

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

CHARLENE LYNN ROTONDO, AS  
TRUSTEE OF THE CHARLENE  
LYNN ROTONDO TRUST,

Plaintiff,

v.

WRIGHT NATIONAL FLOOD  
INSURANCE COMPANY,

Defendant.

Case No. 8:26-cv-00618-WFJ-CPT

**WRIGHT NATIONAL FLOOD INSURANCE COMPANY’S MOTION  
TO DISMISS AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Wright National Flood Insurance Company (“Wright”), which appears solely in its capacity as a Write-Your-Own (“WYO”) Program insurance carrier participating in the United States Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968 (“NFIA”), as amended,<sup>1</sup> in its “fiduciary”<sup>2</sup> capacity as the “fiscal agent of the United States,”<sup>3</sup> by and through the undersigned counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, moves this Court for entry of an order dismissing the Complaint (“Complaint”) filed by Charlene Lynn Rotondo, As Trustee of the

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<sup>1</sup> See 42 U.S.C. § 4001 *et seq.*

<sup>2</sup> 44 C.F.R. § 62.23(f).

<sup>3</sup> 42 U.S.C. § 4071(a)(1); *Shuford v. Fidelity Nat’l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1343 (11th Cir. 2007).

Charlene Lynn Rotondo Trust (“Plaintiff”) against Wright on the grounds that Plaintiff’s lawsuit is time-barred.

Plaintiff did not initiate this action within one year of Wright’s written partial denial of the claim sent by Wright on January 17, 2025. Pursuant to 42 U.S.C. § 4072 and Article VII(O) of the Standard Flood Insurance Policy (“SFIP”), any suit seeking additional monies under the SFIP must be filed in federal district court within one year after the written disallowance of all or part of the claim. 42 U.S.C. § 4072; 44 C.F.R. pt. 61, app. A(1), art. VII(O) (2022); *Hairston v. Travelers Cas. & Sur. Co.*, 232 F.3d 1348, 1349 (11th Cir. 2000); *Zozo Investments LLC v. First Community Ins. Co.*, 2026 WL 1021517 at \*3–4 (11th Cir. Apr. 15, 2026); *Miller v. Am. Bankers Ins. Grp.*, 85 F. Supp. 2d 1297, 1300–02 (S.D. Fla. 1999); *Potter-Martino v. Am. Bankers Ins. Co.*, 2026 WL 982818 at \*2–3 (M.D. Fla. Apr. 13, 2026) (Jung, J.); *Lekse v. Allstate Ins. Co.*, 2025 WL 1827629 at \*3–5 (M.D. Fla. July 2, 2025); *Martini v. Am. Bankers Ins. Co. of Fla.*, 2025 WL 1018394 at \*3–5 (M.D. Fla. Apr. 4, 2025); *Mercer v. Am. Bankers Ins. Co.*, 2025 WL 1018390 at \*3–5 (M.D. Fla. Apr. 4, 2025); *Price v. Wright Nat’l Flood Ins. Co.*, 2025 WL 487627 at \*2–3 (M.D. Fla. Feb. 13, 2025); *4922 Mgmt. LLC v. Selective Ins. Co. of the Southeast*, 2025 WL 417701 at \*2–4 (M.D. Fla. Feb. 6, 2025); *Mazzula v. Am. Strategic Ins. Corp.*, 2021 WL 252295 at \*3 (M.D. Fla. Jan. 26, 2021); see *Cohen v. Allstate Ins. Co.*, 924 F.3d 776, 782 (5th Cir. 2019); *Woodson v. Allstate Ins. Co.*, 855 F.3d 628, 633–37 (4th Cir. 2017); *Lionheart Holding GRP v. Phila Contribution Ship Ins. Co.*, 368 F. App’x 282, 284–85 (3d Cir. 2010); *Gibson v.*

*Am. Bankers Ins. Co.*, 289 F.3d 943, 946–47 (6th Cir. 2002); *see also* 44 C.F.R. § 62.22(a). Because Plaintiff did not file suit until March 10, 2026, the Complaint is untimely and must be dismissed.

