UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ADMIRAL'S BAY ASSOCIATION, INC.,

Plaintiff,

v. Case No.: 2:23-cv-801-JLB-KCD

HARTFORD INSURANCE COMPANY OF THE MIDWEST,

Defendant.
_____/

ORDER

In this Hurricane Ian case, Plaintiff Admiral's Bay Association, Inc. moves to compel appraisal. (Doc. 22.)[1] Defendant Hartford Insurance Company of the Midwest responded in opposition. (Doc. 24.) For the reasons below, the motion is denied.

Hartford[2] issued separate Standard Flood Insurance Policies ("SFIP") for two Admiral Bay condo buildings. Following Hurricane Ian, Admiral Bay filed a claim with Hartford. After consulting an adjuster, Hartford determined that Admiral Bay was claiming payment for items that were not considered a loss

[1] Unless otherwise indicated, all internal quotation marks, citations, and alterations have been omitted in this and later citations.

[2] Hartford is a Write-Your-Own (WYO) Program Carrier participating in the federal government's National Flood Insurance Program. (Doc. 24 at 1.)

caused by the flood. (Doc. 1-2.) Thus, Hartford determined that Admiral Bay was owed $6,289.40 per building. (*Id.*)

Admiral Bay disputed this coverage amount and gave its own estimates with damages totaling nearly $500,000. (Docs. 24-1, 24-2.) These estimates, however, include items that Hartford found were not covered under the plain language of Admiral Bay's policies. Put simply, the scope of loss is disputed. (Doc. 24 at 9.)

SFIP coverage is governed by the National Flood Insurance Program ("NFIP"). The NFIP was established by Congress, through the National Flood Insurance Act, to make "flood insurance coverage available on reasonable terms and conditions to persons who have need for such protection." 42 U.S.C. § 4001(a). Claims are paid from a National Flood Insurance Fund in the United States Treasury. *Id.* § 4017(a). Thus, federal statutes, federal regulations, and federal common law govern disputes about the construction of terms in insurance policies issued under the Act. *See Newton v. Cap. Assur. Co.*, 245 F.3d 1306, 1309 (11th Cir. 2001). And "SFIPs should be interpreted in a fashion that ensures uniform interpretation throughout the country, avoiding state-to-state coverage variances." *Greer v. Owners Ins. Co.*, 434 F. Supp. 2d 1267, 1274 (N.D. Fla. 2006) (citing *Carneiro Da Cunha v. Standard Fire Ins. Co./Aetna Flood Ins. Program*, 129 F.3d 581, 584 (11th Cir. 1997)).

The appraisal provision here states: "If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss." (Doc. 24 at 7); 44 C.F.R. Pt. 61, App. A(1). Under this particular language:

> The appraisal clause can only be invoked when the parties cannot agree as to the actual cash value, or, as defined by the policy, the parties cannot agree as to the replacement cost of an insured item of property. This language cannot be stretched to mean that appraisal can be invoked whenever the parties dispute which items of property were damaged or whether those items were in fact damaged by flood waters.

Flaharty v. Allstate Ins. Co., No. 3:09-cv-499-RV-EMT, 2010 WL 148226, *2-3 (N.D. Fla. Jan. 11, 2010). In other words, the appraisal provision in a federally regulated flood insurance policy can be invoked only when the parties dispute the valuation of a loss, and it cannot be invoked when there is a dispute about what was damaged by the covered peril.

At this stage of the proceeding, there is an unresolved issue about the scope of damaged items attributable to the flood, an issue that Admiral Bay seems to acknowledge in its motion. (*See* Doc. 22 ¶ 6.) So neither party may invoke the appraisal clause at this time. Accordingly, Admiral Bay's motion to compel appraisal (Doc. 22) is **DENIED**. The Hurricane Ian Scheduling Order's automatic toll of the deadlines (Doc. 5 at 2) is lifted.

ORDERED in Fort Myers, Florida on April 23, 2024.

Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record