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# SURVIVING TOTAL DESTRUCTION OF YOUR LAW OFFICE AND CLIENT BASE AFTER A CATASTROPHIC DISASTER

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## ABSTRACT

*Expect your office and the city you work in to be destroyed some day. That's according to a solo practitioner who lost his New Orleans office and much of his practice to Katrina. The author provides specific advice, based on hard-earned experience, on how lawyers can protect themselves and their livelihoods in a catastrophe.*

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*Glenn C. McGovern*

On Thursday, August 25, 2005, Hurricane Katrina was projected to make landfall in Florida and then turn northeast. On Saturday, August 27, 2005, at 7:00 A.M., while we were on vacation near Budapest, Hungary, my Hungarian wife, Erika, handed me a printout of a satellite photo of Hurricane Katrina she had obtained at an Internet café. The hurricane was now heading directly toward New Orleans and literally filled up the entire Gulf of Mexico. It was the biggest hurricane in history.

I had lived through Hurricane Betsy, which had flooded parts of the City of New Orleans and devastated adjacent St. Bernard Parish.<sup>1</sup> I experienced the 195-mile-per-hour winds of Hurricane Camille as a rescue worker and saw the nineteen-foot tidal surge that leveled the first six blocks up from the beach in nearby Bay St. Louis, Mississippi. I lost my Cessna aircraft in Hurricane Georges due to a tidal surge at New Orleans Lakefront Airport.

But Hurricanes Betsy, Camille, and Georges paled in comparison to Katrina. It appeared to be “the big one” we had all feared. It threatened everything I owned and everyone I loved, as well as—although I did not fully realize it—my way of life. My heart sank in my stomach.

Ancient forts with cannons such as Fort Pike and Chef Menteur Pass had protected the City of New Orleans from invasions of the British and the North during the Civil War, but they could not protect it from Katrina. Everything was going to change, for New Orleans and also for me, both personally and professionally. My culture, landmarks, family, friends, office,

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1. In Louisiana, we have parishes instead of counties.

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and law practice would be different for the foreseeable future and then some.

Eastern New Orleans and St. Bernard Parish were hit by a tidal surge over twenty-three feet that burst the unarmored fifteen-foot levees, rolling into the Mississippi River Gulf Outlet and Industrial Canal, which run through parts of Orleans Parish near the St. Bernard Parish line, accelerating up between the larger levees there, and bursting levees into the New Orleans Ninth Ward. Houses were moved off their foundations. People died in their attics, in luxurious and dilapidated homes alike.

A toxic goo of diesel fuel, lead, arsenic, petroleum components, and salt water contaminated some of the homes and the ground—although the EPA later contended that the degree of contamination was ultimately not unsafe. Many question the reliability of the EPA's pronouncements. However, one thing is certain: the smell of this mixture was indescribably unpleasant.

The Mississippi River runs between the east and west banks of New Orleans and empties into the Gulf of Mexico. New Orleans, the second largest port in our country behind New York, is further surrounded by the Industrial Canal, Lake Catherine, Lake Borgne, and Lake Pontchartrain. Lake Pontchartrain is shallow and over twenty-two miles across. Winds can toss the shallow eight-foot Lake Pontchartrain waters like tipping a saucer of water to one side.

The coastal marshlands that protected the city for ages have been washing away as a result of salt water intrusion from the Gulf. Some of the marshland death has resulted from the construction by the Corps of the Mississippi River Gulf Outlet (also known as the MRGO), which provided the city with a waterway shortcut to the Gulf. Some of the problems stem from another Corps project, i.e., construction of levees that, for about eighty years, have diverted the Mississippi River silt that nourished the wetland vegetation.<sup>2</sup> The marshlands, which extended all the way to the Gulf of Mexico, had acted as a natural flood control system.

No substantial federal funding was ever allocated for floodgates at the Chef Menteur, the Industrial Canal, or the Rigolets waterway that passes from the Gulf, or for coastal restoration. Katrina would flood about eighty percent of the city of New Orleans and destroy utilities, underground and above the surface.<sup>3</sup> As I write this account, eight months after Katrina, many areas still do not have phone and electrical service.

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2. See JOHN M. BARRY, *RISE AND FALL: THE GREAT MISSISSIPPI FLOOD OF 1927 AND HOW IT CHANGED AMERICA* (Simon & Schuster 1997) (describing the "Great Flood" of 1927 and the Corps's efforts to control the Mississippi River and protect nearby cities, including New Orleans).

3. The National Hurricane Center has issued a post-tropical storm report for Hurricane Katrina, detailing the storm's meteorological statistics from beginning to end. RICHARD D. KNABB, JAMIE R. RHOME & DANIEL P. BROWN, NAT'L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE KATRINA 9 (Dec. 20, 2005), available at [http://www.nhc.noaa.gov/pdf/TCR-AL122005\\_Katrina.pdf](http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf).

