

THOUGHT LEADERSHIP

News

## CLAIMANT FAILED TO SUBMIT A REQUIRED PROOF OF LOSS, SUMMARY JUDGMENT IN FAVOR OF INSURER UPHeld

Newsbrief

24 DEC 2021

The U.S. Court of Appeals for the Fifth Circuit recently affirmed a district court's summary judgment in favor of an insurer in a dispute involving an insurance claim for flood damage to the claimant's home. *Nguyen v. Tex. Farmers Ins. Co.*, No. 21-40266, 2021 WL 5579268 (5th Cir. Nov. 29, 2021). In August 2017, the claimant filed an insurance claim seeking additional reimbursements for flood damage sustained to her home following Hurricane Harvey. She had coverage under a Standard Flood Insurance Policy (SFIP) purchased through Texas Farmers Insurance Company ("Texas Farmers").

After Hurricane Harvey affected Texas with widespread and catastrophic flooding, the Federal Emergency Management Agency ("FEMA"), who sets the terms of the SFIP, exercised its authority to modify the terms of the SFIP. In so doing, FEMA waived the normal 60-day proof of loss deadline requirement and extended the deadline to 365 days (one year) from the date of loss. As such, the claimant here was required to submit the proof of loss by August 2018, which she admittedly failed to do. However, the claimant argued that the Bulletin issued by FEMA also waived the requirement to file a proof of loss when seeking additional reimbursements.

A review of the clear language of the Bulletin did not support the claimant's interpretation and, indeed, clearly stated that the condition waiver did not alter a policyholder's ability to submit a proof of loss seeking supplemental payments. Additionally, the sample payment letter attached to the Bulletin explicitly stated that policyholders requesting additional payments were required to submit a proof of loss within one year following the date of loss. As a result, the appeals court affirmed the district court's summary judgment in favor of Texas Farmers.