Health-Related Lawsuits and Disasters

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Toll of Disasters

- Disasters may be natural or human-made
  - Disaster cycle includes preparation, response, and recovery
  - Disasters have short- and long-term consequences
- Two of the five costliest U.S. hurricanes occurred in 2017
  - Between $50 and $125 billion each
- 2017-18 hurricane seasons responsible for significant morbidity and mortality

- Policy-makers must try to anticipate needs before a disaster occurs
  - In reality, policy-making occurs at each phase of the disaster cycle
Disaster Cycle

- Mitigation
- Preparedness
- Response
- Recovery
Disasters and Policy-Making

• Policies are needed for each phase of the disaster cycle at each level of government
  o Since 2001, federal government has invested billions of dollars in emergency preparedness and response
  o Role of state and local governments

• Sample issues that policy-makers must address (often in real-time):
  o Evacuations
  o Rescues
  o Vulnerable populations
  o Clean-up

• Impacts at individual and population levels
A Balancing Act!

[Image of a balance scale with 'Public’s Health' on one side and 'Individuals’ Rights' on the other side.]

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Disasters and Litigation

- Policies implemented before/during/after disasters may lead to perceived harms by individuals
  - Physical, mental, financial
  - Examples:
    - Harms related to movement restrictions or evacuation decisions
    - Care for special needs populations
    - Standard of care for hospitalized individuals
    - Inadvertent injuries caused by emergency responders

- Actual or perceived harms may trigger litigation
  - This type of litigation is not well understood
Project Goals

• Describe the types of emergency preparedness, response, and recovery activities that have been the subject of litigation

• Explain common themes that emerged in disaster-related litigation during September 11, 2001–December 31, 2015

• Identify trends in legal action related to disasters, including the parties involved, the policies most often at issue, and the ultimate resolution
Project Team

• Collaboration:
  o CDC’s Public Health Law Program (PHLP)
  o Johns Hopkins Bloomberg School of Public Health

• PHLP routinely receives requests from policy-makers at state and local agencies about disaster-related litigation
  • E.g., in 2015, PHLP delivered over 20 in-person and online presentations, trainings, and webinars to over 2,270 government public health and emergency management stakeholders
  • During these interactions, PHLP received inquiries such as: How do we avoid being sued? What do I have to worry about in terms of potential litigation? How can the government protect me from liability?

• Our collaboration allows us to conduct research for practitioners
Case Law Arising from Emergency Preparedness, Response, and Recovery Activities

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Project Aims

1. Describe the types of emergency preparedness, response, and recovery activities that have been the subject of litigation

2. Explain common themes that emerged in disaster-related litigation during September 11, 2001–December 31, 2015

3. Identify trends in legal action related to disasters, including the parties involved, the policies most often at issue, and the ultimate resolution
Methods

• Standard legal epidemiology methods

• Search terms and process:
  o Standardized search terms were developed through an iterative process and a priori knowledge
  o Exclusion criteria: overtime pay, survivorship rights, insurance claims for disaster damage, wrongful termination of emergency personnel, and contract rights
  o Using Westlaw, searches were conducted to collect relevant opinions from September 11, 2001 through December 31, 2015
  o All identified cases were screened to determine if they met inclusion criteria
Methods

• Search terms and process, continued:
  • Initial search returned 4,970 opinions
  • Each opinion was screened for disaster date and additional exclusion criteria:
    • Procedural delays, FEMA NFIP, fraudulent disaster relief loan applications, cases concerning liability for the cause of man-made emergencies
  • Discrepancies were resolved by consensus among the project team
  • Cases with multiple opinions were treated as one unit
Methods

• All remaining cases were coded to build the legal dataset.

• Data Abstraction and Analysis:
  o Using Qualtrics software, we created an electronic data collection form to abstract information from each judicial opinion
  o A pilot sample of cases was independently coded by members of the study team to refine the form
  o Whenever possible, data were summarized with descriptive statistics
  o Open text data (e.g., descriptions of a case’s facts; summary of reasoning for the decision) were analyzed qualitatively
Qualtrics form

Q11

Description of Emergency (e.g., Hurricane Katrina)
Emergency Response Activity or Activities That Gave Rise to the Claim (i.e., what action(s) or inaction(s) in response to the emergency does the plaintiff claim contributed to the alleged injury). Select all that apply:

