



# COUGHLIN DUFFY LLP

CASE ALERT, NO. 1

MARCH 16, 2006



Adam M. Smith, Esq.  
Of Counsel

P.O. Box 1917  
350 Mount Kemble Avenue  
Morristown, New Jersey 07962  
Tel (973) 631-6050  
Fax (973) 631-6442  
asmith@coughlinduffy.com



Danielle M. DeFilippis, Esq.  
Associate

P.O. Box 1917  
350 Mount Kemble Avenue  
Morristown, New Jersey 07962  
Tel (973) 631-6054  
Fax (973) 631-6442  
ddefilippis@coughlinduffy.com

[www.coughlinduffy.com](http://www.coughlinduffy.com)

## NEW JERSEY SUPREME COURT RULES ON INSURANCE FRAUD PREVENTION ACT

On March 14, 2006, the New Jersey Supreme Court eased the burden on insurers seeking to prove insurance fraud by policyholders. In Liberty Mutual v. Rose Land, et al., which involved a property damage claim under a homeowners' policy, the Court ruled that under the Insurance Fraud Prevention Act ("IFPA") an insurer must prove its case by a "preponderance of the evidence," as opposed to a heightened "clear and convincing evidence" standard.

The Supreme Court, after reviewing the legislative intent, prior case law, and other similar legislation held that the "clear and convincing evidence" standard applied to common law fraud claims is not the proper standard for an IFPA action. The Court found that, because the IFPA is remedial legislation

designed to reduce the occurrence of insurance fraud and remedy high premiums, the more appropriate analogy is to other remedial legislation, such as the Consumer Fraud Act and the federal False Claims Act, which require proof by a preponderance of the evidence.

Insurance fraud has been described as a "problem of massive proportions." The New Jersey Supreme Court ruling will facilitate the ability of insurers to take action against policyholders suspected of such fraud. The Court indicated, however, that its analysis may differ in the context of an alleged fraudulent automobile claim.

Should you have any questions or comments, please do not hesitate to contact us.

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