

## You Can't Always Keep the Water Out

Whether falling from the sky or rising from the ground, water intrusion causes billions of dollars of property damage each year. Consumers often assume that they are covered for all of these types of losses under basic property policies or a flood policy. But that's not always the case—and keeping this in mind may help an agent avoid an errors and omissions claim.



While basic property coverage will cover property losses for damage caused by some types of water intrusion, it generally does not cover losses caused by surface water or rising water. Property losses caused by surface water or rising water must be insured against through the purchase of flood insurance. But there are limitations in the flood program as well as excess flood (such as the maximum limits under the flood program, personal property stored below grade, limits on personal property coverage, etc.).

In some areas of the country, basic property coverage does not cover wind damage. In these areas, windstorm coverage must also be obtained. Even if the peril of wind is covered, there must be property damage which allows the water to infiltrate the building for there to be coverage for the water damage. Evidence of interior water damage alone is not enough to trigger coverage.

When a claim includes interior water damage, the adjuster must find where the water entered the building. If the water entered from the ground up, then the cause for the loss would be considered flood. If the water enters through the roof or wall, the adjuster must determine how the water was able to enter the building. If the roof was punctured by flying debris or peeled back by wind, then the claim is likely covered. If windows were broken by flying debris or siding torn off by the wind, then the claim is likely covered. However, when there is no sign of damage to the exterior of the building and the water entered due to the roof being in disrepair or the building not being properly sealed, then damage caused by wind-driven rain will generally be excluded under both a basic property policy or even a windstorm policy.

Independent agents should take these proactive steps that can help the errors and omissions carrier defend the claim:

- Be familiar with what the basic property policy covers and what additional policies might be beneficial to protect the interests of your customers.
- Make sure to recommend all the relevant coverages and document your recommendations.
- If you see problems with a building you are being asked to insure, point them out to your client.
- Confirm your observations in a letter to your customer detailing the conditions of the building that might affect coverage for damage sustained due to water intrusion.

Mention in the letter the specific concerns you have with the building (i.e. missing windows, siding, mortar, bad roof).

- Follow-up with the client on renewal. Ask whether any improvements or repairs have been made to the building.
- If the problems have not been corrected, follow up with another letter.
- Keep copies of these letters in your file. While you may go out of your way to protect your customers, if you don't document your efforts, they are hard to prove in a court of law.

While there are no guaranties, if you have warned your customer about the potential exposure, you are less likely to be sued. Furthermore, these letters are great evidence of what the customer was told prior to the loss. This is another example where a well documented file acts as an ounce of protection providing a pound of cure when an E&O claim is made against an insurance agent.

James Redeker is a vice president, claims and liability, with Swiss Re and handles claims against insurance professionals in Swiss Re's Overland Park, Kan. office.

*This article is intended to be used for general informational purposes only and is not to be relied upon or used for any particular purpose. Swiss Re shall not be held responsible in any way for, and specifically disclaims any liability arising out of or in any way connected to, reliance on or use of any of the information contained or referenced in this article. The information contained or referenced in this article is not intended to constitute and should not be considered legal, accounting or professional advice, nor shall it serve as a substitute for the recipient obtaining such advice. The views expressed in this article do not necessarily represent the views of the Swiss Re Group ("Swiss Re") and/or its subsidiaries and/or management and/or shareholders.*

Copyright © 2010, Big "I" Advantage, Inc. and Westport Insurance Corporation. All rights reserved. No part of this material may be used or reproduced in any manner without the prior written permission from Big "I" Advantage. For permission or further information, contact Agency E&O Risk Manager, 127 South Peyton Street, Alexandria, VA 22314 or email at [info@iiaba.net](mailto:info@iiaba.net).

[SIDEBAR]

HEADLINE: A Claim that Leads to Court

When water enters through a roof of wall, the adjuster has to determine how it entered the building. This type of claim can often follow moderate wind storms. In a typical case, the claimant will have water enter the building and cause damage to the interior of the building and its contents. A claim will be made on the property policy seeking recovery for the interior damage, personal property damage and a new roof. Upon inspection, the adjuster will find no wind damage to the roof, nor to any roof of the adjacent buildings. However, the adjuster will note the condition of the roof and its general lack of repair. Based on this information, the carrier will deny coverage for the claim. After having the claim denied, the claimant will file suit against the carrier and its insurance agent for misrepresentation of the coverage procured.

--J.R.