



FRIDAY, MAY 5 11:15 a.m. – 12:15 p.m.

**THE LESSONS OF KATRINA - A BLUEPRINT FOR WHAT
TO DO BEFORE AND AFTER A NATURAL DISASTER**

PROGRAM CHAIR:

Nancy Grekin

McCorriston Miller Mukai MacKinnon LLP, Honolulu, HI

SPEAKERS:

Leopold Z. Sher

*Sher Garner Cahill Richter Klein & Hilbert, L.L.C.,
New Orleans, LA*

Susan G. Talley

Stone Pigman Walther Wittmann L.L.C., New Orleans, LA

WHEN DISASTER STRIKES □

Disaster Recovery Plans for Law Firms

By

**Susan G. Talley, Laura Walker Plunkett,
Walter F. Wolf III and Kathryn M. Knight**

Disasters are *Not* the Extraordinary

The 2005 summer of Hurricanes Dennis, Katrina, Ophelia, Rita and Wilma has reminded lawyers and their firms of the importance of disaster preparedness and disaster recovery planning. The threat of a natural disaster, however, is not limited to the Gulf Coast states. The Federal Emergency Management Agency's web site (www.fema.gov) lists declared disasters by calendar year from 1953 to the present. In 2005, major disaster declarations affecting six states were issued for these six hurricanes. There were also 28 declarations for severe storms and flooding, three for tornados, four for severe winter storms and two for typhoons affecting Pacific Ocean island territories. Residents of the San Francisco Bay area have all too vivid memories of the Loma Prieta earthquake in 1989, and this year marks the 100th anniversary of the 1906 earthquake. At the time, Loma Prieta was the costliest natural disaster this country had ever endured. The 1994 Northridge earthquake in Los Angeles then surpassed Loma Prieta in terms of damage cost. Although the Northridge earthquake affected a major metropolitan area, and

Susan G. Talley and Laura W. Plunkett are members of the law firm Stone Pigman Walther Wittmann L.L.C. based in New Orleans, Louisiana. Both are members of the Section, Susan serving as a Supervisory Council Member. Walter W. Wolf III and Kathryn M. Knight are associates in the firm's litigation section. The authors would like to thank other members of the Stone Pigman firm, as well as the firm's administrative staff--especially Janine Sylvas, the IT Director--for their invaluable contributions to these materials. Although it surely will be studied and updated on a regular basis, we hope never again to need our own firm's disaster recovery plan.

killed over 50, further loss of life and serious personal injury were likely avoided because it occurred on the Martin Luther King holiday.

Law practices are not only at risk for natural disasters. September 11th, the Oklahoma City bombing and the anthrax scare signify the continuing threat of terrorism on our home soils, and the attendant potential for death, personal injury, property loss and business interruption. On the more mundane, but equally harmful, level are building fires, plumbing and sprinkler eruptions and similar catastrophes. Cyber attacks and hacking by disgruntled former employees, dissatisfied clients or thrill seekers can also occur.

Whether solo, small or large firm, and whether in a major urban area or a small town, any law practice should have in place a plan for catastrophic events that suits its size, type of practice and locale. "No plan survives first contact with the enemy" said Field Marshal Helmuth Von Moltke, a notoriously meticulous planner.¹ Hurricane Katrina showed that unexpected problems disrupted some of the best laid plans. Those lawyers or firms that *did* have contingency plans were in better circumstances than those that did not have a plan, and a plan reduces the extent of necessary improvisation to respond to a catastrophic event.

The authors of these materials are four lawyers, of varying experience, in the same mid-sized law firm in New Orleans. What we and our firm learned from Hurricane Katrina, the largest natural and man-made disaster this country has ever experienced, followed by the second blow of Hurricane Rita, may be instructive to other lawyers planning for disaster.

¹ Helmuth Von Moltke (1800-1891) was chief of the Prussian (later German) General Staff and the planner of the successful (for Prussia) Franco-Prussian War. (1870-1871). The quote has been attributed to Napoleon, George Patton and Dwight Eisenhower, but Von Moltke is the original source. See www.Wikipedia.org/wiki/Helmuth_Von_Moltke_the_Elder; Ralph Keyes, *The Quote Verifier*, *Antioch Review*, Fall 2006 at Antioch.edu.

Formulate A Plan

Regardless of size, every law practice should have in place some type of disaster recovery plan. Technically, there are two kinds of plans. A business continuance or continuity plan describes the processes and procedures that a business will have in place to ensure that essential functions continue during and after a disaster. A business continuance plan seeks to prevent interruption of critical services. A disaster recovery plan describes how an organization will react to potential disasters. A disaster recovery plan consists of precautions taken to minimize the effects of any catastrophic event. Disaster recovering planning is a part of business continuance planning, and most people use the terms interchangeably. For purposes of these materials, we will refer to disaster recovery or disaster management planning as encompassing both business continuancy planning and the disaster recovery planning that is a part of it.

Depending on the size and management structure of a law practice, there should be a team of lawyers and administrative and support personnel to devise and implement a disaster recovery plan. That same group should routinely review and assess the strengths and weaknesses of the firm's then-current plan. The plan should be kept in both paper and electronic form, backed up off site, so that it can be readily accessible in the event that the firm's offices cannot be entered in the wake of a disaster.

The following materials are organized by subject matter. Within each topic, we suggest information and procedures that should be considered for a firm's disaster recovery plan. We also make suggestions for reacting to the unanticipated.

There are many other resource materials for law firm disaster recovery plans. The Department of Homeland Security's (DHS) Ready.gov web site provides sample plans for disaster preparedness for individuals and businesses. Professional organizations, such as the

Association of Legal Administrators, the International Legal Technology Association and the Association of Records Managers and Administrators, can be invaluable resources.

The Human Element

Most lawyers assume that technology is the linchpin of disaster planning and disaster recovery. Without a doubt, technology is extremely important and technological resources can greatly assist in recovering quickly from a disaster. With time and sufficient money, most technology problems can be solved. What Katrina taught us was the primacy of what we will call the "people" issues. A law firm prospers based on the talents of its individual lawyers and support personnel. Without talented people focused on client needs, a law practice does not exist.

➤ **Leadership Team**

If a catastrophic event affects a law practice of any size, the firm must be prepared to assemble a team of key leaders to manage the disaster. Although the management structure may evolve over time as the firm recovers from the disaster, a disaster management plan should set forth who will be on that team, how they will locate one another and where they should assemble. The team will likely consist of lawyers in management positions and key administrative personnel. Decisions will have to be made quickly, often "on the fly". A plan should minimize the number of reactive decisions the firm will face. Nevertheless, the leadership team must remain flexible to meet the challenges at hand. Once decisions are made, the firm leaders will then need to work with firm members and personnel so as to build a consensus and avoid divisiveness or more anxiety than is already warranted.

