Torrential Rains and Insurance Claims: When Exclusions and Limitations On 'Flood' Coverage May Not Apply

By Micah E. Skidmore | August 5, 2025

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With five months to go, 2025 is already the year of the flash flood in the United States. To date, the National Weather Service has issued more than 3,600 flash flood warnings across the United States in 2025[1]—more than any other year on record since 1986.[2] Extreme precipitation events have resulted in extraordinary flooding in Texas, New Mexico, West Virginia, New Jersey, New York, Oklahoma, Kansas, Vermont and Iowa. In many states, the flash floods have caused tragic loss of life. In other communities, homes, businesses and other properties have been devastated.

For many affected property owners, insurance coverage for "flood" damage and resulting loss of business income may be excluded or otherwise subject to limitations. It may be natural for corporate insureds facing such policy terms to assume that the insurance coverage needed to fully compensate for "flood" losses is simply out of reach. But the recurrence of flood losses over the years has not only brought limitations on policy terms. It has also generated a substantial body of law providing guidance to both insureds and insurers on a variety of issues relating to coverage for water-borne losses. Many of these cases are factually and legally nuanced in ways that may present opportunities for insureds to obtain coverage in spite of flood-related exclusions or limitations.

For those corporate insureds seeking compensation for this year's catastrophic weather events, here are four issues to consider:

1. Do Sublimits For "Flood" Coverage Apply to Both "Property Damage" and "Business Interruption"?

While some commercial property policies exclude or provide no coverage for "flood," other policies make "flood" coverage subject to a reduced sublimit, often insufficient to make a policyholder whole from a catastrophic flood event. When "flood" coverage is subject to a "sublimit," corporate policyholders should carefully consider whether the limitation applies to coverage for both "property damage" and "business interruption" loss. For example, in 2020, Judge Lee Rosenthal in the Southern District of Texas ruled that a sublimited flood endorsement did not apply to the insured's business income loss, where the endorsement expressly applied to "direct physical loss to covered property at 'covered locations' caused by 'flood,'" without mentioning business interruption loss.[3] Here, Judge Lee Rosenthal followed other cases reaching similar conclusions.[4] At the same time, the court distinguished cases defining flood limitations in terms of "all losses" arising from flooding.[5] Other courts have likewise ruled that flood limitations, applicable to property damage claims, do not necessarily limit claims for business interruption loss.[6] Corporate insureds faced with flood sublimits should carefully review the applicable policy terms to determine whether such sublimits apply to any and all flood-related loss, or whether business interruption losses (or any other subset of the insured's loss) is exempt from the subject limitation.

2. How Does a Flood Exclusion or Limitation Interact With Other Policy Provisions?

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Commercial property insurance policies are complex agreements. Such policies provide both grants of coverage as well as exclusions and limitations. Coverage grants and exclusions may each contain "anti-concurrent causation" provisions, expanding the breadth of either the coverage or the limitation to apply in spite of other causes contributing to the insured's loss. The combination of separate coverage grants and independent exclusions—each magnified by anti-concurrent causation provisions—may result in conflicts and ambiguities when the policy is read as a whole. How, for example, can a policy simultaneously provide coverage for a named storm, equipment breakdown and/or earth movement, regardless of any other cause or event contributing to the insured's loss, while also excluding coverage for a "flood" and all concurrent causes, when an occurrence involves both sets of perils? It may not. Either an ambiguity will result, or, potentially just as fortuitous for the insured, a jury will have to sort out the factual issues relating to causation and the application or non-application of an exclusion.[7] Consequently, corporate policyholders and insurers should look beyond a single "flood" provision in the policy, or even the fact of a "flood" in a loss event, to consider both the policy and the occurrence as a whole in order to determine whether coverage for flood-related loss is available.

