

Subrogation and Recovery for Winter Storm Jonas

Historic Snow Accumulation from Winter Storm Jonas

After a mild start to the winter of 2015-16 on the East Coast, Winter Storm Jonas slammed the Southeast with high winds and ice and the Mid-Atlantic states with historic snow totals from January 22 to 23. From Washington to New York, between 22 and 28 inches of snow fell at times in blizzard-like conditions. Fourteen states received more than a foot of snow, with 42 inches in West Virginia.

The snowstorm was both destructive and costly. It impacted more than 70 million people in the South, East and Ohio Valley. The total economic damage is still being computed.



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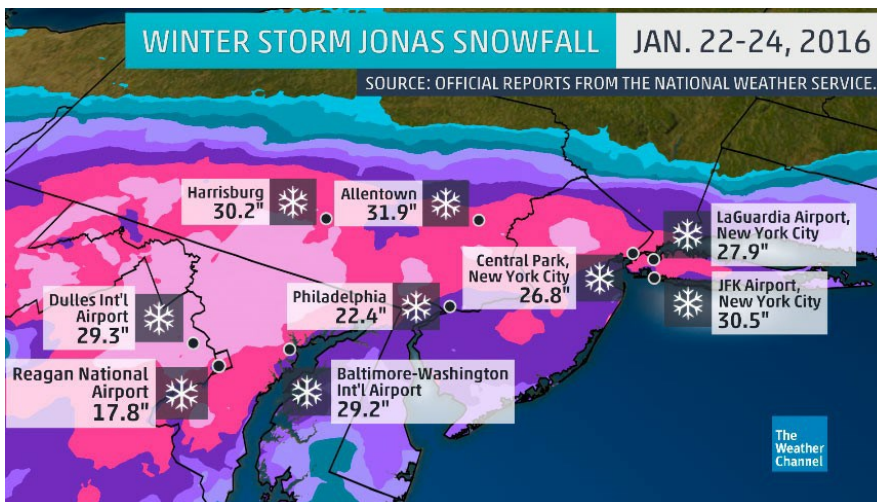
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Subrogation Opportunities

Roof Collapse

Thousands of roofs across the country collapse each winter due to heavy snow buildup. We expect Jonas to have its share. The melting of such accumulation also causes water seepage that rots roofs, destroys insulation, floods attics, ruins gutters, and damages the interior of homes.

Warning Signs

Sagging is the most obvious warning sign of roof collapse. Severe roof leaks, bowed pipes attached at the ceilings, cracks in walls or masonry, and doors that pop open are also signs that a roof is about to give way. In addition to roofs, DIY decks may not be built in accordance with coding standards and are highly susceptible to collapse under the weight of snow and ice.

Once snow buildup occurs or ice dams form, a rake is the best way to remove snow from the roof. Roof rakes have extended handles that enable homeowners to pull snow off of the roof from the safety of the ground. Metal snow rakes should be used cautiously, as they conduct electricity if they come into contact with power lines. Moreover, ladders should be avoided because rungs can freeze in cold weather and cause slippage.

Causes of Roof Collapse

Freezing rain and snow loads impose a positive pressure downward on roofs and weaken their

structures. In fact, two feet of snow on an average-sized roof can be the equivalent of 38,000 pounds, or 19 tons, of pressure. Additionally, wind loads can cause a negative pressure uplift on roofs. These loads must be accommodated through the structural design of the building and safely transferred into the foundation.

The amount of snowfall from a particular storm rarely exceeds the flat roof snow loads that roofing systems are designed to support. However, conditions such as unbalanced snow loads, drifting, sliding snow, and rain-on-snow loads can drastically increase the vertical roof load on concentrated areas of a building. If the framing and structural support has not been designed to account for these conditions, it can cause catastrophic damage.

Subrogating Roof Collapse Claims

An adjuster's primary goal is to evaluate the viability of a roof collapse claim through immediate investigation. Critical evidence, such as snow accumulation or wind speeds, may disappear quickly. In this way, documentation is imperative. If possible, take extensive photographs and videos of the failed area before emergency repairs are performed. Document the site before corrosion significantly alters the post-loss condition and depict the extent and scope of damages. Building codes and design criteria are based upon the weight of snow loading. Therefore, in addition to measuring snow depth, it is also necessary to measure its weight per square foot.

