

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KING, ET AL.	*	CIVIL ACTION
	*	
VERSUS	*	NO. 07-73
	*	
STATE FARM INSURANCE, ET AL.	*	SECTION "L"(5)

ORDER & REASONS

Before the Court is Defendant State Farm Fire and Casualty Company's ("State Farm") Motion for Summary Judgment (Rec. Doc. NO. 41). This motion came on for hearing on August 27, 2008. For the following reasons, the motion is hereby GRANTED.

I. Factual and Procedural Background

This case arises out of property damage as a result of Hurricane Katrina. The Hurricane caused flood damage to Plaintiffs' property at 4900 St. Charles Avenue in New Orleans, Louisiana. The property in question is a condominium unit, which was covered by a Standard Flood Insurance Policy ("SFIP") issued by the State Farm Insurance Company ("State Farm") to the Plaintiffs. As a result of the damages caused by Hurricane Katrina, Plaintiffs notified State Farm and made claims under the policy.

The Casa Grande Condominium Association, Inc. ("Casa Grande") owned the property on which Plaintiffs' unit was located. At the time of the Hurricane, Casa Grande had a standard federal flood insurance policy issued by Standard Fire Insurance Company. Casa Grande reached a settlement with the Standard Fire Insurance Company. Casa Grande sent the Plaintiffs a copy of the settlement and a check for \$275.29 as the Plaintiffs' share of the settlement.

On August 29, 2006, the Plaintiffs filed suit in the Civil District Court for the Parish of

Orleans in Louisiana seeking insurance proceeds allegedly owed under the flood policy. The case was removed to federal court on January 4, 2007. Following the filing of the complaint, the Court has granted the Motion to Dismiss the Metropolitan Property and Casualty Insurance Company, and the Motion for Summary Judgment of the Standard Fire Insurance Company. Casa Grande and State Farm Fire and Casualty Company are the only parties remaining in this litigation.

The parties dispute the Plaintiffs' eligibility under Coverage A (Building Property) of the policy. The Plaintiffs claim that they have submitted documentation of loss to State Farm, and that State farm did not pay these claims. Moreover, the Plaintiffs allege that Casa Grande failed to properly insure the property and failed to fulfill their obligations to repair the property.

The Defendants deny liability. State Farm alleges that any responsibilities to the Plaintiffs are contained in the Standard Flood Insurance Policy (SFIP), which bars some or all of the Plaintiffs' claims. State Farm further alleges that the Plaintiffs' were ineligible for recovery under Coverage A because of the coverage provided by Casa Grande. Casa Grande denies any duty to repair individual units.

II. Present Motion

In the present motion, the Defendants argue that no genuine issues of material fact exist in this case and that they are entitled to judgment as a matter of law. The parties dispute the Plaintiffs' eligibility under Coverage A of the policy. The parties disagree on whether the insurance provided by State Farm is excess insurance to the coverage provided by Casa Grande, and whether the Plaintiffs' claim should be barred because of the policy's proof of loss requirements.

The Defendants argue that the Plaintiffs failed to comply with the proof of loss

requirement of the National Flood Insurance Program (“NFIP”). The Defendants cite *Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386 (9th Cir. 2000) and *Richardson v. American Bankers Ins. Co. of Florida*, 2008 WL 510518 (5th Cir. Feb. 27, 2008) to support the argument that the proof of loss requirements must be strictly enforced. Citing the Plaintiffs’ affidavits, the Defendant states that the Plaintiffs testified that they did not timely submit a signed and sworn proof of loss. The Defendant contends Plaintiffs’ claims fail as a matter of law because the Plaintiffs failed to strictly comply with the NFIP by submitting a signed and sworn proof of loss.

In opposition, the Plaintiffs claim they submitted sufficient proof of loss prior to filing suit. The Plaintiff claim that the Defendants have not stated what part of the required items in the proof of loss Plaintiffs have failed to provide. The Plaintiffs allege that the Statement of Loss located at Bates Number FL0091, in addition to a letter submitted to the Defendants which does not appear in the Claim File, satisfy the requirements of proof of loss. As such, there are genuine issues of material fact that cannot be resolved on summary judgment.

Plaintiff further contends that strict compliance with the proof of loss requirement is not necessary where adequate information has been submitted to support the loss. The Plaintiffs argue that they have submitted enough information for the merits of their claim to be evaluated. The Plaintiffs cite *Oechsner v. Hartford Life Ins. Co.*, 2008 WL 89514 (E.D. La. Jan. 7, 2008) and *Copeland v. Fed. Emergency Mgmt. Agency*, 2004 WL 325577 (E.D. La. Feb. 18, 2004) to support the argument that summary judgment should be denied where there is a factual issue as to whether claimant has submitted sufficient information for the insurer to evaluate the merits of the loss.

III. Law and Analysis

Summary judgment is appropriate in a case if “there is no genuine issue as to any

material fact.” Fed. R. Civ. P. 56(c). “The moving party bears the burden of demonstrating that there exists no genuine issues of material fact.” *In re Vioxx Products Liability Litigation*, 501 F.Supp.2d 776, 781 (E.D. La. 2007). In determining whether a genuine issue of material fact exists, the Court must “review the facts drawing all inferences most favorable to the party opposing the motion.” *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 137 (5th Cir. 2004). But because “only those disputes over facts that might affect the outcome of the lawsuit under governing substantive law will preclude summary judgment,” questions that are unnecessary to the resolution of a particular issue “will not be counted.” *Phillips Oil Co. V. OKC Corp.*, 812 F.2d 265, 272 (5th Cir. 1987).