3. Was the Subject Damage Caused by Something Other Than a Flood?

This may seem like either an obvious or irrelevant question for a policyholder seeking coverage for a "flood" related loss. But catastrophic losses are rarely caused by just one peril. Damage to a building in a flash flood may be the result of not only fast-moving water but earth and debris carried in the water. Where a policy may exclude coverage for "flood," there may nonetheless be coverage for damage independently caused by trees, earth, buildings and cars swept up in the flood.[8] Damage to property from inundation of water and waterborne debris may, for purposes of establishing causation and coverage, be the result of other, non-excluded perils.[9] Water that begins as "surface water" may cease to qualify as a "flood" when it enters a plumbing system.[10] When faced with a significant water-related loss and a policy with a flood-related exclusion or limitation, insurers and insureds alike should rigorously examine the facts to determine the extent to which other covered perils caused or contributed to the loss at issue.

4. When Is a "Flood" Not a "Flood"?

If there is "flood" coverage or a "flood" exclusion in a commercial property insurance policy, the term "flood" is almost always defined. In some cases, the definition of "flood" includes limitations on when coverage or a limitation may apply. For example, where a "flood" is defined as the inundation of normally dry land with water, a "flood" exclusion may not apply to a deluge occurring on property that is positioned over water, as opposed to land.[11] Still other policies may define "flood" in terms of "surface water." Depending on the facts and policy terms, "surface water" may be distinct from water either above or below the surface of the ground.[12] Again, in pursuing a claim for water damage under a commercial property policy with either a flood exclusion or limitation, corporate insureds and insurers should understand and be familiar with any nuance in the "flood" definition and the facts that could limit the application of the provision.

There are undoubtedly other issues and considerations that may be equally appropriate for corporate policyholders to address when grappling with a flood-related loss and flood-related limitations or exclusions in a commercial property policy. The point is that analyzing complex property damage and business interruption claims is rarely as simple and straightforward as assuming that a significant water loss is not covered when there is a flood exclusion or limitation. Insurers should not be susceptible to this presumption, and neither should corporate insureds. As

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the cases referenced above attest, a more thoughtful and nuanced approach to complex property and business interruption claims may yield significant recoveries for corporate insureds.

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[1] Jeffrey Basara, *Why 2025 became the summer of flash flooding in America*, Columbia Missourian (July 28, 2025), *available at* https://www.columbiamissourian.com/opinion/guest_commentaries/why-2025-became-the-summer-of-flash-flooding-in-america/article_e998e322-7c0b-4d61-8fb5-39f5dd295292.html.

[2] Doyle Rice, *2025 has become 'the year of the flood.' Why is it raining so much?*, USA Today (July 15, 2025), *available at* https://www.usatoday.com/story/news/weather/2025/07/15/why-is-it-raining-so-much/85206458007/.

[3] *Alley Theatre v. Hanover Ins. Co.*, 436 F. Supp. 3d 938, 942 (S.D. Tex. 2020).

[4] *See Baylor College of Medicine v. Am. Guar. & Liab. Ins. Co.*, 2002 U.S. Dist. LEXIS 29002, 2002 WL 35644976, at *1 (S.D. Tex. Oct. 30, 2002) (ruling that an insurance policy's flood-endorsement limit did not apply to business-interruption losses caused by flooding from Tropical Storm Allison); *Mark Andy, Inc. v. Hartford Fire Ins. Co.*, 233 F.3d 1090, 1092 (8th Cir. 2000) (holding that a flood endorsement sublimit did not apply to business-interruption losses caused by flood damage after finding the policy to be ambiguous).

[5] *See El-Ad 250 W. LLC v. Zurich Am. Ins. Co.*, 130 A.D.3d 459, 13 N.Y.S.3d 68 (N.Y. App. 2015) (addressing a policy defining flood loss as "all losses or damages arising" during a flood); *For Kids Only Child Dev. Ctr., Inc. v. Phila. Indem. Ins. Co.*, 260 S.W.3d 652, 654 (Tex. App.— Dallas 2008) (the policy stated that it would pay for "loss or damage caused by or resulting from flood damage or water," but would "not [pay] more than $25,000 in any one occurrence").

