

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****February 13, 2006****RECOMMENDATION**

RESOLVED, that the American Bar Association urges the federal government and state and local governments affected by Hurricane Katrina and Rita, to establish and appropriately fund flood control plans and redevelopment plans for the Gulf Coast region.

FURTHER RESOLVED, that the American Bar Association urges federal, and affected state and local governments to take all steps necessary to ensure that the civil and criminal justice systems in the affected states have the necessary resources available to maintain the continuity of the rule of law.

FURTHER RESOLVED, that the American Bar Association urges that appropriate entities both within and outside of the Association, work with state supreme courts to develop model emergency orders for these courts to enact, that permit lawyers, not admitted to practice in the state, to provide pro bono legal services to disaster victims.

FURTHER RESOLVED, that the American Bar Association urges Congress to investigate the response by federal and affected state and local governments to Hurricanes Katrina and Rita, and to: (1) determine whether aspects of the tragedy could have been averted or mitigated by additional advanced planning; (2) encourage the future development of and training for evacuation contingencies in order to assure transportation to those without their own means out of a danger zone; (3) explore the legal issues posed by voluntary versus mandatory evacuations; (4) examine the command structure for coordinated emergency response by all levels of government; and (5) develop advanced coordinated emergency contingency plans for recovery and reconstruction efforts with a clear chain of authority and defined goals, objectives and achievement plans.

FURTHER RESOLVED, that the American Bar Association urges state legislatures in the affected states to explore mitigation efforts for future natural disasters, including, but not limited to, the need for more stringent building codes and revised zoning laws to address problems in flood zones.

FURTHER RESOLVED, That the American Bar Association supports the principle that emergency preparedness plans should take into account the needs of individuals with household pets or service animals as an essential part of the response to any disaster or emergency situation.

FURTHER RESOLVED, that the American Bar Association urges both federal and affected state governments act to afford relief to individuals, businesses and property owners from short notice, statute of limitations, proof of loss requirements, and other legal deadlines that adversely affect individuals, businesses and property owners because of injuries sustained, loss of records, loss of employment, and other effects of the unprecedented destruction caused by these hurricanes.

FURTHER RESOLVED, that the American Bar Association urges Congress to reexamine all aspects of the federal flood insurance program to assure that those living in areas subject to hurricane and flood damage are aware of the risks inherent to living in such areas and understand the necessity of flood insurance.

REPORT

With brutal and devastating force, Hurricane Katrina slammed into the Gulf Coast states of Louisiana, Mississippi and Alabama, leaving in its wake death, destruction, and displacement. More than 1300 people were killed, and the hurricane adversely affected tens of thousands of lives. Thousands were moved to shelters far from their homes. New Orleans was flooded when levees failed, and numerous other communities were equally devastated. Within a matter of weeks, Hurricane Rita wracked the Gulf region again, compounding the destruction, damaging yet more communities, and adding Texas to the afflicted states.

Hurricanes Katrina and Rita exacted a devastating blow to the Gulf Coast region of the United States, bringing a terrible loss of lives, significant injuries to people, wiping out of homes and businesses, the displacement of both people and critical local government institutions, including the courts, and causing untold personal tragedies in what was one of the most destructive and costly natural disasters to befall this country. Many people have yet to return to the homes and jobs they had before the tragedy and some may never be able to return. Part of this tragedy may have been mitigated through better communications between federal, state and local government authorities, and through provision of emergency transportation to enable people to evacuate the affected areas. The emergency response from government and private agencies proved insufficient to minimize damage, save lives, and expedite efforts for reconstructing the coastal region in a timely and sufficient manner. The overlapping, conflicting, and uncoordinated nature of the responding agencies contributed to the insufficient response. The reconstruction effort has been slowed by a lack of coordinated decision making among the various governmental agencies. The existing insurance structure, with a government flood insurance program that is separate from homeowners policies, creates burdens for affected persons.

The insufficient preparation and response demonstrates how ill-prepared for disaster this nation remains, even after the terrorist attacks of 9/11 brought home similar lessons. The levees' known problems were never addressed in advance, possibly because of issues of bureaucratic turf and/or lack of coordination. Reports on the evacuation of the area appear to conclude that those who had their own means of transportation were able to evacuate, but those who had to rely on public transportation could not leave the affected areas, even if they wanted to (one in five New Orleans residents reportedly did not have a car).

As a shelter, the Superdome proved less than hospitable. The air conditioning and regular lighting quickly failed, leaving it dimly lit. Holes in the roof from the storm soon appeared. Running water was soon a memory. Those sheltered there soon had to contend with overflowing toilets, suffocating heat, and an unwelcoming odor. Lawlessness overtook the venue.

The government response was plagued by lack of coordination and communication. President Bush called it "not acceptable." Even today, despair plagues the victims of the disaster and the relief and rebuilding efforts are proceeding at a slower pace than many would like.

It is important to express the American Bar Association's condolences to the victims of this disaster and its appreciation of the many who participated in helping save lives and easing the burden of this devastation.