➤ **Finding People**

One of the first steps after any catastrophic event is to locate firm personnel and to keep them abreast of the firm's plans for responding to the catastrophe and getting back to work. More than one means of communication should be planned for. In the event of a wide-spread natural disaster or a serious act of terrorism, electricity, cell phones, PDAs, land lines and public transportation may not be functioning or may work only intermittently. One of the most unexpected results of Katrina was the nearly complete disruption of communication among co-workers. Most of us have grown complacent in the ability to reach each other by mobile phone or PDA. Destruction of cell towers and office servers brought down phones, corporate email, web sites and other means of communicating. Additionally, normal land lines into the Gulf Coast were disabled.

Many emergency plans were reliant on the use of mobile phones and proved Von Moltke's maxim. Solutions were quickly improvised, however. Some suggestions for maintaining communications include the following.

○ **Voice Mail.** In most disasters, land phone lines will be working. Hurricane Katrina and September 11th may be more the exception than the norm in their effect on telephone communications. A firm should maintain a designated extension or voice mail box that employees may call for updated information. A firm may already have a designated number for more routine work interruptions, such as snow days. If a catastrophic event does render the firm's phone service inoperable, the firm should establish another number as quickly as possible to serve that function. Obviously a number in a different area code or a 1-800 number is the most desirable. A single analog telephone number with voice mail from the telephone company may also be a useful back-up.

○□ **Phone Lists.** A firm should maintain, and regularly update and back up, a contact list for personnel, including home phones and cell phone numbers. If feasible, contact information for a family member in another locale should also be provided and updated. The Gulf Coast hurricanes taught us that employees often evacuate to the home of a relative living outside of the directly affected area.

○□ **Email.** Blast emails can be extremely useful in providing current information to firm personnel. Depending on its nature, however, a catastrophic event may bring down a firm's email system. Lawyers and at least key firm personnel should be encouraged to maintain separate web-based email accounts. These accounts may be free and provide basic services for communication. Those email addresses should be included in the personnel contact list. Once they are able to move to a safe location, personnel may very well have access to web-based email. A more expensive option is to hire email continuity services that use alternate servers in other cities to keep email accounts active. The advantage of an email continuity service is that clients can still reach lawyers at their regular email addresses.

○□ **Text Messaging.** Although mobile phones may not carry voice messages, text messaging may continue because it uses much lower bandwidth. Katrina proved that text messaging is not just for teenagers.² Short messages are easily sent by mobile phone.

○□ **PDA's.** Instructions should be provided for "pin to pin" communications. Blackberries can communicate using pin to pin communication when regular wireless links are severed. Each Blackberry has a PIN number and, by using that number and the PIN of the

² Parents of a teenager should ask him or her for a brief lesson in text messaging.

receiving Blackberry, messages can be sent even if the email server is not available. PIN numbers should be included on the contact list.

○□ **Firm Web Site.** As soon as possible, the firm should get its web site back up and running, even if operating on some kind of limited and temporary hosting basis. Employees should be instructed to check the firm's web site for updated information in the event of an emergency. There should be areas available to the public and password protected areas accessible only by employees. If an office has a back-up server or hot site facility, then a prepared web site with contact information can be set up in short order. Having the firm's web site hosted in a distant locale is yet another option. Back-up servers and hot sites are described in more detail in the technology section below.

○□ **Phone/Contact Trees.** A mechanism should be set up within departments, practice groups or other logical groupings of people so that there is always one or two people responsible to contact others in the group (or to have them, in turn, contact other members of the group). It is a testament to human ingenuity how many employees might be located through friends, family or word of mouth.

○□ **Reminders.** In the event of a natural disaster (such as a hurricane) for which there is some advance warning, reminders of all of these communication options should be sent to firm personnel with instructions. Current contact lists should similarly be disseminated. Whether or not there is advance warning of a catastrophic event, one or more firm personnel should be designated to begin working on these forms of communication as soon as possible.

➤ **Putting People to Work**

Getting people (both lawyers and support staff) back to work in some form or fashion is critical for enumerable reasons. First and foremost are clients. Depending on the severity and

extent of the catastrophic event, there may be filing or other deadlines that must still be met in other jurisdictions. In the case of an isolated event, such as a building fire, business in the rest of the legal community will be going on as normal. Lawyers and other personnel should be reminded of these facts, and there should be an emphasis on checking deadlines and calendars. The disaster management plan should provide that, to the extent feasible, each lawyer should evacuate with a printout of his or her calendar (if maintained electronically) or his or her desk calendar (if maintained as a paper calendar). In the case of a widespread catastrophic event, clients may now have problems of their own that require urgent attention.

A firm's financial health and its ability to continue employing its staff are also dependent on getting back to work. As discussed below, business interruption insurance can provide a cushion. It is no substitute, however, for resuming operations.

Finally, putting people back to work and in some semblance of a routine can aid in recovering from a disaster. In our own firm's experience, very junior associates, who were working in cramped quarters with laptops, some in beanbag chairs, formed bonds that will likely last them through their careers.

As indicated below, office space may be temporary and limited in availability. The management team will need to make decisions about the extent to which lawyers and other personnel will be allowed to work from home or other remote locations. There is a balance to be struck between the ability to work quietly off site and having as many people as possible who are part of a shared experience. In addition, having personnel physically present can aid in quick decision making.

➤ **Housing**

A natural disaster that affects a widespread area can displace people from their homes for a significant period of time. Although Hurricane Katrina may be unique in the degree of effect it had on housing stock, there are still FEMA trailer sites in Plantation, Florida as a result of Hurricane Andrew. Even the largest of firms cannot have a ready source of housing available for all of its employees on the chance that there might be a catastrophic event. Nevertheless, housing should be considered soon after any catastrophic event affecting a large number of residents. Depending on the size and financial resources of a firm, it could itself rent apartments or other housing units. As time and finances permit, in advance of a disaster, a firm may also want to rent hotel rooms or apartments for its key personnel. If the firm itself cannot make the financial commitment for housing, it could serve as a clearinghouse for housing information, such as by maintaining a bulletin board or regular email updates. The clearinghouse mechanism could also include postings by employees who are willing to share housing arrangements. Someone (*e.g.*, in the Human Resource department) should be designated to address these issues if and when a catastrophe occurs.

➤ **Schools**

Likewise, a catastrophe having a widespread geographic effect can close schools. Lawyers and employees who are worried about their children's schooling cannot perform at their best levels. Knowing that schools may be an issue, and being prepared to serve as a clearinghouse or other resource for school information, will go a long way to supporting firm personnel.

