



Anatomy of a

HAIL CLAIM



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Colorado ranks #2 in hailstorm property losses,¹ with estimated losses exceeding \$2.286 billion over the last five years.² Subsequently, the dynamics and requirements for proper recovery after a hail and/or windstorm have evolved. It has never been more challenging for Colorado Community Associations to fully recover all amounts owed under an insurance policy following a damaging hail or wind storm.

The goal of every insured, in the event of a loss, is to recover all money properly owed under its insurance policy as quickly and painlessly as possible, so

damaged property can be repaired. When explaining the anatomy of a hail claim to policyholders, I use a simple analogy of the two “hurdles” that must be jumped in order to fully recover after suffering a hail and/or wind storm loss. Those two hurdles are the “Coverage” hurdle and the “Amount of Loss” hurdle. Both hurdles uniquely affect the claims investigation and adjustment processes, as well as the settlement or dispute resolution methods available to an insured community in the event of a disagreement with their insurance carrier.

The Coverage Hurdle

Simply explained, overcoming the coverage hurdle is accomplished upon the acknowledgement by an insurance carrier that a loss has occurred and caused damage to property, that the damage occurred during the insurance company’s policy period, and that the loss was caused by a peril that the applicable insurance policy insures against.

The coverage hurdle is overcome when the carrier acknowledges a single dollar is compensable under the policy for the given loss, even if the dollar value of that damage is below the deductible. Overcoming the coverage hurdle can be as simple as an adjuster inspecting the property and confirming there is coverage due under the policy, or it can require an exhaustive investigation by the policyholder and experts to corroborate the cause and extent of the loss and that coverage is due under the policy. For a policyholder, establishing the cause of loss and overcoming the coverage hurdle frequently requires a comprehensive investigation utilizing the services of specialized experts such as Forensic Meteorologists, Forensic Engineers, Building Consultants, Roofing Consultants, Contractors, and scientific laboratory testing.

One of the most common defenses of insurance companies in a hail claim investigation is what the industry refers to as “post loss underwriting”. That is to evaluate and take into consideration the condition of the property only after a notification of loss

is provided, rather than at the inception of the policy and the acceptance of the policyholder's premium and the promise of coverage in the event of a loss. This generally goes hand in hand with the company's assertion that any observable hail damage to a building predated the inception of their company's policy period. This defense is common with insurance companies in hail claims, specifically in Colorado, due to the frequency of hail storms and the overwhelming amount of hail caused damage that goes unidentified by policyholder's on a year over year basis. This commonly leads to an insurance company identifying a historic weather event that they assert was more severe than that of the pending claim, and the subsequent attempt to place the cause of the damage on that other storm and the insurance company whose policy was in effect at that time, seemingly without limitation. Our firm has personally experienced insurance companies attempt to attribute hail damage to a storm 30 years prior to the inception of their policy.

What is important to understand is the impact of the specific type of insuring agreement in your insurance policy, on the burden of proof that must be met in order to assert any exclusion under a property insurance policy. Specifically, does the policy provide coverage on a "Named Peril" or "Open/All Peril" basis. This distinction has a direct and significant impact on who bears the burden of proof in establishing its claim and corresponding position on the loss and subsequently has a profound impact on an insurance company's attempt to "Post Loss Underwrite" a loss. It is important that an insured understand the nature of its coverage, so we encourage community associations to consult its agent, attorney or a licensed public adjuster.

There are several steps an insured can take to prepare for a possible claim due to hail and/or wind damages that can be instrumental to overcoming the coverage hurdle as painlessly and expeditiously as possible. The most critical steps are:

- **Obtain Proper Documentation of Property Conditions NOW**

Having a full analysis of your property done by a well-trained insurance claims professional will ensure that all facts and evidence that can become of material significance are fully and properly preserved into evidence. This should include some baseline testing of the building envelope such as moisture surveys, leak mapping, and complete photo documentation. Having such an evaluation done by typical contractors and/or maintenance professionals will not suffice.

