



Tuesday, October 2, 2012

2:30 PM - 4:00 PM

1006 – Seeking Recovery for Self-Insured Losses

Elliott Feldman

Co-Chair, Litigation Department
Cozen O'Connor

David Smith

Attorney, Office of the General Counsel
Toll Brothers, Inc.

Eric Tilles

Associate General Counsel/ Mgr Ethics and Compliance
Arkema Inc.

Lawrence Walker

Member
Cozen O'Connor

Faculty Biographies

Elliott Feldman

Elliott R. Feldman is co-chair of Cozen O'Connor's litigation department, as well as chair of Cozen O'Connor's national and international subrogation and recovery group. He also serves on the board of directors and Management Committee of the firm.

Mr. Feldman concentrates his practice in the prosecution of property damage subrogation claims. He has litigated and tried many substantial subrogation matters, and has secured numerous six-figure and multimillion dollar recoveries for his insurance and commercial clients. He also manages the firm's numerous subrogation programs for its clients, consisting of most of the largest property and casualty insurers in the world.

With the formation of Cozen O'Connor's unified litigation department, with approximately 400 lawyers distributed among its 20 plus offices, Mr. Feldman is proactively involved in coordinating Cozen O'Connor's broad spectrum of educational programs for the litigation clients. His efforts range from coordinating multi-client seminars involving hundreds of participants, to more focused private client training for general counsel, risk managers, and compliance officers.

Mr. Feldman is a past president of the National Association of Subrogation Professionals and completed a six-year term on its board of directors. He is a member of the Philadelphia and Pennsylvania bar associations and is a member of Phi Beta Kappa. He was selected a "Pennsylvania Super Lawyer" by his peers from 2005-2011, appearing in Philadelphia magazine and Pennsylvania Super Lawyers.

Mr. Feldman received his BA, summa cum laude, from Temple University and, after doing graduate work at Harvard University, earned his law degree, cum laude, from Temple University School of Law.

David Smith

David W. Smith is counsel to Toll Brothers, Inc., the nation's leading builder of luxury homes and communities. His responsibilities include managing the litigation docket for seven of the twenty states in which the company operates. In addition, Mr. Smith serves as the company's labor and employment counsel, and is one of the company's compliance attorneys.

Prior to joining Toll Brothers, Mr. Smith worked at Cozen O'Connor for almost a decade. At Cozen, Mr. Smith worked in the firm's subrogation and recovery department.

Mr. Smith is a graduate of Boston College, and the Georgetown University Law Center.

Eric Tilles

Eric Tilles is deputy general counsel for labor, employment and regulatory affairs, and manager of ethics and compliance at Arkema Inc., where he is responsible for providing legal advice concerning all aspects of ethics and compliance, employment, labor, environmental, employee benefits, equal employment opportunity, executive compensation, immigration law, occupational safety and health, and security, and for the day-to-day management of the company's risk management and insurance program, and the company's ethics and compliance program. Mr. Tilles is a lecturer-at-law at the University of Pennsylvania Law School where he teaches employment discrimination law and taught employment law. He is president of the ACC's Delaware Valley Chapter.

