UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

SEASCAPE OF LITTLE HICKORY ISLAND, INC., **Plaintiff,** **v.** **HARTFORD FIRE INSURANCE COMPANY,** **Defendant.**	**CASE NO. 2:26-cv-01330-KCD-KRH**

HARTFORD INSURANCE COMPANY OF THE MIDWEST'S 12(b)(6) MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND INCORPORATED MEMORANDUM

Now Comes the Defendant, Hartford Insurance Company of the Midwest ("Hartford"), erroneously referred to as Hartford Fire Insurance Company, a Write-Your-Own ("WYO") Program 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,[1] in its "fiduciary"[2] capacity as the "fiscal agent of the United States,"[3] files this Motion to Dismiss with Incorporated Memorandum in Support seeking dismissal of all claims asserted by Plaintiff for flood damages to three of Plaintiff's condominium buildings at issue in this litigation, on the

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[1] *See* 42 U.S.C. §4001 et seq.
[2] 44 C.F.R. §62.23(g).
[3] 42 U.S.C. §4071(a)(1); *Sanz v. U.S. Security Ins. Co.*, 328 F.3d 1314, 1315 (11th Cir. 2003); *Gowland v. Aetna Cas. & Surety Co.*, 143 F.3d 951, 953 (5th Cir. 1998).

grounds that Plaintiff's suit is time barred pursuant to 42 U.S.C. § 4072, 44 C.F.R. Pt. 61, App. A(3), Art. VIII(O), and 44 C.F.R. § 62.22(a). Notably, the Eleventh Circuit and the Middle District of Florida, including Your Honor, have previously addressed this issue in several NFIP matters. *See, Hairston v. Travelers Cas. & Sur. Co.*, 232 F.3d 1348, 1350 (11th Cir. 2000); *Zozo Investments v. First Community Ins. Co.*, 2026 WL 1021515 at *3-4 (11th Cir. 2026), *Agostino v. Monarch Nat'l Ins. Co.*, 2026 WL 668331, at *2 (M.D. Fla. 03/10/2026); *Clack v. Hartford Fire Insurance Co.*, 2026 WL 191780, at *1-2 (M.D. Fla. 1/26/2026); *Barnes v. American Bankers Insurance Co. of Florida*, 2025 WL 3525295; and *D'Ambrosio v. Am. Bankers Ins. Co. of Fla.,* 2025 WL 2841172, at *2 (M.D. Fla. Oct. 7, 2025).

As to the remaining insured building, an equipment building (policy number 8701905745), Hartford seeks dismissal of this claim as the Complaint fails to state a claim for which relief can be granted. The policy limits under the SFIP were paid, thus Plaintiff's cannot recover any other monies under this policy for the claim at issue.

Alternatively, should this matter not be dismissed in its entirety with prejudice, the Plaintiff's extra-contractual claim for declaratory judgment and "such other and further relief as this Court deems just and proper" be dismissed as barred under federal statutory, regulatory, and common law. *See, Shuford*, 508 F.3d at 1344; *Jones v. Wright Nat'l Flood Ins. Co.*, 2019 WL 957729, at *4 (M.D. Fla. Feb. 6, 2019); and *Chatman v. Wright Nat'l Flood Ins. Co.*, 2017 WL 3730558 at. *2 (M.D. Fla. June 21, 2017).

MEMORANDUM OF LAW

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. On April 23, 2026, Plaintiff filed its Complaint in this Court. [Doc. 1]

2. In the Complaint, Plaintiff alleges that the lawsuit involves three NFIP Residential Condominium Building Association Policy ("RCBAP") Standard Flood Insurance Policies ("SFIP"), bearing numbers, 87019057552020, 87019057562020, 87019057572020, and one General Property Form SFIP bearing number 87019057452020, all which were in effect on September 28, 2022. [Doc. 1, ¶¶4-5]; Plaintiff's property suffered flood damage as a result of Hurricane Ian on September 28, 2022 [*Id.*, ¶10]; that "Hartford has made certain payments pursuant to the Policies but the parties have disagreed as to the availability and extent of coverage on certain items [*Id.*, ¶14]; that "Defendant issued a partial denial of the claims on or about April 28, 2025" [*Id.*, ¶18]; and that "Defendant has failed and refused to pay amounts owed to plaintiff pursuant to the Policies and therefore has breached its obligations thereunder." [*Id.*, ¶23]