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I. THE AFTERMATH OF THE STORM:  
WHAT I RETURNED TO FIND

I graduated in 1977 from Loyola Law School, located on St. Charles near Audubon Park. I used to warm up to civil district court juries by confessing I was from the Ninth Ward,<sup>4</sup> but I was from the “Upper Ninth Ward,” and thus a “blue blood yat” (people from the Ninth Ward are called “yats,” short for “where you at,” due to their distinctive accents, which are somewhat similar to a Bronx accent). It always brought a chuckle to be likened to royalty in an area that was the poorer part of the city, a stepchild compared to Uptown and Garden District mansions.

I had no idea of what to expect and how my life would change. Imagine not only losing all one’s office furniture, office building, files, and computers, but also one’s staff, since they also lost everything. To make it even worse, imagine also the loss of one’s entire at-home client base in three entire parishes (Orleans, St. Bernard, and Plaquemines) where I had built a good plaintiff civil trial litigation practice since starting my practice in 1977. Talk about stress.

As bad as that sounds, that was not all. I soon learned that I was returning to a city that in many ways seemingly resembled a war zone. Imagine flooded courthouses with roof leaks that cause mold to grow over files. Imagine destruction of the entire legal and communication infrastructures: phone lines, fax lines, post offices, water lines, and electricity. Imagine damage extending across much of the Gulf Coast including parts of Louisiana, Mississippi, and Alabama. Imagine not knowing for days if your house or office was still there or if your friends, relatives, and staff were alive or dead.

As it turned out, I lost “only” my entire office and staff. My relatives survived, although I was not sure about my brother-in-law for some time. I could not communicate with him for over ten days. His cell phone and pager would not work. He had managed a flight base operation at New Orleans Lakefront Airport and I feared he had waited too late to leave after trying to help and protect others. I had nightmares he had been engulfed by the twenty-three-foot toxic tidal surge that leveled the Lakefront Airport near my office. I finally got a text message from him telling me that he had made it.

I lost friends. Father Red, my Catholic priest, had baptized all three of my children. His church was located in New Orleans East. He reportedly told the National Guard, who begged him to evacuate, that God would

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4. The Ninth Ward is the home of musicians and artists. It has both wealthy and poor sections, and is steeped in history.

protect him. Father Red died, and his church was washed away, leaving only the side walls and the slab.

I had friends and relatives in Gulfport, Mississippi, from whom I did not hear for weeks, because the city was literally leveled. Today, over at least 226 people are still missing from Hurricane Katrina and the death toll exceeds 1,577.<sup>5</sup>

The losses kept coming, even after the waters receded. Two of my friends, a doctor and a documentary film maker, committed suicide after the storm, overwhelmed by the loss of their businesses and homes at once. One local CPA was asked whether anyone was making any money. In reply, he gave the name of a leading divorce attorney. The emotional impact of all this still scars me and, as one can see, many, many others.

Another cause of stress for me was that my two of children were forced to scatter so they could continue to pursue their education after the storm. Matthew's high school was flooded with five feet of water and was closed for the rest of 2005, which would have been the first semester of his senior year. Matthew first moved to Pennsylvania with his mother, my ex-wife. Then he ended up in Los Angeles where he lived with my oldest daughter, Celeste, and attended a private school that took him in for a semester. My younger daughter, Megan, fled to Memphis with a friend. She would spend a semester in college there because her school and my alma mater, the University of New Orleans, had gone underwater and suffered rain and wind damage as well. Being separated from my children was very difficult for me. Nevertheless, I discouraged them from returning until Christmas.

I did not know all this yet, as I flew back to the United States on September 3—five days after Katrina made landfall in Mississippi and Louisiana. As for my professional future, there was nothing I could do at that point to change or augment the preparations I had already made. Whatever decisions I had made in the past on flood insurance, the backing up of files, storage of paper files, business interruption insurance, and safeguarding of exhibits and valuables were irrevocable now. I soon learned that I had done some things right but other things wrong.

Before I was able to fly back to the United States, I tried calling my staff of two secretaries and the building manager of our office complex in New Orleans East. No one was reachable. The cell phone and land lines were jammed. My experience was not unique. The New Orleans area code is 504. All land lines were so damaged or the lines so busy that phone communications to and from the 504 area code were very, very difficult. Text

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5. Gwen Filosa, *Storm Victim's Body Is Found in Mid-City Home*, TIMES-PICAYUNE (New Orleans), May 28, 2006, at 1.

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messaging ceased the day of the storm. Evacuees quickly understood the problem and purchased *en masse* new cell phones with new cell phone numbers in, for example, the 225 area code (Baton Rouge), 337 (Lafayette), and 318 (Shreveport), thereby visiting jammed lines upon Baton Rouge, Lafayette, and Shreveport.

The Louis Armstrong Airport in Kenner, a part of Greater New Orleans, was partially damaged by water covering the runways. With the exception of ambulance flights, no flights could take off. The airport had been converted into a makeshift MASH-type triage hospital. I flew from Budapest to Jackson, Mississippi, because my son Matthew had evacuated in my car and left it in Jackson for me.

