

## ENSURING YOUR FLOOD COVERAGE WILL RESPOND WHEN YOU NEED IT

Dealing with Flood coverage has presented us with many challenges in 2010 and it does not appear as if it will get any easier any time soon. The first challenge was whether **the federal government would extend the NFIP legislation** so that this facility would remain funded. After a few starts and stops, the latest extension takes us to December 31, 2010, so we are good for the rest of the year (and Congress is also considering a five-year extension).

The second challenge has to do with FEMA. **FEMA is in the process of updating its U.S. flood maps.** Most of the work has been completed as FEMA has been working on this project since 2008. It expects to finish over the next three years. Property policies usually include a separate flood deductible and limit for locations in High Hazard Flood Zones (a/k/a Special Flood Hazard Areas [SFHA]). The challenge is how to address locations which are remapped by FEMA and change status to a High Hazard Flood Zone mid-term during the policy period. The insured could end up with a higher deductible, having lost any opportunity to purchase NFIP protection to help minimize the deductible because the insured was unaware of the change in status.

To combat this problem, we recommend that you:

- Clearly define in the policy what is meant by SFHA – within the territories covered by the policy in the United States, as it is commonly known as “The areas of a Flood Insurance Rate Map (FIRM) identified as Zone(s) A, AO, AH, AI-30, AE, A 99, AR, AR/A, AR/AE, AR/AI-30, AR/AH, V, VI-30, VE or VO”
- List all SFHA locations in the policy and include the full address to avoid any potential for confusion later on. Make it clear that SFHA locations are **only** the locations listed in the policy as SFHA locations.
- Attempt to endorse the following wording to the policy:

**“HIGH HAZARD FLOOD ZONE ENDORSEMENT**

For the purposes of determining which locations are located in a HIGH HAZARD FLOOD ZONE (a/k/a Special Flood



Hazard Area includes Zones A, AO, AH, AI-30, AE, A99, AR, AR/A, AR/AE, AR/AI-30, AR/AH, V, VI-30, VE or VO as defined by the Federal Emergency Management Agency), it is agreed that the flood zone identification contained in the schedule of locations provided to the Insurer at the inception of the policy period will be used to make such determination unless otherwise agreed by the Insured and the Insurer. If a location's flood zone changes to a Special Flood Hazard Area mid-term during the policy period, the change will be made at inception of the next policy period. If a location's flood zone changes from SFHA to a low hazard zone during the policy period, the change in the flood zone will be recognized by the Insurer. As respects locations added during the policy period, the zone identified at that time will apply and if the zone is not identified, then the Insurer will consider these locations as Zone X (an area that is determined to be outside the 100 and 500 year flood plains) for the balance of the policy period. A listing of all locations in High Hazard Flood Zones or SFHA is included in this endorsement.”

# KNOW HOW YOUR POLICY READS BEFORE THE LOSS!

When we are able to use manuscript wording, we can usually minimize the potential detrimental effects of certain language that underwriters attempt to insert into policies. However, when dealing with an insurer's own policy, more challenges present themselves. It is critical to understand exactly how the policy reads because each insurer's wording has its own quirks. The following examples demonstrate this point.

## EXAMPLE 1 ZURICH'S "EDGE" POLICY

*In this example, Zurich addresses High Hazard Flood in the limit, deductible and definitions sections.*

### LIMIT

**\$25,000,000 FLOOD** in the **Annual Aggregate** but not to exceed the following limits in the :

- a. **\$5,000,000** As respects Locations with any part of the **legal description** within a **100-year flood plain**.
- b. **\$10,000,000** As respects Locations outside a **100-year flood plain**, but with any part of the **legal description** within a **500-year flood plain**.
- c. Not to exceed **\$5,000,000** for the location at 1 Main Street, USA

### DEDUCTIBLE

The following deductibles apply to loss or damage caused by or resulting from Flood. This Flood deductible will apply regardless of any other deductibles that may also apply.

- i) \$100,000 per Occurrence except as follows:
- ii) As respects Locations with any part of the **legal description** within a 100-year flood plain:
  - aa) **Property Damage** - 5% of the value per the Valuation as of the date of loss, for the Location where the direct physical loss or damage occurred, per Location.

### AND

- bb) **Time Element** - 5% of the full 12 months Gross Earnings or Gross Profit values that would have been earned following the **Occurrence** by use of the facilities at the **Location** where the direct physical loss or damage occurred and all other **Locations** where Time Element loss ensues, per **Location**.

### DEFINITIONS

**Flood** - A general and temporary condition of partial or complete inundation of normally dry land areas or structure(s) caused by:

- a) The unusual and rapid accumulation or runoff of surface waters, waves, tides, tidal waves, tsunami, the release of water, the rising, overflowing or breaking of boundaries of nature or man-made bodies of water; or the spray there from all whether driven by wind or not; or
  - b) Mudflow or mudslides caused by accumulation of water on or under the ground.
- Flood** also includes the backup of water from a sewer, drain or sump caused in whole or part by **Flood**.