3. Hartford issued to Plaintiff the following NFIP SFIPs:

a. RCBAP No. 87019057552020, also referred to as 8701905755, covered Building D at 25820 Hickory Blvd., Bonita Springs, FL 34134-3651, for effective dates of February 20, 2022 to February 20, 2023, and provided building coverage in the amount of $7,170,900, subject to a $2,000 deductible. Plaintiff did not purchase contents coverage. [Ex. 1, ¶4a; Ex. 2, RCBAP, 44 C.F.R. Pt. 61, App. A(3); Ex. 3, Declarations Page for RCBAP No. 8701905755]

b. RCBAP No. 87019057562020, also referred to as 8701905756, covered Building F at 25810 Hickory Blvd., Bonita Springs, FL 34134-3651, for effective dates of February 20, 2022 to February 20, 2023, and provided building coverage in the amount of $7,170,900, subject to a $2,000 deductible. Plaintiff did not purchase contents coverage. [Ex. 1, ¶4b; Ex. 4, Declarations Page for RCBAP No. 8701905756]

c. RCBAP No. 87019057572020, also referred to as 8701905757, covered Building E at 25810 Hickory Blvd., Bonita Springs, FL 34134-3651, for effective dates of February 20, 2022 to February 20, 2023 and provided building coverage in the amount of $15,500.00, subject to a $2,000 deductible. Plaintiff did not purchase contents coverage. Ex. 1,¶4c; Ex. 5, Declarations Page for RCBAP No. 8701905757]

d. SFIP No. 87019057452020, also referred to as SFIP No. 8701905745, covered the Equipment Building located at 25810 Hickory Blvd., Bonita Springs, FL 34134- for effective dates of February 20, 2022 to February 20, 2023 and provided coverage for Plaintiff's building up to a limit of $24,900 subject to a $2,000.00. Plaintiff did not purchase contents coverage. [Ex. 1, Declaration of Wendy Strow, ¶ 4d; Ex. 6, General Property Form SFIP, 44 C.F.R. Pt. 61, App. A(2); Ex. 7, Declarations Page for 8701905745]

4. There are no other SFIPs put at issue by the Plaintiff's Complaint other than the four NFIP/SFIPs written by Hartford. The Plaintiff's SFIPs are a codified federal regulation that can be found at 44 C.F.R. Pt. 61, App. A(2) and 44 C.F.R. Pt. 61, App. A(3). [Ex. 1, ¶6; Ex. 2, RCBAP Policy Form, and Ex. 6, General Property Form]

5. Plaintiff made a flood loss claim under the NFIP SFIPs issued by Hartford for damage to the property from Hurricane Ian that occurred on or about September 28, 2022. [Doc. 1, at ¶¶ 10-11]. *See also*, Ex. 1, Declaration of Wendy Strow, ¶7.

6. As to RCBAP No. 8701905755 (Bldg. D), on June 17, 2023, as part of its regular business practices, Torrent, on behalf of Hartford, created and mailed a letter bearing the same date to Plaintiff at the mailing address on the Policy Declarations, denying the Hurricane Ian claim in part as follows:

> [t]he adjuster tells us you are claiming payment for all of the contractor's remediation charges, however, the flood policy will not allow us to pay you for some of these as they are not considered direct physical loss by or from flood, are considered a duplicate or excessive charge or are not properly documented by a signed contract and proper drying logs. These items include temporary power, generator power and stabilization with desiccant dryers (long term) We deny your flood claim for these items pursuant to the SFIP…

[Ex. 1, ¶8; Ex.8, Denial Letter dated June 17, 2023][4]

7. As to RCBAP No. 8701905756 (Bldg. F), on June 18, 2023, as part of its regular business practices, Torrent, on behalf of Hartford, created and mailed a letter bearing

[4] An additional denial letter was mailed in connection with this claim on August 29, 2025, upholding the June 17, 2023 letter and rejecting Plaintiff's Proof of Loss dated July 10, 2025 in part. [Ex. 1, ¶ 8 FN1; Ex. 9, Denial Letter dated August 29, 2025.

the same date to Plaintiff, at the mailing address on the Policy Declarations, denying the Hurricane Ian claim in part as follows:

> [t]he adjuster tells us you are claiming payment for all of the contractor's remediation charges, however, the flood policy will not allow us to pay you for some of these as they are not considered direct physical loss by or from flood, are considered a duplicate or excessive charge or are not properly documented by a signed contract and proper drying logs. These items include temporary power, generator power and stabilization with desiccant dryers (long term) We deny your flood claim for these items pursuant to the SFIP…
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> [Ex. 1, ¶9; Ex.10, Denial Letter dated June 18, 2023]

