light of Hartford's continued adjustment, request for FEMA waivers, and additional payments for KK in December 2023, and that Hartford has established as a matter of law that all KK claims are time-barred. Lokuta's declaration and Plaintiff's interrogatory responses show work and payments for KK continued well after January 7, 2023, and FEMA's Final Decision letter addresses tile and related items on the merits without treating them as time-barred. (Ex. A; Ex. B; Ex. D.)

29. Disputed. See No. 28, *supra*.

30. Disputed. See No. 28, *supra*.

III. PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS'

1. Bay Haven is a condominium association responsible for the maintenance, repair, and management of the common elements and common

areas of eleven 4-unit condominium buildings at Coco Hammock Way in Fort Myers, Florida; it holds a legal interest in those common elements and is the proper SFIP insured for building damages. (Ex. A, at ¶¶ 1-3; Ex. B, Resp. No. 1.)

2. On or about September 28, 2022, Hurricane Ian caused floodwater to intrude into the ground-floor units of all eleven buildings, with measured interior water heights up to approximately twenty inches and durations up to fifty hours. During his October 6, 2022 inspection, Maroney observed that drywall in the ground-floor areas remained wet and saturated up to the waterlines; that the floodwater exposure created Category-3 (“grossly contaminated”) conditions at all eleven buildings; and acknowledged the presence of ceramic tile flooring in the flooded areas. (Ex. C at 20:2 – 21:5; 24:3-25, 25:1 – 27:22).

3. Bay Haven retained J.E.S. Louisiana, Inc. to perform mitigation and build-back work and Gulf Shore Cooling, Inc. to replace copper line sets and related HVAC components. J.E.S. and Gulf Shore generated invoices and estimates for each building showing substantial mitigation, demolition, environmental remediation, build-back, and HVAC repair costs. (Ex. B, Resp. Nos. 5-7, 9, 11.)

4. On or about November 4-5, 2023, after extensive adjustment and consulting review, Hartford’s adjuster prepared and presented to Bay Haven eleven signed and sworn proofs of loss – one for each building – in the amounts

Hartford had then decided to pay. Lokuta executed each proof of loss and returned them to Hartford. (Ex. A at ¶¶ 4–8; Ex. B, Resp. No. 3.)

5. The November 2023 proofs of loss did not include (among other items): full replacement of all first-floor ceramic tile; certain J.E.S. build-back line items (including after-hours labor, increased unit pricing, permit and disposal fees, floor protection, and drywall texture above new seams); or Gulf Shore line-set replacement charges. Bay Haven identified these omissions and the corresponding unpaid amounts by building in its verified interrogatory answers. (Ex. B, Resp. Nos. 5, 6, 7, 9, 11.)

6. Bay Haven submitted a written appeal to FEMA contesting Hartford's underpayment and seeking additional payment for the difference between its contractors' invoices and Hartford's payments. On February 15, 2024, FEMA issued a Final Appeal Decision that recited Bay Haven's request for additional payment; described Hartford's payments and denials; and analyzed whether Bay Haven's "proof of loss and appeal documentation" supported the additional amounts claimed, ultimately concurring with Hartford's denial of certain items on the merits. (Ex. D). FEMA's Final Decision letter did not assert that Bay Haven's claims were barred for failure to submit timely proofs of loss.

7. FEMA's written "Policyholder Rights" guidance, provided to Bay Haven during the pre-suit appeals process, instructs policyholders to "first talk to

your adjuster or insurer for any specific questions about your claim. Your adjuster can answer general questions and assist you in proving your loss. Your insurer can address specific questions and make final decisions about your claim.” See *FEMA’s Policyholder Rights Form* attached as **Exhibit E**. This guidance reinforces that NFIP claims are intended to be handled cooperatively, with the adjuster assisting the insured in proving the loss and with the insured permitted to correct or supplement proofs of loss.

8. On December 12, 2023, Hartford obtained FEMA waivers for each building to permit additional claim payments beyond the extended one-year proof-of-loss deadline and thereafter issued additional checks for each building, including Building KK.

9. In *Oliver v. American Bankers Insurance Co.*, a Hurricane Ian SFIP case in the Middle District of Florida, the defendant argued the plaintiff’s claim was barred because the plaintiff failed to submit a timely proof of loss and moved to dismiss. The court denied the motion, concluding that while a failure to provide a sworn proof of loss can be a material breach, whether such a breach, in context, warrants forfeiture is a question of fact, and “a reasonable factfinder could conclude” there was no prejudice to the insurer. See *the Oliver Order attached as Exhibit F*.

