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In light of an unprecedented four hurricanes hitting the State of Florida, it is expected that there will be extensive litigation regarding insurance claims for property damage due to one or more of the hurricanes. The purpose of this article is to explain the basic information that needs to be understood when a client presents a problem regarding unpaid hurricane damage.

In analyzing hurricane damage, the first point to acknowledge is that there are simply two forces that caused all of the damage—windstorm and flood. For the most part, all of the claims will be made under one or more of three different insurance policies—a windstorm policy, or a homeowner's policy.

I. Flood Insurance

Almost all of the flood insurance in this country is provided by the federal government. The reason for this is that private insurers did not want to undertake the great risk of flood, particularly in a high-flood area. The federal government stepped in, in the late 1960s, and agreed to use tax dollars to underwrite flood insurance. Private insurers may sell and service the policies—but, again, the underwriter is the federal government.

The flood insurance policy looks much like any other insurance policy, with generally four types of coverage in the policy, labeled as coverages A, B, C and D. Coverage is provided for such things as the building and other structures, personal property, debris removal, increased cost of compliance for rebuilding and other risks as well.

FEMA is the government agency that operates the flood insurance program. It has issued innumerable guidelines to govern the handling of claims. In general, flood policies are not as insured-friendly as are homeowner's and windstorm policies because state law does not apply to flood policies and the flood guidelines are much more tilted in favor of the insurer, the federal government, than are other insurance policies. All claims must be filed in federal court.

II. Windstorm

Much of the windstorm coverage in the State of Florida, particularly in the high risk areas, is covered by a state agency, Citizens Property Insurance Corporation. This agency is the successor to Florida Windstorm, which for many years was the state agency issuing wind insurance. These policies are underwritten by state tax dollars but also are substantially contributed to by required contributions from private insurers. These policies are governed by Florida law, and claims are to be filed in state court.

The insurance policies issued by Citizens Property Insurance Corporation, again, look much like other insurance policies. They have at least two coverages, A and B, and cover such risks as the dwelling and other structures, personal property, debris removal, additional living expenses, and other risks as well.

These policies, as well as the flood policies, have certain exclusions from coverage and also have certain itemized property that is not covered by the policy. As with all insurance claims, it is critical to read and understand the policy to determine what is and what is not covered.

The same statutes and case law that cover claims against private insurers also cover claims against Citizens Property Insurance Corporation.

III. Homeowner's Claims

Homes that were not required to have separate flood policies or separate wind policies have all the coverage in their homeowner's policy. However, the homeowner's policy is generally not going to provide flood coverage and provides wind coverage if the home is in an area in which there is a lower risk of windstorm damage than those homes that would normally have to be covered by Citizens Property Insurance Corporation.

As with all homeowner's claims, there are certain properties that are covered and certain itemized properties that are not covered as well as a number of risks that are excluded from coverage. In claims for hurricane damage, because, as a rule, the flood policies and the windstorm policies are going to cover structures in high risk areas, it would be expected that there would be more claims under those policies than under the homeowner's policies.

IV. Conclusion

As mentioned above, reading the insurance policy is critical and that certainly includes reading and understanding the declarations page. There are certain issues that seem to oftentimes come up in a hurricane claim. A common issue, particularly when a structure is a total loss and both wind and flood were involved, is whether flood caused the total loss or wind caused the total loss or did both forces combine to cause the total loss. It is much too common to have a flood adjustor blame wind and the wind adjustor blame flood. Proving what damage was caused by each of the two forces may require the assistance of a meteorologist, engineer, contractor, and possibly other experts.

Another question that seemingly is going to be common after these hurricanes is whether or not the insured is adequately insured—that is, whether the insured had enough windstorm coverage, whether the insured had enough flood coverage and, commonly, whether the insured even had flood coverage at all. If, particularly in the event of a total loss, there is inadequate insurance, the insured may have to consider whether or not his or her agent properly advised and counseled him as to the appropriate insurance. Before these four hurricanes, flood insurance was very inexpensive and seemingly would have been part of the insurance program recommended for any structure that had any risk of flood.

In addition to the Florida Statutes pertaining to insurance claims, some of the statutes that are relevant to hurricane claims are Florida Statutes 627.701, 627.351, 627.4025 and 627.702. These statutes pertain to hurricane claims, the Citizens Property Insurance Corporation, the Valued Policy Law and other topics. The pertinent set of statutes for the flood program is the National Flood Insurance Act which is at 42 U.S.C., §4001 et al.

These claims may be new to many attorneys but they present opportunities for attorneys to help out clients at a difficult time in their lives when their own insurance companies, which they have paid insurance premiums to, simply do not provide for the best interests of their insureds.