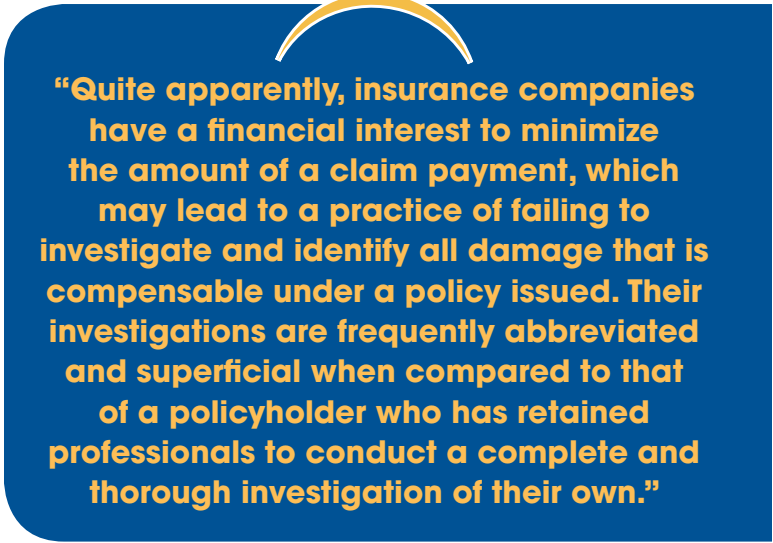
- **Obtain Prior Insurance Inspection Reports**

Request a copy of any property inspection reports and underwriting reports that have been performed by your insurance company, agent or broker, to include photos. These reports can provide crucial evidence in support of a community association's claim, however they can be nearly impossible to obtain following a notification of loss, so be proactive and get them now.

The inability to overcome the coverage hurdle relegates a policyholder to resolving a claim dispute in a Court of proper jurisdiction, as coverage disputes cannot be adjudicated in any other venue. Subsequently, the coverage hurdle is the most important to overcome in the pursuit for a fair and complete settlement by an policyholder in the most painless manner possible.

The Amount of Loss Hurdle

Overcoming the amount of loss hurdle is the process of identifying and agreeing to the scope of the covered damage and the corresponding costs associated with completing those repairs. In my experience, this is where the majority of claims encounter disagreements, and conflicting positions between policyholders and insurance companies arise, for two prevailing reasons; The first is failure by an insurance company to fully investigate a loss with a view to identifying all damage potentially covered, sometimes combined with employment of outcome-oriented experts, consultants and contractors, who whether intentionally or unintentionally, undervalue the extent of damage and the amount of loss.



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Quite apparently, insurance companies have a financial interest to minimize the amount of a claim payment, which may lead to a practice of failing to investigate and identify all damage that is compensable under a policy issued. Their investigations are frequently abbreviated and superficial when compared to that of a policyholder who has retained professionals to conduct a complete and thorough investigation of their own. These complete and thorough investigations frequently expose extensive omissions and oversights on the part of an insurance company. I cannot begin to quantify the amount of time our firm spends overcoming these types of superficial or misleading investigation results and expert analyses, but it is without question the overwhelming majority of our time spent in most hail and/or wind claims.

In addition to incomplete and truncated investigations, insurance companies are the faucet by which many contractors, engineers and construction consultants rely for a steady stream of business. The service providers are commonly beholden to these insurance companies and will do what they must to keep insurance companies happy. This usually means investigation results, scopes of repairs, and estimates that serve an insurance company's needs, but are rarely congruent with the coverages purchased by a policyholder or compliant with the general best construction practices in the industry. This factor also frequently contributes to suppressed claims payments and disputes regarding the extent of damage and the amount of loss.

