



## Insurance Legal Update

### Mississippi Supreme Court Issues Important Ruling in Hurricane Katrina Litigation

On October 8, 2009, the Mississippi Supreme Court issued an opinion in *Corban v. USAA*, No. 2008-IA-00645-SCT, addressing several important property insurance coverage issues arising from Hurricane Katrina. The court held that "storm surge" was unambiguously excluded by standard water damage exclusions, finding that "storm surge" constituted "flood" and "overflow of a body of water." The court also held that wind damage that occurs before the flood or storm surge waters arrive is covered, regardless of whether the floodwaters later cause damage to the same portion of the property that was damaged by wind. The court further held that an anti-concurrent cause clause in the water damage exclusion excludes coverage only if the covered and excluded perils occur truly simultaneously and cause the same loss. The court rejected an argument by Nationwide Insurance (as *amicus curiae*) that any loss that would have been caused by the storm surge is excluded, even if that portion of the property was damaged by wind before the storm surge arrived. The court also held that, under an open peril (sometimes called "all risk") coverage, once the insured has established "direct physical loss" to the property, the insurer must indemnify for any damage that it cannot prove was caused or concurrently contributed to by flood.

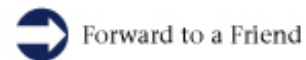
This decision appears unlikely to have a significant impact on carriers that have taken the position in adjusting claims that identifiable wind damage occurring before the floodwaters arrive is covered regardless of whether the same item of property is later damaged by flood. The decision will be problematic for carriers such as Nationwide, that have taken the position that anything damaged by flood at any time is excluded even if it is evidence that the same item of property was damaged by wind before the floodwaters arrived.

Robinson & Cole attorneys Stephen E. Goldman and Wystan M. Ackerman were of counsel to the American Insurance Association as *amicus curiae* in the *Corban* case. Attorneys Goldman and Ackerman have litigated a number of high-profile putative class actions and insurance coverage cases arising out of Hurricane Katrina. They also regularly represent insurance companies in market conduct and coverage class actions and other complex litigation.

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