

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT AFFIRMS SUMMARY JUDGMENT FOR INSURER BASED ON INSURED'S FAILURE TO SUBMIT PROOF-OF-LOSS FORM UNDER STANDARD FLOOD INSURANCE POLICY

Newsbrief

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Last week, the Fifth Circuit Court of Appeals affirmed dismissal of the insured's claim of breach of contract against his insurer based on the insured's failure to submit the proof-of-loss form required by the federal Standard Flood Insurance Policy. In *Yanez v. American Strategic Insurance Corporation*, No. 18-10943, 2019 WL 1219999 (5th Cir. March 13, 2019, mem. op.), Yanez's property was flooded in a storm. Yanez's property was insured by American Strategic Insurance Corporation ("ASIC") through the Standard Flood Insurance Policy ("SFIP") program (which is part of the National Flood Insurance Program administered by FEMA). Yanez submitted a claim to ASIC for damages caused by the flood. As part of the claim process, Yanez completed a flood field survey. ASIC paid Yanez \$1,315.20 for property damages caused by the flood.

Unsatisfied, Yanez requested an additional sum for the loss. He did not, however, provide a proof-of-loss form for the additional sum claimed. Under Article VII of the SFIP, within 60 days after a flood loss, an insured must submit a signed and sworn proof of loss containing a statement of the amount claimed and certain information about the loss (date of loss, explanation of the loss, repair estimates, inventory of damaged personal property, etc.). ASIC denied Yanez's claim for additional benefits and Yanez subsequently filed suit against ASIC for breach of contract. In response, ASIC moved for summary judgment based on Yanez's failure to submit the proof-of-loss form required by SFIP for the additional benefits. On that basis, the district court granted summary judgment in favor of ASIC and the Fifth Circuit Court of Appeals affirmed.

On appeal, Yanez argued that his flood field survey contained all the relevant information that a proof-of-loss form would have contained. The Fifth Circuit Court, however, found Yanez's argument meritless. The court, noting that the provisions of an insurance policy issued pursuant to a federal program must be strictly construed and enforced, concluded that the field survey, even if it did contain the required proof-of-loss information, was insufficient.

Yanez also argued on appeal that ASIC waived the 60-day submission period. Once more, the Fifth Circuit Court found this argument meritless. The court concluded that ASIC – a private company – could not legally waive federal regulations promulgated by FEMA.