I returned to Louisiana by car from Jackson, Mississippi. I could not enter Jefferson Parish, due to downed power lines and trees, or Orleans Parish for weeks. I did not know whether my home had been looted, flooded, or even if it was still there. I had no information on the law office or what had happened in New Orleans East. Public officials were of no assistance and provided no information. Since the office in New Orleans East and my home in Metairie had never flooded, I was hopeful. Barred from both my home and office, I began to plan and act in order to move forward.

Unable to return home in Metairie, I rented a place in Clinton, Louisiana, near Baton Rouge, from good friends. I got a post office box. Also, I had a DSL line, fax machine, and two phone lines installed. I needed the post office box and fax line to file a plethora of insurance claims, as well as to continue working on an active toxic tort case I had pending in Clinton. Simply acquiring these essentials took over two weeks. I notified the insurer of my plane of a potential claim, since the plane was at the Slidell Airport near the eye of the storm. The bridge to Slidell had been destroyed with concrete spans tossed into Lake Pontchartrain by the storm surge and the excessive winds.<sup>6</sup>

Claims for the law office and home had been filed by cell phone from Europe. Having obtained claim numbers for each, I then followed up with express mail letters and faxes to create a record for potential bad faith insurance claims. I anticipated some bad faith claims because the size and scope of this disaster were so immense the insurers could not quickly handle all of the claims.

Nothing would be simple or easy anymore in this post-Katrina world. The Whitney National Bank, where I banked, had flooded and moved

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6. See, e.g., John Hill, *Rescuers: Damage Worse Than They Feared*, DAILY ADVERTISER (Lafayette, La.), Aug. 30, 2005, at <http://www.adiananow.com/apps/pbcs.dll/article?AID=/20050830/NEWS05/50830008>.

The author in  
back of his New  
Orleans office after  
Hurricane Katrina.



operations to Houston, Texas.<sup>7</sup> My personal loan officer had left, making communications impossible. I lost my checkbooks to toxic sludge (I still could not legally get to my office), and online banking did not work for weeks after Katrina. I learned the hard way that ATM and debit cards do not work when the data lines and computers are down and there is no electricity. This was going to be tougher and more frustrating than I thought. Luckily, I had previously set up a line of credit, and (through a Baton Rouge branch) was able to get some temporary checks.

Chaos and uncertainty ruled. Flood waters persisted for several weeks in Lakeview and New Orleans East. Hurricane Rita reflooded parts of the Ninth Ward on September 22, 2005. Erika and I were worried about the children, the office, my ex-wife's home (where flooding was as high as eight feet), as well as our own home. I hoped there were no trees protruding down through our roof. I hoped we still had a roof at all. The anxiety of not knowing if we had a home was overwhelming.

Erika and I had to wait days before we were able to visit our home in Metairie. Finally, we were allowed into Jefferson Parish for three days, at which time I learned my home was not flooded and had "only" suffered about \$14,000 in wind damages. I considered myself lucky. At the same time, I will never forget the sight of so many helicopters flying over the New Orleans area. From large twin-engine Chinooks, to Blackhawks, Hueys, and even Apaches, they flew over our house in Metairie every thirty seconds. These were the helicopters being used by the U.S. Coast Guard to rescue over 35,000 people.

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7. These same Whitney employees evacuated for Hurricane Rita when it approached Houston.

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For those three nights, we slept in our home without electricity. It was so good to be home, even if just for a few nights, despite the absolute darkness. The beauty of the stars was complemented by aircraft navigational lights and rotor blades reflecting in the moonlight. It was pitch black, surreal, and unforgettable. After three days, we took our basic belongings to live in Clinton for the upcoming weeks.

After so many weeks without knowing the fate of my office and New Orleans East, I became first frustrated and then really angry. I was tired of studying CNN reports with aerial videos and looking at satellite photos. I needed to learn the actual condition of my office. I had to file documentation of the physical damage to get paid for the claims.

I came up with a plan. I had started in 1989 to work in Texas on business to extend my practice area, flying my Cessna 206. Although my plane's hangar at Slidell Airport had lost its roof and some walls, the plane itself was basically untouched. I obtained clearance to fly over New Orleans East at 3,000 feet. I took off with a friend and an insurance executive who wanted to come along. We flew over Slidell and were amazed at the tens of thousands of trees that had been strewn like matchsticks over the streets in St. Tammany Parish. We proceeded over Eden Isles, where my brother's house was standing but flooded with two feet of water. I looked for my eighty-seven-year-old mother's home but could not see it due to debris and downed trees.

Next, we flew over New Orleans East and my office. I was shocked at the destruction. Dead deer, pigs, and fish mixed with toxic Katrina residue covered I-10. Parts of the I-10 bridge that connected Slidell to New Orleans East were just gone. I could not drive in even if I wanted to. The old Highway 11 bridge over Lake Pontchartrain, connecting Slidell to New Orleans East, however, was still intact. I would take advantage of this knowledge several days later.

We circled over the office and saw roof damage. I asked the air traffic controller if we could go lower. He turned me over to Omaha Control, the military controller, to whom I explained that we needed to get lower, to about 1,500 feet. He said with his John Wayne accent, "Okay, as long as you don't hit any of my helicopters." From this lower height I had a better view. My office was still there!

