

Hurricanes Likely to Leave Controversy in Their Wake (Again)

by STEVEN KASS

With four major Hurricanes hitting Florida this year, the afterwinds of the storms are already striking the insurance industry. Building upon the lessons of Hurricane Andrew, insurers modernized their pricing and forms over the past decade, leaving the industry in a better position financially to weather these catastrophic losses. But the lessons of Hurricane Andrew also promise interesting legal times over the next few years, as billions of dollars of insured losses are settled and allocated.

Under strong pressure from the Florida Department of Insurance, the industry endeavored to do the right thing after Andrew. Consumer claims were rapidly and generously settled. Then the sorting out began. Three principal categories of legal matters developed, all of which are beginning to repeat themselves.

First, although homeowner's claims were settled quickly and fairly, litigation relating to commercial property and related coverages, such as business interruption, was rampant after Hurricane Andrew. And as South Florida rebuilt, a torrent of insurance-related construction litigation ensued. *In what became a fairly typical field of battle post-Andrew, Jorden Burt represented the insurer of a homeowners' association in litigation with a major construction company over the costs (and cost overruns) of rebuilding a large residential community's common areas.*

Loss reallocation through reinsurance was also a fertile ground for dispute after Andrew, with a number of complex issues playing out between and among insurers, reinsurers, and intermediaries. *Jorden Burt represented the managing general agent for two complex reinsurance facilities involving commercial and residential property and casualty risks highly concentrated in the South Florida area in its successful efforts to collect in excess of \$50 million from participating reinsurers who had complained of fraud in the placement of the reinsurance. This representation entailed multiple arbitrations, as well as litigation in various state and federal courts over ancillary issues.*

Contentious regulatory issues with the Florida Department of Insurance also developed after Hurricane Andrew, as the DOI took a hard line on rate and form changes, and then reacted to the exodus of reinsurers from the market and the concomitant efforts of carriers to reduce their writings in Florida, or to withdraw from the market altogether. The DOI issued a series of "temporary" emergency rules and adopted a number of informal positions that the industry found problematic, including unprecedented administrative orders precluding insurer withdrawal from the Florida market. *Jorden Burt represented insurers in negotiations with the DOI, formal administrative challenges to Departmental rulemaking, and, in some cases, judicial review of agency action.*



Emergency Orders from Florida Office of Insurance Regulation Make Landfall

The magnitude of losses from the 2004 storms will inevitably raise solvency and pricing concerns (particularly in view of the recent moratorium on policy cancellations mandated by the Office of Insurance Regulation). Even for insurers not pushed toward the brink, there will be new pressure to bolster their capital base. These stresses have already led to at least one rehabilitation proceeding.

Although it is difficult to predict the precise pressure points that will follow Hurricanes Charley, Frances, Ivan and Jeanne, it is an actuarial certainty that the industry will be buffeted by the afterwinds from these storms.