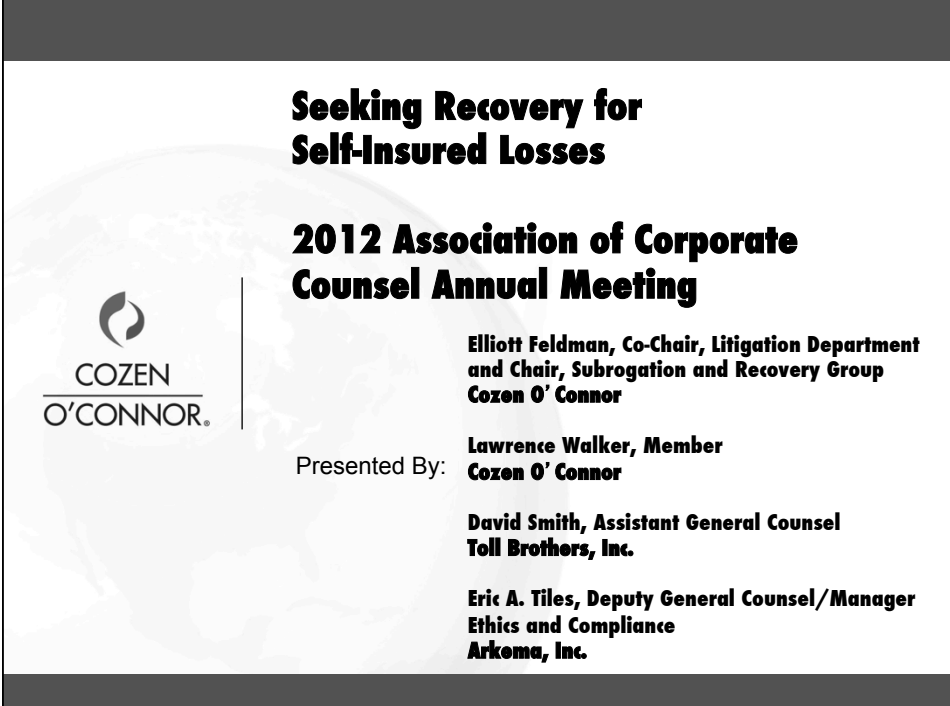
Prior to working at Arkema, Mr. Tilles was an associate general counsel at the University of Pennsylvania/University of Pennsylvania Health System, and an associate at the law firm of Morgan, Lewis and Bockius. He clerked for Chief Judge A. Leon Higginbotham at the United States Court of Appeals for the Third Circuit and for Senior Judge James L. Latchum in the District of Delaware.

Mr. Tilles received his BS from the New York State School of Industrial and Labor Relations at Cornell University and his JD from the University of Pennsylvania Law School, where he was a member of the editorial board of the *Law Review*.

Lawrence Walker


Lawrence F. Walker is with Cozen O'Connor's Philadelphia office and practices in the subrogation and recovery department. In this capacity, Mr. Walker investigates property damage claims including but not limited to: fire damage, water damage and all types of construction defects resulting in significant property damage and losses. He also represents builders in both plaintiff recovery actions and construction defect defense matters. Where third-party tortfeasors are responsible and meaningful opportunities for recovery exist, he prosecutes claims to recover the costs associated with emergency expenses, building repairs and other reasonable and necessary costs.

Mr. Walker received his BS from Penn State University. After graduating, he worked as a private investigator in the Philadelphia area. Mr. Walker received his JD from Rutgers University School of Law in Camden. While in law school, he worked for New Jersey Manufacturer's Insurance Group.



**Seeking Recovery for
Self-Insured Losses**

**2012 Association of Corporate
Counsel Annual Meeting**


COZEN
O'CONNOR.


Presented By:

**Elliott Feldman, Co-Chair, Litigation Department
and Chair, Subrogation and Recovery Group
Cozen O' Connor**

**Lawrence Walker, Member
Cozen O' Connor**

**David Smith, Assistant General Counsel
Toll Brothers, Inc.**


**Eric A. Tiles, Deputy General Counsel/Manager
Ethics and Compliance
Arkema, Inc.**



Insurance Structure

- **Deductibles**
 - The amount that must be reimbursed but coverage is triggered immediately.
- **Self Insured Retentions**
 - The amount that must be incurred by you before coverage is triggered.

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Recovery Benchmark Statistics


If it ain't measured it ain't managed

Key Metrics:

Yield ratio	(15%-20%)
Avg. recovery ratio	(25%-60%)
Benchmark Performance	(4%-12%)

Cycle time (pre-litigation and post litigation)
Expense ratio

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Considerations

- Accounting and Tax Imperatives for Insured Casualty Losses
- Utilization of in house risk management teams and attorneys; outsourced Third-Party Administrators and private counsel.