- Arrest (an aggrieved party was arrested during emergency response activities (this does not include actions taken in the "restriction of movement" category))
- Condemnation (condemnation of dangerous property during a disaster is at issue in the case)
- Crowd Control (crowd control activities, such as riot suppression, gave rise to the alleged injury)
- Delayed Judicial or Administrative Review (a person claims to have been harmed by a delay in court or agency hearing/judicial decision that was caused by a disaster)
- Disaster Mitigation (the injured party claims that the defendant had the duty to mitigate certain conditions that led to the injury sustained during the disaster)
- Duty to Plan (the case concerns whether the defendant had a duty to plan)
- Duty to Warn (the case concerns whether the defendant had a duty to warn)
- Evacuation (evacuation before/during/shortly after an emergency is an issue in the case)
- Mandatory Service (obligatory participation in disaster response is an issue in the case)
- Medical Services and Triage (case discusses whether a medical standard was violated through the provision of services or triage of patients)
- Mutual Aid Agreement (mutual aid agreement between jurisdictions is at issue in the case)
- Personal Protective Equipment (the provision or failure to provide adequate PPE led to alleged injury)
- Post-Disaster Clean-Up Activities (such as debris removal or injuries caused in the process of removing debris (e.g., items from a dump truck hit a car); this does not include financial or environmental disputes (such as related to landfill))
- Post-Disaster Housing (post-disaster housing provided by response personnel contributed to the injury claimed in the case)
- Price Gouging (anti-price gouging laws are at issue, such as a claim that one party violated anti-price gouging laws that were activated during an emergency)
- Restriction of Movement (during/shortly after a disaster, the population's movement is restricted by means of quarantine, isolation, or curfew as a means of responding to the emergency)
- Shelter Operations (the manner in which responders established or operated a shelter contributed to the injury claimed in the case)
- Suspension of Law/Regs (pursuant to a declared emergency, state or local official have suspended statutes and regs to aid in response, and this suspension is at issue in the case)
- Takings (a government actor exercised takings authority (either eminent domain or authority under an emergency seizure power) and that taking is at issue in the case)
- Treatment of At Risk/Special Needs/Vulnerable Populations, such as persons with disabilities or the elderly (persons with special needs are involved in a case and their status as special needs individuals is relevant to the legal issue)
- Volunteer (volunteer disaster responders are involved in the case and their status as volunteers, including credentialing and licensure, is relevant to the case)
- Other
Q20

Does a defendant claim immunity?

- Sovereign immunity
- Good Samaritan
- State disaster/emergency liability protections
- PREP Act immunity
- Other

Q21

Coding comments
Methods

• Coded cases were exported to Microsoft Excel and Stata for descriptive analysis

• Variables added:
  • State/federal court
  • State in which cause of action or injury occurred
  • Year in which emergency occurred
Results

• Initial search screening: 587 cases

• After coding, removal of duplicates, additional screening: 215 cases
  • 212 civil
  • 3 criminal

• 91.2% of decisions issued after 2005

• 47.4% of disasters occurred in 2005

• Louisiana (47%), New York (21.9%), and Texas (5.1%) were the most common states
Decision Year and Year of Emergency for Included Cases
Most Prevalent States in which Litigation was Filed and in which Emergency-Related Injury Occurred
Results

• Most prevalent plaintiff type: private parties
  • At least 1 plaintiff was private person in 88.7% of cases
• Most prevalent defendant type: government (79%)
  • Government entities (70.8%); government official (25.9%)
  • Private entities: 38.21%
Results

• 45% of cases discussed defendant immunity
  • State-specific disaster/emergency protections: 20.5%
  • Sovereign immunity: 19.1%
  • Public Readiness and Emergency Preparedness (PREP) Act: 2 cases (0.9%)
  • Other: 11.2%
Results

• Most common disaster/emergency at issue:
  • Hurricane (57.7%)
  • Terrorist attack (16.7%)

• Most prevalent emergency response activities at issue:
  • Disaster mitigation (29.3%)
  • Clean-up (21.9%)
  • Defendant’s duty to plan (14.4%)
  • Evacuation (12.6%)
  • Conditions of incarceration (12.1%)
Disaster Mitigation

• Injured party claimed that the defendant had a duty to mitigate certain conditions that led to an injury sustained during the disaster

• Most (50.8%) related to hurricane
Disaster Mitigation


• In 2002, severe storm caused widespread power outage in Muncie, Indiana. Sagging power line was reported to fire department and electric company

• The next day, a child was fatally electrocuted by the sagging wire in his backyard

• Parents filed wrongful death of a child action against the city, alleging that the fire department had failed to protect their child from the downed line

• Indiana Court of Appeals held that neither the city nor the fire department had assumed a duty to protect a child from a downed power line
Post-Disaster Clean-Up

• These cases involve clean-up activities such as debris removal or injuries allegedly caused in the process of removing debris.

