

### **FALL 2008 SUBROGATION NEWSLETTER**

Fall is here. It is time for tailgating, fall foliage, shorter days and cooler nights. Unfortunately, it is also a time when Pennsylvania and New Jersey get hit with severe weather events that can cause flooding, wind and water damage claims and eventually potential claims for subrogation.

When presented with weather related claims, adverse carriers often argue that the wind, rain and flooding were Acts of God and that, as a result, their insured can not be held responsible. Both Pennsylvania and New Jersey, however, place a high burden on the Defendant claiming the damages were caused by a weather event beyond the Defendant's control.

In Pennsylvania, the Defendant must prove the weather phenomenon that "was so unpredictable, so extensive, and so unprecedented in vehemence and destructive fury, that the Defendant could not have made preparations to prevent or mitigate the catastrophic effects." Goldberg v. R. Grier, 408 Pa. 1, 9 (1962)(Emphasis Added). New Jersey law defines an act of God as an "unusual, extraordinary and unexpected manifestation of the forces of nature . . . which can not be prevented by reasonable foresight and care." Maussner v. Atlantic City Country Club, 691 A.2d 826 (NJ Super. App. Div. 1997).

Thus, the Defendant must prove that the weather event was both severe and unexpected. The Defendant's position can be challenged with weather forecasts, meteorological records quantifying the amount of wind/rain and historical weather data for that location. Often, the weather event was predicted and was not as severe or as unprecedented as claimed.

#### **Subrogation Tip**

In most cases, the force of nature or act of god defense should be examined closely and challenged by the subrogating carrier.

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