



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

FEMA Flood Insurance Appeal Decision #B8

SUMMARY

The policyholder appealed the flood insurance carrier's (hereinafter "insurer") denial of a part of their claim under the Standard Flood Insurance Policy (SFIP)¹ for damages to his property arising in July 2019.

The policyholder files 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 policyholder's claim.²

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

BACKGROUND

COVERAGE

The policyholder insures property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$250,000 of building coverage with a \$2,000 deductible.

EVENT AND CLAIM FACTS

In July 2019, an accumulation of heavy rainfall from a severe thunderstorm created overflow from Lake Ontario. The rainfall inundated the insured building and neighboring properties creating a general and temporary condition of flood.

The policyholder reported the loss to the insurer and the insurer assigned an adjuster to the claim. The adjuster inspected the property in July 2019. The insured building is located on a small island and is accessible only by boat. The adjuster measured a waterline of 24 inches on the exterior of the building. Because the building is elevated, floodwaters were not high enough to reach the building's first floor. Floodwaters were limited to the crawlspace area underneath the building.

¹ See 44 C.F.R. § 61.13 (2018); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter "SFIP"].

² The policyholder's 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"].

The building is located in a special flood hazard area (flood zone AE) and was constructed in 1989, after the date the local community entered the federal flood program in 1981. The first floor is elevated by piers. As such, the claim is subject to SFIP coverage limitations for post-FIRM (Flood Insurance Rate Map) elevated buildings.³ The adjuster took the SFIP's coverage limitations for post-FIRM elevated buildings into account and estimated the cost for flood cleanup at \$935.67.

Because of questions on the claim, the insurer retained an engineer to verify the condition of loss and the amount of flood-borne debris, sand, and stones deposited underneath the building. The same engineer inspected the building in 2018 after a previous flood event. The engineer determined that since the 2018 inspection, only a minor amount of flood-borne debris was deposited under the building. The engineer estimated this amount ranged from 12 to 15 cubic yards of stones and no sand.

The insurer reviewed the policyholder's amended proof of loss totaling \$182,552.00 and denied the policyholder's additional payment request. In a letter dated December 2019, the insurer denied coverage for flood-borne debris removal stating the stones that washed up under the insured building were not covered under the SFIP.

The policyholder appeals the insurer's denial, stating the SFIP covers debris removal, including the removal of stones. The policyholder requests coverage for the cost to remove 12 to 15 cubic yards of stones as recommended by the insurer's engineer. In support of the appeal, the policyholder provides an estimate from a local service provider to remove the stones from underneath the building totaling \$49,500.00 and a second estimate for transporting the removed stones by barge totaling \$181,832.94.

ISSUE

The policyholder appeals the insurer's denial of flood-borne debris removal and requests payment to remove stones that were washed in underneath their insured building during the subject flood event.

RULES

The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complies with all terms and conditions of the SFIP.⁴

The SFIP covers the expense to remove non-owned flood debris that is on or in insured property.⁵

In case of a loss or request for payment, the SFIP requires the policyholder to submit directly to the insurer, a signed and sworn proof of loss with the documentation that supports their flood loss and the dollar amount requested. This proof of loss documentation packet should also include details of any other insurance that may cover the loss and other documents such as detailed repair estimates for the current loss, repair estimates and proof of repairs and price from previous flood losses and claim payments.⁶

³ See SFIP (II)(B)(14), (II)(B)(23), (II)(B)(26), and (III)(A)(8).

⁴ See SFIP (I), (II)(B)(12).

⁵ See SFIP (III)(C)(1)(a).

⁶ See SFIP (VII)(J), (VII)(K).

ANALYSIS

The policyholder appeals the denial of coverage for the cost to remove flood-borne stones deposited underneath the insured building.

FEMA's review agrees with the policyholder that the SFIP covers the cost to remove flood-borne debris and cleanup of non-owned debris that is on or in the insured property. This scope of coverage may encompass the cost to remove flood-borne debris such as stones, sand, and plant-life that have washed up underneath the insured building's perimeter footprint. The SFIP excludes any additional cost related to a local community ordinance or code compliance order for the removal of any debris.⁷

The SFIP's scope of coverage for non-owned debris is limited to removal from the insured building. The covered scope of non-owned flood-borne debris is limited to the removal of flood-borne debris underneath the insured building to the area around the perimeter of the building. The SFIP does not cover the expense to dispose non-owned debris because it is not insured property.

The scope of coverage under the claim for non-owned debris is limited to the labor and equipment usage to remove the 12 to 15 cubic yards of stones. The labor cost should account for any exceptional condition present with working underneath the building within the crawlspace. The SFIP does not cover any increased cost to remove non-owned debris in the yard or to cart debris from the perimeter of the building into a barge, nor the expense for barge transportation, handling, and disposal.

The policyholder's claim of July 2019, follows three flood claims filed on May 20, 2019, May 29, 2019, and June 11, 2019. The policyholder also reported losses subsequent to the subject flood event that occurred later in July 2019 and October 2019. In order to receive payment on the current and subsequent flood losses, the SFIP requires the policyholder to submit directly to the insurer, a signed and sworn proof of loss with the documentation that proves his loss and supports the dollar amount requested. This proof of loss documentation packet should include all related estimates to remove debris from underneath the insured building, plus estimates to remove debris from the yard. The packet should include proof of repairs and debris removal from the three previous flood claims filed 2019.

Because of the large dollar amount presented by the policyholder's contractor, FEMA recommends the policyholder provide additional evidence the estimated dollar amount from its contractor is limited to the covered scope of work. The SFIP does not cover the cost to remove non-owned flood-borne debris from the yard and it does not cover the expense to ship non-owned flood-borne debris by barge for further handling and disposal. The SFIP covers pricing that is reasonable and customary to the loss and location.⁸ This includes labor and equipment usage for removing of 12 to 15 cubic yards of stone material.

The SFIP will cover reasonable additional labor costs customary for site conditions with working underneath the insured building. To ensure the validity of the contractor's quoted price of \$3,564 per cubic yard with sales tax, the policyholder should provide the insurer with other debris removal estimates from one or more different contractors.

⁷ See SFIP (V)(A)(6).

⁸ See National Flood Insurance Program Claims Manual- Section 2.5.2 Building Scope and Estimate.

Based on previous claims, the policyholder has received payment(s) for similar losses as the subject flood claim. The policyholder should provide proof of repairs and price from the previous losses related to removing stones and debris from underneath the building, as well as the cost paid to remove the same from the yard, even though flood-borne debris removal in the yard is not covered under the SFIP. Because of the price per cubic yard quoted, the policyholder's proof of loss documentation packet should include evidence that the payment request is similarly priced to similar debris removal tasks paid for after the prior flood events.

CONCLUSION

Based on the facts and analysis above, FEMA directs the insurer to cover and pay the cost to remove non-owned flood-borne debris from underneath the insured building to the perimeter of the building in the yard. In order to ensure against a payment overlap, the insurer should review the documentation in its file for the policyholder's previous claims with debris removal. Before issuing any additional payment for the subject July 2019 flood event, the insurer should verify that debris removal for the same area underneath the building was performed before the July 2019 flood event.

If the policyholder does not agree with the insurer's payment recommendation, he must prove his loss and send the insurer a signed and sworn proof of loss with the documentation that proves his loss and supports the dollar amount requested. This proof of loss packet should also include the documentation explained above. Any further adjustment of the claim remains under the direction of the insurer, based on the merits of their finding in accordance with all SFIP terms and conditions.