

ADOPTED

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association recommends that federal, state and
2 territorial governments enact legislation with appropriate funding that would eliminate
3 any prohibitions or restrictions on participants in the private insurance and reinsurance
4 markets from making available broadened insurance protection for property damage
5 arising from storms, including damage from wind, wind-driven rain, and flood caused by
6 storm surge, but excluding damage arising from other types of flood; provided that the
7 availability of such broadened insurance coverage on a voluntary basis by insurers should
8 be encouraged through a competitive marketplace under a regulatory system permitting
9 broad flexibility in insurance pricing and product development.

10 FURTHER RESOLVED, flood is defined as an overflowing of water on an area of land
11 that is normally dry and storm surge is defined as water that is pushed toward the shore
12 by the force of the winds swirling around a storm. The coverage provided for storm surge
13 would be limited (unless an insurer explicitly chose to provide broader coverage) to
14 damage directly caused by the force of the storm surge.

107B

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AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, That the American Bar Association urges Congress to address the consequences of natural catastrophes by strengthening the financial infrastructure and developing programs that increase availability of affordable insurance in areas highly-exposed to catastrophes, while not competing with the private market.

FURTHER RESOLVED, That any federal program should be appropriately designed to protect taxpayers from inappropriate subsidies, and be structured to ensure that sufficient capacity exists before, during and after mega-catastrophic events. Any such federal programs should provide that subsidies be transparent and not imbedded in insurance costs.

FURTHER RESOLVED, That the American Bar Association urges Congress to enact multiple changes to the National Flood Insurance Program to put it on a sound actuarial basis, including:

- A. Phase out subsidies in existing premiums;
- B. Educate citizens in flood zones better to promote awareness on their part that they are either obligated or strongly encouraged to purchase flood insurance;
- C. Prioritize the upgrading of existing flood maps; and
- D. Extend the flood purchase requirement to properties financed with mortgages made by state-chartered financial institutions. In addition, Congress should raise the coverage limits, but only if the premiums charged are risk-based and adequate to pay the losses.

Revised 107C

ADOPTED AS REVISED

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges the federal government to
2 take steps to encourage capital markets to finance catastrophic risks by:

- 3
4 A. Undertaking a study through the U. S. Treasury Department to determine what
5 changes in federal laws and regulations would reduce barriers to the issuance of
6 catastrophe (CAT)-linked securities in the United States; and
7
8 B. Enacting legislation as needed encouraging the issuance of catastrophe (CAT)-
9 linked securities consistent with the study of the United States Treasury.

10
11 FURTHER RESOLVED, That State and territorial governments should take the following steps
12 to encourage capital markets to finance the assumption of catastrophic risks:

- 13
14 A. Insurance regulators and the Financial Accounting Standards Board (FASB)
15 should reform insurance and public accounting rules to facilitate the issuance of
16 catastrophe (CAT)-linked securities in the United States; and
17
18 B. The National Association of Insurance Commissioners and state governments
19 should undertake a study to determine what other changes in state laws and
20 regulations would reduce barriers to the issuance of catastrophe (CAT)-linked
21 securities in the United States.

Deletions struck through; Additions underlined

Revised 107D

ADOPTED AS REVISED

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges the federal government to address the
2 liquidity needs of individuals and businesses in the aftermath of future natural catastrophes,
3 including but not limited to:

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7 FURTHER RESOLVED, for catastrophic natural disasters that are certified by the Treasury
8 Secretary as posing a grave financial risk to state insurance guaranty funds, the Congress should
9 give the Treasury Department the authority to lend to those state funds to assure prompt payment
10 of claims when there has been a demonstration of need to avoid guaranty fund insolvency.

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12 FURTHER RESOLVED, That the federal government should provide incentives ~~through the~~
13 ~~tax code~~ to encourage catastrophe risk-taking by private insurers:

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15 (a) the federal government and the Financial Accounting Standards Board ("FASB")
16 could recognize and allow for multi-year tax-deferred catastrophe reserves to be
17 established by insurers and other parties at risk for natural catastrophes and allow annual
18 net additions to such reserves. Such ~~tax~~ incentives or reserves should be restricted to
19 paying claims for future mega-catastrophes. (b) Congress could also provide ~~income tax~~
20 ~~credits~~ incentives to homeowners and businesses that invest in catastrophe mitigation
21 measures in high-risk areas.

(Deletions struck through; Additions underlined)

ADOPTED

AMERICAN BAR ASSOCIATION

TORT TRIAL AND INSURANCE PRACTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges state, territorial and local
2 governments to use the following tools to mitigate losses from future mega-catastrophes
3 to ensure the ongoing availability and affordability of insurance for natural disasters:
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- 5 1. Require risk appropriate state-of-the-art building codes for new
6 construction that reflects best practices for reducing catastrophe loss
7 exposure and vigorous enforcement of these codes including criminal,
8 civil and regulatory penalties/liability for those who are found to have
9 negligently or intentionally used or produced substandard building
10 products or compounds;
11
- 12 2. Require cost-effective retrofitting measures when residences are modified
13 substantially and otherwise encourage homeowners to invest in mitigation
14 retrofitting;
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- 16 3. Require cost-effective retrofitting measures even when residences are not
17 modified substantially and otherwise encourage homeowners to invest in
18 mitigation retrofitting;
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- 20 4. Adopt land use policies that discourage construction in areas that are
21 difficult to evacuate or that pose unusually high risk to personal safety (to
22 consumers and first responders) or property loss;
23
- 24 5. Encourage development of information that can be disclosed in a
25 standardized format at the time of sale regarding the property's resistance
26 to damage from natural disasters and any mitigation efforts made during
27 construction or through retro-fitting;
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- 29 6. Encourage lenders, housing Government Sponsored Enterprises ("GSEs")
30 and insurers to work together to develop a plan for providing mitigation
31 improvement loans (or similar incentives) to homeowners (that GSEs can
32 package and sell as securities) to finance mitigation investments that will
33 reduce the risk of loss from natural catastrophes to insurers and
34 homeowners
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7. Enact property tax credits and enable grants to homeowners and businesses that invest in catastrophe mitigation measures. State and local governments should not penalize homeowners and businesses with higher property tax valuations due to improvements to property values that stem from mitigation activities; and
 8. Adopt, regularly update, and routinely test emergency preparedness plans for dealing with mega-catastrophes.