For the reasons set forth below, this Court should dismiss Plaintiff's Complaint.

### **MEMORANDUM OF LAW**

#### **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Wright, while acting in its capacity as a WYO Program carrier, issued SFIP number 09 1151782527 05 (the "Policy") to Plaintiff for the property located at 316 16<sup>TH</sup> Ave. Indian Rocks Beach, FL 33785 (the "Property"). Declaration of Sarah Brandeberry ¶ 5 (attached hereto as Exhibit 1) (hereinafter "Decl. Brandeberry"). A true and correct copy of the Flood Declarations Page for the Policy in force at the time of the flood event on or about September 26, 2024, is attached hereto as Exhibit 2 and a true copy of the SFIP Dwelling Form is attached hereto as Exhibit 3. *Id.* at ¶ 11. Plaintiff filed the Complaint in this matter on March 10, 2026. ECF 1. In the Complaint, Plaintiff alleges that Hurricane Helene caused flooding at the Property on or about September 26, 2024. *Id.* at ¶¶ 13–14. Plaintiff further alleges that Wright has breached its insurance contract by "denying Plaintiff's claim for damages," "failing to acknowledge coverage for all damages caused by, and reasonable repairs associated with, the loss," "failing and refusing to tender all insurance proceeds due and owing for the loss sustained as a result of the loss,"

and “refusing to adjust all losses with Plaintiff as required by the terms and conditions of the Policy.” *Id.* at ¶¶ 21–24.

On January 17, 2025, Wright sent correspondence to Plaintiff partially denying her claim under the SFIP (the “January 17, 2025, Denial Letter”). Decl. Brandeberry ¶¶ 9–10. A true and correct copy of the January 17, 2025, Denial Letter is attached hereto as Exhibit 4. Decl. Brandeberry ¶¶ 9–11.

Because this action was filed more than one year after Wright’s written partial denial of the claim, Plaintiff’s action under the SFIP is time-barred.

## **II. LAW AND ARGUMENT**

### **A. National Flood Insurance Program**

WYO Program 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). WYO companies operate as the “fiscal agent of the United States.” *Newton v. Capital Assur. Co., Inc.*, 245 F.3d 1306, 1311 (11th Cir. 2001) (quoting 42 U.S.C. § 4071(a)(1)). Thus, a judgment against a WYO Program carrier constitutes a direct charge on the United States Treasury. *Shuford v. Fidelity Nat’l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1343 (11th Cir. 2007); *Newton*, 245 F.3d at 1311–12. As such, a “suit for benefits under the [NFIP] raises the same concerns, under the Appropriations Clause, as a suit against a governmental entity because

benefits under the [NFIP] are paid from the federal treasury.” *Shuford*, 508 F.3d at 1343.

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(1), art. X (2022). As the U.S. Court of Appeals for the Fifth Circuit has stated:

Since the flood insurance program is a child of Congress, conceived to achieve policies which are national in scope, and since the federal government participates extensively in the program both in a supervisory capacity and financially, it is clear that the interest in uniformity of decision present in this case mandates the application of federal law.

*West v. Harris*, 573 F.2d 873, 881 (5th Cir. 1978).

Because federal funds are at stake, in order to receive benefits under a SFIP, all conditions precedent must be fulfilled. *Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1317 (11th Cir. 2003). Strict compliance with the terms and conditions of the SFIP is mandated. *Id.* at 1317–18; *see Lucien v. U.S. Sec. Ins. Corp.*, 143 F. App’x 152, 153 (11th Cir. 2005). As such, the limitations of the policy must also be strictly construed and enforced. *Miller*, 85 F. Supp. 2d at 1300 (citing *Gowland v. Aetna Cas. & Surety Co.*, 143 F.3d 951, 954 (5th Cir. 1998)); *Mazzula*, 2021 WL 252295 at \*3. This includes the requirement that, to be timely, a lawsuit must be filed in

federal court within one year of a written disallowance of all or part of the claim. 42 U.S.C. § 4072; 44 C.F.R. pt. 61, app. A(1), art. VII(O) (2022); *Hairston*, 232 F.3d at 1349; *Miller*, 85 F. Supp. 2d at 1301.

