

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10485
Non-Argument Calendar

BAY HAVEN AT COCO BAY CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff-Appellant,

versus

HARTFORD FIRE INSURANCE COMPANY,

Defendant,

HARTFORD INSURANCE COMPANY OF THE MIDWEST,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:24-cv-00696-KCD-DNF

Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

This is an insurance dispute under the National Flood Insurance Program. Bay Haven at Coco Bay Condominium Association, Inc. manages eleven condominiums that sustained flood damage during Hurricane Ian. Bay Haven filed insurance claims for the flood damage with Hartford Insurance Company of the Midwest, substantiating its claims with signed and sworn proofs of loss, as required by the National Flood Insurance Program. Hartford paid those claims in full. But when Bay Haven sought recovery for additional loss, Hartford refused to pay because Bay Haven did not submit new signed and sworn proofs of loss to substantiate the additional amount. Bay Haven sued Hartford for breach of contract, but the district court granted summary judgment for Hartford, concluding that Bay Haven was required to file separate proofs of loss for the additional amount. Bay Haven appeals. After careful review, we affirm.

FACTUAL BACKGROUND

Bay Haven manages eleven condominiums buildings in Fort Myers, Florida. Each building was insured under a federal flood insurance policy issued by Hartford through the National Flood Insurance Program. The program, administered by the Federal Emergency Management Agency, provides government-subsidized flood insurance to backstop the private market. 42 U.S.C. §§ 4001(b), 4011(a), 4128(a). Under the program, private insurers issue and administer federal flood insurance policies as “fiscal agents of the United States,” meaning the insurers handle the nitty-gritty of claims administration, while the government foots the bill.

See 42 U.S.C. §§ 4017(a), (d), 4071(a)(1); 44 C.F.R. § 62.23(g), (i)(6), (i)(9). The catch is that neither the insurer nor the insured gets much say—none, in fact—about what goes into the policy. The terms and conditions are fixed according to a standard policy (called the Standard Flood Insurance Policy) written into federal regulations. *See* 44 C.F.R. pt. 61, App. A(3).¹ The standard policy is unyielding—it “must be used” under the program and cannot be “be altered, varied, or waived other than by the express written consent of the” agency. *Id.* § 61.13(d); *see also id.* pt. 61, App. A(3), Art. VIII.C (providing that the standard policy “cannot be changed nor can any of its provisions be waived without the [agency’s] express written consent”).

When Hurricane Ian hit Fort Myers in September 2022, Bay Haven’s buildings were flooded. After the storm passed, Bay Haven reported the flood damage to Hartford and hired contractors to fix the damage. Hartford sent an independent adjuster to inspect. The adjuster prepared eleven proofs of loss—one for each building—for Bay Haven to submit as part of its claims to Hartford.

Bay Haven’s representative signed the proofs of loss and submitted them to Hartford in November 2023. Usually, under the standard policy, an insured must make a claim by submitting a

¹ There are three variants of the standard policy. *See* 44 C.F.R. pt. 61, App. A(1)–(3). When we refer to the standard policy here, we’ll cite to the variant applicable to residential condominium building associations like Bay Haven. *See id.* App. A(3).

signed and sworn proof of loss along with supporting documentation within sixty days of the loss. 44 C.F.R. pt. 61, App. A(3), Art. VIII.G.4. For Hurricane Ian claims, though, the agency extended the deadline to one year, giving Bay Haven until September 2023 to submit its proofs of loss. *See* Fed. Emergency Mgmt. Agency, Bull. W-22012, Hurricane Ian Claims Payment Process (Oct. 6, 2022). But because Bay Haven’s proofs of loss were untimely, even under the extended deadline, Hartford had to request waivers from the agency to pay the claims. The agency granted the waivers for the “proof[s] of loss filed for the date and in the amount noted in this request,” noting that these waivers did “not waive the [sixty]-day proof of loss requirement for any other proof of loss filed by” Bay Haven and “affect[ed] no other term, condition, limitation or requirement of the” standard policy. Waivers in hand, Hartford paid the amounts specified in the proofs of loss.

Bay Haven, however, wanted more. Because Hartford’s payments did not cover additional work Bay Haven’s contractors invoiced, Bay Haven appealed to the agency, seeking additional payment for the difference between its contractors’ invoices and Hartford’s payments. In lieu of separate signed and sworn proofs of loss for the additional amount, it submitted its contractor invoices. But the agency rejected Bay Haven’s request, explaining that its “proof of loss and appeal documentation [did] not sufficiently support the claimed flood loss or the dollar amount requested.”