Congress created the National Flood Insurance Program (“NFIP”) to provide coverage at or below actuarial rates because private insurance companies could not economically underwrite these policies. *See Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir.1998). The program is operated by the Federal Emergency Management Agency (“FEMA”) and underwritten by the U.S. Treasury. All flood loss claims presented under the NFIP are paid directly with U.S. Treasury funds. *See id.*

The Defendant State Farm is a Write Your Own Program carrier participating in the NFIP. Under the NFIP, flood loss policies can be issued directly by FEMA or through private insurers, such as State Farm in the instant matter. *See id.* The National Flood Insurance Act provides that private insurers who issue these policies are fiscal agents of the United States. 42 U.S.C. § 4071. However, the private insurers such as State Farm do not have authority to establish the terms and conditions of the NFIP policies. *See* 44 C.F.R. § 61.4(b). Rather, FEMA sets the terms and conditions, and the policies must be issued in the form of the SFIP. *Id.* The provisions of the

SFIP may not be altered, varied, or waived absent the express written consent of the Federal Insurance Administrator. 44 C.F.R. § 61.13(d).

The provisions of an insurance policy issued pursuant to a federal program must be strictly construed and enforced. *Gowland*, 143 F.3d at 954; *Forman v. FEMA*, 138 F.3d 543, 545 (5th Cir. 1998). Failure to so construe runs afoul of the Appropriations Clause of the United States Constitution. *Gowland*, 143 F.3d at 955. The SFIP issued to the Plaintiff, as with all SFIP's, requires the insured to file a signed and sworn proof of loss within 60 days after the alleged loss. (SFIP, Article VII(J)(4) found at Defendant's Mot. Summ. J., Ex. 1). In this case, after Hurricane Katrina, the Acting Federal Insurance Administrator changed the deadline to a one-year deadline.

The requirements for submitting proof of loss are detailed in 44 C.F.R. § 61, App. A(1), Art. VII (J)(4):

Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:

- a. The date and time of loss;
- b. A brief explanation of how the loss happened;
- c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;
- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the covered property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of the loss and for what purpose; and
- i. The inventory of damaged personal property described in J.3. above.

It does not appear that the Plaintiffs ever submitted a signed and sworn proof of loss statement. In opposition to the motion for summary judgment, the Plaintiffs claim that State Farm had received sufficient information, in the claim file and in a letter, to satisfy the proof of

loss requirements. The Plaintiffs argue that strict compliance with the proof of loss requirement is not necessary and that the information submitted to State Farm was sufficient to put the government on notice that of a flood insurance claim.

A recent decision from the Louisiana Fifth Circuit Court of Appeal reveals that the Plaintiffs' belief that strict compliance with the proof of loss requirements is not necessary is misguided. In *Marseilles Homeowners Condominium Association, Inc. v. Fidelity National Insurance Company*, 2008 WL 4150108 (5th Cir. Sept. 10, 2008), the insured filed a claim pursuant to a flood policy issued under the NFIP. The insured disputed the amount of damages and submitted information in writing seeking payment for additional losses. The Fifth Circuit affirmed summary judgment in favor of the defendant insurer where the plaintiff did not meet the requirements of 44 C.F.R. § 61, App. A(1), Art. VII (J)(4). "Marseilles contends that because it submitted information regarding its loss to Fidelity, there is a fact issue with respect to the adequacy of the proof of loss. To sustain this contention would be in direct contravention of our precedent. 'Under FEMA regulations, strict adherence is required to all terms of the SFIP.'" (Citing *Forman v. Federal Emergency Management Agency*, 138 F.3d 543, 545 (5th Cir. 1998)).

The law in the Fifth Circuit is clear that a failure to provide such proof of loss pursuant to the express terms of the policy warrants dismissal or judgment as a matter of law. *See, e.g., Gowland v. Aetna*, 143 F.3d 951, 954 (5th Cir.1998) ("As the provisions of an insurance policy issued pursuant to a federal program must be strictly construed and enforced, we hold that an insured's failure to provide a complete, sworn proof of loss statement, as required by the flood insurance policy, relieves the federal insurer's obligation to pay what otherwise might be a valid claim."); *Henly v. Allstate Ins. Co.*, 2008 WL 89970, at *2 (E.D.La. Jan. 8, 2008) ("As a matter of law, the failure to timely file the requisite proof of loss and failure to provide documentation

of [the Plaintiff's] loss prior to filing this suit are fatal to Plaintiff's instant claims against [the insurer.]; *Guillot v. Allstate Ins. Co.*, 2008 WL 45359, at *2 (E.D.La. Jan. 2, 2008) (“Plaintiff's failure to provide adequate documentation of her loss is sufficient grounds for granting defendant partial summary judgment.”); *LeBlanc v. State Farm Ins. Co.*, 2008 WL 1990817 (E.D. La. May 5, 2008). The Code of Federal Regulations provides that no provision of the SFIP may be altered, varied, or waived without the express, written consent of the Administrator. 44 C.F.R. § 61.13. The Plaintiff does not claim and there is no evidence to suggest that an express, written waiver occurred in this case with regard to the proof of loss requirement.

The Court finds that recent decisions from both the United States Court of Appeals for the Fifth Circuit and from this Court clearly demonstrate that the plaintiff's claims in this case fail as a matter of law. As the Court decides the matter on the failure of the Plaintiff to submit the required proof of loss, the Court need not reach the other issues raised by the Defendant in its motion.

IV. Conclusion

For the foregoing reasons, IT IS ORDERED that Defendant State Farm Fire and Casualty Company's Motion for Summary Judgment (Rec. Doc. No. 41) is GRANTED.

New Orleans, Louisiana this 7th day of October, 2008.


UNITED STATES DISTRICT JUDGE