

SPECIAL REPORT

WATER & SEWER BACKUP – THE DEVIL IS IN THE DETAILS

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Recent water damage events in the Detroit area and a water backup claim denial caused us to examine the coverage that is provided for exterior water that enters a building.

This is the language from six different insurance carriers and our comments.

A. Carrier A – Flood Exclusion

“This insurance does not apply to loss or damage caused by or resulting from:

- waves, tidal water or tidal waves; or
- rising, overflow or breaking of any boundary

of any natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans or any other body of water or watercourse, whether driven by wind or not, regardless of any other cause or event that directly or indirectly:

- contributes concurrently to; or
- contributes in any sequence to

the loss or damage, even if such other cause or event would otherwise be covered.

This Flood exclusion does not apply to ensuing loss or damage caused by or resulting from a **specified peril**.”

B. Carrier B – Flood Exclusion

“The Insurer will not pay for loss or damage caused directly or indirectly by or resulting from **flood**. However, if **flood** results in fire, explosion, sprinkler leakage or **theft**, the Insurer will pay for that portion of the loss that was solely caused by such fire, explosion, sprinkler leakage or **theft**.”

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a) the overflow, or the expansion beyond normal business boundaries, of inland or tidal waters, including natural or man-made lakes, reservoirs, ponds, brooks, rivers, streams, harbors, oceans or any other body of water or watercourse;
- b) waves, tides or tidal waves including tsunamis; or
- c) their spray, all whether driven by wind or not, including storm surge.”

C. Carrier C – Flood Exclusion

“We will not pay for loss or damage caused directly or indirectly by “**flood**”. Such loss or damage is excluded regardless of any other cause or event, including a “**mistake**”, “**malfunction**”, or weather condition, that contributes concurrently or in any sequence to the loss, even if such other cause or event would otherwise be covered. But if “flood” results in fire, explosion, or theft, we will pay for that portion of the loss or damage that was solely caused by that fire, explosion, or theft.

“**Flood**” means a general and temporary condition of partial or complete inundation of land areas from:

- a) The overflow, or the expansion beyond normal boundaries, of inland or tidal waters, including natural or man-made lakes; reservoirs, ponds, brooks, rivers, streams, harbors, oceans, or any other body of water or watercourse;
- b) Waves or tides, including tsunamis; or
- c) their spray, whether driven by wind or not.”

COMMENTS ON CARRIERS A, B AND C FLOOD EXCLUSIONS

These three insurance carriers are similar in that they exclude damage from a flood, but define a flood as essentially as an overflow of a body of water.

This means that sewer or water backup or surface water from a heavy rain are covered.

There is no sublimit for sewer or water backup or surface water with these carriers.

Coverage for a flood from overflow of a body of water is readily available for non-flood zone risk from these three carriers.

This approach is the one we favor because it is easy to understand and even without additional flood coverage, virtually any water event (except for overflow of a river or ocean, etc.) entering a building from the outside will be covered.

Now let's look at three other insurance companies that take the approach of excluding any event that causes water to enter a building and then adds back some limited coverage for sewer backup.

The following is how three other carriers give back limited coverage.

D. Carrier D – Sewer Backup Add Back

The following is added to **A. Coverage, Paragraph 4. Additional Coverages** of Building and Personal Property Coverage Form CP 00 10:

“Sewer Backup

- 1) We will pay for direct physical loss or damage to Covered Property at the described premises, solely caused by or resulting from water or waterborne material carried or moved by water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment. The term “drain” includes a roof drain and its related fixtures.

2) Payment under this Additional Coverage is included within the applicable Limit of Insurance for Covered Property at the location of loss or damage.

3) Special Sewer Backup Exclusion

We will not pay for:

a) Loss or damage from water or other materials that backup or overflow from any sewer or drain, sum, sump pump or related equipment when it is caused by or results from any “flood”, regardless of the proximity of the backup or overflow to the “flood” condition; or

If an insured complied with these requirements, it would not have a loss to begin with

b) Failure to keep a sump pump or its related equipment in proper working condition; or

c) Failure to perform routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

“Flood” means a general and temporary condition of partial or complete inundation of normally dry land areas due to:

a) The overflow of inland or tidal waters;

This does not have to be in close proximity to the site of the sewer backup.

b) The unusual or rapid accumulation of runoff of surface waters from any source; or

c) Mudslides or mudflows, which are caused by flooding as defined in **b)** above. For the purpose of this Covered Cause of Loss, a mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.”