8. As to RCBAP No. 8701905757 (Bldg. E), on June 11, 2023, as part of its regular business practices, Torrent, on behalf of Hartford, created and mailed a letter bearing the same date to Plaintiff, at the mailing address on the Policy Declarations denying the Hurricane Ian claim in part as follows:

> [t]he adjuster tells us you are claiming payment for all of the contractor's remediation charges, however, the flood policy will not allow us to pay you for some of these as they are not considered direct physical loss by or from flood, are considered a duplicate or excessive charge or are not properly documented by a signed contract and proper drying logs. These items include temporary power, generator power and stabilization with desiccant dryers (long term) We deny your flood claim for these items pursuant to the SFIP…
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> [Ex. 1, ¶10; Ex.11, Denial Letter dated June 11, 2023][5]

9. Plaintiff's lawsuit filed on April 23, 2026, more one one-year from the denial letters mailed June 17, 2023 (Bldg. D), June 18, 2023 (Bldg. F) and June 11, 2023 (Bldg. E), violated RCBAP Article VIII(O). [Doc. 1; Ex. 1, ¶11; & Ex. 8,

[5] An additional denial letter was mailed in connection with this claim on August 25, 2025, upholding the June 17, 2023 letter and rejecting Plaintiff's Proof of Loss dated July 10, 2025 in part. [Ex. 1, ¶10 FN2; Ex. 12, Denial Letter dated August 29, 2025.

Ex. 10, and Ex. 11]

10. An NFIP SFIP insured must file suit within one year of a denial of all or part of the claim. Plaintiff failed to do so. As such, Hartford now moves to dismiss Plaintiff's claims for policy numbers 8701905755 (Bldg. D), 8701905756 (Bldg. F) and 8701905757(Bldg. F) from the lawsuit as they are time barred. [Ex. 5, RCBAP Art. VIII(O)]

11. As to SFIP No. 8701905745, policy limits of $24,900 were paid on March 30, 2023. [Ex. 1, ¶12; Ex. 7, and Ex. 13, Check dated March 20, 2023 in the amount of $24,900 for policy number 870190574]

12. Because policy limits were paid on SFIP No. 8701905745, there is nothing left that Plaintiff is entitled to receive under this SFIP for the flood claim at issue. [Ex. 1, ¶¶12-13; Ex. 6, General Property Form SFIP, Art. VI(A), "When a loss is insured under this policy, we will pay only that part of the loss that exceeds your deducible amount, subject to the limit of liability that applies."]

II. BACKGROUND OF THE NATIONAL FLOOD INSURANCE PROGRAM

This is a lawsuit 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 statutory and regulatory scheme of the

NFIP is outlined below.

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. *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 ("WYO") authorized to issue the SFIP. WYOs 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), 44 C.F.R. Pt. 61, App. A(2), Art. VII(C), and 44 C.F.R. §61.13(d). Due to the statutory scheme of the NFIP and the fact that federal 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).

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*.

III. LEGAL ARGUMENT AND AUTHORITIES

A. 12(b)(6) Standard of Review

> To avoid dismissal subject to a motion to dismiss under Federal Rule of civil Procedure 12(b)(6), a plaintiff's 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 (2009). Mere "labels and conclusions and a formulaic recitation of the elements of a cause of action" are insufficient to survive to survive a motion to Dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
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> *Rosario*, 2025 WL 1425461, at *1.
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> At the motion to dismiss stage, all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, n.1 (11th Cir. 1999)(internal citation omitted). Importantly, "at the motion to dismiss stage, the scope of a court's review must be limited to the four corners of the complaint." *Boyd v. Peet*, 249 F. App'x 155, 157 (11th Cir. 2007).
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> *Rosario*, 2025 WL 1425461, at *1.

However, in deciding whether a complaint states a claim upon which relief may be granted, a district court considers the factual allegations in the complaint and the exhibits attached to the complaint or incorporated into the complaint by reference. *Id., see also MSP Recovery Claims, Series LLC v. Metro. Gen. Ins. Co.*, 40 F.4th 1295, 1303 (11th Cir. 2022). A Court may consider evidence outside the complaint if the evidence satisfies the incorporation-by-reference doctrine or is properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007); *Swinford v. Santos*, 121 F.4th 179, 187-88 (11th Cir. 2024).

