



THE LION'S ROAR

HOW INSURERS CAN SUSTAIN
THE PUNISHING BLOWS FROM
MARCH'S NOR'EASTERS
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The month of March saw unprecedented weather with four nor'easters hammering the East Coast—the first three striking in an 11-day span. Just as residents and businesses recovered from the first storm, they faced the daunting task of preparing for and withstanding the second and third attacks, and then a fourth weeks later.

Each nor'easter brought with it howling winds, torrential rains, and heavy snow. High wind warnings were issued from Massachusetts to as far south as Georgia, and more than 1.5 million homes and business were left without power. Devastating coastal flooding struck from North Carolina to Maine. As if its ferocity was not enough, the first nor'easter transformed into a volatile weather event known as bombogenesis, or “bomb cyclone,” which is a drastic drop in atmospheric pressure that results in an increase in intensity.

While the violent winds and coastal flooding brought widespread damage, record snowfall was the main culprit for catastrophic losses. In fact, the sheer amount of snow in March made this season the snowiest on record for several parts of Massachusetts.

COVERAGE FOR DAMAGE

As temperatures rise slightly in late winter and early spring, snow generally contains a higher moisture content, which creates a heavier snow. Snowfall during this period can have a water content as high as 33 percent. The water content for ice is nearly 100 percent. Conversely, a drier, powdery snow, which is often experienced in colder temperatures, will have a water content as low as three percent.

The weight of snow is obviously a critical factor for insurers because heavy, wet snow will result in roof collapses and toppling trees or power lines. Most insurance policies provide insurance coverage for damage caused by the weight of ice and snow. Coverage generally applies to both the structure as well as personal property.

Importantly, while the home and personal property are covered for damage from the weight of ice and snow, most insurance policies exclude damage to awnings, canopies, fences, pavements, patios, swimming pools, foundations, retaining walls, bulkheads, piers, and docks. The purpose of these exclusions is so that the insurer is only required to provide coverage for the dwelling. Importantly, while most insurance policies exclude coverage for “collapse,” a collapse caused by the weight of ice and snow is often an exception to any collapse exclusion.

Since most insurance policies provide coverage for this kind of damage, it is critical for every insurer to determine, within a reasonable degree of certainty, whether the weight of ice and snow was, in fact, the cause of the loss. A collapsed roof could require the structure to be razed, resulting in exorbitant costs to the carrier, so insurers should look into whether the collapse may have been caused by an excluded factor.

The most obvious inquiry for any insurer to determine whether the weight of ice and snow was the cause of loss is to first verify the accumulation of snow or ice on the particular date. Building codes generally require roofs to withstand snow loads of 20 pounds per square foot. Practically, that means most roofs should be able to bear about one foot of wet, heavy snow, or about six inches of ice. With a lighter, drier snow, most roofs can hold several feet.

The amount of snow load that a roof should be able to bear will depend on the local jurisdiction where the loss occurred. For instance, in most New England states, where winters are notoriously harsh, residential and commercial buildings are required to resist snow loads of 30 pounds per square foot. Building codes in South Carolina, which sees very little, if any, snow, only mandates that the roofs withstand snow loads of about 10 pounds per square foot. Therefore, insurers are well served to confirm the accumulation of snow on the date of loss and compare those totals with the local building requirements where the loss occurred.

EXCLUDED FACTORS

If an insurer determines that the snow loads on the date of loss are inadequate to cause damage to the roof, then other factors may be at play, such as faulty or defective construction, improper maintenance, or deterioration. Importantly, most insurance policies exclude damage caused by or consisting of faulty or defective construction, improper maintenance, or deterioration.

Insurers may benefit by retaining a structural engineer to perform a complete and thorough analysis of the building to ensure that it was built correctly and properly maintained through the years. Moreover, a structural engineer can opine on whether the cause of damage was deterioration. A structural engineer can first determine whether the roof was built according to local building codes. If it wasn't, then the claim may be excluded under the faulty or defective construction exclusion.

Even if the structure was built pursuant to local building codes, a structural engineer may opine that construction was not consistent with "acceptable building practices" in the locality. Oftentimes, building codes are accepted and adopted by local municipalities and do not always keep pace with industry building methods. Consequently, builders are usually aware of the current construction methods that are being utilized in excess of local building code requirements.

Furthermore, even when a home is built in compliance with code or acceptable building practices, the structure may still have obscure construction deficiencies that can allow an insurer to deny a claim for faulty or defective construction. For example, the ventilation system in the attic may be insufficient even if it is arguably code compliant. Without proper ventilation, the support structures on the interior of the roof, such as the rafters and the sheathing, can be exposed to excessive levels of moisture, which can weaken their integrity over time. Additionally, without proper attic ventilation, the shingles on the exterior of the roof can become damaged or the roof could experience ice damming, both of which allow water intrusion into the roofing system. Ongoing water intrusion will undeniably weaken the structural integrity of any roof and compromise the snow loads that a roof can bear.

Lastly, even if the roof has been built properly, the insured may have failed to implement reasonable

maintenance practices to protect the structure. Almost all roofing treatises recommended inspecting your roof twice a year, usually in the fall and spring. If an insured has failed to apply reasonable maintenance practices that would have prevented the loss, then an insurer may be able to deny the claim, depending on the policy provisions. Accordingly, a claims professional or an engineer should ask the insured about maintenance practices before the insurer provides coverage for the loss.

Every roof will deteriorate over time, and most insurance policies exclude losses caused by or consisting of deterioration. An insured who may have simply failed to replace the roof shingles in a timely manner may not be entitled to coverage, even if the damage occurred during a heavy snow event. On average, most roofs need to be replaced approximately every twenty years. If an insured property has shingles that are curled at the edges or are cupped, or are missing the granules, then most likely the roof is beyond its life expectancy, and that may be the cause of the damage. If an insured's roof is deteriorated, then that should be documented and memorialized in the insurance company's file. A deteriorated roof that contributed to the damage is likely not covered.

As insurance companies scramble to handle the onslaught of claims brought by the recent nor'easters, including structural damage caused by the weight of ice and snow, they may benefit from analyzing the possible causes of loss described here. Just because there is ice or snow on the roof when the damage occurs does not mean the insured is entitled to coverage. There may be other factors at play that caused the roof to fail, and it would be prudent to examine important aspects of the structure such as construction methods used and the maintenance practices of the insured before affording coverage. ■

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