E. Carrier E – Backup of Sewer, Drain or Sump – Direct Damage Add Back

“You may extend the insurance provided by this Coverage Form to pay for direct physical loss or damage to Covered Property at described premises caused by or resulting from:

1. Water or waterborne material that backs up or overflows or is otherwise discharged from the described premises sewer, drain, sump, sump pump or related equipment; or
2. Water under the ground surface pressing on, or flowing or seeping through foundations, walls, floors or paved surfaces.

However, we will not pay the cost of repairing or replacing a sump pump or its related equipment in the event of mechanical breakdown.

For purposes of this Coverage Extension, drain does not include a roof drain, gutter, downspout or similar fixtures or equipment.

Note: Carrier D includes roof drains and Carrier E does not

This Coverage Extension does not apply to loss or damage caused by or resulting from your failure to:

- Same as Carrier D
1. Keep a sump pump or its related equipment in proper working condition; or
 2. Perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

The most we will pay under this Coverage Extension is the limit shown in the ElitePac Schedule or the Building and/or the Business Personal Limit of Insurance shown in the Declarations, whichever is less.

Same as Carrier D

This Coverage Extension is not flood insurance. We will not pay for direct physical loss or damage from water or waterborne material that backs up or overflows from a sewer, drain, sump, sump pump or related equipment caused by any flood whether or not the flood contributes concurrently or in any sequence to the loss. This applies regardless of the proximity of the flood to Covered Property. Flood includes the accumulation of surface water, waves, tides, tidal waves, overflow of streams or other bodies of water, or

their spray, all whether driven by wind or not, that enters the sewer or drain system.”

COMMENTS

Both of Carrier D and E’s insurance carriers are providing very little coverage for sewer backup or sump pump overflow.

- If you kept the sump pump in proper working order you would not have a loss. So if a loss occurs, there will not be any coverage.
- The same thing is true if you failed to perform routine maintenance or repair to keep a sewer or drain free from obstruction.
- Even if the above two exceptions do not apply, the insurance carriers could deny the loss saying if the sewer drain or sump pump overflow was caused by a flood there would be no coverage, regardless of where the flood occurred.
- The flood exclusion, which includes the accumulation of surface water even if it is far away from the location of the backup negates the sewer backup coverage.
- The solution is to never rely on this coverage and always secure flood coverage, but be careful. Carrier D has the following language on its flood endorsement, which negates coverage, even under its flood form:
- Carrier E’s D.I.C. form that provides flood does not have the maintenance warranty limitation.

Coverage described in Paragraphs **A.1.d.** and **A.1.e.** does not apply to loss or damage resulting from an insured’s failure to:

- Carrier D puts this in two places: in its sewer backup endorsement and on its flood endorsement.
- a) Keep a sump pump or its related equipment in proper working condition; or
 - b) Perform routine maintenance or repair necessary to keep a sewer or drain free from obstruction.

F. Carrier F – Sewer & Drain Backup Add Back

“**Coverage:** This insurance is extended to apply to direct physical loss or direct physical damage to Coverage Property at “Scheduled Premises”, Newly Acquired Premises and Unnamed Premises caused by or resulting from water that backs up from a sewer or drain.”

Limit of Insurance: The most we will pay in any one occurrence is the Limit of Insurance applicable to the Covered Property where the direct physical loss or direct physical damage occurred. This Additional Coverage is included within the Covered Property Limits of Insurance.”

THIS IS NOT FLOOD INSURANCE

This Additional Coverage does not apply to loss or damage caused by or resulting from Flood, regardless of the proximity of the backup or overflow to such conditions.

Flood as used in this Additional Coverage means:

- a. Surface water, waves, tidal water, tidal waves, tsunamis, or overflow or any natural or man-made body of water from its boundaries, all whether driven by wind or not; or
- b. Mudslide or mudflow, meaning a river or flow of liquid mud directly or indirectly caused by flooding or the accumulation of water under the ground.
- c. Water under the ground surface pressing on, or flowing or seeping through:
 - 1) Foundations, walls, floors or paved surfaces;
 - 2) Basements, whether paved or not; or
 - 3) Doors, windows or other openings

- This is where they take it away
- d. Flood includes water or other material that backs up or overflows from any sewer or septic tank or drain, if such backup is caused by any of the conditions in a. or c. above, regardless of the proximity of the backup to such conditions.

- e. All flooding in a continuous or protracted event will constitute a single flood.

COMMENTS

The Carrier F form does not have the sewer backup warranties of Carrier D and E on the sewer backup form (and Carrier D on its flood form), but does have the flood exclusion for surface water or ground water, which limits the value of sewer & drain backup.

The Carrier F Flood endorsement does solve the problem and does not have the maintenance warranties of Carrier D.

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