➤ **Cross-Training**

In the event of a significant catastrophic event such as an act of terrorism or a widespread natural disaster, not everyone will necessarily return to work immediately. Firm personnel should be cross-trained to perform additional tasks in the event of an emergency. Whether it is another lawyer, a paralegal, an administrative assistant or a secretary, every lawyer should have someone else in the firm who knows the current matters on which he or she is working and where calendars, files and other critical information may be located. That way, someone else can step in and take over a matter, as needed.

➤ **Counseling and Other Support**

A significant catastrophic event can take an enormous emotional toll on people. Some may have lost their homes of many years. Others may have lost photographs, wedding albums, keepsakes and other family mementos. In the worst of circumstances, employees may have lost family members or co-workers, or there may be employees or their family members who have sustained significant personal injuries. The firm's leadership must give people the "space" to deal with the grieving and healing process, while at the same time getting them back in the routine of work. Depending on the nature of the disaster, more formal counseling may be in order.

In some instances, employees may have sustained substantial economic losses. As appropriate, a firm may want to establish a disaster relief fund or make other financial accommodations for affected employees. Bonuses or other benefits may be a way of acknowledging employees who have made an extraordinary contribution to the recovery effort.

Finally, firm personnel may be faced with the daunting task of applying for federal disaster assistance, insurance claims and other benefits. As appropriate, making available firm

lawyers with the requisite expertise for employee informational sessions can help rebuild employee morale. Other consultants (such as accounting firms) with whom a law firm has relationships may also be willing to host informational sessions at no charge.

➤ **Layoffs and Furloughs**

In the aftermath of a catastrophic event, a firm's leadership must think carefully about whether any employees must be laid off or temporarily furloughed. In addition, the firm must decide and implement a uniform policy for how long employees will be paid before they must return to work at an acceptable location. Any decisions to terminate an employee should not be made in haste. As catastrophic events in recent history, including September 11th, have proven, there will be some natural attrition. A major catastrophic event can be a life changing experience, causing some people to rethink career choices. An interruption in business may be temporary, causing a lawyer or firm to regret having laid off employees. Moreover, everyone involved must be mindful of anti-discrimination laws, employee benefit rights, insurance coverage issues and similar concern in making any decision to lay off an employee. Finally, one cannot ignore the public image of any business laying off employees in the wake of a catastrophic event. Our own firm was fortunate that we did not have to layoff any employees, but the issue is one that cannot be ignored.

Technology

The modern law office's reliance on technology is a given. Protecting a law office's data and records can make all the difference in post disaster business survival. Furthermore, clients may assume that their lawyers will protect a client's records and data in a manner superior to that of the client. Although each disaster presents unique problems for managers and IT staff, there

are certain fundamental principles of technology and data protection that apply under almost any circumstances. What follows is a brief review of those principles.

➤ **General Measures to Protect Data and Records**

○ **Back Up all Data Generated on a Daily Basis.** This is one of the most critical and one of the most abused principles of data management. There are numerous ways to back up data depending on the size and needs of a law office. There are back-up tapes, CDs, DVDs, disks and separate drives, all of which can serve this function depending on how much information is generated on a daily basis.

○ **Store Backed Up Data in a Secure Location.** Until recent events showed otherwise, it was generally believed that saved data could be stored in the same city as one's office. This is logical if the disaster is a single building fire or similar event. Large scale events that affect an entire city or region dictate that a set of back-up data should be transmitted electronically or physically to another city for storage. It may even be advisable to have a back-up computer facility--either a "cold site" or "hot site" as discussed below.

○ **Protection of Hardware.** Protection of servers,³ routers⁴ and hard drives is as important as protection of software and data generated. Computer facilities should be located in

³ In information technology, a server is a computer *program* that provides services to other computer programs (and their users) in the same or other computers. The computer that a server program runs in is also frequently referred to as a server (although it may be used for other purposes as well). In the *client/server* programming model, a server is a program that awaits and fulfills requests from *client* programs in the same or other computers. A given application in a computer may function as a *client* with requests for services from other programs and also as a *server* of requests from other programs.

⁴ In *packet-switched* networks such as the Internet, a router is a device or, in some cases, software in a computer, that determines the next network point to which a *packet* should be forwarded toward its destination. The router is connected to at least two networks and
(continued on next page)

a secure part of the building that is high enough to avoid flooding. Placement should also be made so that loss of windows or a roof will not damage the system. Fire protection is essential, such as halon gas dispensers or the newer FM 200 system replacing halon.

Ideal protection can be had by the creation of a back-up facility. This facility can be a "cold site" or shell location, or it can be a fully equipped "hot site." A cold site is a space that is prepared and wired for rapid installation of computers and servers. It has the hardware in place, but the user must configure servers and restore data. A hot site is a place where actual computers and servers with duplicate software and data are stored. A hot site can be activated in a matter of hours while a cold site will be usable only after servers are configured and data has been restored. There are vendors that can set up a hot site on short notice for a fee. If cost permits, the most advantageous option is to maintain a hot site and use real-time replication of data. Having the real-time replication of data will minimize a firm's downtime in the wake of a disaster.

In smaller offices where computers may not be networked, the hard drive for each computer may be removed and transported to a new location where new computer shells may be purchased and the hard drive inserted. This does not relieve an office of the necessity of data backup and it will be most effective in offices under 15 to 20 people at most. Another alternative is to have a reciprocal agreement with another law firm in another city to store each other's data.

decides which way to send each information packet based on its current understanding of the state of the networks it is connected to. A router is located at any *gateway* (where one network meets another), including each *point-of-presence* on the Internet. A router is often included as part of a network *switch*. A router may create or maintain a table of the available routes and their conditions and use this information along with distance and cost algorithms to determine the best route for a given packet. Typically, a packet may travel through a number of network points with routers before arriving at its destination.

That kind of arrangement, nevertheless, will depend on whether the attorney-client privilege can be preserved and conflicts of interest avoided.

o□ **Protection of Power Sources.** The Department of Homeland Security guidelines make the distinction between evacuation plans and shelter-in-place plans. If circumstances prevent evacuation, then the firm should consider certain alternate power plans such as generators. A disaster plan should take into account how long a generator may operate unattended. Otherwise, it may burn up, damaging itself.

If evacuating, it is best to keep a checklist of items related to powering the firm's electronic devices. Mobile phones, laptop computers, Blackberrys, Palm Pilots and other devices should have an AC adapter for both houses and cars. Spare batteries are advisable. Personnel may end up evacuating to an area that does not suffer directly, but does lose power for several days. Base units and software for PDAs are also useful if time permits those items to be retrieved.

