

THOUGHT LEADERSHIP

News

## FIFTH CIRCUIT CONCLUDES THAT INSURED'S FLOOD-LOSS ACTIONS MUST BE FILED IN (OR REMOVED TO) FEDERAL COURT WITHIN THE ONE-YEAR LIMITATIONS PERIOD

Newsbrief

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Last week, the United States Court of Appeals, Fifth Circuit held that the insured's flood-loss claims against his insurer were time-barred because he filed suit in state court, not federal court. In *Ekhlassi v. National Lloyds Ins. Co.*, No. 18-20228, 2019 WL 2353371 (5<sup>th</sup> Cir., June 4, 2019, mem. op.), a rain-storm caused flooding and damaged Ekhlassi's home in Houston, Texas on May 25, 2015. Ekhlassi's house was insured with a National Flood Insurance Program policy from National Lloyds Insurance Company ("Lloyds"). After reporting the loss, Ekhlassi had an adjuster inspect his house, who subsequently obtained repair estimates from contractors that exceeded \$200,000.

Lloyds also inspected the house, but concluded flooding from the storm did not cause much of the claimed damage. As such, on October 6, 2015, Lloyds sent a letter to Ekhlassi partly denying his claims and stating it would process a claim for \$3,768.25 upon receipt of a proof of loss.

Ekhlassi submitted a proof of loss in late December 2015 for \$274,940.05. In response, on January 11, 2016, Lloyds sent a letter to Ekhlassi acknowledging receipt of the proof of loss, and rejected all but \$3,768.25 (the amount offered by the initial letter).

On January 11, 2017, one year from Lloyds' January 11, 2016 denial letter, Ekhlassi filed suit against Lloyds in Texas state court claiming breach of contract and extra-contractual claims. The action was removed to federal court on April 24, 2017.

After removal, Lloyds filed a summary-judgment motion contending that Ekhlassi's action was time-barred. The United States District Court for the Southern District of Texas granted Lloyds' motion, concluding that Lloyds October 6, 2015 letter and not its January 11, 2016 letter triggered the one-year limitations period.

On appeal, however, the Fifth Circuit set aside the issue of which of Lloyds' two letters was the operative denial. In its place, the Fifth Circuit addressed the issue of whether 42 U.S.C. § 4072 (requiring flood-loss actions be filed in the United States District Court for the district in which the insured property is located and providing a one-year limitations period) was applicable not only to actions against the FEMA Administrator, but also to actions against

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Write-Your-Own carriers (i.e. private insurers which issue flood insurance policies [underwritten by the Government] in their own names as part of the National Flood Insurance Program), such as Lloyds. The court concluded that 42 U.S.C. § 4072 does apply to Write-Your-Own carriers. Consequently, the court held that Ekhlassi's claims were time-barred because he did not file in federal court within a year (regardless of which of the two letters triggered the limitations period).