### **B. Standard for Dismissal**

In deciding a Rule 12(b)(6) motion to dismiss, a court must first be mindful of the liberal pleading standards under Rule 8, which require only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8. Thus, a court must take “the material allegations of the complaint” as admitted and liberally construe the complaint in favor of a plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421–22, 89 S. Ct. 1843, 1849 (1969).

However, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007)). While Rule 8 does not require “detailed factual allegations,” a plaintiff must still provide “more than labels and conclusions” because “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 545, 127 S. Ct. at 1965 (internal citation omitted). Indeed, the legal framework of the complaint must be supported by factual allegations that “raise a right to relief above the speculative level.” *Id.* Dismissal is appropriate when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the

cause of action. *Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

The Eleventh Circuit has adopted the “incorporation by reference” doctrine, under which a document referenced in the Complaint and attached to a motion to dismiss may be considered by the court “without converting the motion into one for summary judgment if the attached document is: (1) central to the plaintiff’s claim; and (2) undisputed.” *Day v. Taylor*, 400 F. 3d 1272, 1276 (11th Cir. 2005); *Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002); *Lido Bay Manor Ass’n, Inc. v. Chubb Custom Ins. Co.*, 2020 WL 8413430 at \*2 (S.D. Fla. Dec. 30, 2020); see *Hill v. State Farm Ins. Co.*, 181 F. Supp. 3d 980, 986 n.2 (M.D. Fla. 2016) (holding that the Court could consider the insurance policies included in the defendant’s motion to dismiss even though not attached to the complaint). “[A] document need not be physically attached to a pleading to be incorporated by reference into it; if the document’s contents are alleged in a complaint and no party questions those contents, we may consider such a document provided it meets the centrality requirement . . . .” *Day*, 400 F.3d at 1276. As Plaintiff has alleged that Wright improperly denied the subject claim, and as the January 17, 2025, Denial Letter triggered the running of the one-year limitations period, the January 17, 2025 Denial Letter is central to Plaintiff’s claim. The Flood Declarations and the SFIP Dwelling Form are also central to Plaintiff’s claim as the documents constitute the written agreement that is the basis of this action. The only policy issued by Wright to the Plaintiff was the SFIP Dwelling Form, which is a codified federal regulation

available at 44 C.F.R. Part 61, Appendix A(1) (2022), the terms and conditions of which cannot be disputed.

**C. Plaintiff's Complaint Is Time-Barred Because Plaintiff Did Not File Suit Within One Year of Wright's Written Partial Denial of the Claim**

The one-year limitations period is provided in 42 U.S.C. § 4072:

In the event the program is carried out as provided in section 4071 of this title, the Administrator shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and **upon the disallowance by the Administrator of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance** by the Administrator, may institute an action against the Administrator on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy.

(Emphasis added). The limitations period is also provided within the SFIP

Dwelling Form:

**O. SUIT AGAINST US**

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 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(1), art. VII(O) (2022) (emphasis added).

The relevant statute and regulation provide that any action for breach of the SFIP must be initiated in a United States district court within one year of the written denial of all or part a claim. In the Complaint, Plaintiff alleges that the Property sustained water damage from Hurricane Helene that occurred at the Property on September 26, 2024. ECF 1 at ¶¶ 13–14. Plaintiff further alleges, *inter alia*, that Wright breached the Policy “by denying Plaintiff’s claim for damages.” *Id.* at ¶ 21. Wright sent the January 17, 2025 Denial Letter to Plaintiff on January 17, 2025. Decl. Brandeberry at ¶¶ 9–11; Exhibit 4. The January 17, 2025 Denial Letter and the FEMA Policyholder Rights form attached to the January 17, 2025 Denial Letter advised Plaintiff of her right to appeal Wright’s decision to FEMA and/or to “**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.**” Exhibit 4 at pp. 4–5. (emphasis added). Plaintiff filed this action on March 10, 2026, over one year after Wright sent the January 17, 2025 Denial Letter. ECF 1. As such, Plaintiff’s claim is time-barred and subject to dismissal.