Good commercial quality surge protectors are a must for lightening and power surges. The better surge protector can run \$60 to \$70, while the least expensive models are \$15 to \$25 and are sometimes little more than a power strip with a low capacity circuit breaker installed.

o□ **Preservation of Lines of Communication.** A number of suggestions for contacting employees are set forth above. These same suggestions apply to communications with clients, vendors and other third parties with which a law firm deals on a regular basis. In addition to a voice mail box or system for employees to contact, the firm needs to consider how clients and others will reach it. In some cases, programmable call forwarding of main telephone lines may allow call forwarding to an emergency location.

A firm may provide its lawyers and paraprofessionals with laptops, or individuals may purchase their own laptops. A firm should consider whether all firm laptops should be equipped with wireless cards for when DSL lines are disabled. Similarly, individuals providing their own laptops should be encouraged to have wireless Internet service.

Firm personnel may be accustomed to dialing in to the office using remote access applications, such as Citrix. On the assumption that not everyone will be dialing in at the same time, a firm may very well have fewer licenses for its remote application software than the number of personnel who may be dialing in in the wake of a catastrophic event. A disaster recovery plan should include an assessment of how many licenses the firm holds, how many it might need in the event of an emergency and how it can quickly obtain additional licenses.

o□ **Inventories of Software and Hardware.** To the fullest extent possible, an emergency package containing inventory lists of hardware and software, including serial numbers for hardware, software license numbers and contract numbers for vendors and suppliers should be kept off site in a firm's remote location or at its cold or hot site facility. This will help account for lost items and give an accurate picture of the prior technology needs and capacity. Additionally, having license numbers for software is imperative if servers must be rebuilt.

➤ **Cyber Attacks and Hacking**

Not all disasters will be natural. Recent releases of nationwide and international computer viruses demonstrate that civilization's malcontents are capable of causing havoc for retribution or sheer fun.

DHS's Ready.gov web site provides a basic checklist of measures to prevent cyber attacks:

○ **Use anti-virus software and update it regularly.**

Anti-virus software is no guarantee that all viruses will be intercepted. As the mousetrap is improved, new breeds of smarter mice come along. New viruses are created that defeat the most current protection, but anti-virus software is still essential.

○ **Do not open email from unknown or suspicious sources.**

This is especially true of a stranger's email with an attachment. Some offices have set protocols to automatically delete attachments in certain formats conducive to spreading viruses, such as .exe attachments.

○ **Use hard to guess passwords.**

Passwords should be at least 8 characters long and, if possible, a mixture of upper and lower case letters. Personnel should avoid using the names of a spouse, child or beloved family pet. If actual words are used, then use obscure names and places. Change passwords frequently because several password "cracking" programs exist that will randomly generate passwords in an attempt to break passwords.

○ **Use firewalls to protect your system when using the Internet.**

Firewalls prevent "hacking" into a system. "Soft" firewalls protect personal computers and individual workstations. "Hard" firewalls protect entire systems, and networked systems should use hard firewalls at a minimum.

○ **Back up computer data.**

The reasons for this are discussed above. In addition, many viruses are designed to destroy data files.

○ **Download security protection updates.**

These are known as "patches", and companies that issue anti-virus and fire wall protection will create updates as vulnerable spots are found in their software.

o□ **Check security on a regular basis.**

Office IT staff or consultants can check security of the computer system by attempting to hack past firewalls or running password guessing programs.

o□ **Train employees on what to do if the system becomes infected.**

Circulate instructions on how to shut down computers in the system and minimize the spread of a virus. Conduct a drill in the same way that a fire drill would be conducted.

A more detailed and comprehensive guide written for use by IT administrators can be found at the National Security Agency's web site on www.nsa.gov/SecurityRecommendations Guides. Entitled "The 60 Minute Network Security Guide" and prepared by NSA's Systems and Network Attack Center (SNAC), the 38-page document gives detailed information on protecting your system from all intruders.

Office Space

A catastrophic event may make law offices uninhabitable for days, weeks, months or forever. Understandably, a law firm cannot have backup office space at the ready in the event of a catastrophe. A disaster recovery plan, however, should include some key matters to consider immediately if disaster strikes.

A plan should be made for accessing the damaged office space as soon as is feasible to retrieve necessary data, equipment, files and other personal property. It is very useful to have a priority list of items to recover. Inoperable elevators, damaged floors and other physical factors may limit how much can be removed and how heavy it might be. The plan must also contemplate a scenario in which the offices are completely destroyed, or there can be no access for a very long period of time.

Next, the plan should address the need for new or temporary quarters. Certainly, if a firm has more than one office, then the unaffected offices are likely points of refuge for the lawyers and personnel from the affected office. Even that, however, is not so simple. Suddenly having a branch office double or triple in population can make even the most harmonious of relationships more than a bit testy. One or more members of the leadership team should be assigned to facilitate that transition. Routine items such as shared phones, computers and desk space will have to be handled.

For a single office law practice, the challenges are even more daunting. Someone should be dispatched immediately to deal with space issues. Office space may be scarce and leasing rates at a premium. Finding temporary space is something that must be done quickly, but should not be done rashly. As market conditions (which may be overheated) allow, the firm should take as little space as it can for as short a term as is possible. A longer term lease with some cancellation rights might serve the same purpose. Depending on the severity of the disaster, space may be available in a "suite" office facility. The firm leadership should not lose sight of the fact that the space is temporary and is being leased to fulfill a short-term need.

Insurance

Insurance coverage should be a primary consideration for every firm when preparing a disaster recovery plan. Depending on the nature of the catastrophic event, property, business interruption, rent and liability claims may be involved. If the disaster involves death or personal injury, employees may also be looking to the firm's life, disability and health care coverage.

➤ **Designate a Firm Insurance Coordinator**

First, every firm should designate one of its lawyers specializing in insurance law or contracts as an "insurance coordinator" and conduct a survey of its existing insurance coverage

as compared to its needs. Although firm administrative personnel will likely have primary, day-to-day responsibility for insurance matters, having a designated lawyer, who is well versed in coverage issues, is essential. In fact, depending on the size of the practice, the firm may want to designate a back-up lawyer in case the primary coordinator is unavailable.

The firm's insurance coordinator can serve as the point person for pursuing the firm's insurance claims, in the event of a disaster causing a covered loss. Having a firm expert on the important subject of the firm's own coverages and the required procedures for initiating and pursuing a claim will enhance the firm's ability to respond to a disaster and return as soon as possible to the business of serving its clients. Ideally, the firm's insurance coordinator should have been an active participant in the review and assessment process. He or she should continue to monitor the firm's insurance needs and address any substantial changes in those needs as they occur. He or she should also assist the firm in reviewing and assessing its insurance coverage and needs at least annually.