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Legal Imperatives

- Preservation and non-spoliation of evidence (physical and documentary)
- Notice to potentially responsible parties
- Liaison with public authorities
- Public relation issues
- Early consideration of contractual and legal bars (indemnity agreements, limitations of liability, statutes of repose...)

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MOST IMPORTANT SCENE AND EVIDENCE PRESERVATION

◆ Communicate with Claims Personnel, Subrogation Personnel, the Insured, and Vendors to Preserve Scene and Evidence.

◆ **Don't Alter the Scene!**


◆ **Preserve the Evidence!**

◆ Consequences –

- ◆ Independent Torts
- ◆ Third party cause of action
- ◆ Sanctions:
 - ◆ Dismissal
 - ◆ Striking experts
 - ◆ Negative inference



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 **NOTICE TO POTENTIAL TARGETS**

- ◆ Place all individual or entities with an interest in the scene on notice of the loss:


- ◆ Product Manufacturers.
- ◆ Distributors.
- ◆ Suppliers.
- ◆ Contractors.
 - ◆ State Builder Notice Act Requirements
- ◆ Government entities.



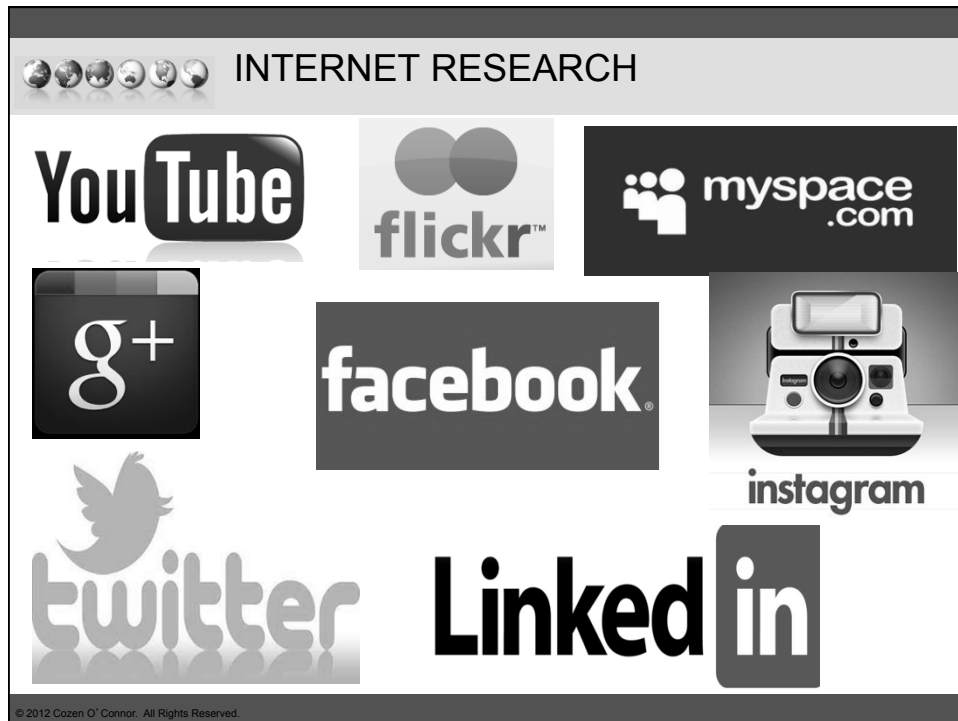
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 **FACTUAL INVESTIGATION**

- Contractual and legal bars.
- Pre-Loss Plans, Specs. Photos and Video.
- Post-Loss Photos and Video.
- Contract and Warranties.
- Labels and Tags.
- Instruction Manuals and Service Guidelines.
- Internet Research.
- Service and Maintenance Records.
- Save the Twin