In *Hairston*, the plaintiffs’ property sustained damage from flooding in 1995 and the plaintiffs submitted a claim to the defendant, a WYO carrier. 232 F.3d at 1349. Two years later, the plaintiffs found additional damage that they believed was caused by the 1995 flood and submitted another claim to the defendant. *Id.* On November 13, 1997, the defendant denied the claim. *Id.* Approximately one year after the denial, the plaintiff filed an action in state court. *Id.* The state court filing was removed to federal court on December 15, 1998, “more than a year after

appellees denied the claim” and the defendant WYO carrier filed a motion to dismiss on the grounds the filing was time-barred. *Id.*

The *Hairston* Court granted the motion, holding that the filing in state court failed to toll the statute of limitations. *Id.*; see *Mazzula*, 2021 WL 252295 at \*3 (holding that plaintiffs filing of the lawsuit in state court did not toll the one-year limitations period); *Smith-Pierre v. Fidelity Nat’l Indem. Ins. Co.*, 2011 WL 3924178, at \*4 (S.D. Fla. Sept. 7, 2011) (holding that “filing suit based on the denial of an SFIP flood claim in state court was analogous to filing the case ‘in [the plaintiff’s] kitchen drawer’”). The Eleventh Circuit Court of Appeals affirmed the district court’s dismissal, relying upon the one-year limitations period in 42 U.S.C. § 4072. *Hairston*, 232 F.3d at 1349, 1353. The Court held that the state court had no jurisdiction because the statute conveyed exclusive jurisdiction to the federal district court. *Id.* at 1350–52. Thus, an otherwise “timely” filing in the state court had no tolling effect on the one-year limitations period. *Id.* at 1350–52.

Similarly, this Court recently granted a motion to dismiss on the time-bar issue, finding that plaintiff’s suit was untimely. *Potter-Martino*, 2026 WL 982818 at \*2–3. Plaintiff’s lawsuit arose from flood damage to plaintiff’s property sustained during Hurricane Helene. *Id.* at \*1. On February 4, 2025, defendant (a WYO carrier) issued a letter partially denying the plaintiff’s claim. *Id.* at \*1. Plaintiff filed suit in state court on January 20, 2026, however, the state court action was not removed until February 23, 2026, over one year after the issuance of the denial letter. *Id.* Defendant moved to dismiss on the grounds that the action

for breach of the SFIP was time-barred. *Id.* This Court rejected the plaintiff's argument that filing in state court tolled the limitations period, finding that "the math is simple and unforgiving." *Id.* at \*3. Because plaintiff failed to file the lawsuit in federal court within one-year of the written denial, this Court granted the defendant's motion and dismissed the plaintiff's lawsuit. *Id.* at \*2-4.

The decision in *Miller* is also persuasive. The plaintiff's property flooded during Hurricane Andrew on August 24, 1992. 85 F. Supp. 2d at 1299. The plaintiff contacted the defendant, a WYO carrier, in spring 1993 to advise the defendant that he observed damages to the property. *Id.* The defendant issued a denial letter on June 22, 1993. *Id.* The plaintiff filed suit against the defendant in state court on August 19, 1997. *Id.* After the defendant removed the case to federal court, the defendant filed a motion for summary judgment, arguing that the action was time-barred by the one-year limitations period. *Id.* at 1298-99. The District Court found that the plaintiff was required to file suit within one year of the denial of his claim. *Id.* at 1300. Because the plaintiff failed to comply with the one-year limitations period contained in the statute and the SFIP, the District Court granted the motion for summary judgment and dismissed the action. *Id.* at 1300-02.