➤ **Conduct a Survey of the Firm's Insurance Needs and Existing Coverage**

During the initial stages of preparing a disaster plan, the firm's insurance coordinator and appropriate administrative personnel should evaluate the firm's existing insurance coverages, including primary, excess or umbrella and special risk coverage, to determine whether coverage is adequate for current needs. Read and understand the fine print. What risks are covered? What risks are specifically excluded? Is any special coverage needed, such as coverage for earthquake, flood, wind, computer data or equipment, art work, excess expense, payroll or any other special coverage unique to the firm's needs? Then consider compiling a comprehensive list of the firm's insured assets, including serial numbers or other identifying data. Consider photographing or videotaping all of the firm's assets, in addition to preparing a list on paper.

Play "what-if" games--what if the firm experienced some disaster that caused the loss of most of these assets? Or only a few of them? Or all of them? Would the existing insurance coverage adequately compensate the firm for the loss? Could the firm's operations be restored with payments from its insurance coverage?

To answer these questions, consider whether the coverage is based on the actual cash value of the assets or on replacement cost. A policy that pays covered losses based on the assets' actual cash value will generally pay the replacement value at the time of loss *less* a percentage of depreciation determined based upon the assets' age and condition. Would this be enough to replace the lost or damaged assets and get the firm back to work? Perhaps not. If the policy pays covered losses based on the replacement cost of the assets, generally the policy would pay the amount it costs the firm to replace or rebuild the assets in kind or quality. This is not the end of the inquiry, however. Does the firm's policy contain a coinsurance provision? If it does, the firm must ensure that its assets are insured to value, meaning that the insurance limits provided in the policy must be greater than or equal to a certain stated percentage (provided by the policy) of the assets' replacement costs. The penalty for failing to insure to value is that a covered loss is paid only proportionately, based on the fractional relationship between the amount of insurance carried and the amount of insurance required.

Business risk interruption insurance must also be reviewed. What kind of event will trigger the coverage? How long is the coverage period? What items of income and cost are covered?

Although it is tedious and time-consuming, a thorough insurance analysis allows the firm to make informed decisions about its levels of coverage, particularly any decisions to remain underinsured, and minimizes the risk of unpleasant surprises in the wake of a disaster.

As the final step of the assessment stage, the firm should confirm all of its coverages and the correct policy forms with its insurance companies, *not* the agent or broker, unless the agent or broker is a dedicated agent or broker, selling only that insurer's policy and considered an "employee" of that insurer.

➤ **Compile Essential Materials**

As a part of its disaster plan, the firm should compile essential insurance materials in an easily portable format that will be readily accessible if a covered loss occurs or if quick evacuation or retrieval is required. The firm should retain a copy of the current form of each of the firm's insurance policies in paper, and in backed up electronic form off site, so as to allow immediate access. If disaster strikes, immediate access to this information is essential to the firm's ability to respond quickly and to begin remediation and restoration as soon as possible. If current insurance information is not easily accessible, or worse, destroyed, the delays are easy to imagine. Of course, all of these hard and electronic copies should be updated any time there is a change in a policy form or coverage, so that outdated versions are deleted and the most current version is always accessible.

The firm should also have a brief summary of its expectations of the coverage provided by each policy, the coverage exclusions, the requirements for complying with the policies' claims provisions and any deadlines for filing claims, together with current contact information for each insurance company and the agent or broker from whom the firm purchased the coverage. The firm's insurance file should include a copy of the asset inventory, in hard and electronic form.

➤ **Pursue the Firm's Insurance Claims**

If disaster strikes, the firm's insurance coordinator will become the firm's "first responder" for purposes of initiating the necessary insurance claims process and helping the firm

plan its recovery. First, the insurance coordinator should notify each carrier of the firm's losses, making certain to comply with all terms of the applicable policy for notice. Then the firm must begin the process of assessing the damages (by category of covered loss) and determining the cause of each type of damage sustained (*e.g.*, wind-driven water damage versus flood damage). A financial analysis will also be necessary for a business interruption claim. This can be a team effort, with different areas of potential damage assigned to different firm personnel. Careful, detailed documentation of the damages and their extent is essential to prompt (and hopefully full) payment of the firm's claims.

○□ **Property Claims.** For property losses, if at all possible, documentation should be complete before mitigation or restoration efforts are begun. If immediate mitigation efforts are necessary to prevent further damage, the firm should document as much as possible before mitigation is begun. As with the inventory of assets, consider photographing or videotaping the damage. Pictures truly can be more valuable than written documentation alone. As restoration begins, the firm should maintain detailed records of expenditures that may apply toward any relevant deductibles.

○□ **Business Interruption Claims.** Business interruption claims come with their own unique set of coverage and claims issues. Even a few days of down time for a law practice can be costly. As part of its advance disaster planning, a law practice should maintain and update good financial data on its average monthly billings, its average hourly rates billed and collected, its average number of hours billed each month, its average monthly collections and its typical realization rates. After the disaster, the firm should meticulously track time recorded, amounts billed and fees collected. This data will all help in recovering the lost income from a business interruption. Firm budgets are a great starting point, but a carrier will be looking for

historic and current data and not just goals for the year. Similar information for payroll and other line items of cost are also key.

In pursuing a business interruption claim, the firm may want to engage a forensic accountant. Even if the firm does not have its own forensic accountant, it should request from the insurer all work papers of the insurer's adjuster or accountant that support payments the insurer proposes to make. The firm should pay careful attention to the method that the insurer uses to calculate lost revenue. Lost revenue will likely be the largest part of any business interruption settlement. Someone unfamiliar with a firm's practice may make wrong assumptions about the firm's ability to generate fees and their ultimate collection.

One helpful tool may be to create a separate time writing file or account within the firm's time writing system to allow all lawyers and other professionals to account for down time they experience as a result of the disaster. Firm lawyers may be spending time on firm relocation, personnel or insurance issues that might otherwise be devoted to client work. Likewise, in the case of a widespread natural disaster, those same professionals may need time away from work to deal with their own insurance and other personal affairs. At the end of the day, the firm must be able to convince its business interruption carrier of the financial loss it has sustained as a result of the casualty.

The firm also needs to look carefully at the triggering and wind down events for the business interruption claim. Most policies require a physical damage to start the coverage. Coverage may also be triggered if damage to other property results in civil authorities denying access to the firm's premises. Most policies have a wind down or tail period. The policy will assume that a business may have to relocate to a temporary facility. It also assumes that there will be some ramping up time required if the business returns to its existing facility. Therefore,

the coverage will be effective for some number of days (*e.g.*, 45) after the business resumes operations. Some thought needs to be given, and persuasive arguments made, as to when the firm has resumed operations at its damaged facility.

○□ **Working with Adjusters.** As the claims process progresses and the firm's restoration continues, the insurance coordinator should work with the claims adjusters to resolve the firm's claims. All communications with the adjusters should be documented with a letter or email--for example, confirming the firm's understanding of what the adjuster has said about the claim, any requests to extend deadlines established by the controlling policy and any other deviations from the requirements of the policy. If disputes develop, as unfortunately they sometimes do, the firm will be better positioned to pursue full recovery of its losses within the provisions of its policies.

