



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

FEMA Flood Insurance Appeal Decision #C40

OVERVIEW

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

In its review, FEMA found the following facts relevant:

- At the time of loss, the policyholder had \$250,000 in building coverage and \$100,000 in personal property coverage.
- The policyholder reported the loss to the insurer and the insurer assigned an adjuster to inspect the property.
- On August 2020, the adjuster inspected the building and documented an exterior waterline of six inches and an exterior waterline of 25 inches confined to the subgrade crawlspace. The adjuster observed damage from repeated exposure of accumulated rainwater and evidence of settlement.
- The adjuster recommended allowances for flood loss cleanup and structural drying.
- The insurer agreed with the adjuster’s recommendation and issued the policyholder payment totaling \$457.07 for covered building damages.
- Subsequently, the policyholder expressed concerns regarding cracking in the tile and wood flooring. The insurer retained an engineer to inspect the property.
- On November 2020, an engineer inspected the property and concluded the building had undergone long-term settlement and additional settlement during the flood due to earth movement. The engineer concluded no damage was caused by erosion, scouring, or washout from flooding.
- On November 2020, the insurer sent a letter to the policyholder denying coverage for structural damage based on the engineer’s report.
- On appeal, the policyholder disagrees with the insurer’s denial and the findings of the engineer.
- The policyholder does not include any substantive information with his appeal; therefore, FEMA’s decision is based on the documentation in the claim file.

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 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”].

RULES

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.³

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.⁴

ANALYSIS

The policyholder appeals the insurer's denial of coverage for structural and foundational damage to his property.

The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property. 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.

Due to the policyholder's concerns of structural damages, the insurer retained a state-licensed engineer to determine the cause and extent of structural and cosmetic distress to the building. The engineer concluded that the building has undergone some long-term settlement and concluded that during the flood, some additional settlement occurred. The engineer did not observe any evidence of damage due to erosion, scouring, or washout from flooding. He concluded that the shifting and distress from the flood was a result of earth movement, specifically due to an accumulation of moisture in the subsurface soils beneath the floor.

Saturated soil can lose the ability to bear weight, resulting in foundation components to move, shift, or sink into the soil. To better understand this flood policy exclusion, 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.

FEMA's review finds that the engineer's report meets the standard for a report of its type. The report includes ten pages with a descriptive list of observations supported by 40 annotated color photographs. The report provides an analytic discussion which leads to a clear conclusion. Based on a report of its type, a forensic damage evaluation, the engineer's report provides all necessary disclosures and reporting elements meeting an acceptable standard.

³ See SFIP (I), (II)(B)(12).

⁴ See SFIP (V)(C).

Based on the information presented, FEMA's review agrees with the insurer's denial due to earth movement. Without a countervailing opinion by a licensed engineer, there is no basis for FEMA to overturn the denial or instruct the insurer to re-evaluate the claim.

CONCLUSION

Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for foundation damages caused by earth movement.