



FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

RESILIENCE

APPEAL DECISION

FEMA Flood Insurance Appeal Decision #D21

SUMMARY

The policyholders through their representative (hereinafter “policyholders”) appeal 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 September 2022.

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 policyholders had \$250,000 of building coverage and no personal property coverage.

EVENT AND CLAIM FACTS

Hurricane Ian produced torrential rain, storm surge, and widespread flooding in Florida.³

Following the flood event, the policyholders filed a claim for damages with the insurer and the insurer assigned an adjuster to inspect the property. The insured property is a one-story, single-family dwelling with a slab-on-grade foundation.

¹ See 44 C.F.R. § 61.13 (2021); 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, Resilience, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter “Appeal File”].

³ See FEMA Bulletin W-22015 (Oct. 14, 2022) (setting Sept. 26 – Oct. 12, 2022, as event dates of loss).

In October 2022, the adjuster inspected the property and confirmed a general and temporary condition of flood existed. The adjuster recorded a 23-inch waterline on the exterior of the building and a 12-inch waterline in the interior of the building. The adjuster also recorded a 35-inch waterline on the exterior of the detached garage and a 34-inch waterline in the interior of the detached garage.

The adjuster prepared an estimate with allowances for flood loss cleanup, structural drying, flooring, trim, drywall, cabinets, vanities, appliances, HVAC system, and doors.

Due to concerns of cracks in the floor of the detached garage, the adjuster requested the insurer retain a state-licensed engineer to inspect the insured property and determine the cause and extent of damage.

In November 2022, the engineer inspected the property. Throughout their report, the engineer refers to the detached garage as a shed. The engineer concluded the shed had not been structurally damaged by flood. The engineer also concluded the cracks in the shed floor are the result of concrete shrinkage.⁴

The insurer issued the policyholders payment totaling \$151,374.21 for covered building damages.

In a letter dated March 2023, the insurer denied coverage for a washer and dryer, noting the policyholders had not purchased any personal property coverage. The insurer also denied coverage for various non-covered remediation charges on a water remediation bill, citing FEMA Bulletin W-13025a. The insurer also denied coverage for tile flooring, noting it is considered flood damage resistant based on FEMA's Technical Bulletin 2. The insurer also denied coverage for structural damages claimed to the detached garage floor, based on the engineer's conclusion that the damages are not flood-related. In addition, the insurer denied coverage for Tesla Powerwall batteries, citing no direct damage by or from flood.

The policyholders appeal the insurer's denial for the tile flooring, structural damages to the detached garage, and Tesla Powerwalls. With their appeal, the policyholders provide a copy of the flood adjuster's estimate, a public adjuster's estimate with photographs, and documentation to support the replacement of the Tesla Powerwall batteries.

ISSUE

The policyholders appeal the denial of tile flooring, structural damages to the detached garage, and the Tesla Powerwalls.

RULES

The insurer agrees to pay the policyholders for direct physical loss by or from flood to covered property, provided the policyholders complied with all terms and conditions of the SFIP.⁵

⁴ See Appeal File, Engineer's Report.

⁵ See SFIP (I), (II)(C)(14).

In case of loss or request for payment, the SFIP requires the policyholders to provide a signed and sworn-to proof of loss with documentation that supports the loss and the dollar amount requested.⁶

ANALYSIS

The policyholders appeal the denial for tile flooring, structural damage to the detached garage, and the Tesla Powerwalls.

Tile Flooring. The SFIP pays for direct physical loss by or from flood. The marble and ceramic tiles were installed in a thin-set mortar over top of a concrete slab with cementitious grout. When properly installed and maintained, this creates a flood-damage resistant floor assembly. This classification is based on material testing industry standards and is detailed in FEMA's Technical Bulletin 2.⁷

As harsh as floodwater can be, it will not cause the adhesive properties within thin-set mortar or cementitious grout to “de-bond” from a concrete slab or from individual tiles. De-bonding of these components can occur if certain factors unrelated to floodwater inundation exist. De-bonding can occur from the lack of expansion joints in tile floors around woodwork or within floor areas exposed to higher levels of humidity, sunlight, or heat. When affected by these natural conditions, wood and ceramic tile can expand. This expansion causes separation of the tile from the thin-set mortar or cracks in the tile or the grout. Other factors that contribute to de-bonding are excess moisture in the concrete slab, an unclear concrete surface at the time of installation, a poor mortar or grout mixture, or the application of semi-dried thin-set mortar. When concrete moves from natural shrinkage or from long-term effects from settlement, further separation and cracking can develop. All these factors and conditions contribute to the loosening of tiles, separation or cracking, and the hollow sound which is present when the tile surface is tapped with a blunt object or walked upon. When floodwater enters in the pre-existing spaces created from de-bonding, the separation and looseness of the tiles becomes more pronounced. The floodwater exacerbates a pre-existing condition of damage in the floor assembly and is not the result of direct physical loss by or from flood.

If the surface of the tiles were damaged by sediment that caused abrasions from wave action or velocity flow of floodwater, or if a wood product, other than structural wood framing, is a material component within the tile floor assembly, consideration for replacement would be justified. Other considerations could be based upon written justification from a local community official or a qualified expert regarding a pollutant or other type of contamination within the floodwater.

Based on the information presented, FEMA agrees with the insurer's decision to deny coverage for the tile flooring. FEMA also notes the policyholders removed the floor before allowing the insurer to re-inspect the property and further evaluate the cause of the damage claimed.

Detached Garage (Shed). The engineer found no erosion, voids, or debris fields to indicate the garage was affected by moving water. The engineer found the cracks in the floor had rounded edges, indicating they were historical and not recent. The engineer concluded the garage was not damaged by flood-related forces, and the cracks in the shed floor were the result of concrete shrinkage.

⁶ See SFIP (VII)(G)(3)-(5).

⁷ See FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements (Aug. 2008).

In case of loss or request for payment, the SFIP requires the policyholders to provide a signed and sworn-to proof of loss with documentation that supports the loss and the dollar amount requested. Without any evidence from a qualified professional that directly contradicts the findings of the engineer, FEMA's review finds no basis to overturn the denial of coverage for damages claimed to the detached garage.

Tesla Powerwall Batteries. The policyholders request payment to replace two Tesla Powerwall batteries. While the adjuster confirmed floodwater reached both Powerwall battery units, FEMA's review finds the extent of damage caused by flood has not been documented and agrees with the insurer's decision to deny coverage for replacing the Powerwall batteries. In case of loss or request for payment, the SFIP requires the policyholders to provide a signed and sworn-to proof of loss with documentation that supports the loss and the dollar amount requested. The policyholders must justify the amount claimed. The policyholders' estimate is not sufficient to prove the damages claimed. FEMA recommends the policyholders obtain a diagnostic report from a qualified technician describing the damage, as well as the causation, and explain why repairing any damaged components is not possible or economically feasible in comparison to replacing the damaged components. With this documentation, the policyholders should attach a signed and sworn to proof of loss form and submit it directly to the insurer for review.

CONCLUSION

Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for the tile flooring, the structural damages in the detached garage, and the Powerwall batteries.

FEMA directs the insurer to re-evaluate the claim to ensure the full and proper scope of restoring marble tile flooring has been accounted for.

In their appeal, the policyholders also inquire about exterior stucco damage and pricing related to the HVAC system. These items were not denied in writing by the insurer; therefore, they are not eligible for appeal review by FEMA.