Other Financial Issues

In addition to insurance coverage, there are other issues that could have a direct effect on the income and cash flow of a law practice, and its ability to recover quickly from a catastrophic event.

➤ **Banking**

As part of its advance disaster planning, a law firm should consider the banking institution or institutions with which it maintains a customer relationship. Is the bank locally based? Is it a large national or international institution? Whether a firm's accounts are maintained with a local, regional or national bank can play a part in its ability to get back up and running. Soon after the occurrence of any catastrophic event, someone from the firm should make contact with the firm's bank or banks to help banking and financial matters operate as smoothly as is possible.

➤ **Payroll**

Meeting the firm's payroll in the wake of a disaster is very important. Many law firms pay employees by direct deposit, which can solve most problems. Firm personnel will then be able to access funds through banks or ATMs located outside of the immediately affected area. Nevertheless, planning will be needed to insure that a firm's payroll is funded, even if the pay date is in the midst of a catastrophic event.

➤ **Mails**

Hurricane Katrina caused a significant disruption in mail service in South Louisiana, which is still being felt as of the writing of these materials. The main post office in New Orleans was severely flooded. Even after the city began to be reoccupied, mail from Point A to Point B within the city went to Baton Rouge, then to Houston, then back to Baton Rouge before returning to Point B in New Orleans. Many lawyers and their firms filed temporary changes of address, which then took weeks to "undo", creating further confusion. Terrible mail disruptions also occurred as a result of the anthrax postal scare, especially in the Washington D.C. area. In this age of emails, faxes and overnight deliveries, lawyers can easily forget how dependent we remain on the U.S. mails for basic services--such as getting paid.

As part of a disaster recovery plan, a lawyer or firm should think about where mail should be sent if an office suddenly cannot be occupied. Consideration should likewise be given to sending bills by email and requesting payment by wire or overnight delivery (our own firm offered up the firm's FedEx account to clients to make payment easier).

➤ **Cash is King**

Lawyers can forget how much we depend on electricity and phones, and how seldom transactions are conducted in cash. If ATMs and bank accounts suddenly become inaccessible, a

modest stash of cash can be a lifesaver to secure immediate goods, services and manual labor. A supply of firm checks located off site, and accessible to key firm personnel, is an additional option to consider.

Original Documents

➤ **Client Documents**

More and more firms are imaging and backing up important client documents, including final documents from closings. Imaged documents may not be sufficient protection for all client documents. This factor is especially true in the estate planning arena. In most states, copies of wills may be "proved" to the court if the original will has been destroyed, but at a significant additional administrative burden and expense. If the will was not lost, but was destroyed in a law firm's office, the client may expect the firm (or its insurer) to absorb those additional costs.

Banks, brokers and hospitals will not accept copies of powers of attorney or living will declarations (sometimes referred to as advance healthcare directives). Most institutions, however, will accept "certified true copies" of a power of attorney. In other words, the original notary can certify a fully-executed copy of a power of attorney as a true copy of the original document. In many jurisdictions, living will declarations/advance medical directives are not notarized documents and, therefore, cannot be certified. Because they are not notarized, they can be re-created easily as long as the client is conscious and has capacity. Most hospitals keep forms on hand.

Natural disasters are particularly hard on our older, more vulnerable population. The mere act of evacuating may exacerbate health problems. An extended evacuation can interrupt routines and prescription refills may not be readily available. Elderly clients may miss doses of much-needed medicines either through forgetfulness or lack of availability which, in turn, may

lead to premature emergency hospitalizations and even death. Many older clients simply will not want to deal with the enormity of the insurance and reconstruction issues that follow a natural disaster and will choose to rely on their children to handle these issues. Clients' family members will call in the weeks following a natural disaster looking for powers of attorney and living will declarations in a much higher volume than is customary.

To minimize the disruption a catastrophic event may cause, a firm should consider some or all of the following suggested practices for client documents.

- Execute powers of attorney (healthcare and financial) and living will declarations/advance medical directives in no less than triplicate. Maintain at least one original in the firm's document safe and advise the client to keep one original of each with the "important papers" with which he or she evacuates.
- Incorporate living will declarations/advance medical directives into a client's medical power of attorney by reference and attach as an exhibit.
- Store irreplaceable original client documents in sealed plastic bags to protect them from flood waters, a building's sprinkler system or the fire fighter's hose.
- Image all fully-executed wills, powers of attorney and living will declarations.
- To the extent practical, notarize all of a client's estate planning documents personally.
- Have each lawyer or paraprofessional take his or her notary stamp or seal with him or her on evacuation, so that print-outs of the imaged documents can be certified as true copies.

➤ **Firm Documents**

Client documents are not the only critical documents to be preserved. Important firm documents should be imaged and backed up to an off site location so as to allow immediate retrieval. Insurance documentation is discussed above. Other key firm documents may include:

- The firm's office space lease or leases.
- Documents relating to any firm loans or equipment leases.

- Partnership agreements or limited liability company operating agreements for the firm.
- Any employment contracts, especially for key employees.
- Employee manuals and policies.
- Tax returns for the firm for the last few years.
- Employee W-2 forms for the last few years.

Depending on the nature of the firm's operations, there may be additional critical documents that would be needed in an emergency and should be imaged and available off site.

Post-Disaster Marketing

Marketing is not the first thing that may come to mind in the wake of a disaster. Consistent messages of reassurance to clients and the community are nevertheless important. How does a law practice let its clients know where its personnel are after a natural disaster and what services are available? If local clients have also evacuated, how does a firm find them? How do the clients find their lawyers?

➤ **Blast Emails.** If the firm maintains a central database of client email addresses (a client relationship management database), then one email can be sent to all clients and contacts giving them a status report. If the firm does not have a client relationship management database, then the form blast email should be sent to each lawyer in the firm so that he or she can forward it to his or her personal contact list. This email should go out with the addressees listed in the "bcc" field so that the addresses cannot be read by the recipients. Some clients may consider the mere fact that they have representation confidential; most would prefer that their email addresses not be published.

➤ **Access to Contact Lists.** The firm's client relationship management database should be accessible from the web so that client and contact addresses can be pulled together quickly and easily from an evacuation point. If the size of a law practice does not justify the costs of a central or web-based database, a PDA that is synchronized to the contacts on each lawyer's hard drive can be indispensable (and do not forget the batteries and chargers as discussed above).

➤ **Consistency.** Communications to clients and the outside world should be consistent. For example, a uniform statement should be sent to clients instead of each lawyer in the firm writing his or her own informational piece. One person or a small designated group should write blast emails and other firm communications, and the management team should approve them.