Dispute Resolution

Unlike a coverage dispute, which again can only be put before a Court, a dispute regarding the amount of loss can be resolved in several alternative fashions. Most policies of insurance outline an alternative dispute resolution method called Appraisal. In an appraisal, both the Insured and Insurer select and retain an appraiser, who will take a fresh look at the claim and come to their own independent conclusions of the "Amount of Loss". Both the chosen appraisers will also select an Umpire, who will be the tiebreaker in any disputes that the Appraisers cannot resolve amongst themselves. The Appraisal process is a powerful alternative dispute resolution method, which is intended to be a faster and less costly remedy when compared to litigation. An appraisal also puts an "amount of loss" determination into the hands of industry professionals – Insurance Adjusters, Public Adjusters, Engineers, Contractors, Lawyers and Judges – which generally leads to a more accurate determination of the amount of loss, when compared to that of a jury of civilians unfamiliar with insurance principles and construction requirements.

In addition to appraisal, disputes regarding the amount of loss can be resolved through mediations or arbitrations, which can also be a more expedient, inexpensive, and accurate remedy when compared to litigation. This is why the Coverage hurdle is so important to cross over when dealing with a hail and/or wind claim.

Summary

Insurance policies are complicated, as are their provisions and how they impact the claims investigation and adjustment process, the duties and obligations of the insured in the event of a hail and/or wind loss and the methods for resolving disputes.

Most community associations do not appreciate that under an insurance policy it is incumbent upon you to present a claim for damages to your insurance company in the event of a loss; that is to say, it is your responsibility to tell your insurance company how much it owes you and why. Understanding how varying types of insuring agreements and forms affect the burden of proof, how a community association's governing docs and insurance policy integrate with coverage, and how principles of insurance drive the amounts that are due to a community in the event of a hail and wind loss requires extensive experience and specialized training. It is imperative to proper recovery and ensuring both claim hurdles are overcome, that policyholders secure independent evaluations from specialized professionals following a hail or wind storm, rather than relying solely on your insurance company to tell you what they owe you.

Never assume that your insurance company has conducted a thorough, complete and fair investigation. No matter how long their investigation takes, how many consultants or experts they retain, how polished their expert's reports are, or how well thought out their position appears to be - CONDUCT YOUR OWN INVESTIGATION! ⬆

Derek O'Driscoll is a Licensed Public Insurance Adjuster, and the President of Impact Claim Services, LLC, a Colorado based public adjusting, claims management and roof consulting firm. Derek and his firm specialize in securing fair and complete recoveries for property owners on large complex losses caused by hail and wind, specifically to commercial and multi-family properties throughout the country. Learn more about them at www.impactclaimservices.com

- 1 According to a 2016 report by the National Insurance Crime Bureau.
- 2 According to the Rocky Mountain Insurance Information Association, reference of 2015 estimated cost calculations based on the Consumer Price Index.

Marcus Dumville Joins Orten Cavanagh & Holmes, LLC

Marcus had his own law practice as a solo attorney before joining the firm as a Community Association and litigation attorney. Marcus obtained his J.D. from The University of Oklahoma College of Law. He is a member in good standing of the Colorado Bar Association, the RMC of CAI and the Southern Colorado Chapter of CAI. Marcus also earned a BSBA in Marketing from The University of Denver Daniels College of Business.

Outside of practicing law, Marcus enjoys everything that life in Colorado has to offer, including snowboarding, hiking, attending concerts at Red Rocks Amphitheater and basketball. Marcus was raised overseas in the small town of Udhailiyah, Saudi Arabia where he developed a deep love of traveling the world. He is also passionate about reading, philosophy, politics, and the Los Angeles Angels of Anaheim. "We are excited to welcome Marcus into our HOA law firm. His skills and experience as a litigator will be a great addition to Orten Cavanagh & Holmes LLC," said Managing Partner Jerry Orten.

Orten Cavanagh & Holmes, LLC founded in 2005. The mission of the firm is to provide communities and associations with timely, value-oriented legal services. For more information, visit <http://www.ochhoalaw.com>.