This natural disaster highlights the necessity for Congress to hold hearings, not to set blame, but to understand and set in motion what it will take to avert, or at least mitigate, the destruction that disasters of this nature can bring in the future. The particular problems that arose in this disaster included a lack of advanced planning, evacuation and transportation problems, lack of a coordinated command structure that encompassed all levels of government, and the lack of coordinated emergency contingency plans for recovery and reconstruction. All of these issues should be addressed in congressional hearing so that future disasters will not result in the same problems and hopefully lessen the suffering experienced by those affected by the disaster. There should also be action by state legislatures to address these same problems as well as areas that are subject to state or local control such as more stringent building codes and zoning and planning laws that impact flood zones.

The impacts of this natural disaster include many legal problems experienced by people who live or lived in the affected areas. While people are attempting to put their lives back together the time periods during which they must initiate or react to legal actions are running. It is essential for many people that the notice periods and statute of limitations for actions be adjusted to allow them to handle disaster related matters and still be able to deal with legal issues in a timely manner. It is very likely that those affected by this disaster will be unable to act in a timely manner to satisfy proof of loss requirements, especially because in many instances they have lost or are unable to obtain necessary records. Added to this are the problems resulting from injuries sustained by affected persons or the loss of employment, either of which will significantly impact the ability of an affected person to handle legal matters in a timely manner. It is important for government entities to recognize these difficulties and provide relief to the victims of this natural disaster so they can recover their lives without having to deal with new problems resulting from legal deadlines and requirements.

One specific problem that this disaster has highlighted is the utility, affordability and impacts of the federal flood insurance program. Many people affected by this disaster were without flood insurance or have had problems accessing their flood insurance coverage. Congress should conduct a thorough review of the federal flood insurance program to see how it can be improved to better serve those affected by floods. Often it is those who are the least informed or most economically disadvantaged of our citizens who live in areas that are prone to flooding problems. These people, who often need flood insurance the most, are the least likely to be covered by flood insurance, because they can't afford it or they don't understand the risks they face or they think their homeowners insurance covers them for flood damage. The American public is spending a tremendous amount of money to address the damage from these hurricanes. If an improved flood insurance program could better handle the damage from disasters involving flooding as well as proactively decreasing the likelihood of such damage, it would be well worth the expense involved.

These recommendations address the tragedy resulting from Hurricanes Katrina and Rita. It is important for the ABA and our country to address these issues now while the disasters are fresh in our minds so that future disasters of nature will not result in problems like the ones we have seen with this disaster.

Respectfully submitted,

Sandra R. McCandless, Chair
Tort Trial and Insurance Practice Section

February 2006

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial & Insurance Practice Section

Submitted By: Sandra R. McCandless, Chair

1. Summary of Recommendation(s).

The recommendation expresses the American Bar Association's condolences to those affected by the tragedies visited upon the Gulf Coast region by Hurricanes Katrina and Rita and expresses appreciation for those who participated in responding to the tragedy.

Next, the recommendation calls upon Congress to hold hearings related to the disaster resulting from Hurricanes Katrina and Rita. The hearings should address (1) whether the tragedy could have been averted or mitigated by advanced planning; (2) encouraging evacuation contingencies for such disasters; (3) look at voluntary versus mandatory evacuations; (4) establishing an effective command structure; and (5) developing emergency contingency plans. It also calls for state legislatures in the affected states to explore mitigation efforts for future natural disasters, such as revising building codes, planning actions, and zoning laws that impact flood zones.

The recommendation also urges governmental agencies to provide appropriate relief from legal deadlines and obligations that impact victims of the tragedy, such as short notice periods, statute of limitations, proof of loss requirements because of injuries, loss of records, loss of employment, and other effects of the hurricanes. The last portion urges Congress to evaluate the federal flood insurance program to assure that persons living in areas subject to hurricanes and flood damage know of the risks inherent from living in such areas that they are not unknowingly left without the protection necessary to rebuild their lives following a tragedy such as Hurricanes Katrina and Rita caused.

2. Approval by Submitting Entity.

Approved by the Council of the Tort Trial & Insurance Practice Section on January 11, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None that we are aware of.

5. What urgency exists which requires action at this meeting of the House?

Hurricanes Katrina and Rita were the worst natural disasters to afflict this nation and the ABA House of Delegates should appropriately express the Association's condolences to victims and appreciation for those responding to help, as well as recommending appropriate action that can assist victims of this disaster and improve the handling of future disasters. It is now over four months since the disaster took place and if we wait until August to act it will be almost a year since the disaster.

6. Status of Legislation. (If applicable.)

A number of bills have been introduced in both Houses of Congress. The Senate bills were referred to the Committee on Homeland Security and the House bills were referred to the House Homeland Security Committee

7. Cost to the Association. (Both direct and indirect costs.)

None

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

This report is being referred to all ABA Sections, Divisions, and Forum Committees as well state and local bar associations for co-sponsorship.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

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