These facts preclude summary judgment.

IV. LEGAL ARGUMENT AND MEMORANDUM OF LAW

A. Summary Judgment Standard

Summary judgment is appropriate only if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Courts must view the evidence and all reasonable inferences in the light most favorable to the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The moving party bears the initial burden of identifying those portions of the record demonstrating the absence of a genuine issue of material fact; the non-movant responds by designating specific facts showing that a genuine issue exists for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

Here, Plaintiff has come forward with extensive record evidence—sworn declaration, verified interrogatory answers, deposition testimony, FEMA decisions, and FEMA guidance—creating genuine issues of material fact on all of Hartford’s dispositive arguments.

B. NFIP/SFIP Framework and Proof-of-Loss Requirement; Waiver

The SFIP is a federal insurance contract whose terms are strictly construed, and policy conditions—including proof-of-loss requirements—are ordinarily enforced. But those requirements exist within a broader NFIP regulatory framework in which FEMA retains authority to waive or modify conditions by written bulletin or claim-specific waiver.

Federal courts in this Circuit do require strict compliance with the SFIP's proof-of-loss requirement when an insured seeks additional federal flood benefits. See *Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1318–19 (11th Cir. 2003) (insured's failure to submit a timely, signed and sworn proof of loss, "without obtaining a written waiver of the requirement[,] eliminates the possibility of recovery"); *Shuford v. Fid. Nat'l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1342–43 (11th Cir. 2007) (reaffirming that SFIP claims are governed by federal law and rejecting a constructive-waiver argument where plaintiff had no express written waiver from FEMA). But those cases underscore why summary judgment is **not** appropriate here. In *Sanz* and *Shuford*, the insureds conceded that they never submitted a timely sworn proof of loss that complied with the SFIP and never obtained any written FEMA waiver, so there was no factual dispute to try. See also *Greer v. Owners Ins. Co.*, 434 F. Supp. 2d 1267, 1276–78 (N.D. Fla. 2006) (barring recovery where the insured failed to "completely satisfy" the sworn proof-of-loss requirement and had no written waiver); *Blocdahl Leasing, LLC v. Am. Strategic Ins. Corp.*, No. 2:23-cv-776, 2024 WL 5202783, at *3–4 (M.D. Fla. Dec. 23, 2024) (granting summary judgment where plaintiff conceded it had not submitted a signed, sworn proof of loss for the additional amounts it sought beyond what the adjuster had paid, and there was no written FEMA waiver).

The Middle District has also recognized that, although the proof-of-loss requirement is strict, FEMA may waive or extend it—but only by an express written act of the Federal Insurance Administrator. See *Slater v. Hartford Ins. Co. of the Midwest*, 26 F. Supp. 3d 1239, 1249 (M.D. Fla. 2014) (“[T]he Proof of Loss requirement may be waived, but to be effective, the waiver must be made by the Federal Insurance Administrator in writing.” (citing 44 C.F.R. pt. 61, app. A(1), art. VII(D); § 61.13(d)). In *Slater*, the court denied Hartford’s summary-judgment motion in part and proceeded to a two-day bench trial on the parties’ competing evidence regarding the insureds’ proofs of loss, FEMA’s communications, and the scope of covered flood damage—precisely because those disputed facts could not be resolved on a paper record.

The *Oliver* Order (Ex. F) confirms that proof-of-loss and waiver issues are fact questions. There, the defendant argued the plaintiff’s claim was barred because the plaintiff failed to submit a timely proof of loss and moved to dismiss. The court rejected that argument at the motion-to-dismiss stage, reasoning that while failure to submit a sworn proof of loss can be a material breach, whether such a breach warrants forfeiture—particularly in the context of FEMA’s post-Ian bulletin and the insurer’s own conduct—is a question of fact, and “a reasonable factfinder could conclude” there was no prejudice. If proof-of-loss, waiver, and prejudice issues could not be resolved as a matter of law in *Oliver* at the pleading

stage, they certainly cannot be resolved in Hartford's favor here at summary judgment on a much more developed record – one that includes executed proofs of loss, FEMA waivers, extensive documentation, FEMA guidance, and a FEMA Final Decision analyzing Bay Haven's claims on the merits.