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Legal Issues

- Attorney client communications.
- Documents prepared in anticipation of litigation.
- Specially retained experts and your communications with them.
 - FRCP 26 has changed.
- Joint prosecution agreements
- First Money
- Damages (RCV, ACV & FMV)

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Balancing Business Interests and Recovery Opportunities

- Leveraging business relationships
- Enforcing contracts and warranties
- Improving your loss history and reducing premiums
- Imposing legal liability and responsibility where it belongs

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Theories of Liability

- Fire origin and fire spread issues
 - How to find culpability when the cause is at issue or cannot be determined
- Construction defects
- Material failures/pipe ruptures
- Machinery and product defects
- Utility negligence
- Transportation claims
- Natural disasters
- Contribution and Indemnity

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Supply air, meet return air.



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ACTIONABLE ACT OF GOD?




Most states find that when an act of negligence combines with an act of God to cause a loss, the claim for negligence is not barred.

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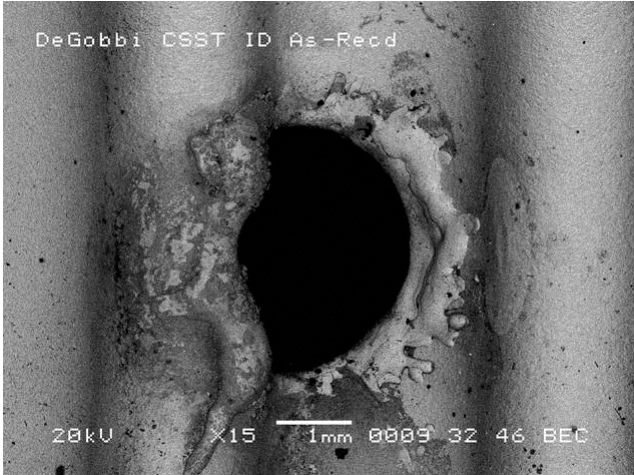
CORRUGATED STAINLESS STEEL TUBING

- PRIMER
- Thin: 10 mils thick (.008 inches thick)
- Corrugated
- Annular (round and hollow)
- Plastic coating (polyethylene)



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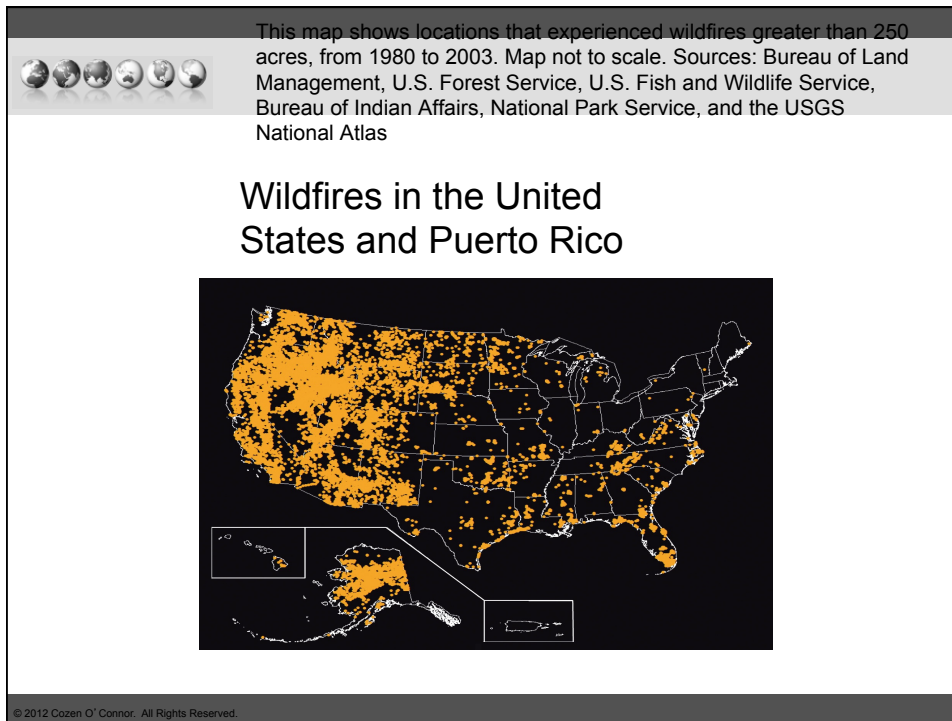
CSST Ablation caused by induced energy from a lightning strike



