



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 9, 2025

CBCA 8432-FEMA

In the Matter of SCHOOL BOARD OF BAY COUNTY, FLORIDA

Wendy Huff Ellard of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Jackson, MS; and Chris Bomhoff of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Fort Lauderdale, FL, counsel for Applicant.

Kelly Ann Kennedy, Deputy General Counsel, and Caleb Keller, Senior Attorney, Tallahassee, FL, counsel for Grantee; and Cassie Sykes, Recovery Appeals Officer, and Melody Cantrell, Recovery Legal Liaison, Tallahassee, FL, appearing for Grantee.

Rebecca J. Otey and Jasmyn Allen, 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 **BEARDSLEY** (Chair), **LESTER**, and **VOLK**.

VOLK, Board Judge, writing for the Panel.

After suffering extensive damage from a hurricane, applicant, the School Board of Bay County, Florida (School Board), received insurance payments totaling \$100,000,000. The School Board also requested public assistance (PA) funding from the Federal Emergency Management Agency (FEMA). To avoid duplicating the School Board's insurance benefits, FEMA reduced the School Board's PA funding for otherwise eligible projects by \$100,000,000. The School Board argues that its PA funding should not be reduced by the full \$100,000,000 because a portion of the insurance proceeds covered losses that are ineligible for PA funding. We agree and find that FEMA must calculate an apportionment

of the insurance proceeds based on the ratio of the School Board's total PA-eligible losses to its total ineligible losses.

Background

On October 10, 2018, Hurricane Michael made landfall in Bay County, Florida, as a Category 5 hurricane. The next day, the President declared the event a major disaster.

The School Board suffered extensive damage to its facilities. At the time of the disaster, the School Board held an insurance policy tower with a \$250,000,000 overall limit of liability and a \$100,000,000 per-occurrence sublimit for a hurricane or wind event. The insurers paid the full \$100,000,000 to the School Board by early 2019, as it was clear that the School Board's covered losses exceeded the \$100,000,000 hurricane sublimit. The School Board did not enter into any agreement with its insurers allocating the insurance proceeds to specific losses, and the insurers did not purport to allocate money to specific claimed losses when making payment.

As FEMA processed the School Board's requests for PA funding, a disagreement arose regarding how to reduce the School Board's PA funding to avoid duplicating its insurance benefits. FEMA began zeroing out PA funding for otherwise eligible projects. The School Board asserted that FEMA needed to first calculate an apportionment to determine how much of the \$100,000,000 in insurance proceeds covered losses that are eligible for PA funding and apply only that amount—rather than the full \$100,000,000—as a reduction to the School Board's PA funding to avoid duplication.

FEMA maintains that the School Board had not established a basis to apportion the insurance proceeds or deduct less than the full \$100,000,000. After an unsuccessful first appeal to FEMA, the School Board timely requested arbitration before the Board.

Discussion

FEMA cannot provide PA funding when such funding would duplicate benefits from other sources, including insurance. 42 U.S.C. § 5155(a) (2018). When PA funding would duplicate insurance proceeds, FEMA reduces PA funding for eligible costs by the amount of the applicant's actual or anticipated insurance proceeds. Public Assistance Program and Policy Guide (PAPPG) (Apr. 2018) at 40.

However, FEMA does not reduce an applicant's PA funding based on insurance proceeds received for losses that are ineligible for PA funding, as PA funding would not be duplicative of insurance proceeds received for losses that are not eligible for PA funding.

The PAPPG provides that if a portion of an applicant's insurance proceeds were "for ineligible losses (e.g., business interruption), FEMA calculates a relative apportionment of insurance proceeds." *Id.* FEMA calculates the apportionment using one of three methods, based on:

- [1] The proceeds received per type of loss as specified by the insurance policy or settlement documentation;
- [2] Policy limits for categories of loss as specified in the insurance policy;
or
- [3] The ratio of total eligible losses to total ineligible losses.

Id.

The School Board argues that the \$100,000,000 it received in insurance proceeds should be apportioned using the first method or, alternatively, the third PAPPG method.¹ Under the first method, the School Board argues that \$35,260,000 of the insurance proceeds should be deemed to have been received for ineligible losses. Alternatively, under the third method, the School Board argues that \$18,395,854.90 of the insurance proceeds should be allocated to ineligible losses. FEMA argues that the dispute is not yet ripe and that the School Board has not demonstrated that its insurance proceeds covered any ineligible losses.