This case is materially different from Hartford's cited cases. As further detailed *infra*, Bay Haven executed eleven proofs of loss, provided extensive documentation, obtained FEMA waivers, and received a FEMA Final Decision that addressed the disputed items on their merits. This raises classic fact questions about the sufficiency and effect of Bay Haven's sworn submissions.

C. Genuine Issues of Fact Exist Regarding Proof-of-Loss Compliance, Waiver, Estoppel, and Prejudice.

Hartford contends that Bay Haven's failure to execute additional FEMA proof-of-loss forms for every incremental supplemental amount sought is a complete bar to recovery. That contention cannot be accepted as a matter of law on this record.

First, Bay Haven executed eleven signed and sworn proofs of loss in November 2023, prepared by Hartford's adjuster, one for each building. (Ex. A, at ¶¶ 4–8; Ex. B, Resp. No. 3.) Bay Haven then submitted J.E.S. mitigation and build-back invoices by building; Gulf Shore Cooling HVAC invoices and estimates; Environmental testing and labor reports; and a detailed FEMA appeal letter. In its verified interrogatory answers, Bay Haven specifically identifies those invoices

and the FEMA appeal letter as “additional proofs of loss for the claim which were submitted to Defendant.” (Ex. B, Resp. No. 3.) ‘T

This is not a case where an insured remained silent. Instead, a jury could reasonably find that Bay Haven complied or substantially complied with the SFIP’s proof-of-loss requirement as modified by FEMA’s bulletin and waivers.

Second, FEMA’s Final Decision letter confirms the dispute concerns scope and cost, not a missing proof of loss. FEMA recites that Bay Haven “seeks payment for the differences between actual costs paid to [its] contractors and amounts paid by the insurer,” and notes that Hartford has already paid significant sums. (Ex. D). FEMA then analyzes whether “the policyholder’s proof of loss and appeal documentation” supports additional amounts, ultimately concurring with Hartford’s denial of certain items on the merits and “rejecting” Bay Haven’s proofs of loss as insufficient to justify those amounts. *Id.* FEMA does **not say** that Bay Haven failed to file a supplemental proof of loss; that any proof of loss submitted was untimely; or that NFP regulations bar further considerations of the claim for technical reasons.

Instead, FEMA assumes the existence of a proof of loss and evaluates whether the underlying documentation supports the amount Bay Haven claims. This is consistent with Bay Haven’s position that it complied with the proof-of-

loss requirement (as modified by FEMA) and places this case squarely in the realm of scope and cost disputes, not threshold jurisdictional defects.

Thirdly, FEMA's Policyholder Rights (Ex. E) guidance confirms the adjuster's role and the ability to supplement proofs of loss. Under FEMA's own description of the process, the adjuster assists the policyholder in proving the loss, and the insured is permitted – and encouraged – to correct or add to previously submitted proofs of loss by providing amended proofs and supporting documentation to the insurer. Bay Haven's evidence supports that it did exactly that at a minimum, a reasonable jury could find that Bay Haven acted in accordance with FEMA's guidance and that Hartford is waived and estopped from asserting strict forfeiture based on technical proof-of-loss arguments in the face of its own and FEMA's conduct.

Finally, there exists disputes over scope and causation of the disputed damages reinforce the impropriety of summary judgment which Hartford's proof-of-loss argument attempts to avoid. Maroney admitted observing Category-3 water conditions and saturated drywall at all eleven buildings. (Ex. C at 20:2 – 21:5; 24:3-25, 25:1 – 27:22.) J.E.S. and Gulf Shore invoices document extensive Category-3 mitigation and necessary build-back and HVAC work that Hartford did not fully pay, particularly for full removal and replacement of ceramic tile in flooded ground-floor living areas; copper line-set replacement and related HVAC

components in contaminated spaces; after-hours labor, increased unit pricing, permit and disposal fees, and drywall texture above new seams; and temporary sanitation facilities for workers. (**Ex. B**, Resp. Nos. 5-7, 9, 11). These facts alone demonstrate genuine issues for trial on coverage and damages.