I turned around and flew east. St. Bernard Parish was almost completely leveled by wind and water. I headed toward Pass Christian and Gulfport, Mississippi. The entire area for six miles from the edge of the Gulf of Mexico to I-10 had been leveled. It was unimaginable. The marsh and barrier islands were eroded beyond belief. This was beyond bad; it was surreal.

Erika asked me over the cell phone after I landed how bad it was. I just cried. All I could do was cry. About eighty percent of the city was badly

damaged. I had expected it to be bad, but this was beyond anything I could describe. I had only seen the damage from an airplane—not at ground level, yet.

After we returned to the Slidell Airport, I contemplated reaching the law office by truck. The Marines were in New Orleans East but camped at Slidell Airport. I talked to a few who camped there at night and entered New Orleans East during the day to search for survivors, repair the roads, and guard property, except on Sunday when they went to church at the airport. No one was allowed in New Orleans East until October 3, 2005,<sup>8</sup> but I had to get in to save what files I could, retrieve my servers, and document the damages for insurers.

I schemed to go in the next Sunday at 6:30 A.M. and leave before the Marines returned from church. I enlisted a friend, Joe, to go with me in my fifteen-foot Ford box truck. I would evade the road blocks with some Xerox copies of passes I got from a friend and magnetic contractor signs on the truck. Besides my servers, I needed to recover hard drives, backup copies, and paper files before they got moldy. I was hoping that the office had less than a foot of water, since the upper Ninth Ward had never flooded before.

I met Joe at 6:00 A.M. We crossed over the old Highway 11 bridge into New Orleans East in my truck, along with water, gloves, plastic bins for books and files, flashlights, a generator, lights, respirator masks, boots, and a police model Mossberg seven-shot twelve-gauge shotgun loaded with rifle slugs and buckshot, just in case. We would be in there on our own with no help.

Everything in the Bayou Sauvage Wildlife Refuge was gray and dying. There were no leaves on the trees. Dead fish and animals littered the highway. It really stunk. I then understood why the Marines did not camp there at night.

My heart sank as we approached Read Boulevard. There was still water covering parts of I-10. To go from flooded sides to unflooded sides of I-10 required our crossing over the median at a set speed to avoid getting stuck in the wet, muddy median. The tires were sliding all over in the sludge and muck. Six to eight inches of toxic silt covered the parking lot and some roads. It was hard to get traction, but we progressed by sliding along. We got as close to the office as we could, barely making it. I went in.

Not only was there four feet of contaminated salt water in the office, but the roof had been overloaded. Rain water came in, splashing my electrical gear and collapsing part of the ceiling tiles. Everything was thrown

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8. The city was under martial law. As a result, checkpoints were set up across the city and only authorized persons could enter.

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all over. The safe where I kept backup CDs and exhibits had been corroded and could not be opened. Some of the paper files above the four-foot level were okay, but others were smelly. My library was wet and moldy, the books ruined. I removed the dry files and my wet accounting records. We began loading them, quickly filling the truck. I managed to take digital video and still pictures of the roof failure and flood damage. This was the first hurricane that I did not take all the computers and critical files with me in the box truck and head north.

As we were loading the box truck, some young males with guns approached us on foot in the parking lot. They were armed with pistols. Joe called out and I grabbed the loaded, unchambered shotgun. I pointed it at the intruders and made sure they heard the chambering of a buckshot shell into the chamber. The juveniles stopped when I told them that I was having a bad month, to put their hands up and walk backwards or I would shoot. I meant it. I was so mad that if they would have made a move I would have fired. This was a desperate time for sure, but I had been victimized by Katrina and was in no mood to tolerate vandalism and looting. They walked backwards and went away, falling in the muck.

We finished loading the truck and headed home. The Marines were back. I evaded the now-manned roadblocks on Read Boulevard. A big guy with a Homeland Security T-shirt stopped the truck to check my papers. Luckily for me, he received via radio a call for help from some cell phone tower workers who were under fire. We were told to get out and not to come back with those passes again. We left, glad not to be detained.

## II. TOUGH CHOICES: STAY AND REBUILD — OR LEAVE

I felt better knowing the condition of the office, even though it had been badly damaged. Heck, St. Bernard Parish (where I had many clients), the Ninth Ward, and Lakeview also had been devastated. Knowing what I faced gave me a strange sense of closure and removed the anxiety that accompanies uncertainty. I now had a choice. I could (1) give up my twenty-nine-year-old law practice and the city and move to another state or (2) fight to stay in business, finish cases in progress for my clients, and help to rebuild my city in any way I could.

I thought about this a lot. It took days to weigh my options and decide what to do. I talked to fellow business owners who were undecided as well. We all were shocked and numb. I then made some critical decisions. Obtaining insurance money was the top priority. But what then? I had to lease new space as close to the city as possible. I started the search by driving and responding to ads for unflooded office space. I soon found space in nearby Metairie. BellSouth was helpful in forwarding old phone lines, pre-

servicing my old numbers, and getting new service to me quickly under bad conditions.