Ripeness

The ripeness doctrine prevents tribunals from "entangling themselves in abstract disagreements" before "an administrative decision has been formalized and its effects felt in a concrete way." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by*, *Califano v. Sanders*, 430 U.S. 99 (1977). In evaluating ripeness, we consider: (1) the fitness of the issues for review; and (2) the hardship to the parties of withholding consideration. *Id.* at 149.

FEMA argues that the dispute is not ripe because the particular PA funding denials from which this arbitration arose total only \$9,008,100.13, while the School Board effectively concedes that its PA funding needs to be reduced by at least \$64,740,000, given that the most that it argues should be allocated to ineligible losses is \$35,260,000. According

¹ Neither party argues that the second method should be used here.

to FEMA, it must withhold more than \$64,740,000 from the School Board's PA funding before the dispute will ripen.

However, FEMA acknowledges that, if apportionment is required, it may pay a portion of the PA funding requests at issue in this arbitration by applying the insurance reduction as a ratio to various projects submitted by the School Board, rather than zeroing out the entirety of each project until the full insurance reduction is reached.² In its response to the School Board's request for arbitration, FEMA stated: "Instead of de-obligating a percentage of the award across all of the [School Board's projects], FEMA zeroed out these 11 [projects that are at issue in this arbitration] and anticipates that it will continue to do so until the entire amount of insurance funds received have been removed from [the projects] submitted by this Applicant for this disaster." FEMA Response at 15 n.16. During an oral argument before the panel, FEMA confirmed that it could apply the insurance reduction in different ways, such that an apportionment of the insurance proceeds may result in FEMA making payments to the School Board for the eleven projects at issue in this arbitration, rather than zeroing out those projects entirely.

In this case, the question of whether the School Board's insurance recovery must be apportioned to account for ineligible losses is ripe. That disagreement is not abstract and is fit for review. FEMA's decision not to apportion the insurance recovery has been felt by the School Board in a concrete way, and it will cause hardship to the School Board if we withhold consideration, given that FEMA admittedly may agree to fund a portion of the projects at issue in this arbitration if the School Board's insurance recovery is apportioned.

Moreover, FEMA's own policy regarding insurance proceeds specifies that "[w]hen an applicant receives proceeds for losses that are ineligible for FEMA assistance[,] . . . FEMA will calculate a relative apportionment of insurance proceeds *before* reducing [PA]." FEMA Recovery Policy (FP 206-086-1), Public Assistance Policy on Insurance (June 29, 2015), FEMA Exhibit 2 at 9 (emphasis added). There is no dispute that FEMA has reduced the School Board's PA. Considering the plain language of FEMA's own policy, the School Board's contention that FEMA should have first calculated an apportionment of the insurance proceeds is ripe for review.

² It is undisputed that the insurance recovery will not cover all of the School Board's PA-eligible losses, which total approximately \$230,000,000.

FEMA Must Calculate An Apportionment

On the merits, FEMA argues that no apportionment is appropriate here because the School Board has not established that any portion of its \$100,000,000 insurance recovery covered ineligible losses. We disagree. The School Board has demonstrated that it suffered losses that are not eligible for PA funding, and the blanket insurance payout was for all of its losses, regardless of PA eligibility. Thus, it is not appropriate to reduce the School Board's PA funding by the full \$100,000,000 in insurance proceeds. An apportionment must be calculated to limit the reduction to the portion of the insurance proceeds corresponding with PA-eligible losses.

As for how to calculate the apportionment, the School Board first argues that the calculation should be performed using the first method described in the PAPPG, comparing the "proceeds received per type of loss as specified by the insurance policy or settlement documentation." PAPPG at 40. That method is not feasible or appropriate in these circumstances. The School Board acknowledges that it did not reach any agreement with its insurers allocating insurance proceeds to specific losses. It has repeatedly described the insurance payments as unallocated. *E.g.*, Applicant Exhibit 2 at 5 (First Appeal Letter: "The insurance companies did not allocate the \$100 million in proceeds by type of loss.").

