BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

ARE YOU WEATHER READY? UNDERSTANDING YOUR COVERAGE

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It's raining outside and he winds are howling. There are water leaks throughout your home and you are running around your home trying to dry up the puddles and wipe down the watermarks and stains. All the while, you are thinking as soon as the day breaks, you are going to call your insurance company to report the obvious water damage to your home so that it can assist you in making the necessary repairs by paying for the damage. But instead, two weeks later, when the insurance company's adjuster comes to your home to inspect the damage, he announces to you that he does not see any openings through which the rain entered your home. He tells you there are wear and tears in your roof and your windows and that your policy excludes coverage for wear and tear. He also tells you that there were no openings created by the wind or any other peril that the insurance policy covers. The adjuster then shows you the language in your insurance policy, which is standard in most homeowner's policies as well as commercial insurance policies that the insurance company does not cover damage to the interior unless a covered peril created the opening. Yikes! Believe it or not, this is a common scenario. And, Florida courts have generally enforced provisions requiring a covered peril to have caused the opening, which allowed the elements—usually rain—to enter into and damage the interior of your home.

Good News--this is not the end of the story because the origin of the source of the opening is a factual question and one in which is generally the subject of opinions by experts. That means whether it is your home or your business, it is critical to retain skilled professionals who can assist you in identifying the causes of the opening that the insurance policy covers. Moreover and significantly, the burden to prove the cause of the opening was due to a covered peril is generally not on the insured. Rather, the insurance company has the burden to prove its exclusions. That means, the insurance company must first prove the cause of the opening was the result of something the policy does not cover falls on the insurance company. Generally, insurance policies insure "all risks," which means that unless there is a specific exclusion in the policy, the policy covers the loss. That means, in response to the insurance company's contention of exclusion, the policyholder does not necessarily have to prove any particular cause—just that the cause of the opening is something other than an excluded peril. And generally, the policyholder does not have to show that the non-excluded cause was the sole cause, but rather there will still be coverage even if the non-excluded cause combined with an excluded cause to create the opening.

Should you have any questions or concerns about your policy, your claim, or your insurance carrier's obligations, please do not hesitate to contact Michael J. Higer of Berger Singerman's Insurance Team.

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