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FURTHER RESOLVED, That the American Bar Association urges state, territorial and local governments to allow insurers to charge risk-based prices that reflect the best available actuarial and scientific information, and to ensure that the private insurance market for homeowners insurance remains competitive. States that choose to subsidize the purchase of insurance by individuals of limited means should do so through transparent direct subsidies rather than through any government-sponsored "residual markets plans" which are not means-tested and for which the subsidies are non-transparent.

Revised 107F

ADOPTED AS REVISED

RECOMMENDATION

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RESOLVED, That the American Bar Association urges the federal government to use the multiple tools available to it to mitigate losses from future mega-catastrophes including:

- A. Establish risk appropriate federal standards for specific catastrophes in the regions of the country exposed to the risk requiring strong, damage-resistant building codes for new construction that reflects best practices for reducing catastrophe loss exposure and vigorous enforcement of these codes;
- B. Require cost-effective retrofitting measures when residences are modified substantially and otherwise ~~encourage~~ provide incentives to homeowners to invest in mitigation retrofitting ~~through federal tax incentives~~, including when substandard construction techniques are discovered after the fact, or better practices are available, and
- C. Adopt land use policies that discourage or prevent construction in areas that are difficult to evacuate or that pose unusually high risk to personal safety (to consumers and first responders) or property loss, and require FEMA to incorporate the adoption and effective enforcement of statewide building codes in its Hazard Mitigation Grant Program. In addition, FEMA and the Congress should implement a preference in making pre-disaster grants to proposals by states and localities seeking support for the training of state and local building code inspectors to improve enforcement.

FURTHER RESOLVED, That the American Bar Association urges Congress to authorize and appropriate additional funds for disaster prevention and preparedness activities, including additional funds (on a matching basis) to states and localities in areas of high catastrophic risk, to support adoption and enforcement of modern building codes, and for mitigation grants, ~~tax credits~~ incentives, and needs tested direct insurance subsidies.

Deletions struck through; Additions underlined

Revised 107G

ADOPTED AS REVISED

RECOMMENDATION

1 RESOLVED, That the American Bar Association recommends that ~~the national, state, and~~
2 territorial governments adopt the following standards for handling residential and small business
3 insurance claims for property damages resulting from hurricanes or storms:

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5 1. Uniform standards should be established for all insurers as to the procedures used in
6 the adjusting of property damage claims.

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9 A. Such standards should be consistent with the Unfair Claims Settlement Act of
10 the National Association of Insurance Commissioners.

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12 B. Such standards should also contain ~~provisions~~ guidelines for training and
13 certification, licensing, or other appropriate form of oversight and regulation
14 of all adjustors who engage in claims procedures.

- 15
16 2. Mediation programs should be created and maintained in advance of a particular
17 disaster.

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19 A. Such programs should be modeled on the programs made available by
20 Mississippi, Louisiana, and Florida with the assistance of qualified dispute
21 resolution administrators, state bars, courts, or insurance companies.

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23 B. Mediation programs should allow any insured to request mediation and
24 require the ~~good faith~~ participation of both the insured and the insurer or
25 insurers. The mediation fee should be paid by the insurer. Both the insured
26 and the insurer or insurers should be able to be represented by an attorney if
27 they so choose, the process should be non-binding unless the parties agree
28 otherwise and qualitative measures of programs effectiveness should be
29 tracked and publicly reported.

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31 ~~3. A study should be undertaken to create a database of reliable current information on~~
32 ~~the costs of items and services required for the repair or replacement of real property~~
33 ~~for various geographical areas. This database would be made available to insurers and~~
34 ~~insureds, adjustors, claims representatives, mediators, and others involved in the~~
35 ~~claim process to provide greater accuracy and uniformity in the adjusting of property~~
36 ~~damage claims.~~

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39 FURTHER RESOLVED, That the American Bar Association recommends that the national,
40 state, and territorial governments should conduct two studies of the handling of residential and
41 small business insurance claims for property damages resulting from hurricanes or storms:
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Revised 107G

- 43 1. A study should be undertaken to assess whether or not states have enacted laws
44 designed to prevent price gouging during times of catastrophe and whether those laws
45 are uniformly and consistently enforced. A study should also be conducted to assess
46 the impact of major catastrophes on supply and demand in the realm of consumer
47 goods and services, the range of price fluctuations and changes in the availability of
48 certain goods.

49
50 FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation
51 that authorizes and directs the National Flood Insurance Program to participate in good faith in
52 the mediation programs established by the states and territories so there is a single mediation
53 venue for resolving all disputes for insurance claims resulting from hurricanes or storms.

Deletions struck through; Additions underlined