I received distress calls from my condominium association. They had lost their twenty-five businesses in the hurricane. The manager had resigned. There was no leadership. The other twenty-five owners were scattered and no one seemed to have any idea where to start. Before going to law school, I had building experience as a contractor. I felt I had the ability to help. If I left now, I would feel guilty that I had abandoned my city and business neighbors.

Any lingering doubts about my decision to stay and rebuild were removed when I received a phone call from a client who started crying when she heard my voice. "I thought you were dead when I couldn't reach you," she cried. "I am in Atlanta. I lost everything. My mom lost her house. Can you still help us?" I choked up. "Sure," I said. "I'm not leaving. Maybe later I will relocate but I will help you now. That's what I'm here for." I had not fully realized others' need for me until that moment.

Suddenly I had a plan and a direction for my life to go. I was not giving up; I was going to try to keep my practice alive. There was a lot to do for now. My wife said to take it one day at a time and just try and accomplish one thing a day. I was used to making a list and doing almost a dozen things a day. Things would be different now: everything was more difficult and took more time. Living in post-Katrina New Orleans was now like being in a third-world country.

Although it seemed impossible, I threw myself into investigating the feasibility of rebuilding Deer Park. I recovered the flood proceeds for the Deer Park Condo Association, called a meeting to vote to rebuild (eighty percent voted yes), negotiated a partial settlement on the wind/roof damage claims, obtained rebuilding cost estimates, obtained a bonded contractor to rebuild Deer Park, and, surprising myself, even obtained a building permit for Deer Park.

### III. YOU NEED A PLAN TO SURVIVE—LESSONS LEARNED

I truly believe that the U.S. Coast Guard was one of the few federal agencies that performed flawlessly during and after Hurricane Katrina. Whenever I see a Coast Guard helicopter crew member at the airport, I shake his or her hand. The Coast Guard was the first responder into the city. They worked around the clock for the next seven days and saved over 30,000 people from roofs, car tops, and homes in toxic floodwaters. How did they do it? They had prepared by moving all assets and personnel to Alexandria, Louisiana, safely north of New Orleans, before Hurricane Katrina made landfall. They then returned and executed their plan flawlessly. You need to have a plan to survive.

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The primary purpose of this article is to describe my experience, and discuss some steps you can take to protect your own practice and survive in the aftermath of a catastrophe. When I go out of town for depositions, and discuss the New Orleans disaster, I often am bluntly told I was foolish for living there in the first place. This is painful for me. Moreover, it ignores the fact that disasters can happen anywhere—caused by, among other things, fire, flood, earthquake, terrorist attacks, or tornado—and we all should be prepared. How I got through this stressful event will be discussed. It may help you to cope if something like this ever happens to you. You can endure like I did, if you have a recovery plan.

Here are some things I learned and pass on to help others in the practice of law to survive a man-made or natural disaster:

A. *Plan on the Office and City You Normally Work in Being Destroyed Some Day*

I had done some smart things by accident, but I also did some dumb things. Looking back, branching out of the New Orleans area and taking cases in other parishes in Louisiana in the 1980s and 1990s and in Texas beginning in 2000 was smart. The point is that one should not have all of one's practice/clients in one place. I have cases in nearby parishes north of New Orleans and in Texas. I never stopped working on those cases.

I soon realized the harsh reality: some businesses in New Orleans and St. Bernard would grind to a halt for months or years. Entergy New Orleans, the local utility company, was unable to restore electrical power. Congress refused to help the utility with funding, and it filed for bankruptcy very soon after Katrina.

In New Orleans, everything stopped for six months. The forwarded office phones stopped ringing with inquiries from New Orleans and St. Bernard residents. Most witnesses had evacuated and the courthouses had roof, rain, and flood damage.

The federal courts in New Orleans relocated until December because of flooding on the first floor. The civil district courts in New Orleans moved to Gonzales, Louisiana. There was limited court activity until early 2006. The criminal courthouse in New Orleans was flooded. The St. Bernard Parish courthouse flooded and did not reopen for almost eight months.

Since the population dropped down from 458,000 to 100,000 overnight, picking a jury in New Orleans proved to be difficult. For example, in January, the civil district court sent out a jury summons to 3,000. Less than 300 were returned. The federal court sent out 5,000 in late 2005, with only 50 returned. The mail was not working in a timely fashion at all: for example, I received a package in April 2006 that was mailed from Texas in September 2005. Conducting trials would be hard where witnesses could

not be located or subpoenaed, and where hospital medical records had been submerged.

I had always complained about traveling out of town on business and flying the single-engine Cessna solely on instruments at night or in bad weather by myself to work out of town. After Katrina, however, my ability to do this gave my law practice a life preserver. Essentially, in not having all of my business in one town, I had avoided putting all my eggs in one basket.

