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Water, Water Everywhere!

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"In America the ice-storm is an event. And it is not an event which one is careless about. When it comes, the news flies from room to room in the house, there are bangings on the doors, and shoutings, 'The ice-storm! the ice-storm!' and even the laziest sleepers throw off the covers and join the rush for the windows." --Mark Twain, *Following the Equator*

Of course, in modern times, the news of an ice storm arrives--long before the first speck of frozen water appears--via the endless scroll across the bottom of the TV screen. Now if only a scroll explaining the insurance issues resulting from ice damage appeared.

Enter *FC&S*. We receive numerous and varied questions regarding ice, from ice causing things to fall, to things falling through ice. For instance, one subscriber explained that a carrier was coding ice losses resulting from tree branches breaking off and damaging homes as water losses. They then applied a water loss surcharge. The subscriber thought the cause of loss should be falling objects or the weight of ice and snow, and not water. If ice melted and seeped into a dwelling then it might make sense, but not this.



Ice And Water

Ice is not at all the same as water, a distinction that becomes clear when reading homeowners' forms. For example, one named peril in the ISO HO 00 03 covers "weight of ice, snow, or sleet that causes damage to property contained in a building." In the situation the subscriber described, the weight of the ice has not only caused damage to the dwelling exteriors--after all, the ice is the efficient proximate cause of the branches becoming falling objects--but it can also be viewed as the efficient proximate cause of any damage done to property inside the dwelling. In other words, there is a definite chain of events beginning with the ice storm and ending with the property damage.

Distinguish this named peril from another separate peril that applies to "accidental discharge or overflow of water." The policy drafters differentiate between water and its frozen form; the insurer has ignored the plain policy language by coding these losses as water losses since clearly the policy wording indicates that ice and snow are separate perils.

The same is true under commercial forms, as indicated in this scenario presented to us: a commercial property insured under the CP 00 10 04 02 policy with special causes of loss form CP 10 30 04 02 attached experienced a loss when the Vermillion River, which was covered in ice, started to thaw, causing the ice to break apart. Large chunks of ice damaged the exterior electrical outlets by the river, which were connected to the main building. The insurer denied coverage under the water damage exclusion.

This was an inappropriate use of the water damage exclusion, and the loss should be covered. The electrical outlet fixtures qualify as building covered property because they are fixtures. There was no flood damage here. There was a collision with ice, not damage by flood or water. The fact that the water was in frozen form takes it out of the water damage exclusion.

Another issue that frequently arises is ice damming. As one questioner explains, in his area of the country it is common for snow to lie on roofs for periods of time after a snowfall. Subsequent periods of thawing and freezing cause ice dams to build up along overhangs and the flashing at pitch breaks. Water from the melting snow backs up from these dams and seeps under the shingles into the house. Generally there is no visible damage to the roof.

However, when the water seeps under the shingles, it can cause interior damage, which is what happened to the insured's wallpaper, which the subscriber did not think was covered under the HO-3. The subscriber stated, "The peril of windstorm or hail contains the limiting wording that loss to the property contained in a building caused by rain, snow, sleet, sand or dust is not covered unless the direct force of wind or hail damages the building causing an opening in the roof or wall. We think that the proximate cause is snow, whether or not in its crystalline form, and, without an opening in the roof, there is no coverage."

Rain And Snow

There is a necessary distinction between rain, snow, and the accumulation of water that results from either of these events. The exclusion of loss caused by "rain, snow, sleet, sand, or dust" is not synonymous with loss caused by "water, sand, or dust." That is, water may emanate from a number of sources and an accumulation of water is an event totally distinct from either rain or snow. Yet, the exclusion refers only to rain or snow. Other water-related damage that occurs after the rain or snow has fallen may be excluded as flood or surface water, but no exclusion addresses the loss in question.

Further, the cause of loss to which the subscriber refers is found in the personal property coverages. Wallpaper, since it is permanently affixed to the wall, is real property and thus covered under dwelling coverage. Therefore, coverage exists as it would if the roof were leaking.

Ice does not only affect dwellings and buildings, though. One subscriber admitted that an insured drove his car onto a frozen lake and the vehicle fell through the ice. He wanted to know if such an event was considered a collision loss or a comprehensive loss.

It has been held that damage by water can be a collision loss, but these cases usually involve a car running into water or being swept away by water. Again, the fact that the water is in a frozen state results in a different outcome. In this scenario, the car was on the ice, fell through, and was submerged. This is not the same as an auto impacting or colliding with water and would not be considered a collision but would be an other than collision loss.

While the *Farmers Almanac* is predicting an overall kinder and gentler winter for 2011, there will certainly still be ice to contend with. Insurance professionals should understand that ice is its own entity and cannot be treated as water.

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Fast Facts

- ▶ From 1990-2009, winter storms resulted in about \$25 billion in insured losses, according to ISO.
- ▶ According to the Insurance Information Institute (I.I.I.), winter storms cost \$770 million in insured losses in 2009, the lowest total cost in eight years, and \$600 million below average.
- ▶ The 11th and 12th costliest U.S. winters by insured losses from 1980 to 2010 were due to winter damage and ice storms.
- ▶ The 11th most costly ice storm occurred Jan. 13-16, 1999, almost exactly a decade before the 12th ranked ice storm; winter damage and an ice storm hit 15 states, causing \$575 million in insured losses, but no deaths were recorded.
- ▶ The 12th most costly winter, also due to winter damage and an ice storm, affected the Southeast, South Central, East, and Midwest regions. A line of ice storms active from Jan. 26-28, 2009, caused \$565 million in insured losses and 58 deaths.

Source: www.iii.org

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