➤ **Visibility.** A firm should let its clients know that their lawyers are okay and available as soon as possible after the disaster. Remember that the clients may also be in crisis and may welcome the contact, viewing it more as support and reassurance than a marketing pitch.

➤ **Information.** As soon as the firm has a temporary location, send out the first blast email telling clients and other contacts that the firm is up and running. Officing after a disaster may occur in phases, with moves from one emergency location to another "more permanent" temporary location and then back to the old or new permanent quarters. As soon as the firm returns or has a new location, it should send another blast email. If legislation or administrative orders are issued in response to the natural disaster, the firm may want to inform clients of their existence and include a link to more information (a copy of the act, a press release announcing the new regulation and the like).

➤ **Newspaper Advertising.** A law practice may never have advertised before. A catastrophic event may be the time to make an exception. Let clients know that the firm is displaced. Express a commitment to the community and an effort to return and rebuild, and

follow through. For example, our firm put together and sponsored a free disaster recovery seminar for non-profits shortly after we returned to our New Orleans office, which was well attended.

Once back in permanent quarters, a firm may want to run another advertisement letting people know that it is back and the date on which the firm returned. Local citizens and business leaders will look favorably on a timely return to the local community after a disaster. Do not forget to thank the city that hosted the firm and key private parties that may have assisted the firm during the crisis.

➤ **Firm Web Site.** A web site provides a central location where clients in need of the services know to go to find the firm. Post all of the information outlined above on the firm's web site. As previously mentioned, there should be a private place for information exchange among employees. A lawyer or firm does not want clients to see the inevitable post-disaster chaos attendant to finding employees and telling them where and when to report.

Courts, Filing Offices and Governmental Contacts

Another consideration for a firm's disaster recovery plan is access to local courts and filing offices. In the case of wide-spread disaster, these public offices may be damaged, displaced or destroyed, just as the firm may be. If the public offices have temporarily relocated, how will the firm access these offices for filing documents or obtaining necessary copies? How will the firm know where these offices have relocated and their schedules for providing public services? How can the firm make filings if mail and facsimile services are unavailable or unreliable after a disaster? How will the firm meet client deadlines or other needs if public offices are not accessible? How will the public's inability to access the courts affect statutes of limitation? The disaster recovery plan should address these concerns.

Moreover, knowing how and where to reach key public officials and first responders may be critical to regaining access to one's offices to gather important materials. Those kinds of contacts may also be useful in locating personnel and assisting them with their own personal needs.

Admittedly, it is hard for a firm to prepare for the way in which third parties and government offices will respond to a disaster. Nevertheless, the firm can determine in advance necessary procedures to gather and update information about the availability of the courts and filing offices serving the firm's practice area and other public offices required to meet clients' needs. A firm's disaster recovery plan should include a list of resources to consult for vital information on the continued operation of courts and filing offices in the event disaster strikes, and a dedicated person responsible for continued monitoring and updating that list for the entire firm. The list may also include contact information for critical governmental officials (*e.g.*, state or local homeland security office, fire and police departments, national guard headquarters, key executive branch officials). The list should be kept in both hard and backed up electronic form.

For example, in the wake of Hurricane Katrina, our firm assigned an associate to monitor web sites maintained by the various state and federal courts in our area, together with the web sites of local bar associations and the ABA, to gather information and provide at least daily updates on the courts' relocations, reopening dates and dockets. This task continued for several months post-storm, until most courts had returned to their original locations or had resumed "normal" operations at a temporary location. Multiple calls to the staff of several key political figures by various members of our firm enabled us to gain an essential services pass that allowed firm personnel past police and military checkpoints to reach our offices and retrieve equipment and files.

Office Supplies

A disaster recovery plan should include mundane items such as office supplies that may be needed in a temporary location. A group of lawyers and support personnel suddenly occupying temporary offices or another of the firm's branch offices will look for what may be considered the basics of law practice: tablets, paper, staplers, copiers, pens, pencils, coffee, soda, water and snacks. In a sudden disruption, the firm may need to purchase additional computer hardware to get up and running. All of these purchases may need to be made in an overheated market with other businesses scrambling for the same resources. In a disaster recovery plan, some thought should be given to the basics of every day practice that may be needed. Soon after a catastrophic event, a member of the firm's staff should be dedicated to that job.

Conclusion

Every lawyer hopes that a catastrophic event will never befall his or her practice or firm. Of course, history has taught lawyers that we are all at risk of a natural disaster, casualty or other catastrophic event. Although a disaster recovery plan may not prevent catastrophe, it will go a long way in aiding a law practice in a timely and successful recovery.

**AND YOU ONLY THOUGHT YOU HAD
PLANNED FOR A DISASTER:
LESSONS LEARNED (THE HARD WAY)
IN POST-KATRINA LOUISIANA**

By Michael H. Rubin¹

Every firm has a Disaster Recovery Plan, either committed to paper or in the mind of some member of the firm. We all think that we have sufficient foresight and thoughtfulness that, if any unlikely disaster hits, we will be able to quickly recover and service our clients. Hurricanes Katrina and Rita have proven that, with few exceptions, most businesses (and law firms) were poorly prepared for a massive disaster that not only shut down their business and dislocated their customers but also scattered their attorneys and staff all over the country.

Imagine that, in your state, thirty percent of its entire population was told they had forty-eight hours to vacate their businesses and their city. Assume that, during this period of time, you had to make adequate arrangements for your family, your business, all the employees of your business, and your clients. Assume that you left believing you would be back in your office and in your home within three days, only to find that you could not physically return for more than one month.

That was the situation South Louisiana faced with Hurricanes Katrina and Rita. Thirty percent of our state's population was displaced. One-third of the state's lawyers were displaced. More than 100,000 homes in the New Orleans area alone had more than four feet of water in them for a week or more (and in some cases, several weeks).

As of December 30, 2005, over 950,000 property insurance claims (businesses and residential) had been filed in Louisiana; with a pre-storm population of 4.6 million, this is a

¹ Michael H. Rubin is one of the managing partners of McGlinchey Stafford, a multi-state law firm with offices, in among other locations, New Orleans. He is a former President of the Louisiana State Bar Association and headed up the Louisiana Bar's Hurricane Relief committee. He is currently President-Elect of the American College of Real Estate Lawyers and is Vice Chair of the RPPT's Ethics and Professionalism Committee.

twenty percent damage rate. Imagine if one-fifth of your state had property damage from a storm.

Imagine if the dislocation struck not merely your business but every aspect of your life. Your medical records were inaccessible and your doctor could not be contacted. Your children's schools were closed and would not re-open for a full semester at the earliest. Even if your home was not one of those that had six to eight feet of water in them (and some homes had fifteen feet of water), the damage of even three to six inches of water was devastating. Imagine if your home stayed flooded for up to three weeks.