[6] *See, e.g.*, *Northrop Grumman Corp. v. Factory Mut. Ins. Co.*, 805 F. Supp. 2d 945, 950 (C.D. Cal. 2011) ("[T]he court finds it significant that the Flood Sublimit only refers to 'physical loss or damage' and does not — as it could and as the policy does in defining business interruption loss — refer to loss caused by physical loss or damage."); *but see Almah LLC v. Lexington Ins. Co.*, 2016 Del. Super. LEXIS 47, at *15 (Del. Super. Ct. Jan. 27, 2016) (applying a flood sub-limit to business interruption loss under a policy stating that time element losses are "subject to the applicable limit of liability that applies to the insured physical loss or damage.").

[7] *See, e.g.*, *Madelaine Chocolate Novelties v. Great Northern Ins. Co.*, 399 F. Supp. 3d 3, 12 (E.D.N.Y. 2019) (finding an ambiguity and triable issue of fact regarding the application of a "flood" exclusion under a policy containing "dueling" anti-concurrent causation language in a covered "windstorm" definition); *Pinnacle Entm't, Inc. v. Allianz Global Risks US Ins. Co.*, 2008 U.S. Dist. LEXIS 108583, at *17 (D. Nev. Mar. 26, 2008) (holding that a flood exclusion did not apply to wind-driven floods under a policy expressly providing coverage for a "weather catastrophe occurrence").

[8] *See, e.g.*, *Naumes, Inc. v. Landmark Ins. Co.*, 119 Ore. App. 79, 83 (Ore. Ct. App. 1993) (reversing grant of summary judgment in favor of insurer upon finding that there was a genuine issue of material fact regarding the cause of the insured's loss—excluded flooding and surface water or non-excluded "debris torrent").

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[9] *See, e.g.*, *Northland Ice Center, Inc. v. Centennial Ins. Co.*, 1979 Ohio App. LEXIS 10249, at *4 (Ohio Ct. App. Apr. 18, 1979) (affirming the trial court's decision that damage to a skating rink was not the result of an excluded flood, but rather the result of a collapsed embankment that allowed water and waterborne debris to crash into the insured structure).

[10] *See, e.g.*, *State Farm Lloyds v. Marchetti*, 962 S.W.2d 58, 61 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) ("Here, excessive rainfall caused the sanitation sewer system to exceed its capacity and direct waters back through the underground lines from the street into appellees' home, in turn, causing non-flood water and sewage to accidently discharge or overflow from within the plumbing system in their home. We hold that when the loss is a consequence of the invasion of the insured premises by non-flood water, even though the invasion may have been proximately caused by flood water, the exclusion does not apply.").

[11] *See, e.g.*, *Playa Vista Conroe v. Ins. Co.*, 989 F.3d 411, 417 (5th Cir. 2021) (finding that a "flood" exclusion did not apply to damage to boat slips where the policy defines "flood" as "a general and temporary condition of partial or complete inundation of 2 or more acres of normally dry land areas or of 2 or more distinct parcels of land (at least one of which is your property) with water").

[12] *See, e.g.*, *Zurich American Insurance Co. v. Medical Properties Trust Inc.*, 237 N.E.3d 733 (Mass. 2024) ("[W]e conclude that the definition of 'surface waters' does not include the rainwater that landed and accumulated on the rooftop courtyard and parapet roofs in this case, or at least it does not unambiguously include such accumulation of water on a roof."); *Laur v. Safeco Ins. Co. of Ind.*, 2024 U.S. App. LEXIS 14576 (5th Cir. Jun. 14, 2024) (affirming the district court's grant of summary judgment to an insurer, who had denied coverage for water damage to the insured's basement from a burst irrigation line where (1) the subject policy insured freezing to a landscape sprinkler system unless the resulting loss is excluded as either "surface water" or "water below the surface of the ground"; and (2) the water damaging the homeowner's basement both originated below the surface of the ground and flowed at ground level).

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