In DAmbrosio, 2025 WL, 2841172, at *1, the Court explained:

> "[A] document outside the four corners of the complaint may … be considered" as incorporated by reference if it "is central to the plaintiff's claims and is undisputed in terms of authenticity," regardless of whether it is "mentioned in" or "attached to " the complaint. *Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340 n. 3 (11th Cir. 2005).
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> *2 The Court agrees with Defendant – the December 2022 denial letter fits squarely within the incorporation-by-reference doctrine. It is central to Plaintiffs' case "because it is the denial letter [they] seek [ ] to challenge." *Apatow v. Am. Bankers Ins. Co. of Fla.,* No. 16-198 MWF (MRWX), 2016 WL 7422288, at *2 (C.D. cal. Dec. 21, 2016). The letter's authenticity is also unchallenged. "So the Court considers it." *Price v. Wright Nat'l Flood Ins. Co.,* No. 2:240CV09140SPC-KCD, 2025 WL 487627, at *1 M.D. Fla. Feb 13, 2025).

The Middle District of Florida has repeatedly held that denial letters and insurance policies are central to the NFIP breach of contract claims and have considered these documents which are outside of the pleadings when considering a motion to dismiss. *See, D'Ambrosio,* 2025 WL 2841172, at *1*; Clack*, 2026 WL 191780, at, * FN 2; *Rosario,* 2025 WL 1425461, at * 2; *Barnes,* 2025 WL 3525295 *at * 2; Raulerson*, 2025 WL 1122767, at *2; *Martini,* 2025 WL1018394 at *1-2; *4922 Management, LLC, 2025 WL 417701 at *1; Adams*, 2025 WL 1555144 at FN 1*; Caruso*, 2025 WL 448953 at *1; *Price*, 2025 WL 487627 at *1; *Mercer*, 2025 WL 1018390, at *1; and *Matthies*, 2025 WL 1069307, at *1.

In *D'Ambrosio,* the plaintiff argued that this Court could consider only what was within the four corners of the pleading and not a denial letter exhibit to the defendant's motion to dismiss that was not mentioned in the complaint. 2025 WL 2841172, at *1. This Court held that a document outside the four corners may be considered by reference if it is central to the plaintiff's claims and is undisputed in terms of authenticity; regardless of being mentioned or attached to the complaint, it was the denial the plaintiff sought to challenge. *Id.*

In *Rosario*, the plaintiff argued that the denial letters attached to the motion to dismiss could not be considered because he disagreed that the denials should have been issued. 2025 WL 1425461, at * 2. The court held that "undisputed" in this context means the authenticity of the document is undisputed and because plaintiffs did not challenge the authenticity of the denial letters, which were central to the breach of contract claim, were properly considered, and based upon the denial letters, the lawsuit was time barred. *Id*.

In *Raulerson*, 2025 WL 1122767, at *2, the plaintiff argued that the court could not consider documents attached to the motion to dismiss. The court disagreed, holding that the SFIP and the denial letter squarely fell within the incorporation by reference doctrine, and explained:

> Here, the SFIP between ASIC and Plaintiff is undoubtedly central to Count One because Plaintiff is bringing a breach of (insurance) contract claim against ASIC. (citations omitted) ASIC's September 2023 partial denial letter is also referenced in the Complaint and intertwined with Plaintiff's breach of contract claim. (citation omitted) As far as the authenticity of the exhibits, Plaintiff neither contests nor challenges their validity in his response to the motion to dismiss.

Id.

Similarly, in this case, the denial letters attached to this Motion are unquestionably central to Plaintiff's claim of breach of contract. In the Complaint, Plaintiff alleged "compliance with all required provisions of the Policies." [Doc. 1, ¶ 12]; that Hartford has made certain payments under the polices but the parties disagree as to the availability and extent of coverage on certain items." Doc. 1, ¶14], and that "Defendant issued a partial denial of the claims on or about April 28, 2025. [*Id.*, ¶18] [Doc. 1]. In doing so, Plaintiff asserts it met all requirements to bring and maintain the cause of action, including the Suit Against Us provision of the SFIP, discussed more in depth below. 44 C.F.R. Pt. 61, App. A(3), Art. VIII(O). Accordingly, Plaintiff's assertions referencing Defendant's activity in denying coverage, sending the denial letter(s), coupled with the SFIP requirement that Plaintiff assert compliance with, filing suit within one year of the denial of Plaintiff's claim, confirms that the denial letters are central to the claims.

