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1-2008

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### Recommended Citation

Gary A. Munneke, Disaster Planning What We Have (and Haven't) Learned, *Bus. L. Today*, Jan./Feb. 2008, at 23, <http://digitalcommons.pace.edu/lawfaculty/568/>.

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# ABA Section of Business Law

## Business Law Today

Volume 17, Number 3 January/February 2008

Disaster Planning

What We Have (and Haven't) Learned

By Gary A. Munneke

Like almost everyone in the New York City area, I knew people who died in the World Trade Center attack on 9/11, others who narrowly escaped with the shirts on their backs, and still others whose lives were disrupted in significant ways. In the weeks that followed the attack, practitioners, law students, and professors came to the aid of those who had been displaced by the economic, social, physical, and political upheaval. Law firms around the city took in lawyers displaced by the conflagration, and courts attempted to accommodate proceedings where documents and records had been obliterated. Ironically, in media reports, the infamy of the perpetrators often overshadowed the selfless acts of heroism by countless volunteers.

### **Recent Disasters**

The World Trade Center attack was not the first, nor will it be the last disaster humankind will face. Within the past decade, other areas in the United States have experienced their own disasters: earthquakes in California, hurricanes in Florida, floods in the Midwest. Disasters are much more commonplace than most of us imagine, and yet, a positive dearth of information exists about the need to plan for disaster. What information is available tends to be widely circulated in places that have experienced disasters, but is more or less ignored in areas that have not been affected directly by some recent calamity.

Sadly, the wealth of information available in Florida on how to cope with the ravages of hurricanes did not make its way to many parts of southern Louisiana and coastal Mississippi by the summer of 2005, when a monstrous storm named Katrina forever changed the fabric of New Orleans and its environs. In retrospect, we know that such storms are inevitable along the Gulf Coast, and that other areas of the country are equally at risk for different types of disasters.

Despite the fact that disasters do happen, most of us live our daily lives as if they will not happen to us. We do not plan for disaster, especially when harm is less than certain. It is easier to rationalize that we will "cross that bridge when we get to it" than to prepare for a risk that may never come to pass. For many of us, the burden of taking precautions is greater than the uncertain potential loss associated with a disaster. As lawyers, we owe ourselves and our clients a responsibility to be ready for the worst-case scenario.

### **Disaster Preparedness**

Basic disaster planning is not only cost-effective but relatively easy to integrate with other planning activities. By looking at the experiences of lawyers and law firms that have survived disasters in recent years, it is possible to gain insights that will help us overcome such adversity. Transactional business lawyers, whose clients are frequently the victims of the same forces that harm lawyers, have a special obligation to serve these clients in times of crisis in order to restore these businesses to functionality and commerce to the community at large.

Examining the disaster cycle, the process can be divided into three phases: planning, response, and recovery. Planning is what happens before the fact and involves assessing the risk and making contingency plans about what to do when disaster strikes. The response phase involves getting through the disaster itself and protecting life at all costs and property interests to the extent possible. The third phase entails digging out after the storm has passed. To the extent that the disaster has caused an interruption of practice, recovery means reestablishing the people and resources to be able to deliver legal services to clients again.

For the business lawyer or law firm, disaster planning and response are necessary predicates to recovery because their clients may not be as nimble as they are. Companies typically create products, maintain production lines, retain inventory, and utilize transportation and communication networks to deliver goods to customers. Law firms, by contrast, deliver legal services, which are often much more portable and flexible. In this sense, lawyers may be in a better position than their clients to overcome the consequences of disaster. Moreover, it is often the case that clients need legal assistance in order to deal with events before they can re-enter the marketplace.

## Ten Lessons About Disaster

The question then becomes: what are the most important things that business law firms can do for themselves and their clients? The following 10 lessons drawn from the experience of lawyers affected by recent disasters describe how law firms, especially business law firms, can prepare for and cope with future disaster. The jury is still out on the question of whether or not we have learned from these past events, but it is clear that we have an opportunity to improve our chances (and those of our clients) to recover from a disastrous event, even if we are unable to prevent the event from happening.

1. *Law firm leaders should keep disaster on the firm's agenda.* Because disasters are always unexpected, in order to protect ourselves, it is necessary to anticipate them through planning. It may be possible to identify the general risk of disaster, such as living in Tornado Alley, but none of the 9/11 victims had an inkling that their lives would be shattered by the random hand of terrorism. Law firms can institutionalize discussions about how to handle disaster by including the topic of disaster response in their management and/or planning agendas. Otherwise, complacency and more pressing short-term crises will certainly push disaster planning to the back burner. The responsibility for keeping disaster on the agenda falls on law firm leadership and management.