In *Cohen*, plaintiff's property was insured under an SFIP issued by Allstate, a WYO carrier. 924 F.3d at 778-79. The property was damaged by flooding in April 2016 and the insured made a claim under the SFIP. *Id.* Allstate assigned an adjuster to inspect the property, determined that the SFIP covered building damages totaled \$55,506.28, received a signed and sworn Proof of Loss for that

amount, and paid the plaintiff in accordance with the Proof of Loss. *Id.* On July 19, 2016, Allstate sent a letter denying the plaintiff's claim for additional building damage because further amounts were not supported by documentation. *Id.*

The plaintiff filed suit on August 14, 2017, over a year after Allstate issued the denial letter. *Id.* at 779. Allstate moved for summary judgment, alleging the suit was time-barred and the District Court granted the motion, from which plaintiff appealed. *Id.* On appeal, the plaintiff asserted that the denial letter issued by Allstate was flawed and did not trigger the one-year limitations period because it did not identify any specific item denied, denying coverage for "various items." *Id.* at 780–81. Plaintiff also claimed that the limitations period was not triggered because the basis for the denial was invalid. *Id.* at 781–82. The United States Court of Appeals for the Fifth Circuit rejected these arguments, holding that the one-year limitations period began on July 19, 2016, the date the denial letter was issued. *Id.* at 782. That plaintiff "disputes the adequacy of Allstate's grounds for denial does not speak to whether the July 19 letter was itself sufficient to trigger the limitations period. Strictly construed, it was." *Id.* at 781 (citing *Migliaro v. Fidelity Nat'l Indem. Ins. Co.*, 880 F.3d 660, 667 (3d Cir. 2018)). The Court noted that both 42 U.S.C. § 4072 and Article VII(R) of the SFIP require that a policyholder file suit within one year after the date of mailing of notice of disallowance or partial disallowance of their claim. *Id.* at 782. "[N]ot even the temptations of a hard case will provide a basis for ordering recovery contrary to the terms of [a] regulation, for to do so would disregard the duty of all courts to observe the conditions defined

by Congress for charging the public treasury.” *Id.* (quoting *Forman v. FEMA*, 138 F.3d 543, 545 (5th Cir. 1998)). The Court affirmed the judgment of the District Court, finding that the District Court correctly determined that the suit was untimely. *Id.*

In the instant matter, the one-year limitations period was triggered when Wright sent the January 17, 2025, Denial Letter. Plaintiff filed this action on March 10, 2026, over one year after the denial of Plaintiff’s claim. As such, Plaintiff’s claim for breach of the SFIP is barred by 42 U.S.C. § 4072 and 44 C.F.R. Part 61, Appendix A(1), Article VII(O). *Hairston*, 232 F.3d at 1349; *Cohen*, 924 F.3d at 782; *Woodson*, 855 F.3d at 633–37; *Zozo*, 2026 WL 1021517 at \*3–4; *Miller*, 85 F. Supp. 2d at 1300–02; *Potter-Martino*, 2026 WL 982818 at \*2–4; *Mercer*, 2025 WL 1018390 at \*3–5; *Price*, 2025 WL 487627 at \*2–3. Thus, Plaintiff’s lawsuit must be dismissed.

### **III. CONCLUSION**

For the foregoing reasons, Wright National Flood Insurance Company respectfully requests that the Court enter an Order dismissing Plaintiff’s Complaint, with prejudice.

**LOCAL RULE 3.01(g) CERTIFICATION**

I, undersigned counsel for Wright National Flood Insurance Company, hereby certify that I attempted to confer with counsel for Plaintiff prior to filing the instant motion and was informed that counsel for the Plaintiff was out of the office until Monday, May 11, 2026.

Dated: May 8, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2026, a true and correct copy of the foregoing Motion was electronically filed using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Tara J. Kholos  
Tara J. Kholos

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