



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 23, 2020

CBCA 6636-FEMA

In the Matter of FLORIDA KEYS COMMUNITY COLLEGE

Thomas M. Gonzalez of GrayRobinson, P.A., Tampa, FL, counsel for Applicant.

Allison McLeary and Sherin Joseph, Bureau of Recovery, Florida Division of Emergency Management, Tallahassee, FL, counsel for Grantee.

Ramoncito J. deBorja and Maureen Dimino, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **GOODMAN, DRUMMOND, and O'ROURKE.**

Introduction

The applicant in this case, Florida Keys Community College (the applicant or FKCC), claims that, between September 4, through October 13, 2017, Hurricane Irma caused damage to its property in the amount \$2,997,378.79. FKCC further states that \$1,482,498.69 of the damage was covered by insurance, and the remaining amount, \$1,514,880.10, was uninsured and eligible for public assistance (PA) funding from FEMA. FKCC states that it “paid all of the amounts for which reimbursement is requested, using money from a fund maintained on behalf of the Florida College System Risk Management Consortium (FCSRMC)[Consortium]^[1].”

¹ FKCC uses the acronym FCSRMC throughout its submissions. We use the term Consortium in place of the acronym in this decision.

The Stafford Act provides that “[a] person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source.” 42 U.S.C. § 5155(c) (2018). FEMA has denied funding of all but \$10,000 of the remaining amount of \$1,514,880.10, contending that FKCC is entitled to be paid that amount, less \$10,000, from another source.

Discussion

FKCC states that it is a member of the Consortium, which it describes as follows:

[The] Florida Legislature affords community colleges the opportunity to join together to develop and implement a cooperative system of risk management under one comprehensive plan using the Consortium. The Consortium was created by mutual agreement of the Boards of Trustees from the Florida public colleges for the sole purpose of joining in a cooperative effort to develop, implement and participate in a coordinated statewide community college risk management program including workers’ compensation, liability, property, health, and life insurance and other options. The purpose of the Consortium is to manage the insurance programs in accordance with the Florida Statutes and as approved by the member colleges’ Risk Management Council, made up of the College Presidents.

The Consortium purchases a commercial insurance policy (commercial policy) whose named insured is the Consortium and its twenty-seven member colleges, including FKCC. The commercial policy paid \$1,482,498.69 of the \$2,997,378.79 damage resulting from Hurricane Irma. The remaining amount of \$1,514,880.10, for which FKCC seeks PA funding is the commercial policy deductible, which is calculated by the terms of the policy as of 3% of the value of damaged properties.

The Consortium, FKCC, and other community colleges participate in Policy #RMC 2017-0301 entitled “Plan Document for Colleges Participating in the Property and Casualty Program of the Florida College System Risk Management Consortium, March 1, 2017-February 28, 2018” (Consortium plan). According to the terms of the Consortium plan, the term “Participant” means the “Participant entity,” and “Participant entity” means “the participating members of the [Consortium]^[2]” and “shall also include [the Consortium]”. FKCC is entitled to reimbursement for property damage from the funds available from the

² The Consortium plan lists the twenty-seven participating member colleges, including FKCC, in Endorsement 8.

Consortium plan, except for a \$10,000 deductible.³ Section I, Property Coverage, Agreement A, Building and Contents of the Consortium plan, states that “the [Consortium] agrees, subject to the terms and conditions of the Plan, to indemnify for all risks of physical loss or damage . . . to Real . . . Property . . . which is duly registered with [the Consortium].”

Endorsement 3 of the Consortium plan states:

It is hereby understood and agreed that the following deductibles apply to the LIMITS OF LIABILITY as described in Endorsement #2:

SECTION I - Insuring Agreement A (Property - Building and Contents-Other than Fine Arts)

- \$10,000 any one occurrence for all perils other than theft

FKCC states that it paid all of the amounts for which reimbursement is requested, i.e., the deductible under the commercial policy, in the amount of \$1,514,880.10, from the funds it received from the Consortium plan. However, FKCC maintains that the Consortium plan is not another source of funds, as the Consortium itself is not an entity, and the funds received from the Consortium plan are its “own money,” i.e., state funds which it had previously paid into the plan. It therefore seeks to have FEMA fund this payment as PA.

FEMA contends that the \$1,514,880.10 deductible under the commercial policy is incurred by the Consortium, not FKCC, as FKCC is entitled under the Consortium plan to payment of that amount, except for the \$10,000 deductible under that plan. Therefore, FEMA concludes that PA funding of the \$1,514,880.10 commercial policy deductible, which was paid to FKCC by funds from the Consortium plan, would be payment of a duplicate benefit, prohibited by 42 U.S.C. § 5155(c) of the Stafford Act, as payment was available to FKCC from another source. FEMA has therefore funded the \$10,000 deductible under the Consortium plan and denied funding of the remaining amount of \$1,514,880.10.

³ The Consortium Plan’s document, Endorsement 3, requires the Consortium to reimburse FKCC’s costs for property damage for all perils other than theft, less a \$10,000 per-occurrence deductible.

The FKCC's position is not persuasive. With regard to the Consortium, FKCC states:

The consortium is not an entity. . . It is not and could not be a party to any obligation owed by FKCC. It is not a party to any contract with FKCC which FKCC could enforce to compel the consortium to reimburse the college for any amount the college paid for the repair of damage to its facilities. It is not a party to any contract which would obligate it or anyone else to pay for services rendered to FKCC.

These arguments lack merit. The assertion that the Consortium is not an entity is contradicted by the terms of the Consortium plan that state that the Consortium is an entity, and define it as a "Participant Entity." Further, while FKCC asserts it could not compel the Consortium to reimburse the college for any amount the college paid for the repair of damage to its facilities, and also asserts that the participating colleges in the Consortium are responsible to pay for the 3% commercial insurance deductible, these assertions do not comport with the fact that FKCC did pay the amount for which PA funding is requested, the 3% deductible under the commercial policy, with funds it received from the Consortium plan. FEMA's determination that only the Consortium, and not FKCC, is responsible for the 3% commercial insurance deductible is therefore consistent with the terms of the Consortium plan and the FKCC's receipt of funds from the Consortium plan.

FKCC also asserts that the Consortium plan is not an insurance contract, while FEMA contends that it has all the elements of one. We need not resolve this issue, as the Stafford Act does not require a duplicate benefit to come from an insurance contract, but only from "another source." Finally, FKCC argues that there would be no duplication of benefits because payment from the Consortium plan would consist of funds that FKCC had previously paid into the Consortium plan. This argument lacks merit, as twenty-six other community colleges participate in and contribute to the Consortium plan. There is no evidence that FKCC only received funds that it had contributed.

The rationale behind the Stafford Act's prohibition against duplication of benefits is that "[u]nder federal disaster law, the federal government is a last resort provider of disaster relief." *State of Hawaii ex rel. Atty. Gen. v. Fed. Emergency Mgmt. Agency*, 294 F.3d 1152, 1154 (9th Cir. 2002). FKCC and the other twenty-six participants prudently pooled their resources to create the Consortium plan, a source to compensate any participant for hurricane damage. Having received compensation from that source, FKCC is not entitled to PA to reimburse it for the compensation received.

Because the Consortium plan requires the Consortium to cover damages in excess of \$10,000, FKCC is only eligible for PA funding for its own \$10,000 deductible under this plan, which FEMA has previously paid.

Decision

The FKCC has failed to demonstrate that it is entitled to additional PA funding, as it has been paid the amount it seeks from another source.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge

Jerome M. Drummond

JEROME M. DRUMMOND
Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE
Board Judge