Furthermore, as to Policy No. 8701905745 the claim check is central to the claim and should be considered. Plaintiff alleged that "Defendant has failed and refused to pay amounts owed to plaintiff pursuant to the Polices and therefore has breached its obligations thereunder."[Doc. 1, ¶23] Plaintiff's allegations regarding the payment issued and the assertion that the Defendant has refused to pay confirm that the payments for this clam are central to the claims.

B. Plaintiff's Lawsuit is Time Barred as to Policy Nos. 8701905755 (Bldg. D), 8701905756 (Bldg. F) and 8701905757(Bldg. F)

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 Article VIII(O) requires an NFIP insured to file suit within one year of the written denial of any part of an NFIP SFIP claim:

> 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 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.

This language mirrors the NFIA's one-year statute of limitations enacted by the Congress which states:

> 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 the controversy.

42 U.S.C. § 4072. These provisions are both included in the Code of Federal Regulations, which separately provides:

> Upon the disallowance by the Federal Insurance and Mitigation Administration, a participating Write-Your-Own Company, or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any claim after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance and Mitigation Administration, the participating Write-Your-Own Company, or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the insurer only in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

42 C.F.R. § 62.22(a).

The one-year limitations period of the SFIP is contained within the same section of the SFIP under which the courts have fully applied a strict construction standard, namely, SFIP Article VIII. *See, Shuford,* 508 F.3d. at 1343; *Sanz*,143 F.3d at 1317-18 (11th Cir. 2003). 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); *Van Holt*, 163 F.3d at 163; and *Gibson v. American Bankers Ins. Co.*, 91 F.Supp.2d 1037 (E.D.Ky. 2000). At 44 C.F.R. §62.22(a), FEMA reiterated Congress' one-year time limitation mandate in the Code of Federal Regulations which are 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 claim 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 time limitation.

In the case at bar, Plaintiff asserts that Hartford denied coverage and that Plaintiff complied with all policy obligations and conditions precedent to this lawsuit. [Doc. 1 ¶¶12, 14 and 18]. Thus, the Complaint explicitly alleges that Hartford denied coverage for Plaintiff's claims. Indeed, among others, Hartford mailed denial letters to Plaintiff in June 2023. [Ex. 1, ¶ 6, 7 & 10; Ex 3] The denial letters explicitly informed the insured that "The adjuster tells us you are claiming payment for all of the contractor's remediation charges, however, the flood policy will not allow us to pay you for some of these as they are not considered direct physical loss by or from flood are considered a duplicate or excessive charge or are not properly documented for these items pursuant to the SFIP…"[Id.] The partial denial letters attached the FEMA Policyholder Rights form that advised Plaintiffs of its right to appeal Hartford'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." [Ex. 2, Art. VIII(O)]

On April 23, 2026, nearly three (3) years after the mailing of the June 2023 partial denial letters, Plaintiff filed the lawsuit in this Court. [Doc. 1]. As such, Plaintiff's claims for damages under 8701905755 (Bldg. D), 8701905756 (Bldg. F) and 8701905757(Bldg. F) are time-barred and subject to dismissal.

In *Price*, the plaintiffs' lawsuit also arose from flood damage to plaintiffs' property sustained during Hurricane Ian. *Price*, 2025 WL 487627 at 1. On February

21, 2023, defendant (a WYO carrier) issued a letter partially denying the plaintiffs' claim. *Id.* The plaintiffs filed suit 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.* The Price court rejected multiple arguments advanced by the plaintiffs in an effort to excuse their failure to timely initiate the action, holding that the February 2023 denial letter was sufficient to put the insureds on notice that a portion of their claim had been denied, initiating the one-year limitations period contained in 42 U.S.C. § 4072. *Id.* at *2 (citing *4922 Mgmt. LLC v. Selective Ins. Co.*, 2025 WL 417701 at *2). Because plaintiffs failed to strictly adhere to the requirement to file an action within one-year of a denial, this Court granted the defendant's motion and dismissed the plaintiffs' lawsuit. *Id.* at *2-3.

In the present case, the one-year limitations period was triggered when Hartford issued the denial letters on June 17, 2023 (Policy 8701905755, Bldg. D), June 18, 2023 (Policy 8701905756, Bldg. F) and June 11, 2023 (Policy 8701905757, Bldg. E). Plaintiff's subsequent, submissions and Defendant's subsequent denial letters did not act to reset this clock. Plaintiff filed its lawsuit almost three years after the initial denial. 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(3), Article VIII(O). *Hairston*, 232 F.3d at 1349 and Plaintiff's claims for damages under 8701905755 (Bldg. D), 8701905756 (Bldg. F) and 8701905757(Bldg. F) are time-barred and subject to dismissal.

