

Help For Florida Insurers Drowning in Water Damage Claims

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In recent years, property insurers in Florida have experienced a proliferation of water loss claims, many the result of aggressive advertising campaigns by plaintiffs' law firms that represent policyholders in actions against insurance companies. These advertisements have targeted allegedly failing cast iron pipes beneath the foundation of homes.

As these water damage claims continue to grow, homeowners insurance companies have been forced to craft new policy endorsements which either exclude coverage or limit the amount of insurance available to consumers for property damage caused by water. The goal of these limitations and exclusions is to reduce exposure, combat the rising costs of insuring properties in Florida, and to provide homeowners with more accurate and affordable premiums. However, many policyholders continue to claim these endorsements are ambiguous and do not apply to their particular claims, and they seek venues and judges who might agree.

The most prevalent claims at issue involve the demand for full replacement of the cast iron plumbing systems, including the labor to replace the plumbing system itself when its alleged failure causes physical damage to the home. In these cases, homeowners' attorneys contend the new policy

endorsements are ambiguous and do not clearly delineate tear-out and access to the deteriorated plumbing systems as being subject to the endorsements.

Recently, Florida judges began issuing opinions on whether these endorsements are enforceable or ambiguous, as claimed by the plaintiffs bar. With each insurer having its own version of a limitation and/or exclusion endorsement, judges have been forced to analyze each unique situation and determine whether the endorsement, on its face, encompasses all water damages. For example, most endorsements provide that a sudden and accidental direct physical loss to covered property by discharge or overflow of water or steam from within a plumbing system, is limited to "X" amount of dollars. This includes all damage to covered property provided by the endorsement and is applicable to covered property. Some judges have systematically concluded these endorsements do not apply to the tear-out and access provision, as the property that needs to be accessed or torn-out may not be covered (plumbing system) nor is damaged by water (i.e., tile flooring above the plumbing system). While the covered water damages are included in the endorsement, homeowners have successfully argued that the tear-out of non-damaged or non-covered property falls under the "Perils

Insured Against” provision, which is limited under Coverage A policy limits.

Other insurers have more expansively addressed the issue by enumerating that additional portions of the repairs fall under the purview of the limitation or exclusion endorsement. Some examples of this additional language include: “this limit includes the cost of tearing out and replacing any part of the building necessary to repair the system from which the discharge occurred” or “including the cost to tear-out and replace any part of a building, or other structure, on the ‘residence premises’” or “this limitation includes but is not limited to the cost to repair or replace any non-damaged part of the building or its components to match the damaged property and the cost of tearing out and replacing any part of the building necessary to repair any damaged property.” Plaintiffs’ attorneys have begun to concede such language covers the tear-out and access for replacement of the plumbing system.

Alternatively, some courts have been successfully persuaded to rule in favor of the carrier that the said language includes any tear-out and access for replacement costs.

It appears clear that the more detailed the endorsement as to exactly what aspects of the water damage claim will be covered, the more likely Florida judges will agree the endorsements are unambiguous and will enforce the provisions. If an insurer’s endorsement is vague and non-specific, it opens the door to policyholders’ attorneys arguing in favor of expansive coverage due to ambiguities in the endorsement. Courts will construe those ambiguities in favor of policyholders despite the intent to be excluded or limited.



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