My brother, on the other hand, had exclusively defended those charged with crimes in New Orleans. His practice has been destroyed and will be a long time in recovering. The population in New Orleans is not expected to return to pre-Katrina levels for a decade, assuming that it does so even then. Currently, the city has a population of only about 230,000. My cases and legal practice outside of New Orleans and St. Bernard Parish will save me financially. Lesson: Develop business out of town and out of state as a backup.

*B. Have a Satellite Office with the Bare Essentials to Operate with If You Lose Your Office*

I often thought of having another office but viewed it as impractical since overhead expenses would rise. I never thought of it as being a figurative "port in a storm." I now have a satellite office in Clinton, Louisiana, ninety miles northwest of New Orleans, where I have the bare essentials such as DSL lines, phone lines, fax machine, copy machine, scanner, desks, office supplies, and forms. Another hurricane hitting New Orleans this year is not a remote possibility, and the levees have not been fully repaired. The pumps that remove rain water may be compromised. Evacuations for hurricanes in the past usually lasted for one to three days at the most. Hurricane Katrina was different and the future might be as well.

But an earthquake, tornado, flood, fire, or other disaster also could damage your office. Plan now to have a backup office with another firm or rent space to house your law office staff. Plan now to have a satellite office where you have some business to help justify the expense. It takes time to get a new post office box, stationery, business cards, computers, fax machines, phones, phone lines, and DSL lines installed and functioning. It could take weeks or months in a disaster. Everything takes much longer after a disaster. Think of a satellite office as insurance to save the law practice you worked a lifetime to build. Also, business interruption insurance will not readily cover loss of your entire client base.

*C. Have a Good Website and Use It to Communicate with Your Clients and to Get New Out-of-Town Business When a Disaster Strikes*

A good website is a valuable tool in retaining clients and obtaining new business during disasters. Make sure clients have your web address. Be sure

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that the site can be updated to facilitate communication and give new information to clients, especially when your location, phone numbers, and mailing address change. Hurricane Katrina did not damage the Internet. New Orleans Mayor Ray Nagin essentially was unable to communicate with the outside by cell and regular phone lines, but he was able to contact President Bush through an improvised Internet setup in the Hyatt Hotel in New Orleans. Reassuring clients you are still there to serve them is invaluable. Potential clients find comfort in “seeing” you on the Internet, even though your actual office may be under four feet of water. Having developed a good website helped me to convey an image of competence and preparedness. My website enabled me to attract new cases, which is emotionally uplifting at any time, but was particularly so when the city remained under water. Believe me, I’ve been there.

*D. Give Clients Your Cell Phone Number and Put It on the Website and Letterhead*

One could call me nuts for providing my cell number to clients. However, phones have caller ID and one does not have to answer them all the time. Moreover, one of the biggest legal fees I ever received originated from a cell phone call I received while driving a ski boat with the kids after 5:00 p.m. on Bayou Sauvage in 1986. I always give my cell phone number to my clients. My old office number has always been forwarded to my cell phone. If I had not done these things, I would have been lost to the clients. Cases develop even in a catastrophe. Clients need help in a disaster, especially when injured. If potential clients cannot reach you immediately, they probably will contact another lawyer and your name could be washed away from their memory as they are overwhelmed by the disaster. I cannot stress enough the importance of being ready to receive calls from old and new clients. Even when cell phones weren’t working on voice calls, they worked on text messaging. For weeks, this was the only way to communicate.

*E. Keep All Insurance Papers in a Separate and Distant Location*

I erred here. I had a big safe in the office with four-hour fire rating. It flooded and the door could not be opened. Many banks’ safety-deposit boxes flooded.

Put insurance papers in a safe place at another distant location. Copy essential information to your laptop in PDF formats and always take it with you. I purchased a new Mac PowerBook G4 just prior to Katrina. I had many valuable bits of information on it, including 1-800 numbers and policy numbers. This information proved very valuable since my insurance agent lost his files. I was, nevertheless, able to file claims almost immediately.

*F. Consider Changing to Laptop Computers for All Staff and Yourself*

Only one of my small business friends saved all data on computers. He had laptops in the office. The staff took their laptops when they evacuated. Of course, laptops are easier to remove and carry than a full desktop computer or even just the hard drive. Also, when one needs to return to work, it is easier to do with a laptop than to acquire and set up a new system of hardware and software.

My accountant relocated in a wholesale air conditioning and heating parts business warehouse for months with the staff operating only on their laptops. They had an emergency plan and it worked. All they had to do was find space and a new mailing address. Phone communication for six months was accomplished solely by cell phone.

From now on, all of our computers will be portable laptops and will be evacuated for each disaster. The new ones have great screens and sufficient memory to do this.

Even if you have offsite data backup (which is recommended), you will need the hardware and software to operate and the laptops give you and your staff instant portability to get up and get running quickly.

*G. Back Up Data and Paper Files Offsite and on CDs that You Can Take with You*

I had a backup server on-site at a seven-foot level. The roof failed, dumping rainwater on it and literally rusting all of the components. When I took it down, it rattled from electronic parts falling out of the circuit boards. The data were lost. Luckily, I had also backed up everything on CDs, although some were not recoverable because they were also in the large safe on-site. Luckily, I had the bulk of my paper files and closed files offsite in a warehouse that did not flood. I highly recommend that all backups be kept through an offsite service in another state in secured facilities. This also will facilitate your ability to return to work immediately.

