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Technical Advisory

TA 306

May 21, 2013

Subject: Wind-Driven Rain – Commercial Property & Homeowners Issues

Background: Water damage to property comes in many forms: flooding, surface water, plumbing overflow, sewer backup, sprinkler system discharge, seepage, and rain. These types of losses are addressed in various ways in the ISO Commercial Property and Homeowners coverage forms. Damage by rain, particularly damage by wind-driven rain, is the source of some debate, confusion, and ultimately, litigation.

Main Points: Several issues drive the discussion about damage by rain and wind-driven rain, which are applicable to both the Commercial Property forms and the Homeowners forms.

Issue #1: Named Peril Forms.

Rain is not a named peril in the Commercial Property forms or the Homeowners forms. However, damage done by rain could be covered if another named peril caused the rain to enter the building. For example, if an opening was created in the roof or wall by fire, lightning, explosion, aircraft, a fallen tree, vandalism, etc., the subsequent damage to the interior (and also to personal property inside) would be covered under the doctrine of proximate cause, associated with the contributing named peril.

Interestingly, while windstorm is also a named peril, both the Commercial Property forms and the Homeowners forms limit rain damage associated with the windstorm peril only to rain that enters through an opening in the roof or wall caused by windstorm. With this restrictive language (see excerpt below), there is no coverage for wind-driven rain which enters the building through an open window or door, or by “seepage,” where the force of the windstorm allows water to seep into the building around the seals & caulking of windows and doors, under shingles, etc., which is sometimes called the “carwash effect.”

Excerpt – Commercial Property forms:

CP 00 10 06 07 Causes of Loss – Basic Form, and
CP00 20 06 07 Causes of Loss – Broad Form
Covered Causes of Loss

4. Windstorm or Hail, but not including:

c. Loss or damage to the interior of any building or structure, or the property inside the building or structure, caused by rain, snow, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters.

Excerpts – Homeowners forms:

HO 00 02 10 00 Broad Form

Section I – Perils Insured Against – Coverages A, B, and C

2. Windstorm Or Hail

This peril does not include loss to the inside of a building or the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

HO 00 03 10 00 Special Form

Section I – Perils Insured Against – Coverage C

2. Windstorm Or Hail

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening

Issue #2: Special (“all-risk”) Forms.

The distinction between named perils and special form (“all-risk”) coverage is that under special form, all damage is essentially covered except that which is specifically excluded or otherwise limited. However, the coverage for wind-driven rain in the Commercial Property Causes of Loss – Special Form is no broader than it is in the Causes of Loss – Basic Form or Broad Form, discussed above.

Excerpt – Commercial Property form:

CP 10 30 06 07 Causes of Loss – Special Form

B. Exclusions

[No exclusions for wind-driven rain. However, see Limitations below.]

C. Limitations

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

(1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters;

Excerpts – Homeowners forms:

HO 00 03 10 00 Special Form

Section I – Perils Insured Against – Coverages A and B

[No exclusion for wind-driven rain.]

HO 00 05 10 00 Comprehensive Form

Section I – Perils Insured Against – Coverages A, B and C

[No exclusion for wind-driven rain.]

Comment: Most inland marine forms (commercial or personal) are written on an “all-risk” basis, and do not exclude damage by wind-driven rain. However, proprietary inland marine forms vary, so it would be important to review the specific form being used to cover scheduled property.

Comment: Special (“all-risk”) Forms exclude “faulty, inadequate or defective workmanship, repair, construction, maintenance,” etc.

Excerpt – Homeowners forms:

HO 00 03 10 00 Special Form

HO 00 05 10 00 Comprehensive Form

Section I Exclusions

B. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

3. Faulty, inadequate or defective:

b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

c. Materials used in repair, construction, renovation or remodeling; or

d. Maintenance;

In these two Homeowners forms, where the force of the wind causes rainwater intrusion (“seepage”) around the caulking and seals of doors and windows, this exclusion does not prohibit coverage for damage done by the rainwater. The exclusion applies to the faulty, inadequate or defective work itself (cost to repair), and not to an ensuing loss not otherwise excluded. (See discussion above for HO 00 03 and HO 00 05.)

Note, however, that while the Commercial Property Causes of Loss – Special Form also includes the above language, the form does have a Limitation for wind-driven rain, which provides coverage only for rain which enters the building through an opening in a wall or roof caused by windstorm. (See discussion above.) Thus, the ensuing loss caused by the entry of rainwater from “faulty, inadequate or defective workmanship, repair, construction, maintenance” is still not covered, due to the Limitation for wind-driven rain.

Issue #3: Is a “blue tarp” a “roof”?

In the Commercial Property and Homeowners forms discussed above, where there is an exclusion or limitation restricting coverage for wind-driven rain only to situations where the rain enters through an opening in a “roof or wall” caused by windstorm, would a temporary covering such as a “blue tarp” be considered a “roof”? This is a common question when a roof is being repaired, and a tarp, sheet of visquine, etc., is temporarily secured over the work in progress. In the event a windstorm comes up and rips off the temporary covering, would the temporary covering be considered a “roof”?

There have been a number of legal cases on this issue, and the majority (but not all) have ruled that a temporary covering does not constitute a roof. In some of the cases, the temporary covering included sheets of plywood holding down the plastic sheeting, roofing felt, tarpaper, etc., but the courts still ruled that this was not a roof. In several of the cases, the courts specifically commented that a roof was a permanent structure, regardless of what the temporary covering was made of. In one case, the roofing company ran into some unexpected delays, and actually constructed a wooden structure over the tarps, to protect the tarps from being damaged. However, a storm later damaged the structure and the tarps underneath, allowing rain to enter the building, and the court ruled that this arrangement was still not a roof.

Necessary Action: Circulate this Technical Advisory to all appropriate agency staff.