



FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA) APPEAL DECISION

FEMA Flood Insurance Appeal Decision #C27

OVERVIEW

The policyholders filed an appeal on September 2020, alleging their flood insurance carrier (hereinafter “insurer”) improperly denied part of their claim under the Standard Flood Insurance Policy (SFIP)¹ for damages to covered property arising from a flood event dated May 2020.²

In its review, FEMA found the following facts relevant:

- At the time of loss, the policyholders had \$200,000 of building coverage and \$80,000 of personal property coverage.
- Following the flood loss, the policyholders filed a claim with the insurer and the insurer assigned an adjuster to inspect the property.
- On May 2020, the adjuster inspected the property and confirmed a general and temporary condition of flooding existed. The adjuster measured 20-inch waterlines on the interior and exterior of the building. The insurer recommended the replacement of ceramic tile throughout the building.
- The adjuster prepared an estimate for covered damages and submitted the estimate to the insurer for review.
- The insurer reviewed the estimate and issued the policyholders payments totaling \$64,448.28 for building damage and \$23,976.56 for personal property damage.
- The policyholders notified the adjuster of structural concerns and the adjuster requested the insurer retain an engineer for an engineering consult.
- The insurer retained an engineer who inspected the property.
- On July 2020, the engineer inspected the building and concluded the flood event did not damage the exterior wall sheathing. The engineer noted the property was inundated with flood water in May and July 2020; however, the engineer concluded the building was not structurally damaged by hydrodynamic forces, hydrostatic forces, buoyant forces, or frictional forces from the May 2020 and July 2020 flood events. The engineer concluded the cracks in the brick veneer and foundation were caused by earth movement.

¹ See 44 C.F.R. § 61.13 (2019); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter “SFIP”].

² The policyholders file this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholders’ claim. The policyholders’ appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter “Appeal File”].

- In a letter dated July 2020, the insurer denied coverage for structural and foundation damage, citing the earth movement exclusion in the SFIP.
- The policyholders appeal the insurer's denial of coverage for structural and foundation damage. The policyholders contend the flood event worsened structural and foundation cracks. The policyholders submit no additional documentation in support of their appeal; therefore, FEMA's decision is based on the documentation in the claim file.

RULES

The insurer agrees to pay the policyholders for direct physical loss by or from flood to covered property, provided the policyholders comply with all terms and conditions of the SFIP.³

The SFIP excludes earth movement, even if earth movement is directly caused by flood. Examples of earth movement include land subsidence, sinkholes, destabilization or movement of land due to water accumulation, and gradual erosion.⁴

ANALYSIS

The policyholders appeal the insurer's denial of coverage for structural and foundation damage.

The insurer agrees to pay the policyholders for direct physical loss by or from flood. The SFIP excludes earth movement, even if earth movement is directly caused by flood. Here, the engineer inspected the property and observed cracks in the concrete slab and exterior brick veneer. The engineer concluded some of the cracks were rounded with dull-colored edges that contained dull-colored mortar or algae, indicating old damage that predated the flood event. The engineer noted the policyholders' building was inundated by another flood in July 2020, after the subject flood event. However, the engineer concluded the building was not structurally damaged by hydrodynamic forces, hydrostatic forces, buoyant forces, or frictional forces from the May 2020 and July 2020 flood events. The engineer also found the flood events did not damage the exterior wall sheathing. The engineer concluded the unlevel floors and cracks in the exterior brick veneer and concrete foundation were due to historical differential settlement (earth movement) and exacerbated by both flood events.

To better understand earth movement, consider when a flood event inundates a building causing flood damage and a fire. The damage caused directly by the flood is covered under the SFIP, but the damage caused directly by fire and smoke is not, even though the flood directly caused the fire. Here, the flood directly damaged part of the building, but also caused the soil to weaken and move. The damage directly caused by the flood is covered under the SFIP, but the damage to the building caused directly by the soil weakening and moving is not covered under the SFIP.

The insurer's engineering report includes 62 photographs, a detailed listing of observations, and an analytical discussion leading to conclusions supported by evidence. Without countervailing evidence, such as a report from another qualified professional, FEMA's review finds no reason to overturn the insurer's denial or request a re-evaluation.

³ See SFIP (I), (II)(B)(12).

⁴ See SFIP (V)(C).

For these reasons, FEMA's review finds the insurer properly denied coverage for structural and foundation damage, as the SFIP does not cover earth movement.

CONCLUSION

Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for structural or foundational damage due to earth movement.