*H. Get the Most Insurance You Can for All Perils and Watch Out for Gaps in Coverage between Policies*

All business interruption policies are not the same. There are gaps between flood policy coverage and business interruption/wind/fire policies. For example, a flood policy usually provides almost no coverage for loss of valuable papers, and the business policy has very limited coverage or none in the case of flood.

In the event of a disaster, don't expect payment without a fight. I *still* have not received full payment from my business interruption insurer, and it took five months before I received a partial payment. I had to deal with a series of five different adjusters until I got to someone with authority

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who also knew the policy. It was frustrating. My agent did not inform me of the gaps between the two coverages—such as, for example, coverage for loss of valuable papers—and I face some uncompensated loss. But one can, for example, insure against loss of valuable papers. Make sure you get the coverage you need and review your policy annually for changes.

I am not alone. Very few law firms received timely payments for business interruption, including several big insurance defense firms.<sup>9</sup> Be ready to document all income losses and hire a forensic accountant to crunch the numbers right after the storm. This is easier to accomplish for a defense firm that has hourly billing records than it is for a plaintiff personal injury firm that works largely on contingency contracts with income varying widely each year.

*I. Keep an Inventory of the Office on Your Laptop You Take with You and PDFs of the Policies So You Can File Your Notarized Sworn Proof of Loss as Soon as Possible to Get Your Claim Paid*

In an immense disaster such as Katrina, he who files first and fights the hardest gets paid first. Having all of the policy information and phone numbers with one allows one to file claims early. Luckily, I had all of my agent and insurance policy numbers information on my laptop with me in Europe and filed my claims and got claim numbers before I returned to the country. It still took months to recover on the claims (I am still working on the business interruption claims). You need to get a claim number and an adjuster assigned to you as early as possible in order to recover as soon as possible. This is a priority. You cannot rebuild until you have your insurance money.

There is another very important lesson I learned. Most policies require that a notarized sworn proof of loss be filed within sixty days of the flood or casualty loss. When one cannot legally or physically get to one's office within sixty days to make an inventory and photograph damages, this can be a big problem. Yet, one cannot expect an insurer to pay a substantial claim prior to receipt of a notarized sworn proof of loss describing the damage and containing a specific amount of loss, when and how it occurred, etc. One cannot file a lawsuit until this is done. Insurance companies know how to play the game, since they played a role in the imple-

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9. Section 22:658 of Louisiana's Revised Statutes provides, in case of a catastrophic property loss, for insurers to initiate loss adjustment of a property damage claim within thirty days after notification of a loss by a claimant or pay penalties as provided in section 22:1220. Section 22:658 currently provides for penalties against an insurer of twenty-five percent of damages on the amount to be due from the insurer or \$1,000, whichever is greater. LA. REV. STAT. § 22:658 (West 2004). As this is written, there are several pending bills to increase the penalty to include attorney fees and up to two times the damages sustained. See Robert Travis Scott, *Bill Raises Stakes in Insurance Delays, Late Penalty Payment Would Be Increased*, TIMES-PICAYUNE (New Orleans), June 1, 2006, at 6, available at 2006 WLNR 9393850.

mentation of the rules. One must know the rules and be ready to satisfy the criteria needed to be reimbursed or one will not get paid.

I had to run around roadblocks to digitally photograph and videotape the office damage before I could submit a detailed list to my first business interruption adjuster. Our first meeting was unforgettable. He worked with a large national insurer. Yet he was operating in Kenner, Louisiana, out of the back of Nicholl's Limousine Service. I hand-delivered him the loss package (the mail system was nonfunctioning for months in New Orleans) with the notarized and sworn proof-of-loss form I had drafted, digital photos, and videotape of damages. He pulled me over, not even opening up the package, and told me, "Well, you know this is just a flood loss and not covered by your business policy?" I told him I was shocked that he had already reached a wrong conclusion before he had even looked at the package and had not visited the site to see if the roof failed, as it did, in fact. I complained in writing to the company. I evaded roadblocks to get my first flood adjuster into the office. He later got sick from toxic mold and was taken off the claim after being hospitalized. I was assigned another adjuster months later for the flood claim. In all, I had five successive claims adjusters for my law office, flood, and wind claims. The insurer assigned another adjuster who confessed that he had never handled a business interruption claim and was not familiar with the policy. I wasted months dealing with the second and third adjusters trying to settle the claim. The third adjuster actually visited the office and said there was a clear claim due to roof failure and the company would tender policy limits. However, this did not happen. Rather, he was replaced presumably after the insurer received his report. I never did meet with the fourth adjuster in person, nor did he visit the site. Teams of outside engineers from Los Angeles visited the site and walked the roof. Then a fifth adjuster walked into the office, saw evidence of roof damage and ceiling leakage, and immediately cut a partial check. I gave him my photos, the sworn loss form, the inventory, the video, the forensic accounting report, and the weather report documenting rainfall. The claim has still not been completely resolved.

