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TIDAL INSURANCE

By Judon Fambrough

The year 2004 ended on a disastrous note when a tsunami struck Southeast Asia, killing hundreds of thousands. The scale of devastation may never be known. An earthquake on the ocean floor caused the catastrophe.

Could a tsunami hit the Texas Coast? If it did, would a conventional Texas insurance policy cover the resulting property damage to homes and businesses?

Earthquakes, landslides, volcanic activity and even meteors can trigger tsunamis, which are better known as tidal waves. The probability of an earthquake-related tsunami in the Gulf of Mexico on a scale similar to the one in Southeast Asia is slim to none, according to Dr. Dale Sawyer of Rice University. Tsunamis may occur in the Atlantic, but they are more common in the Pacific because of a higher level of seismic activity.

Although the chances of a meteor hitting the Gulf are slim, many scientists believe one crashed into the northern Yucatan peninsula 64 million years ago, wiping out the dinosaurs and triggering a giant tsunami that slammed ashore along the Gulf Coast. Some argue that the Gulf region is due for another.

If a home or business were destroyed or damaged by a tsunami, an unexpected tropical depression like Allison that inundated Houston several years ago or any other type of flood water, would the homeowners or business insurance cover the loss? This may be a good time to find out.

Floods are the most common and deadliest disasters in the United States. In 2003, the National Weather Service estimated flood damage at $2.5 billion, but only about a third of that damage was covered by insurance. Property owners bore two-thirds of the loss. Misconceptions concerning coverage may have contributed to some of the uninsured losses.

An examination of the exclusions section of a standard Texas homeowners insurance policy, whether residential or commercial, reveals that losses caused by or resulting from flood, surface water, waves, *tidal water* or *tidal waves*, overflow of streams or other bodies of water or spray from any of these, whether or not driven by wind, are excluded. Likewise, losses caused by earthquake, landslide or earth movement are not covered.

Property owners may purchase flood insurance through a separate policy issued by National Flood Insurance Programs (NFIP) administered by the Federal Emergency Management Agency (FEMA). Property owners with federally backed mortgages on property have no choice but to purchase this insurance for buildings located within the 100-year flood plain. At minimum, the law requires them to carry sufficient flood insurance to cover the lesser of the amount of the loan or the largest amount of insurance the borrower can get on the building, which is $250,000.

Under NFIP, property owners in high-risk areas may insure the building but not its contents. Property owners in low-to-medium risk areas may insure both the building and its contents. Insurance on contents may not exceed $100,000.

Assuming the property owner has federal flood insurance, does the policy cover damage from a tsunami? The answer depends on the wording of the policy. The federal flood policy specifically covers damage from *tidal waters*. Tidal waves are not mentioned.

The NFIP policy defines a flood as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land or two or more properties (at least one of which is the insured property) from the overflow of inland or tidal waters, unusual and rapid accumulation of runoff of surface waters from any source, or mudflow. The definition does not include the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined by the policy.

The NFIP policy does not define *tidal waters* nor *tidal waves.* There may be an important distinction. The dictionary defines *tide* as the periodic rise and fall of the waters of the ocean produced by the attraction of the moon and sun. Tide is created by the gravitational pull of the moon and sun; high and low tides occur about every 12 hours. Black's Law Dictionary defines *tidal* as water (generally saltwater) that, in the regular course of things, flows and reflows. *Tidewater* is defined as water that falls and rises with the ebb and flow of the tide.

The dictionary defines a *tidal wave* as a large, destructive ocean wave produced by an earthquake, hurricane or strong wind. The definition of a tidal wave includes a tsunami, but the definition of tidal waters does not. Consequently, the question becomes whether the NFIP policy covers both tidal waves and tidal water. There is no answer to this question in the NFIP policy.

Assuming the NFIP policy covers tidal waves (because they are not explicitly excluded), property owners face yet another possible exclusion related to earth movement. The NFIP policy excludes coverage for a loss caused directly by earth movement even if the earth movement is caused by a flood. Examples of earth movement include earthquakes, landslides, land subsidence, sinkholes, destabilization or movement of land resulting from the accumulation of water in the subsurface or gradual erosion.

While the NFIP policy excludes earth movement caused by a flood, does it cover floods caused by earth movement (earthquakes)? The Southeast Asia tsunami is a prime example of what can happen. The answer depends on the use of the word *direct,* which is not defined in the policy.

If an earthquake shakes the foundation of a building, the resulting damage would be excluded under the NFIP policy because of the direct contact between the earth movement and the foundation. But, if an earthquake hundreds of miles away in the Gulf of Mexico causes a tsunami to damage the same foundation, is the damage direct enough to be excluded or indirect enough to be included? Again, the answer cannot be found by reading the policy.

Property owners may wish to investigate these and other issues with an insurance agent before purchasing the NFIP policy. The issues may be resolved by purchasing an endorsement, if one exists, for clarification or by getting a written interpretation from the agent and attaching it to the policy.

NFIP flood policies are not limited to property lying within the 100-year flood plain. With exceptions, flood policies are available to all property owners across the United States. The only differences are the premiums, which are based on the amount of coverage, deductibles and risk of flooding.

Flood risks depend on the elevation of the property. Property outside the 100-year flood plain receives Zone X designation. Property owners in Zone X with federally backed mortgages are not required to purchase flood insurance. However, being in Zone X does not guarantee a flood-free existence. Fifty percent of the Houston area damaged by Tropical Depression Allison lay in Zone X.

All property within the 100-year flood plain does not receive the same risk assessment. The exact height of the property must be ascertained from an elevation certificate issued by a surveyor. Flood risks (and premiums) are based on the certificate (or elevation) of the property.

Flood risks for a particular area can be estimated by going to FEMA's website at www.floodsmart.gov. Click on "What's your flood risk?" and type in an address, city, state and zip code. Once you know the risk, go back to the homepage and click on "Estimate your Premium." The average annual premium is about $432. In low-to-medium risk areas, premiums are less.

A local insurance agent may be helpful in securing a policy. FEMA lists local insurance agents on its homepage. Regardless of the agent, the policy will be issued by NFIP.

Homeowners with a NFIP policy who experience an insured loss must submit a signed and sworn proof of loss statement within 60 days as a condition to receive compensation.

Even if the property lies outside the 100-year flood plain, purchasing NFIP flood insurance may make sense. After all, in 2003, about 25 percent of all flood insurance claims came from areas rated low-to-medium risk.

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