C. Plaintiff's Claim under SFIP No. 8701905745 Fails to State a Claim for Which Relief can be Granted

Plaintiff seeks additional payments under SFIP No. 8701905745. As shown by the Declaration Page in effect on the date of the loss, SFIP No. 8701905745 provided building limits of $24,900 and 0 for contents coverage. [Ex.1, ¶4d; Ex. 7] Hartford issued check number 88707 on March 20, 2023 for the policy limits of $24,900.00. [Ex.1, ¶12; Ex.13, Check totaling $24,900] As limits have been paid, no additional funds are due under this policy. SFIP, Art. VI(A), provides that "[w]hen a loss is insured under this policy, we will pay only that part of the loss that exceeds your deducible amount, subject to the limit of liability that applies." [Ex. 1, ¶13; Ex. 6, Art. VI(A)] Further, Plaintiff has sought to dismiss this claim via a Joint Stipulation of Dismissal which was stricken due to procedural reasons. [Doc. 20 and 21] As such, dismissal of this claim is warranted at this time.

D. Plaintiff's State Law Claims Are Preempted and Barred by Federal Law

Should this matter not be dismissed based on the December 6, 2022, denial letter and in an abundance of caution, Hartford seeks dismissal of Plaintiff's claim for declaratory judgment and "further relief as this Court deems just and proper" to the extent Plaintiff seeks attorney fees and interest. [Doc. 1-2, ¶ "WHEREFORE" paragraph].

The question of whether an NFIP insured may recover under state law is well settled in the U.S. Eleventh Circuit. In *Shuford*, 508 F.3d at 1344, the Eleventh Circuit held that the plain language of the codified SFIP clearly preempted claims under state law. The *Shuford* Court relied upon Article IX of the SFIP-added in 2000 by an amendment to the regulations-which states that claims under the SFIP are "governed exclusively" by federal law. 44 C.F.R. Pt. 61, app. A(l), Art. X; *Id*.

Furthermore, in *Newton*, the Eleventh Circuit held that interest is not recoverable based on the "no-interest" rule. 245 F.3d at 1310-12. The *Newton* Court reasoned that any prejudgment interest awards against WYO Program carriers are actually direct charges on the public treasury, which is forbidden by the "no-interest rule." *Id.* at 1312. Likewise, any award against Defendant in this case will ultimately be paid for by U.S. Treasury funds. Based upon the reasoning in *Shuford* and *Newton*, Plaintiff's claim for prejudgment interest should be dismissed.

This Honorable Court and other courts in the Middle District of Florida, have similarly dismissed claims for declaratory relief, attorney fees and interest. *Haslam v. Monarch Nat'l Ins. Co.*, 2025 WL 2661508, *1; *Agostino v. Monarch Nat'l Ins. Co.*, 2025 WL 2770856, at *1. *See, Jones,* 2019 WL 957729, at *4; *Chatman,* 2017 WL 3730558 at *2; *House v. Bankers Ins. Co.,* 43 F. Supp. 2d 1329, 1331 (M.D. Fla. 1999); *Stapleton v. State Farm Fire & Cas. Co.*, 11 F. Supp. 2d 1344, 1347 (M.D. Fla. 1998); *Friedman*, 855 F. Supp. 348, 350-351 (M.D. Fla. 6/8/1994).

IV. CONCLUSION

WHEREFORE the Defendant, Hartford Insurance Company of the Midwest, respectfully requests that this Honorable Court dismiss this lawsuit with prejudice as the matter is clearly time barred. Alternatively, should Defendant's motion to dismiss the case as time barred be denied, Defendant prays for dismissal of Plaintiff's claim for interest and attorney fees.

Dated: June 29, 2026.

Respectfully submitted,

NIELSEN & TREAS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2026, the foregoing document was electronically filed with the Clerk of the Court. I also certify that the foregoing document is being served this day on all counsel of record on the attached Service List.

/s/ Benjamin D. Keener
Benjamin D. Keener

Local Rule 3.01(g) Certification

The movant hereby certifies that on this date he has conferred with Plaintiff's counsel regarding this Motion to Dismiss and counsel opposes the Motion.

/s/ Benjamin D. Keener
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SERVICE LIST

CASE NO. 2:26-cv-01330-KCD-KRH

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