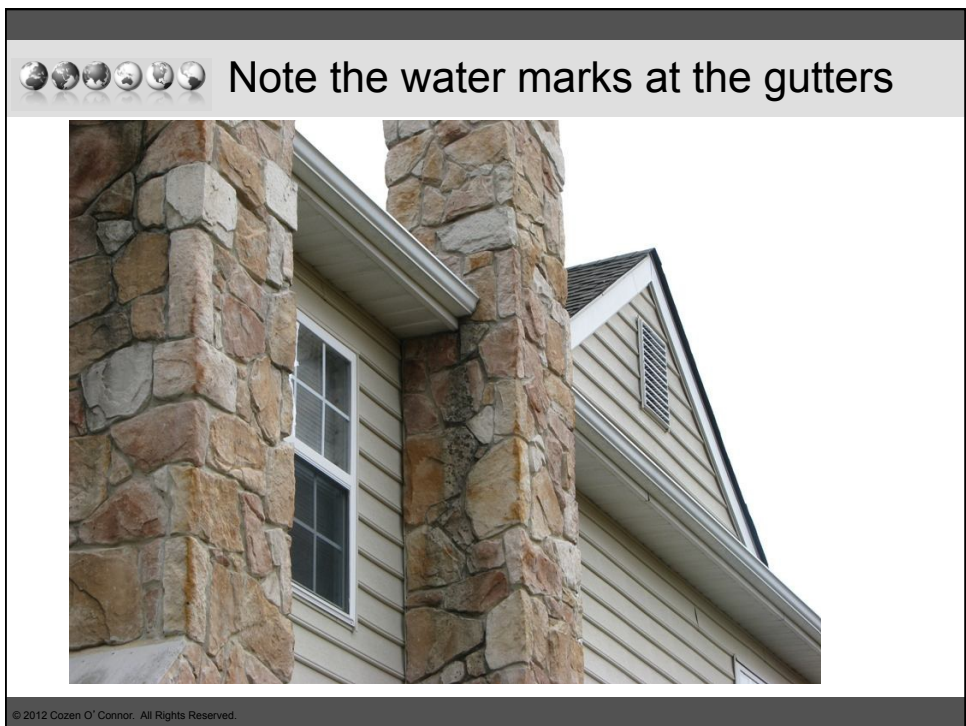
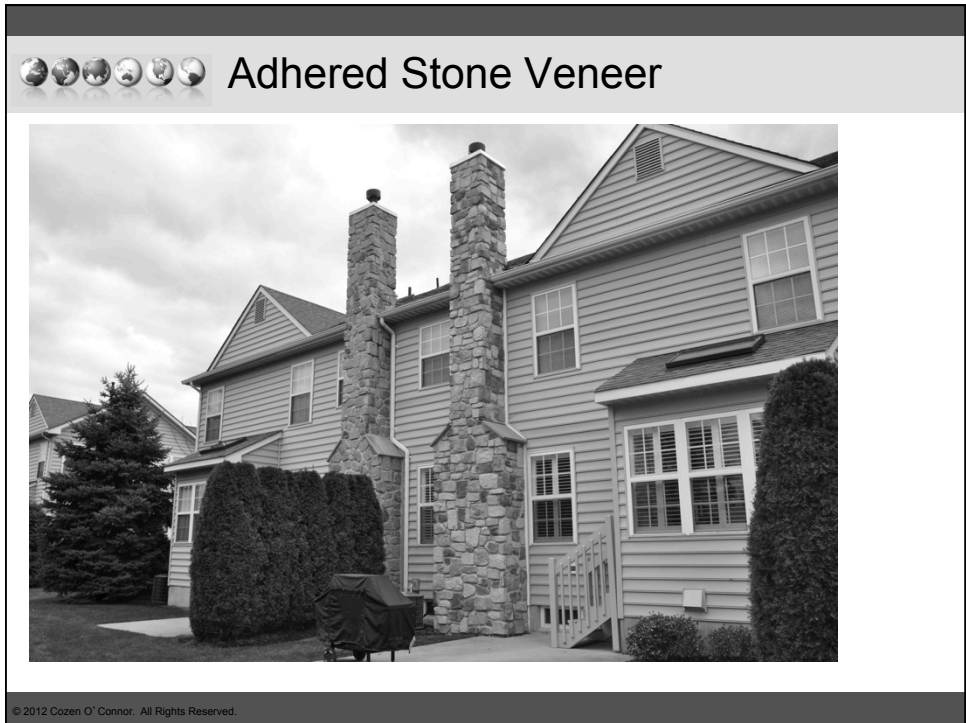
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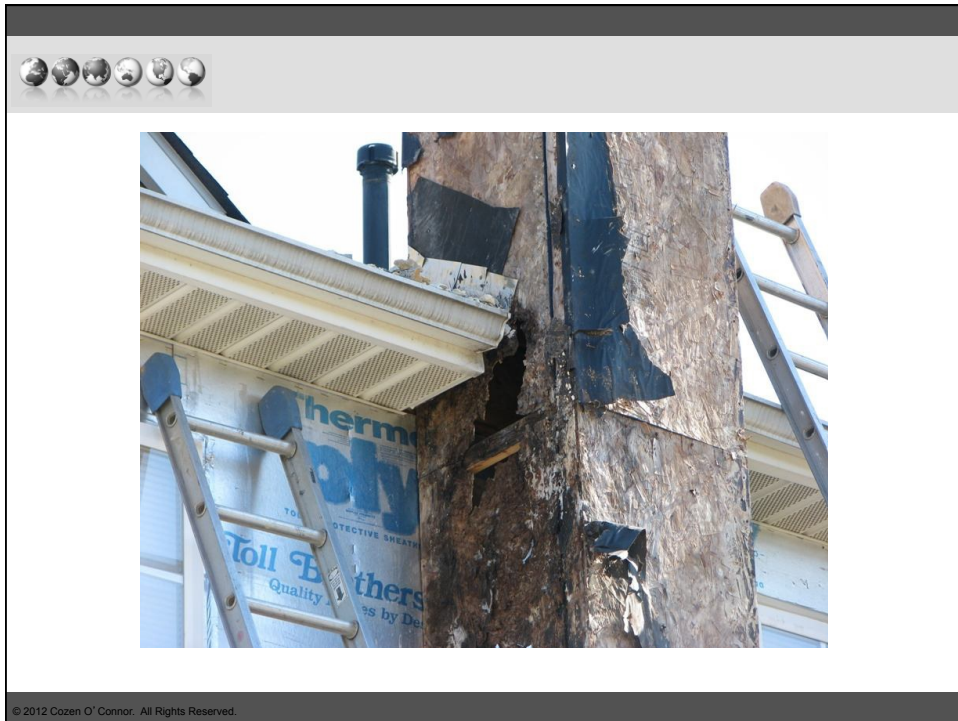
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- ### COMMON CAUSES OF WILDFIRES
- Utility equipment failures.
 - Lighting Strikes.
 - Spontaneous Combustion.
 - Campfires.
 - Smoking Materials.
 - Outdoor Debris Burning
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 Questions?



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 Contact Information

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