### 100-Year Flood Plain

**100-year flood plain** - Is an area defined by FEMA or any foreign equivalent as a **100-year flood plain**. In areas not defined by FEMA or any foreign equivalent, it is an area of land that has a 1-percent chance of being inundated by a Flood in any given year.

### 500-year Flood Plain

**500-year flood plain** - Is an area defined by FEMA or any foreign equivalent as a **500-year flood plain**. In areas not defined by FEMA or any foreign equivalent, it is an area of land that has a one fifth of 1-percent chance of being inundated by a **Flood** in any given year.

What does legal description mean?

For locations within the U.S., we should try to nail it down more specifically (i.e., Zones A, AO... etc.) and actually include a list of all locations that fall within the 100-Year or 500-Year Zones

## DESCRIBED CAUSES OF LOSS

### FLOOD

The Company will pay for direct physical loss of or damage to Covered Property, Time Element loss and Special Coverages loss as provided by this Policy, if such loss or damage is caused by Flood regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, **ensuing physical loss or damage by fire, explosion, theft, vandalism or sprinkler leakage** will not be considered to be loss by Flood within the terms and conditions of this Policy.

We prefer to see the words "by an insured peril" apply to ensuing loss

### PROBLEM ENCOUNTERED WITH ZURICH EDGE WORDING

A flood occurred at location thought to be outside of the 100-Year or 500-Year Flood Zone; however, when looking at the term "legal description" of location, the loss adjuster took the position that although the building at the location was not in the 100-Year or 500-Year Zone, legal description means the surveyor's plot plan on file with the local government entity, meaning: if the owned land, which the building sits on, is in the 100-Year or 500-Year Zone, then the High Hazard Flood Limit and Deductible will apply. **Instead of \$25,000,000 in limit and a \$100,000 deductible, the insurer tried to impose a \$5,000,000 limit and 5% deductible!**

## EXAMPLE 2 ALLIANZ POLICY

*In this example, Allianz addresses High Hazard Flood in the limit, deductible and definition sections.*

Program Sublimit(s)	Coverage, Coverage Extension, Additional Coverage, "Location", Property, or Peril
_____	FLOOD (Term Aggregate), sublimited as follows –
_____	FLOOD as respects "High Hazard Zones For Flood" (Term Aggregate)
_____	FLOOD as respects "Moderate Hazard Zones For Flood" (Term Aggregate)
_____	FLOOD for "locations" in The Netherlands (Term Aggregate)
_____	FLOOD as respects: <ol style="list-style-type: none"><li>1. AUTOMATIC COVERAGE;</li><li>2. ERRORS AND OMISSIONS;</li><li>3. EXHIBITIONS, EXPOSITIONS, FAIRS OR TRADE SHOWS; and</li><li>4. MISCELLANEOUS UNNAMED LOCATIONS</li></ol>
_____	(Term Aggregate)

Try to eliminate these areas where Allianz will try to add smaller limits

### DEDUCTIBLE

**FLOOD as respects "High Hazard Zones For Flood" or "locations" in The Netherlands:** \_\_\_% applies separately to (A) and (B) below:  
(A) PROPERTY DAMAGE – the value, per VALUATION, of the Insured Property (including foundations) at the "location" where the physical loss or damage occurred.  
(B) TIME ELEMENT – the sum of:

- (1) the full TIME ELEMENT values that would have been earned in the 12-month period following the "occurrence" by use of the facilities at the "location" where the physical loss or damage occurred; and
- (2) that proportion of the full TIME ELEMENT values, at all other "locations" where TIME ELEMENT loss ensues, that:
  - (a) would have been earned in the 12-month period following the "occurrence"; and
  - (b) was directly affected by the use of the facilities at the "location" where the physical loss or damage occurred.

The combined deductible for PROPERTY DAMAGE and TIME ELEMENT is subject to a minimum of \$\_\_\_\_\_ per "occurrence".

Allianz will also try to impose a % deductible on High Hazard Zones

Allianz will also try to impose a % deductible on Moderate Hazard Zones

**FLOOD as respects "Moderate Hazard Zones For Flood":**

\_\_\_% applies separately to (A) and (B) below:

(A) PROPERTY DAMAGE - the value, per VALUATION, of the Insured Property (including foundations) at the "location" where the physical loss or damage occurred.

(B) TIME ELEMENT - the sum of:

(1) the full TIME ELEMENT values that would have been earned in the 12-month period following the "occurrence" by use of the facilities at the "location" where the physical loss or damage occurred; and

(2) that proportion of the full TIME ELEMENT values, at all other "locations" where TIME ELEMENT loss ensues, that:  
(a) would have been earned in the 12-month period following the "occurrence"; and

(b) was directly affected by the use of the facilities at the "location" where the physical loss or damage occurred.

