

## **Flood disaster made worse by some insurers**

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Any kind of disaster insurance can be very tricky.

Fine print in a policy can mean the difference between having the money to rebuild – and having nothing. But, reports Julie Watts, of CBS station KPIX in San Francisco, a dispute over what caused a flood disaster in one California city in May is leaving many policyholders high and dry.

For many in Capitola, it still seems like a bad dream.

“People were trying to walk against the current,” says Carin Hanna, of Craft Gallery.

While the coastal community is no stranger to flooding, this time, there was no warning.

“It usually comes up from the ocean,” says Joyce Murphy, of Pacific Gallery, “or up from the river, and we have plenty of time to sandbag. But this came the opposite way.”

That’s because “this” was no typical flood.

Engineers blame an old pipe that broke unexpectedly during an average-sized storm.

“That next day,” says Murphy, “we just shoveled mud. All you did is just shovel mud,”

But the following day, a larger storm rolled in and, with no pipe to control the water, it turned Capitola into a lake

In its wake — a city filled with mom and pop shops that was already on the brink.

It was, says Hanna, “very emotional for a lot of people ... here.”

And they soon realized the flood was just the beginning of their nightmare.

Next, the Federal Emergency Management Agency (FEMA) denied disaster relief. Then, many insurance companies did the same.

“The people who had flood insurance were thrilled,” Hanna recalls, “because, finally, their flood insurance policy was going to pay off — until their insurance company said, ‘No. We don’t think it was a flood, we think it was a broken pipe.’ So then, claimants turned to their liability, but the insurance company said, ‘Oh, no, we think it was a flood.’”

Hanna is one of the lucky ones – the Craft Gallery is back in business, thanks to her small private insurer, Golden Eagle, which found the broken pipe to be a covered cause of loss.

But for others, such as a very emotional David Ross, “It basically broke my back, emotionally and

financially.”

He isn’t talking about the flood. He’s talking about the insurance company’s response on covering damage.

“I don’t have funds to go on,” Ross laments.

His dreams of franchising the popular Carousel Taffy Store have now been crushed. His savings have been spent repairing flood damage, because Allied Insurance denied his claim.

And he’s not alone.

The owner of the Kinkade Galley says, “It was just like a lake” in the shop.

That claim was also denied, by Allied, a subsidiary of the Fortune 500 company, Nationwide.

Mocking that company’s well-known ad slogan, policy attorney Gerry Mannion remarked, “Nationwide, who’s on your side? Not in this instance.”

He reviewed both policies, along with insurance advocate, Amy Bach.

How is it possible that two insurers can come up with two completely different findings for the same disaster?

“Well,” says Bach, “they would tell you, ‘We have different policy language.’”

But the primary difference they find is the “efficient proximate cause” — or what the insurer says “caused” the loss.

At first, Allied denied the claims, stating the damage was due to “surface water” — a policy exclusion.

But engineers point out that surface water was caused by a broken drainpipe.

Says FEMA contractor Clark Stoner, “The water would have been controlled had the pipe not broken; it’s really due to pipe failure.”

Stoner points out that those findings have been widely reported.

And Mannion notes that, damage due to pipe failure is covered.

But, when the Kinkade Gallery reminded Allied of the “drain water damage” coverage in its policy, the company sent a second denial, citing what experts say is an obscure clause that limits coverage 10 days before “or after” a flood — which is, says Mannion, “when you are most likely to have this exact loss.”

Mannion says, in 34 years, he’s never seen coverage that limits drainpipe damage before a flood, since drain damage is likely to cause a flood.

“That’s the perfect example of a hidden, fine print. legalese exclusion,” Bach says.

And she observes that, in order to enforce an unexpected clause, Allied — or any insurer — would have to prove it previously made it clear to the policyholder.

We brought this to Allied’s attention, and pointed out it only limits coverage for sewers and sump pumps – not drain pipes.

Allied's response: "The facts do not support the cause of the flood was mechanical failure of a pipe." From a practical standpoint," says Mannion, "the only thing you can do is sue them."

Ross, in tears, said, "That's a tough one."

Back at the taffy shop, that news is heartbreaking.

Unless he sued Allied, Ross was out of options. He's now decided to sue.

Advocates advise that, when taking on big insurance companies, you should be sure to hire a policy lawyer with an insurance background who agrees to work on contingency.

This case really demonstrates the need for a good agent or broker to help you select your policy.

Someone should have noticed that clause Allied wound up using to deny the claim. Also, a good agent would help fight for you if need be.

In Capitola, there were many positive stories about insurers going above and beyond for people in Capitola. That prompted some to switch over to those insurers. But advocates warn against that, saying you can't predict future insurance company performance based on past performance: They may not necessarily pay out following the next disaster.