The School Board argues that "the proceeds received per type of loss" ought to be taken from a letter that it obtained from an insurance adjuster in April 2020, a few months after receiving final payment from the insurers. In that letter, an insurance adjuster that the School Board had retained to represent its interests stated, "Below is an exhibit that gives the NON-PA amounts in your program and the Insurance amounts in your policy. With the magnitude and devastation that happened we feel the amounts you have listed in your column are reasonable to expect." Applicant Exhibit 8. The letter then presented a table containing, for each of several categories of expected losses, amounts for "Insurance \$ Allocated" and "Insurance Sublimit." The "Insurance \$ Allocated" column totaled \$35,260,000. The amounts in that column were determined by the School Board. For most of the categories in the letter, the amount in the "Insurance \$ Allocated" column matched the amount in the "Insurance Sublimit" column.

The School Board's insurers did not participate in the creation of this April 2020 letter. The letter did not purport to establish that any particular amount was actually paid by the insurers for any specific loss or category of loss. Rather, the letter merely identified categories of losses that were purportedly covered by the School Board's insurance policy, but ineligible for PA funding, and the letter asserted that it was "reasonable to expect" that the School Board's losses would mostly reach the insurance policy limits for those categories. This information does not establish that there was any particular allocation of the

insurance proceeds to particular losses. And, in fact, there was no such allocation, as the School Board has conceded. Thus, the first method described in the PAPPG for calculating an insurance apportionment—comparing “proceeds received per type of loss as specified by the insurance policy or settlement documentation”—is not appropriate here.

However, the third method described in the PAPPG for calculating an insurance apportionment—comparing the “ratio of total eligible losses to total ineligible losses”—is an appropriate way to apportion the School Board’s insurance recovery. In opposition to the School Board’s alternative argument that an apportionment should be calculated using this method, FEMA argues that the School Board has not established that it suffered any ineligible losses. But FEMA has itself determined that \$13,771,691.65 in property damage sustained by the School Board as a result of Hurricane Michael is not eligible for PA funding.³

The School Board has also established that it incurred ineligible losses for debris removal. Although FEMA notes that debris removal is generally eligible for PA funding as an emergency protective measure, FEMA Response at 25, the School Board did not seek PA funding for debris removal for Hurricane Michael. At this point, those costs are ineligible for PA funding, even if they may have been eligible had they been presented at an earlier time. *See* 44 CFR 206.202 (2018) (application procedures specifying deadlines for requesting PA). Considering that the purpose of the apportionment calculation is to avoid duplicating benefits, the School Board’s debris removal costs—for which PA funding was not, and now cannot be, sought—are appropriately categorized as ineligible costs.

Finally, the School Board argues that its ineligible losses include a business interruption loss, which the PAPPG identifies as an example of a loss that is not eligible for PA funding. PAPPG at 40. As defined by the School Board’s insurance policy, “[b]usiness [i]nterruption means loss resulting from necessary interruption of business conducted by the Insured and caused by direct physical loss or damage by any of the perils covered” by the policy. Applicant Exhibit 6 at 12. The insurance policy provided that “[i]f such loss occurs during the term of this policy, it shall be adjusted on the basis of the actual loss sustained by

³ When asked about these losses at oral argument, FEMA counsel indicated a desire to review the reasons for FEMA’s ineligibility determinations. However, this argument was timely asserted by the School Board, beginning with its request for arbitration, and FEMA has not rebutted it. Although FEMA is not necessarily precluded from further reviewing these losses when it calculates the necessary apportionment, for purposes of this arbitration, the School Board has established that it suffered ineligible losses by reference to FEMA’s own decisions on other requests for PA funding.

the Insured, during the period of restoration, consisting of the net profit (or loss) which is thereby prevented from being earned.” *Id.*

The School Board asserts that it suffered a business interruption loss from Hurricane Michael in the amount of \$35,019,625. The School Board calculates this amount by comparing the funding it received from the state of Florida based on its number of enrolled students following the hurricane with the revenue it projects it would have received from the state if its enrollment had not decreased. However, the School Board does not address how its operating costs would have been affected by greater student enrollment. While we do not doubt that Hurricane Michael caused a business interruption for the School Board, it has not presented enough information in this arbitration to establish what *net* loss, if any, resulted from the interruption. Because FEMA has not yet calculated an apportionment of the insurance proceeds, and we return the matter to the parties for that calculation, the School Board will have an opportunity to work with FEMA to provide additional information in support of its claimed business interruption loss.

Decision

FEMA must apportion the School Board’s insurance recovery from Hurricane Michael by comparing the ratio of the School Board’s total eligible losses to its total ineligible losses.

Daniel B. Volk

DANIEL B. VOLK
Board Judge

Erica S. Beardsley

ERICA S. BEARDSLEY
Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.
Board Judge