

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

*FEMA Flood Insurance Appeal Decision #C32*

## **SUMMARY**

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The policyholder appealed the flood insurance carrier's (hereinafter "insurer") partial denial of a claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to her property arising on September 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.<sup>2</sup>

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

## **BACKGROUND**

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### **COVERAGE**

The policyholder insures 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**

Tropical Storm Imelda produced torrential rain and widespread flood damage in Texas.<sup>3</sup>

Following the flood loss, the policyholder reported a claim to the insurer and the insurer assigned an adjuster to inspect the property. The adjuster inspected the property on September 2019, and measured a two-inch water line on the exterior of the building and near the front door. The adjuster also noted a quarter-inch water line in the interior of the building.<sup>4</sup>

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

<sup>2</sup> 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. 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"].

<sup>3</sup> See FEMA Bulletin w-19017 (Oct. 16, 2019) (setting Sept. 17-24, 2019, as event dates of loss).

<sup>4</sup> See Appeal File, Preliminary Report.

The adjuster prepared an estimate of damages that included an allowance to replace the hardwood flooring. The insurer reviewed the adjuster's estimate and elected to retain an engineer to determine if a flood damaged the hardwood flooring.

On December 2019, the engineer inspected the dwelling. The engineer determined the separations, squeaks, minimal warping, and discolorations of the wood flooring resulted from natural aging and exposure to the elements. The engineer concluded the flood event did not cause the condition of the flooring.<sup>5</sup>

After reviewing the information from the adjuster and the engineer, the insurer determined the damage to the wood floors was not covered by the policy. In a letter to the policyholder dated December 2019, the insurer denied coverage for the wood floors citing no direct physical loss by or from flood.

In a letter dated December 2019, the insurer rejected the policyholder's signed proof of loss, stating the amount of \$18,741.90 did not accurately reflect the flood damages. On January 13, 2020, the insurer issued the policyholder payment totaling \$448.85 for covered building damage.

On February 2020, the policyholder appealed the insurer's denial. The appeal writes that the adjuster estimated for the replacement of the floors, and she did not understand why the insurer denied coverage. The policyholder includes a report from her contractor with the appeal.

## ISSUE

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The policyholder is appealing the denial of wood flooring and contends that a flood event directly caused the damage.

## RULES

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The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complied with all terms and conditions of the SFIP.<sup>6</sup>

The SFIP does not authorize the adjuster to approve or disapprove claims or tell policyholders whether the insurer will approve their claim.<sup>7</sup>

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 policyholder's property) from the overflow of inland or tidal waters, unusual and rapid accumulation or runoff of surface waters from any source, or mudflow.<sup>8</sup>

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<sup>5</sup> See Appeal File, Insurer's Engineering Report.

<sup>6</sup> See SFIP (I), (II)(B)(12).

<sup>7</sup> See SFIP (VII)(J)(8).

<sup>8</sup> See SFIP (II)(A)(1).

The SFIP excludes water, moisture, mold, or mildew substantially confined to policyholder's structure, that is within the policyholder's control including, but not limited to design, structural or mechanical defects; failure or breakage of water or sewer lines, drains, or equipment; or failure to inspect and maintain the property after the flood recedes.<sup>9</sup>

## ANALYSIS

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On appeal, the policyholder contests the denial of coverage for replacement of her hardwood floors.

The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complied with all terms and conditions of the SFIP. Here, during the inspection the adjuster noted a quarter inch of floodwater entered the insured building. The adjuster prepared an estimate that included an allowance to replace the hardwood floors. The insurer reviewed the adjuster's estimate and determined the claim required the services of a state-licensed engineer. The insurer retained an engineer to determine whether the wood flooring sustained damage as a result of the claimed flood event. The engineer inspected the property and concluded that the damages to the floor were not the result of a single flood event but was caused by normal wear and tear over time. The insurer denied the policyholder's claim for the replacement of the wood floors based on the findings from the engineer that the floors were not damaged by a flood event.

The SFIP does not authorize the adjuster to approve or disapprove claims. The role of the adjuster who inspected the property was to assist the policyholder in documenting damages and to provide an estimate for the insurer to formally review. It is the insurer, not the adjuster, who makes coverage determinations based on all available evidence and in accordance with all terms and conditions of the policy.

The policyholder retained the services of a restoration contractor who submitted a report stating floodwaters entered the dwelling through the entry door and that water traveled across the floors into adjacent rooms. The contractor states that the damaged sections of the flooring would not stain to match the undamaged sections.<sup>10</sup> The contractor forwarded their report to the insurer's engineer for review and comment. FEMA's review finds that the contractor's statement does not demonstrate that the floors were damaged by direct physical loss by or from flood. The statement is not from a licensed engineer and is not sufficient to discredit the evidence and conclusions provided by the engineer who inspected the property.

The SFIP excludes from coverage damage caused by water, moisture, mold, and mildew that results primarily from any condition confined to the dwelling or within the policyholder's control, including the failure to inspect and maintain the property after a flood recedes. The engineer determined that there was no evidence that the damage was caused by the one-time flood event but resulted from natural aging and exposure to the elements. FEMA's review notes that even though a flood as defined by the SFIP did occur, the engineer determined that the damages to the floors occurred over time. Because damages caused by water, moisture, mold, and mildew are excluded from coverage, FEMA finds that the damages to the floor are not covered by the policy.

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<sup>9</sup> See SFIP (V)(D)(4).

<sup>10</sup> See Appeal File, Floor Contractor's Statement.

Based on the information presented, FEMA agrees with the insurer's denial of the claim. The policyholder would need to submit a report from a licensed engineer that counters the findings of the insurer's engineer. If the policyholder obtains an engineering report, it should be submitted directly to the insurer for consideration.

## **CONCLUSION**

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Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for the wood flooring.