• Most (61.7%) related to terrorist attack
Post-Disaster Clean-Up

*Alfonso v. U.S., 752 F.3d 622 (5th Cir. 2014)*

- Louisiana National Guard was removing debris and repairing a levee in the aftermath of Hurricane Katrina

- An individual was injured when he drove into mud the National Guard had deposited during their work

- Driver brought claims against individual guardsmen

- Fifth Circuit Court of Appeals dismissed the claims
  - Held that the National Guard was involved in an emergency preparedness activity and was therefore entitled to immunity under the Louisiana Homeland Security and Emergency Assistance and Disaster Act
Duty to Plan

• These cases concern whether the defendant had a duty to plan for an emergency or disaster.

• Most (61.2%) related to hurricane
Duty to Plan

*Lacoste v. Pendleton Methodist Hospital, 966 So.2d 519 (La. 2007)*

- Lacoste was admitted to defendant hospital prior to Hurricane Katrina.

- During the hurricane, the hospital lost all power, Lacoste’s life support failed, and she died.

- Family filed claim alleging negligence for failure to have plans for evacuation and transfer in place.

- Hospital claimed that the action dealt with medical malpractice and should be heard by a medical review panel.

- Supreme Court of Louisiana held that the case sounded in general negligence and remanded to the lower court.
Evacuation

• These cases involve evacuation before, during, or shortly after a disaster.

• Most (85.2%) related to hurricane

• 95.7% of hurricane-related cases involved a hurricane that occurred in 2005.
Duty to Plan

Cooley v. Acadian Ambulance, 65 So.3d 192 (La. Ct. App., 4th Cir. 2011)

- Special needs residents of St. Bernard Parish in Louisiana drowned in their homes during Hurricane Katrina

- Surviving family members filed wrongful death and negligence actions against the parish

- The decedents had qualified for governmental evacuation assistance and Acadian had been tasked with executing the evacuations

- Ambulance company ceased operations due to high winds

- Court of Appeals of Louisiana held that, absent willful misconduct, the parish government was entitled to complete immunity under the federal Homeland Security and Emergency Assistance and Disaster Act
Conditions of Incarceration

• These cases involve prison or jail conditions before, during, or shortly after a disaster.

• Most (92%) related to 2005 hurricane season
Conditions of Incarceration

*Spotts v. United States*, 613 F.3d 559 (5th Cir. 2010)

- Hurricane Rita hit Beaumont, TX on September 24, 2005
- Only some of the inmates were evacuated from the Federal Correctional Facility in Beaumont
- Significant damage to the facility: no power for 36 days, roof damage, and no potable water.
- Following the storm, the inmates received no medical care
- The inmates alleged negligence, intentional infliction of emotional distress, and wrongful death
- The Fifth Circuit held that the decision not to evacuate was a policy decision protected by federal law
Discussion

• Large-scale disasters generate the most litigation
  • 60.9% of cases arose from two of the most costly disasters in our study period: Hurricane Katrina and the September 11 attacks

• Litigation mostly targets government entities and officials

• Policymakers and emergency planners should anticipate using legal resources in addition to the many other tools necessary during preparedness and recovery
Discussion

• Litigation associated with a given disaster can last for years or even decades

• Majority of litigation occurred after 2005, but majority of relevant disasters occurred during or before 2005

• Injuries and damage caused by a disaster may occur quickly, but stakeholders should also consider the time and cost required to litigate disaster-related injuries.

• Policymakers and emergency planners seeking to minimize their liability exposure should consider focusing preparedness efforts on those activities that are most likely to give rise to lawsuits.
Discussion

• Litigation may arise from any phase of the disaster cycle:
  • Mitigation (disaster mitigation)
  • Preparedness (duty to plan)
  • Response (evacuation)
  • Recovery (clean-up)

• Although policymakers may spend a significant amount of time and resources on pre-disaster preparedness and mitigation, post-disaster recovery and clean-up activities might generate nearly as much litigation.
Discussion

• While we identified certain disaster activities that arose frequently in our sample, other activities may lead to litigation
  • Some activities that are rare or non-existent in our sample may lead to litigation that does not result in published case law
  • Our findings illustrate which activities should be prioritized, not which can be ignored

• Government officials should also understand state and federal protections in place during disasters
Discussion

• Limitations
  • Cases were omitted if no published opinion was available on Westlaw
  • The decisions we collected may not represent the ultimate disposition of each case

• Strengths
  • Systematic and thorough search process
  • Results will assist public health professionals and emergency planners in understanding which activities might lead to litigation
Conclusion

• Litigation is an inevitable consequence of large-scale disasters

• These findings will help everyone involved in emergency preparedness and response anticipate some of the most common legal issues surrounding emergency preparedness, response, and recovery.
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Questions and Answers