



POLICYHOLDER INSURANCE COVERAGE E-UPDATE

THE WEEKEND'S HISTORIC NOR'EASTER BROUGHT UNRELENTING RAIN & GALE FORCE WINDS: IS THERE COVERAGE?

MARCH 2010

In the wake of the recent storm that pounded the tri-state area with four straight days of unrelenting rain and gale-force winds, many homeowners are coping with flooded basements, downed trees or other property damage caused by the storm. A host of factors come into play such as the policy's terms and exclusions, the particular insurance company involved and how the insurer classifies the cause of the claimed damage. The following are a few, general considerations to keep in mind when making a claim:

I. Accumulated Water in Basements:

General Rule:

1. Accumulated water in a basement will be covered under a homeowner's policy if the cause of such accumulation is the result of a backup in plumbing.
2. However, if the accumulation is the result of rising groundwater, it will likely be deemed a "flood" and, unfortunately, most homeowners' policies specifically exclude floods from coverage.

G&C Commentary:

Have a licensed plumber assess the situation and be prepared to prove that the accumulation of water was caused by faulty plumbing and not rising groundwater.

Also, if the accumulating water is the result of a loss of electricity, causing sump pumps to fail and the basement to flood, coverage may still be obtainable. Although it would

appear that the cause was rising groundwater that was simply not evacuated by the inoperative sump pump, an argument could certainly be made that such was the result of a failure of a home drainage system (like a failure of a plumbing system), which might be covered by a homeowner's policy.

II. Damage to House/Structure:

General Rule:

1. If a neighboring tree or structure causes damage to the insured's property, the damages caused by the falling tree or structure is deemed an "act of god" that will generally be covered under the homeowner's own policy. Thus, a claim must be made under the insured's homeowner's policy.
2. The removal of a neighboring tree or structure causing damage on the insured's property, however, will not be covered under its policy. Thus, the neighbor must put a claim in under his or her own policy for the removal of the tree.
3. The same general rules apply for trees that fall on your car, except that your client's auto policy would be providing the coverage.

G&C Commentary:

With regard to damage to your home, it is also worth noting that if the storm was deemed a hurricane, your deductible will likely be higher because insurance companies try to limit their exposure to catastrophic losses from natural disasters by

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including in their homeowners' policies percentage deductibles for storm damage instead of traditional dollar deductibles, which are used for other types of losses such as fire damage and theft. Specifically, in New York, hurricane deductibles are calculated as a percentage of the dollar amount of coverage on the dwelling. The trigger for hurricane deductibles varies by company, but, generally, they go into effect only when the National Weather Service issues a hurricane watch or warning that remain in effect for 24 to 48 hours after the storm has passed. The intensity of the hurricane also affects the trigger. Luckily, here, no such hurricane warning was issued, so the traditional dollar deductible should apply.

Conclusion

As we have said, there are many different variables that will affect whether you are covered for damage caused by a major storm such as the one we just experienced. Every situation and policy is unique and every insurance company will treat similar situations differently. Thus, it is imperative that you review the terms of the policy and the particular situation. Knowing the basic concepts discussed above should help. Please feel free to call with any question