



FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA)

APPEAL DECISION

FEMA Flood Insurance Appeal Decision #A10

SUMMARY

The policyholders appealed the flood insurance carrier's (hereinafter "insurer") denial of a claim under the Standard Flood Insurance Policy (SFIP)¹ for damages to their property arising in May 2020.

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.²

After reviewing the issues, evidence, and relevant authorities, FEMA affirms the insurer's decision.

BACKGROUND

COVERAGE

The policyholders insure property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$250,000 of building coverage and \$100,000 of personal property coverage.

EVENT AND CLAIM FACTS

Following the claimed flood event, the policyholders filed a claim for damages with their insurer and their insurer assigned an adjuster to inspect the property..

In June 2020, the adjuster inspected the policyholders' property and determined a general and temporary condition of flooding did not exist on the claimed date of loss. The adjuster canvassed the neighborhood and determined the ground around the property was wet, but there was no debris, exterior or interior waterlines to the building, and no reported damage to the property.³ The adjuster determined there was evidence of erosion of soil due to multiple floods, but observed no damage to the residence or foundation system. The policyholders contended the claimed flood event caused soil to erode behind the retaining

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' appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance, Policyholder Services Division, Appeals Branch [hereinafter "Appeal File"].

³ See Appeal File, Adjuster's Preliminary Report.

wall, causing damage to their building. The adjuster recommended the insurer retain an engineer to determine the extent of the structural damage caused by or from flood.

In June 2020, the insurer's engineer inspected the property and determined the policyholders' building sits 60 feet above the Licking River.⁴ The insurer's engineer concluded the soil erosion was due to multiple floods over 140 years. The insurer's engineer concluded no general and temporary condition of flooding existed on the claimed date of loss and the building sustained no structural damages from the claimed May 2020 flood event.

In a letter dated July 2020, the insurer denied coverage, citing no general and temporary condition, the earth movement exclusion, and no direct physical loss by or from flood.

The policyholders appealed the denial to FEMA in an email. In support of their appeal, the policyholders submit a copy of their engineer's report, contractor proposal, and proofs of payment.

In an addendum report dated October 2020, the insurer's engineer reaffirmed his conclusion that no general and temporary condition of flood existed on the claimed date of loss.⁵ The insurer's engineer also concluded the stabilization issues of the property have been ongoing since 1990 and are not caused from a one-time flood event.

ISSUE

The policyholders appeal the insurer's denial of coverage for no general and temporary condition of flood, earth movement exclusion, and no direct physical loss by or from flood.

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.⁶

The SFIP defines a flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, one of which is the policyholders,' from overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, or mudflow.⁷

The SFIP does not cover fences, retaining walls, seawalls, bulkheads, wharves, piers bridges or docks.⁸

The SFIP does not insure loss to property caused directly by earth movement, even if earth movement is caused by flood. Examples of earth movement include land subsidence, sinkholes, destabilization or movement of land due to water accumulation, and gradual erosion.⁹

⁴ See Appeal File, Insurer's Engineering Report.

⁵ See Appeal File, Insurer's Addendum Engineering Report.

⁶ See SFIP (I), (II)(B)(12).

⁷ See SFIP (II)(A)(1).

⁸ See SFIP (IV)(12).

⁹ See SFIP (V)(C).

ANALYSIS

The policyholders appeal the insurer's denial of coverage for no general and temporary condition of flood, earth movement exclusion, and no direct physical loss by or from flood.

The insurer agrees to pay the policyholder for direct physical loss by or from flood. A flood is a general and temporary condition of partial or complete inundation of two or more properties, one of which is the policyholders,' from unusual and rapid accumulation or runoff of surface waters from any source or mudflow. Here, the adjuster determined no general and temporary condition of flooding existed on the claimed date of loss, as the adjuster canvassed the neighborhood and found no evidence of flooding or debris. The adjuster found no interior or exterior waterlines to the building and no damages to the main building. FEMA's review of the National Flood Insurance Program claims database found there were no flood claims in the policyholders' surrounding area since 2018. Accordingly, FEMA's review finds the insurer properly denied coverage for no general and temporary condition of flood.

The SFIP excludes earth movement, even if earth movement is directly caused by flood. Most soils that become saturated tend to lose bearing capacity, which is the soil's ability to maintain a load or stabilize weight. Here, the policyholders contend erosion from an early 2020 flood event led to the structural cracking and foundation damage to their retaining wall. The policyholders' engineer inspected their property in April 2020, which is before the reported date of loss.¹⁰ The policyholders' engineer determined a large tree limb fell on the membrane, causing damage to the membrane which served to reduce surface water inflow. FEMA's review notes the damaged membrane is not a direct physical loss caused by or from a flood and pre-dated the claimed flood event. The engineer also concluded the impact of land sliding in early 2020 compromised the soil's strength. However, the engineer provided no evidence showing the damage caused by land sliding was caused by the claimed flood event.

The insurer's engineer inspected the property and concluded there was evidence of gradual and ongoing erosion. The insurer's engineer also found no evidence of structural or foundation damage resulting from the claimed flood event. The insurer's engineer found no general and temporary condition of flood existed on the claimed date of loss. The insurer's engineer reviewed the policyholders' engineering report, damage assessment, contractor's proposal, and prepared an addendum. In the addendum report, the insurer's engineer re-affirmed his initial conclusion that soil erosion or slope failure was not the result of a singular flood event. The insurer's engineer also concluded the stabilization issues of the property have been ongoing since 1990. Accordingly, FEMA's review finds the insurer properly denied coverage, as the SFIP excludes earth movement.

The SFIP does not cover retaining walls. Here, the policyholders contend soil erosion from an early 2020 flood event caused damage to their retaining wall. FEMA's review notes that while the SFIP does not cover retaining walls, the damage to the policyholders' retaining wall also predated the claimed flood event and the SFIP excludes earth movement. Accordingly, the FEMA's review finds the insurer properly denied coverage for the retaining wall, as it is not covered under the SFIP.

For these reasons, FEMA's review finds the insurer properly denied coverage for no general and temporary condition of flood, earth movement exclusion, and no direct physical loss by or from flood.

¹⁰ See Appeal File, Policyholder's Engineering Report.

CONCLUSION

Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for no general and temporary condition of flood, earth movement exclusion, and no direct physical loss by or from flood.

NOTICE: Delivery of this Appeal Decision **concludes your appeal**, pursuant to 44 C.F.R. § 62.20(f)(3). If you do not agree with FEMA's Appeal Decision, please refer to the Standard Flood Insurance Policy for options for further action. **The appeals process does not extend the one-year period to file suit against the flood insurer that began when the insurer denied your claim in writing. 44 C.F.R. § 62.20(f)(4).**

You may request a phone discussion with a FEMA flood insurance expert regarding this Appeals Decision by emailing FEMA-FI-Appeals@fema.dhs.gov and referencing the FEMA Flood Insurance Appeal Number shown above. **Such discussions are for informational purposes only. FEMA will not reopen the appeal or consider new information during any phone discussion.**