Additionally, there is no substitute for on-site measurements. Although National Weather Service data is convenient and available, it is only a starting point. Accumulated snow depths, drifting, and wind speeds can vary dramatically over relatively short distances from reporting stations. Thus, on-site measurements provide the most accurate and reliable data.

Where snowfall or high winds cause damage to roofing materials, consider whether neighboring buildings suffered similar damage. If not, the loss site may have deficiencies in the building design or construction that rendered it incapable of meeting minimum code requirements. This may signal that further inquiry is appropriate.

A qualified engineer or other expert may be needed to thoroughly examine the loss site and identify the failed components before the collapsed structure is disturbed. This will confirm whether the structure was built to conform to the contract plans, specifications, and applicable building codes. This decision should be made in consultation with subrogation counsel and the consultant should be advised not to disturb the failed structure unless it is absolutely necessary to make emergency repairs.

Downed Power Lines

Snow, ice storms, freezing rain and high winds during extreme winter weather can lead to power outages and electrical surges and can cause fires.

Many states have adopted industry standards regulating the safety of utility lines. These standards require electric utility companies to prune trees away from power lines and other electrical equipment. They also require utilities to proactively inspect for and remove vegetation that pose a risk to wires. In this way, distinct engineering and scientific disciplines may be required to investigate the cause of the downed power lines and the extent of the damage. This decision should be made in consultation with subrogation counsel and the consultant should be advised not to disturb the downed wires unless it is absolutely necessary to make emergency repairs.

In order to effectively evaluate the viability of a downed power lines claim, immediate investigation is key. Critical evidence, such as weather conditions and witness accounts, may disappear quickly. Thus, documentation of the site before corrosion significantly alters the post-loss condition is important. If possible, take extensive photographs and videos of the loss before emergency repairs are performed and depict the extent and scope of damages.

On-site measurements provide the most accurate and reliable accounts of wind speeds, snow and freezing rain accumulation, and other meteorological conditions at the time of the loss. In this way, thorough analysis of the loss site and surrounding structures should be considered and well-documented.

Subrogation Considerations

Tough decisions must be made relative to the investigation of winter weather subrogation claims. The first item of business is typically securing the scene and beginning remediation. In doing so, however, adjusters must be mindful of the ways in which a potential claim may be prejudiced.

Immediate On-Scene Investigation

It is important to immediately evaluate the viability of recovery and to determine if a lawyer, engineer, and/or expert should be consulted. Timing is critical because evidence and opportunity may be lost if decisions are not made promptly. The best time to measure and investigate accumulation, damages, and effects is during or shortly after a storm.

All evidence should be preserved in its original condition and should not be altered or damaged during removal. If possible, take pictures of evidence before emergency repairs are performed and document how evidence is removed from the loss site. Photographs should depict not only the origin of the loss but also the extent and scope of damages in the surrounding areas.

Steps taken to mitigate the loss, protect evidence, and identify potential responsible parties should not be considered spoliation of evidence.

Statute of Limitations and Statute of Repose

Some jurisdictions have unique Statutes of Limitations for claims against government entities. It is important to be familiar with the law in all jurisdictions relevant to the loss.

A Statute of Repose acts as an absolute bar to claims for property damage arising out of a defective or unsafe improvement to real property after a certain period of time. These statutes protect design professionals and contractors. They typically begin to run when a project is “substantially completed,” meaning the time frame can expire even before a property loss occurs. In this way, it is important to be familiar with the Statute of Repose in all jurisdictions relevant to the loss.

Notice of Claims

Many states require a plaintiff to file a notice of claim as a prerequisite to filing a lawsuit. Although not every jurisdiction has a notice requirement, claims can be barred for failure to comply with jurisdictions that do. In some states, the notice requirement is as short as 60 days from the date of the loss.

Act of God Defense

Government entities are not liable for damages caused by “extraordinary events.” In other words, a government entity cannot be held accountable for a snowstorm that it could not anticipate. Because this defense turns on the definition of “extraordinary event,” evidence of recent severe winter weather can be used to argue that large-scale storms are foreseeable and ordinary.

Conclusion

Winter Storm Jonas serves as an example that extreme winter weather events, whether caused by climate change or historical precedent, are no longer an anomaly. Moreover, the frigid temperatures recorded across the country last winter foreshadow that this blizzard is likely not the only superstorm to occur this winter. Viable recovery opportunities for claims arising from extreme winter weather can be identified and pursued.

Cozen O'Connor stands ready to assist with any questions you may have regarding subrogation and recovery opportunities for winter storms.