The combined deductible for PROPERTY DAMAGE and TIME ELEMENT is subject to a minimum of \$\_\_\_\_\_ per "occurrence".  
\$\_\_\_\_\_ per "occurrence".

**FLOOD at all other "locations":**

**DEFINITION**

**FLOOD**

a. This "policy" covers direct physical loss or damage to Insured Property at Insured Location(s) caused by or resulting from "flood". However, direct physical loss by **fire, explosion or sprinkler leakage** resulting from "flood" is not considered to be loss by "flood" within the terms and conditions of this "policy".

b. The following definition applies wherever the defined term appears in quotation marks:

(1) The term "flood" means:

(a) storm surge;

(b) rising water;

(c) surface water;

(d) waves;

(e) tide or tidal wave;

(f) rain accumulation;

(g) runoff from natural or man-made object;

(h) the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water, or the spray therefrom; or

(i) surface water or sewer backup resulting from any of the foregoing;

all whether driven by wind or not, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

(2) The term "High Hazard Zones For Flood" means:

(a) all property at a "location" that is **partially or totally situated** in an area which at the time of loss or damage has been designated on a Flood Insurance Rate Map (FIRM) to be a Special Flood Hazard Area (SFHA);

(b) all property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at a "location" is partially or totally situated in an area which is within a one hundred (100) year flood plain or its worldwide equivalent; or

(c) all property at a "location" that is **partially or totally** protected by dams, dikes, levees or walls which are intended to protect such property from the level of a one hundred (100) year flood or its worldwide equivalent, regardless of any Zone or Area designation or assignment by Federal Insurance and Mitigation Administration (FIMA) or other recognized authority having jurisdiction.

(3) The term "Moderate Hazard Zones For Flood" means:

(a) all property at a "location" that is **partially or totally situated** in an area which at the time of loss or damage has been designated on a Flood

With respect to ensuing loss, Allianz only includes fire, explosion or sprinkler leakage v. Zurich's policy which also adds theft and vandalism; again, we prefer to see ensuing loss from "an insured peril"

Instead of "legal description", Allianz uses "partially or totally situated" to address their concerns

Insurance Rate Map (FIRM) as Zone B or X-shaded but is not in a Special Flood Hazard Area (SFHA); or

- (b) all property in areas where the National Flood Insurance Program (NFIP) is not in effect, and where all property at a “location” is situated in an area which is outside of a one hundred (100) year flood plain or its worldwide equivalent, but partially or totally within a five hundred (500) year flood plain or its worldwide equivalent.

Regardless of any Zone or Area designation or assignment by Federal Insurance and Mitigation Administration (FIMA) or other recognized authority having jurisdiction, “Moderate Hazard Zones For Flood” does not include any property at a “location” that is partially or totally protected by dams, dikes, levees or walls which are intended to protect such property from the level of a one hundred (100) year flood or its worldwide equivalent.

### **PROBLEM ENCOUNTERED WITH ALLIANZ WORDING**

Whether it is Zurich wording “legal description” or the Allianz wording “partially or totally situated” – either can be problematic, and you could find yourself in a situation where there is a difference in opinion on what is a High Hazard Flood location.

The Allianz definition of High Hazard Flood is very concerning because in c) the wording says if the location is in 100-Year Flood area protected by dams, dikes or levees, Allianz will treat this as a High Hazard Flood location **regardless** of the actual flood zone designation.

The whole topic of levees (especially in Arizona and California) was recently highlighted in a **USA Today article** published September 10, 2010 and in **The Wall Street Journal article** published November 29, 2010.

## **CONCLUSION**

The topic of flood cannot be taken lightly and requires a thorough review of both coverage and exposure. Space here permits examples for just a few carriers, but all carriers’ wordings need to be reviewed carefully with the suggestions in this article in mind. Our National Property Practice (NPP) is available to help you work through this process. The contacts by region for NPP are shown below.

### **David Finnis – NPP Leader**

david.finnis@willis.com

404 302 3848

### **Jim Costner – NPP Resource**

james.costner@willis.com

612 872 3421

### **Quentin Van Marcke de Lummen – Atlantic Region**

quentin.vanmarckedelummen@willis.com

804 527 2355

### **Dick Forand – Midwest Region**

dick.forand@willis.com

312 621 4774

### **Mary Broderick – New England Region**

mary.broderick@willis.com

617 351 7432

### **Paul Richardson – Northeast Region**

paul.richardson@willis.com

212 915 7939

### **Derek Whipple – Northwest Region**

derek.whipple@willis.com

415 955 0223

### **David Hartline – South Central Region**

david.hartline@willis.com

303 996 6723

### **Ed Atherton – Southeast Region**

ed.atherton@willis.com

404 224 5150

### **Frank Beuthin – Southwest Region**

frank.beuthin@willis.com

213 607 6341

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