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PROCEDURAL HISTORY

Out of luck with the agency, Bay Haven sued Hartford for breach of contract to recover the additional amount. Hartford moved for summary judgment, arguing that the additional amount was not payable because Bay Haven never submitted signed and sworn proofs of loss for it. Bay Haven responded that although it did not submit signed and sworn proofs of loss for the additional amount, it “complied or substantially complied with the [standard policy’s] proof-of-loss requirement” because it submitted contractor invoices to substantiate its loss. Bay Haven also submitted the agency’s appeal decision, which Bay Haven contended “assume[d] the existence of a proof of loss” when it noted that Bay Haven’s “proof of loss and appeal documentation [did] not sufficiently support the claimed flood loss or the dollar amount requested.”

The district court agreed with Hartford. The standard policy, it explained, required strict, not substantial, compliance. And here, the standard policy “impose[d] a clear and non-negotiable obligation on the insured to substantiate [its] claim” with a “a sworn proof of loss” within the time allowed. Bay Haven admitted that it never submitted a separate signed and sworn proof of loss for the additional amount within the time allowed, and its additional documentation—the contractor invoices and the agency decision—was “simply not the functional equivalent of the signed and sworn statement the regulations demand.” Because Bay Haven “failed to satisfy a non-negotiable condition precedent under the [standard]

policy,” it was not entitled to the additional amount under its contract with Hartford. The district court therefore entered summary judgment for Hartford on Bay Haven’s breach-of-contract claim.

Bay Haven appeals the summary judgment for Hartford.

STANDARD OF REVIEW

We review de novo a district court’s summary judgment, “apply[ing] the same legal standards that bound the district court and view[ing] all facts and reasonable inferences in the light most favorable to the nonmoving party.” *Shuford v. Fid. Nat’l Prop. & Cas. Ins. Co.*, 508 F.3d 1337, 1341 (11th Cir. 2007).

DISCUSSION

The district court did not err by entering summary judgment for Hartford because Bay Haven did not submit a signed and sworn proof of loss for the additional amount, as required by the standard policy. We require “strict compliance with the provisions of federal flood insurance policies.” *Id.* at 1343 (citing *Sanz v. U.S. Sec. Ins. Co.*, 328 F.3d 1314, 1317–18 (11th Cir. 2003)). The reason is simple.

Because payments of federal flood insurance claims are drawn from the treasury, they implicate the Constitution’s injunction that “[n]o money shall be drawn from the treasury, but in consequence of appropriations made by law.” U.S. Const. Art. I, § 9, cl. 7. It is therefore the “duty of all courts to observe the conditions defined by Congress for charging the public treasury” so that “pub-

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lic funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of [g]overnment agents or the individual pleas of litigants.” *Sanz*, 328 F.3d at 1318 (first quoting *Fed. Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384–85 (1947), then quoting *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 428 (1990)).

When it comes to federal flood insurance, then, we have demanded that “the insured must adhere strictly to the requirements of the [standard policy] before any monetary claim can be awarded against the government.” *Id.* To make a claim under the standard policy, the insured must “send [the insurer] a proof of loss” within sixty days of the loss, or within any extended period granted by the agency (here, one year). 44 C.F.R. pt. 61, App. A(3), Art. VIII.G.4. The proof of loss is the insured’s “signed and sworn” “statement of the amount claim[ed] under the policy.” *Id.* In addition to the amount claimed, the proof of loss must include information about the loss, specifications of the damage, and a detailed repair estimate, among other information. *Id.* “[F]ailure to file a proof of loss bars recovery absent an express written waiver of the proof-of-loss requirement by” the agency. *Shuford*, 508 F.3d at 1343.

Bay Haven acknowledges that the only signed and sworn proofs of loss here were those it submitted with its claims in November 2023. Hartford paid those claims in full. Bay Haven did not submit any proofs of loss for the additional amount. But because any “amount claim[ed] under the policy” requires a “signed and sworn” proof of loss, Bay Haven was required to submit signed

and sworn proofs of loss for any additional amount, even if it had a preexisting claim. 44 C.F.R. pt. 61, App. A(3), Art. VIII.G.4.

Every one of our sister circuits to have considered the question has said the same. See *Ferraro v. Liberty Mut. Fire Ins. Co.*, 796 F.3d 529, 534 (5th Cir. 2015) (holding that “a second proof of loss was necessary” for the insured to claim any additional amount on a preexisting claim); *Gunter v. Farmers Ins. Co.*, 736 F.3d 768, 775 (8th Cir. 2013) (concluding that the insured’s “failure to file a proof of loss for any supplemental amount” on a preexisting claim was “a bar to recovery”); *DeCosta v. Allstate Ins. Co.*, 730 F.3d 76, 87 (1st Cir. 2013) (holding that a signed and sworn proof of loss “claims only the amounts listed in those forms,” and the insured must file an additional proof of loss to claim any additional amount of money on a preexisting claim). This rule is unforgiving, yes, but “[p]rotection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of the law.” *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 63 (1984) (citation modified).