Imagine that, even if you were able to return to your office (and most people could not return for up to thirty days), you could not get workers to help you fix your office, and you might return to find your physical files water-logged or scattered across the street. Imagine if your office were in a high rise building which did not get electricity until thirty after the storm. Imagine if your office was on the tenth floor, or the twenty-fifth floor, or the fiftieth floor; how practical would it be for you to walk up those stairs and try to bring items down individually?

WHAT DISASTER PLANNING IS NOT

Disaster Planning is not something to be delegated (or relegated) to a staff member or a junior lawyer. Disaster planning is not making sure that you back-up your electronic files nightly. Disaster planning is not thinking about being dislocated for a few days.

Disaster planning *is* a comprehensive, fully thought-out process of figuring out what would happen if your business was shut down for thirty days or more, your city was shut down for thirty days or more, and your lawyers and staff were scattered. Only by making those assumptions can a disaster plan begin to be formulated.

TECHNOLOGY IS A COMPONENT OF A DISASTER PLAN; IT IS NOT THE DISASTER PLAN

It is easy to believe that technology provides a convenient solution to a disaster plan; however, technology is merely a part of a disaster plan. The human element, taking care of the physical well-being of your staff and your lawyers, should be your first and foremost concern.

The following items, at a minimum, ought to be part of any technology portion of your disaster plan:

- Remote co-location of all electronic data. This means not merely backing-up your data nightly in a remote location (outside of your city), but also having a plan to access it, knowing who can access it, and having the ability to re-transmit this data. This includes not merely the data itself, but all of the programs that you use.
- Communications. With whom do you have broadband access? Do you have back-up access? What if your web page goes down? What if your phone system goes down? What if no cell phones work for up to three weeks (in New Orleans, those with New Orleans area codes on their cell phones found that they could not get calls in or out for up to three weeks)?
- Emergency Contact Number – Incoming. Does your phone system allow an automatic transfer of your calls to the emergency number for clients calling your office? Will that number work if your city and region are overwhelmed? Who mans that number? Who can access the calls and who can return them?
- Emergency Contact Number – Outgoing. Do you have an emergency contact number, outside of your area code, for all of your lawyers and staff? If not, how will you contact them? If there is no centralized, always accessible website or phone system where you can reach them and they can reach you, how will you put your office back together again when people scatter?
- Emergency Office Space – Do you have a contingency plan where your office can physically relocate if your city is shut down? Do you have options on lease space that you can exercise? Are there buildings available that have “ready-to-go” offices that you can lease on a short-term basis? Post-Katrina, law firms found that areas within 200 miles from New Orleans quickly were fully leased within days after the storm and that prices jumped twenty to fifty percent. Furthermore, when Rita hit, those who had relocated from New Orleans to areas attacked by Rita had a double problem.
- Client Files – Is your client information electronic and reasonably ascertainable? How do lawyers access their files and computers when their computers are left in the office and they cannot return to their offices?

- Back-Up Equipment – If you had to leave all of your computers and servers at your office on an emergency basis, what computers would your lawyers use to access their files? How would you arrange for computers, servers and printers, not to mention networking and programs?

PHYSICAL FILES (NON-ELECTRONIC) FILES

If you had to leave your office on a short notice and could not return for one month, what would you do with all the paper files that your lawyers have, not only in central file locations but in their offices?

- Do you have a formal program to image or create electronic copies of critical documents and pleadings for clients?
- Do you have electronic back-up (imaging) of the firm's critical documents?
 - Lease Agreements
 - Service Contracts
 - Employment Agreements
 - Partnership/Organization Documents
 - Insurance Policies
- What about original files that you were holding for your clients because of ongoing transactions or litigation work? Have these been imaged and are they safely accessible from a remote location?

THE CARE AND FEEDING OF YOUR LAWYERS AND STAFF (LITERALLY)

When a disaster strikes and dislocates a city, your lawyers will not relocate to one location. They will be scattered throughout the region, and in some cases will be hundreds if not thousands of miles away. When you are ready to reassemble them in one (or more) remote locations to operate on a temporary basis (which may be as long as six months), what arrangements have you made for:

- Housing
- Schools for children

- Temporary loans for those who need advances
- Psychological counseling for lawyers, staff, children, spouses and significant others
- Providing assistance to lawyers and staff with:
 - Insurance claims
 - Medical problems
 - Emotional support

DOES YOUR OFFICE LEASE HAVE SUFFICIENT PROTECTIONS FOR YOUR FIRM?

Most transactional lawyers think that they have carefully drafted clauses in leases to deal with an emergency. Most of these emergency clauses, however, assume that the city itself is livable and operational even if the building is not. These assumptions are not necessarily valid post-Katrina and post-Rita. Clauses in leases that may need to be examined are:

- Quite enjoyment clauses where the building may be accessible but the city is not livable.
- Situations where the building is supposedly accessible but, in fact, has only limited access (e.g. one elevator, limited HVAC, parking area destroyed, electrical service spotty, etc.).
- What if your office space is accessible but common areas are impaired?
- What if the common areas are open but your individual offices are severely damaged?
- Who determines when an “Act of God” period expires?
- What if the levees in New Orleans had not broken but had been blown apart by a terrorist act? Would your lease cover that or would the Landlord be able to invoke an exception for “war” or “insurrection” even if the “insurrection” did not directly damage the building?
- What if your building was high and dry but you could not get to it either because the city was closed down or all of the streets around it were flooded?

BUSINESS INTERRUPTION INSURANCE

Business Interruption Insurance forms a critical part of any disaster recovery plan, the Business Interruption Insurance is only as good as the policy itself and the clauses in the policy.

- Have you read your policy lately?
- Have you inquired whether there are additional riders that you might get and that you might want?
- Do you have a plan for assembling information that would make a business interruption claim possible?
- Will you be able to effectively track costs, lost profits, lost hours, etc.?
- The actual interruption of your business starts at the warning of the disaster, not when the disaster hits. Does your policy cover the 48 hours before the storm when the city is being evacuated?

CONCLUSION (OR, RATHER, THE BEGINNING)

This paper highlights merely a few of the areas that arise from a massive disaster. Even the World Trade Center 9/11 terrorist attack, as devastating as it was, did not shut down the city of New York for more than a few days. While the Wall Street area had many problems, the rest of the city functioned reasonably well.

Disaster planning, however, must assume that your city as a whole cannot function. Therefore, the first step in disaster planning is to recognize that the scope of a disaster is far larger than we all have previously anticipated, and therefore we must begin with the assumption that the disaster is huge. Once we've made that assumption, creating a disaster recovery plan that works for huge disasters will also take care of the small ones as well.

