

# ***SUBROGATING AGAINST GOD?***

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The nemesis of most insurance carriers is the natural disaster. When God sends a hurricane, tornado, flood or a naturally occurring fire, the resulting claims can be enough to put many carriers out of business. With no third parties or subrogation potential, these claim payments are simply money down the drain. Such appeared to be the case with the Great Flood of 1993 in the Midwest and along the upper Mississippi River. This naturally occurring flood cost an estimated \$21 billion, covered parts of nine states and lasted three months. As the floodwaters rose, 1,369 brand new Subaru automobiles, ready for distribution and valued at over \$17 million, were being stored by the Chicago & Northwestern Railroad (now Union Pacific) for Subaru of America, Inc. at an old American Motors outdoor storage facility in Kenosha, Wisc., which the railroad had leased for this purpose. Lloyds of London and its lead underwriter, Commercial Union Insurance Company, ultimately paid over \$11 million on this claim. The claim also resulted in Lloyds canceling Subaru's policy. Subrogation was looked into

**Summaries ► 19**

## EXPERT TESTIMONY

We hired two separate liability experts. This was a tactical decision to have the respective experts focus on different aspects of the case. One expert focused primarily on the conduct of the HVAC contractor and the other focused on the Products Liability aspects of the case and the role of Vendor and Supplier. The latter expert was very effective in using an electron microscope to demonstrate internal damage on the hose, which he concluded was consistent with efforts to force the hose barb/insert into the hose while the ferrule was in place, thereby compressing the hose. The sophisticated testing also showed evidence of crimping and recrimping of the hose, which the component manufacturer testified should never occur.

## DAMAGES/COMPARATIVE NEGLIGENCE

As is typical, the defense attempted to blame ABC and specifically contended that the PM's conduct was a causative factor. We argued that the PM was merely a "facilitator" and HVAC was hired for its expertise.

Defendants contended the telephone switching equipment could have been reconditioned and reused. We argued it was valueless because its warranty was voided by the water damage.

## RESULT

We pushed for a mediation, which did not result in a resolution. We opposed requests by defendants for continuances. On the eve of the trial, the defendants put together a settlement package that essentially compensated ABC for the full amount of its recoverable loss. At our suggestion, the defendants reserved the right to resolve their cross-claims through some form of mediation.