Bay Haven nevertheless argues that the district court erred by granting summary judgment for Hartford because there was a genuine dispute of material fact about whether Bay Haven satisfied the standard policy’s proof-of loss requirement for the additional amount through a combination of the November 2023 proofs of loss, the agency’s waiver, the contractor invoices, and the agency’s

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decision “that proceeded on the assumption Bay Haven had submitted a proof of loss.” There was no genuine dispute of material fact.

As we’ve explained, the November 2023 proofs of loss entitled Bay Haven to payment only for the amounts in those proofs of loss. Hartford paid those amounts. The agency’s waivers allowing Bay Haven to claim those amounts out of time did not waive the proof of loss requirement for any additional amount. A waiver must be express and in writing. 44 C.F.R. § 61.13(d); *see also Shuford*, 508 F.3d at 1343 (holding that “an express written waiver” by the agency is required to excuse the proof-of-loss requirement). Here, the written waivers were expressly limited to the “proof[s] of loss filed for the date and in the amount noted in this request”—that is, the November 2023 proofs of loss—and did “not waive the proof of loss requirement for any other proof of loss filed by” Bay Haven or affect any “other term, condition, limitation or requirement of the” standard policy. So the waivers did not open the door to additional claims beyond those specified in the November 2023 proofs of loss.

The contractor invoices don’t help Bay Haven either. Because they were not reduced to a “signed and sworn” “statement of the amount claim[ed] under the policy,” they cannot function as a substitute for the proof-of-loss requirement. 44 C.F.R. pt. 61, App. A(3), Art. VIII.G.4; *cf. DeCosta*, 730 F.3d at 78 (concluding that

the insured's attachment of unsworn and unsigned adjuster estimates to "to two executed proof-of-loss forms claiming a smaller amount [did] not comply" with the proof-of-loss requirement).

And even if we accepted Bay Haven's contention that the agency "assume[d] the existence of a proof of loss" for the additional amount during the appeal, compliance with the standard policy cannot be waived by conduct because a waiver must be express and in writing.² *Id.* § 61.13(d); *see also Sanz*, 328 F.3d at 1318–19 (declining to recognize constructive waiver when the provider processed the claim without a proof of loss); *Shuford*, 508 F.3d at 1343 (same); *see also Dawkins v. Witt*, 318 F.3d 606, 612 (4th Cir. 2003) (concluding that the agency's initial acceptance of a proof of loss outside the deadline did not waive compliance with the proof-of-loss requirement).

Undeterred, Bay Haven insists that the district court erred because it ignored standard policy article VIII(G)(9), which provides:

At [the insurer's] option, the insurer may accept the adjuster's report of the loss instead of [the insured's] proof of loss. The adjuster's report will include information about [the insured's] loss and the damages [the insured] sustained. [The insured] must sign the

² We also note that the agency's decision clearly informed Bay Haven that if it "requests additional payment, the [standard policy] requires [it to] send [its] insurer a signed and sworn to proof of loss with the documentation that supports the claimed flood loss and dollar amount requested."

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adjuster's report. At [the insurer's] option, [the insurer] may require [the insured] to swear to the report.

44 C.F.R. pt. 61, App. A(3), Art. VIII(G)(9). Bay Haven points to a letter from January 2023, where Hartford informed Bay Haven that it had “exercised [its] option to accept [the] adjuster’s report of [Bay Haven’s] flood loss instead of a signed proof of loss to evaluate and pay your claim” for one of Bay Haven’s policies. This letter, Bay Haven argues, triggered article VIII(G)(9)’s “substitute mechanism” to accept an adjuster’s report in lieu of a proof of loss, excusing the proof-of-loss requirement for the additional amount. But it didn’t.

The adjuster’s report referenced in the letter was the basis of the proof of loss for the initial claim, which Hartford paid. The letter did not, however, excuse Hartford from compliance with the proof-of-loss requirement for any additional amount claimed. And even if article VIII(G)(9) did what Bay Haven says it does, Bay Haven never submitted adjuster’s reports—much less signed and sworn ones—for the additional amount.

Because Bay Haven didn’t comply with the proof-of-loss requirement for the additional amount, the district court properly granted summary judgment for Hartford.

AFFIRMED.