D. Summary Judgment is also Improper on Hartford's Limitations Defense as to Building KK.

Hartford contends that all claims for Building KK are barred by the SFIP's one-year suit limitation because Hartford sent a letter on January 7, 2023 concerning tile and suit was filed more than one year later. However, the record shows that Hartford continued to adjust KK's claim after January 7, 2023, including obtaining a December 12, 2023 FEMA waiver and issuing additional payments. Bay Haven continued to submit J.E.S. and Gulf Shore invoices for KK, and FEMA's Final Decision addressed KK-related items on the merits. Additionally, Bay Haven reasonably understood from Hartford's conduct that the KK claim remained open and under active consideration until well after January 7, 2023. (**Ex. A; Ex. B; Ex. D.**)

Under SFIP Article VII(R) and 42 U.S.C. § 4072, the one-year limitations period runs from "the date of the written denial of all or part of the claim." Whether the January 7, 2023 letter constitutes that denial – or whether Hartford's subsequent conduct and payments effectively extended the adjustment process – is a disputed question of fact.

Again, the *Oliver* Order (Ex. F) confirms that such fact-intensive issues regarding timing, waiver, and insurer conduct are not appropriate for resolution as a matter of law, particularly where the insurer continues adjusting and paying the claim after an earlier partial denial.

E. Hartford’s EAJA Arguments Are Legally Unsettled and Fact-Dependent and Cannot Be Resolved on Summary Judgment.

Hartford also moves for summary judgment on Bay Haven’s claim for attorney’s fees under the Equal Access to Justice Act (“EAJA”), arguing (1) that EAJA may not apply to WYO carriers at all, and (2) that even if it does, Hartford’s position was “substantially justified” as a matter of law because of its strict proof-of-loss stance. Neither contention supports summary judgment.

First, Hartford candidly recognizes that “[t]he Eleventh Circuit has not decided whether the EAJA applies to WYO Program carriers.” It cites the Fifth Circuit’s decision in *Dwyer v. Fidelity Nat’l Prop. & Cas. Ins. Co.*, 565 F.3d 284 (5th Cir. 2009), as persuasive authority, but *Dwyer* is not binding on this Court. At the same time, Hartford acknowledges that courts in this District have denied motions to dismiss EAJA claims against WYO carriers, holding such claims at least “plausible” at the pleading stage. *See, e.g., Arevelo v. Am. Bankers Ins. Co. of Fla.*, 2019 WL 2476644, at *4 (M.D. Fla. June 13, 2019); *Shapiro v. Wright Nat’l Flood Ins. Co.*, 2020 WL 224538 (M.D. Fla. Jan. 15, 2020). Thus, even under Hartford’s own authorities, the question whether EAJA can apply to WYO carriers remains an

open and fact-sensitive issue, not one that can be summarily resolved as a matter of law in Hartford's favor.

Second, Hartford's alternative EAJA argument is that even if EAJA applied in theory, Hartford was "substantially justified" in its position because Bay Haven allegedly failed, as a matter of law, to comply with the SFIP's proof-of-loss requirement. That argument rises or falls with Hartford's view of the underlying merits. It cannot be resolved in Hartford's favor while the core questions – proof-of-loss compliance, waiver, estoppel, limitations, causation, and scope of loss – remain genuinely disputed. The Court could also find, at a later stage, that Hartford's position was not "substantially justified" for EAJA purposes.

V. CONCLUSION

Hartford asks this Court to grant summary judgment in a complex, multi-building Hurricane Ian flood case despite: (1) executed proofs of loss for each building; (2) extensive supplemental documentation submitted to Hartford; (3) Hartford-requested FEMA waivers and additional flood payments; (4) a FEMA Final Decision letter addressing the merits of Bay Haven's disputed items; (5) FEMA Policyholder guidance encouraging insureds to work with adjusters and insurers to "assist in proving [their] loss" and to correct or add to proofs of loss; and (6) the Middle District's *Oliver* decision recognizing that proof-of-loss compliance, waiver, estoppel, and prejudice are fact questions.

When the record is viewed, as it must be, in the light most favorable to Bay Haven, genuine issues of material fact abound. Hartford has not carried its burden under Rule 56.

WHEREFORE, Plaintiff, BAY HAVEN AT COCO BAY CONDOMINIUM ASSOCIATION, INC., respectfully requests that this Court DENY Defendant's Motion for Summary Judgment in its entirety, and grant such further relief as the Court deems just and proper.

Dated: December 11, 2025

Respectfully Submitted,

/s/ Eduardo A. Ramirez

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[CERTIFICATE OF SERVICE ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 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 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, to John A. Unzicker, Jr., Ryan M. Bennett, NIELSEN & TREAS, LLC 3838 North Causeway Blvd., Suite 2850 Metairie, Louisiana 70002 at junzicker@nt-lawfirm.com; rbennett@nt-lawfirm.com.

/s/ Eduardo A. Ramirez