*J. Video and Digitally Photograph the Entire Office for Insurance Loss Purposes*

In a disaster of this magnitude, most if not all claims are handled electronically. Having digital photos in a small format that an adjuster can easily download to the home office will facilitate reimbursement. The same applies to causation information. I needed to prove roof failure. The digital pictures and video tapes enabled me to establish this. Similarly, damage from trees, debris, and water leakage is not visible forever and disappears during cleanup. My early efforts preserved this evidence.

*K. Have a Communicated Staff Retention Policy to Retain Staff*

I lost my staff. I did not have a retention policy in effect. We lost communication when they relocated. I will have to retrain new staff once I can hire replacements.

Now, however, it is extremely difficult to replace them due to dislocations, housing shortages, and competition. That is, salaries have gone up over twenty-five percent and employers must offer a salary plus a full package of retirement, medical, and insurance benefits to obtain new employees. One small law firm lost seven secretaries in the past three months. Two large defense firms panicked and let go all associates and half of their secretaries. These and other firms feared that they would not have any legal work or reduced workloads leading to a loss of income. They were wrong! The two firms tried to rehire their staff but could not. The firms had not only made a bad move from an employee relations standpoint, but they may be unable to replace that already-trained staff for a long time.

One should do everything possible to retain one's employees and delay layoffs until the situation can be better evaluated, because—in the long run—there is more money on the revenue (assets) side than the expense side of a balance sheet, and one may not be able to replace qualified staff when one needs them later when business returns.

*L. Have a Financial Reserve Set Aside to Remain in Business Until the Insurance Claims Are Paid*

Unfortunately, in a major disaster, it takes time to settle all of the claims. The penalties for the untimely payment of flood claims and business claims are too small in Louisiana to deter insurers or give them an incentive to pay timely and fully.

Even when the claims in a three-state disaster area are initially settled, the work is not over. The costs of materials rapidly rise. On the basis of experience in Florida and Louisiana, supplemental claims often will be filed. These further burden the system and delay payment of claims.

Therefore, one must be ready to sustain cash flow for several months out of savings, whether or not one settles or files suit. Do not count on the "good hands" of your insurer sending you a check within sixty days in an extensive disaster area. As described above, delays from hiring a forensic accountant and completing an inventory, due to lack of site access and/or not being able to get an adjuster to the site, can result in payment delays. One, therefore, must be prepared to survive for six months or longer on savings for both practical and claims-related reasons. That is, one needs to be able to survive and not need a settlement check so badly that one accepts a check that only partially covers the loss.

M. *Have a List of Clients and Their Prescription Dates on Your Laptop and in Writing*

Immediately after the storm, the courts were closed and relocated. This process took place over months. Governor Blanco issued an executive order suspending legal claims on prescription.<sup>10</sup> After that, the legislature enacted House Bill 90, which provided for “the suspension of prescription” until the courts could reopen. But there are still unresolved legal issues based on the validity of some of the executive orders. You do not want to become a test case. I luckily had a list of all open files with prescription dates on my laptop and in a notebook. While I had to scramble to file some suits to avoid a potential malpractice situation, I could and did file timely. If I had not had this information, I could have faced another disaster. Keep such information on clients in multiple places on paper and in your trusty laptop.

#### IV. CONCLUSION

I predict that the mistreatment by some insurers of some claimants will fuel a huge backlash against all of the tort reform that, coincidentally, has been promoted by many of the same insurers.

I am taking things one day at a time and starting to get used to it. Maybe my practice will not recover. Maybe the city will not come to be as populated. Maybe business will be insufficient for my economical survival.

But I am going to try and preserve and grow my successful law practice I built up over twenty-nine years. I hold many record judgments and settlements in the areas of toxic torts, police brutality, products liability, and employment law. The City of New Orleans and the State of Louisiana have been good to me, and I cannot forget that. I cannot abandon the clients who have supported me, especially as they need me now more than ever. I may have lost everything physical in my law office, but my life as an attorney still has purpose. I am here to serve clients in Louisiana in their time of need. I have chosen to stay and fight. They respect me more than ever for that. My purpose in being an attorney still exists and has never been more important to me at any other point in my career. Even Hurricane Katrina did not destroy that.

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10. See Exec. Order No. KBB 2005-32 (Sept. 6, 2005) (suspending all deadlines applicable to legal proceedings, including prescription and preemption, in all Louisiana state courts, administrative agencies, and boards in effect until September 25, 2005), *available at* <http://www.gov.state.la.us/assets/docs/32SuspensionofPrescription,Peremption.pdf>, later extended by Exec. Order No. KBB 2005-48 (Sept. 25, 2005) (providing that liberative and preemptive prescription periods were suspended statewide until November 25, 2005), *available at* <http://www.gov.state.la.us/assets/docs/48execAmend-KBB2005-32-Prescription-Peremption.pdf>.

## **Surviving Total Destruction of Your Law Office and Client Base After a Catastrophic Disaster**

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