



Current Articles 2004 - October

Flood: Is it a Flood???

Although most insurance policies exclude flood, they do not define what constitutes a flood. The basic insurance definition of flood as used in insurance texts has been "the rising of navigatable waters". This would therefore refer to water overflowing the banks of rivers and lakes. An American definition is slightly different and defines flood as "damage done by the rising or overflowing of bodies of water". Still another definition set by the courts is "inundation of water over land not usually covered by it."

Most personal policies exclude damage caused by flood. It is also very difficult to obtain coverage for flood for residential risks. Commercial policies for property, boiler and business interruption can be endorsed to cover flood damage.

Residential policies may include coverage for sewer back up or the policy can be endorsed to supply this coverage. Seepage of water through basement walls, window or door wells, etc. is not covered.

So what happened in Peterborough this summer? A recent Thompson's News stated that the "Peterborough floods" stated that the Peterborough losses cost the insurers approximately \$100 million? This is considerably higher than the \$45 million reported in the Toronto Star on July 24.

In order for the coverage to apply coverage must be triggered and there can be no applicable exclusion. Since flood and seepage is generally excluded, this leaves the damage to the sewer back up clauses. It is generally accepted by reputable insurers that when there is water damage from different sources (seepage and sewer back up) they will cover such damages because it is not possible to differentiate the amount of damage for each. And this is what happened in Peterborough providing that the policy included sewer back up.

Not all sewer back up endorsements are the same. Some limit losses to the backing up of sewers only. What about water escaping from sump wells, septic systems, sewage holding tanks, downspouts, storm drains, etc. Some endorsements will not cover sewer back up if the building is vacant. Some insurers may use a higher deductible or a low sub-limit for losses covered by the sewer back up endorsement. It is a good idea to review the sewer back up coverage, whether included or by endorsement, with all your insurers. Having coverage with an insurer that uses a "restrictive" endorsement does not put the broker in a good position when coverage is available and maybe with a different insurer represented by the broker. The plaintiff's solicitor will ask why coverage was placed with a restrictive wording. The broker may not have a good defense to this situation!

In the next few months, many of your clients will be heading to their condominiums or residences in Florida. Although you may not be able to arrange the coverage for their U.S.A. location, as a service you should advise them of the need and availability of Flood Insurance. Many clients do not understand the difference between a hurricane policy (sometimes also sold separately) and a

flood policy. A hurricane policy will cover losses due to rain that soaks furniture etc. because a roof or wall has blown away, but it won't cover losses due to storm surges, overflowing rivers and mud slides. These losses require flood insurance.

In the U.S.A. the federal government has sponsored the National Flood Insurance Program. Flood Insurance is not cheap and is rated territorially. The average premium for \$100,000 US of coverage is \$520.00 annually. In high-risk areas and low-lying areas, the premium may be double or triple this amount. The policy also will have a 30-day waiting period, so plan early!

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