2. *For planning purposes, lawyers need to consider the various forms disasters may take, their potential risk, and the likely problems they might cause.* Since disasters come in innumerable forms, there is no one size that fits all in terms of planning and response. Disasters may be catastrophic, with extensive loss of life and infrastructure destruction over a wide area; or they might be more localized and less cataclysmic. The reality is that if an unanticipated event shuts down your firm and forces the interruption of client service, it does not matter how it happened or how many other people are impacted. You have a problem, and you need to respond.

3. *Disaster planning can be as simple or extensive as the circumstances and the risks dictate.* At the very least, every law firm or organization can provide some basic protections:

- Have a contact tree so that if people need to get in touch with each other, they can. I did not use the more popular phrase "phone tree" because in a disaster, phone service may be spotty or nonexistent, so addresses, e-mail addresses, and emergency contact numbers out of the area might be useful.
- Keep basic first-aid equipment, flashlights (with working batteries), canned goods, and water in the office in a place that everyone knows.
- Develop an escape plan. Make sure that everyone knows how to get out of the building, including alternatives if primary exits are blocked.

- Identify an assembly point at a seemingly safe spot outside the building. It might also be wise to have backup assembly points if the first proves to be inaccessible.
- Know who the disaster leader(s) will be, and remember—the person who is most effective in times of tranquility will not necessarily be the best crisis leader.
- In times of disaster, banks and ATMs are likely to be closed, so cash may be the only available currency.

4. *Make sure that everyone in the firm knows what do in case of emergency.* Disaster plans are useless when they are not communicated to lawyers and staff, or, if communicated, then stuffed into a drawer and forgotten. Once again, it is up to firm leadership to ensure that everyone in the office remains vigilant, that plans are reviewed and updated periodically, and that resources (e.g., flashlight batteries) are checked and replenished as necessary. The disaster plan should be a standard part of the orientation of every new partner or employee.

5. *Time is of the essence, so be prepared to act quickly and decisively.* A hurricane may give more warning than a tsunami, and civil unrest more time to plan than a terrorist attack. However, the window of opportunity to react and avoid harm is likely to be considerably shorter than you think. There is certainly no time to plan, and there may or may not be time to react. Whatever you have done in advance will be essentially the hand of cards you will have to play. Regardless of your advance preparations and the timeliness of warnings, decisions will have to be made in split seconds without second guessing. Every disaster produces poignant stories of victims who waited too long to act, who vacillated about alternatives, or who thought that somehow they would be spared if they waited out the storm. And it is far better to have evacuated your building only to see the tornado spare the structure than to stay inside for a direct hit.

6. *People come first.* When disaster strikes, you must protect the lives and safety of your people to the greatest extent possible under the circumstances. From the immediate evacuation of your offices, to identifying survivors and those needing assistance, to reassembling a legal service delivery team when it is feasible, never lose sight of this fundamental principle. The corollary is that you can buy new furniture and equipment, but human life is sacred.

7. *Back up your data.* The lessons of earthquakes, fires, floods, and other disasters punctuate the fact that files, whether hard copy or electronic, can be obliterated in a moment. When they are gone, they are gone. It might be possible to reconstruct some portions of lost files by going to clients, courts, and opposing counsel, assuming that disaster has not decimated the files of these sources as well. The far less painful, but

considerably more inexpensive solution, is to take advance precautions to back up everything and store the records in some alternative location. In practice, backup may mean moving physical data to or storing electronic data at a geographical location far enough removed from the physical location of the law office that it will not be destroyed by the same forces that necessitate the backup process in the first place.

8. *Identify a place to work.* In the aftermath of 9/11, many firms displaced by the collapse of the World Trade Center towers and devastation to the surrounding area were able to find space in other parts of the New York City area until permanent arrangements could be made. In New Orleans, after Katrina, it proved to be weeks before most law firms could return to the city, and some firms never returned. Some firms may be able to arrange in advance to have access to temporary office space, thereby avoiding the problem of having to compete for space in the post-disaster period. Even so, the nature of the disaster may be such that even the primary backup site is unavailable. Firms with locations in multiple cities may have an advantage in shifting personnel to other offices, but this solution may leave the firm without lawyers on the ground in the disaster area, where they may be needed. All firms should periodically review their insurance coverage to make sure that they will be able to reassemble and replace physical resources that may have been destroyed in the disaster.

9. *Reach out to clients.* Clients are just as likely as their lawyers to experience business interruption, displacement, and economic loss. Just as lawyers may find it difficult or impossible to make court appearances and provide other client services, clients may be precluded from delivering their products and services to consumers. They may experience difficulty meeting legal obligations to their customers and clients. Law firms should have a plan for making contact with key clients as soon as possible after a disaster to determine the clients' legal needs. Law firms should also be able to anticipate some if not all of the assistance their clients may require in the aftermath of such events, and make plans to address these needs as soon as possible. It might make sense to discuss disaster recovery issues with clients before disaster strikes. This is particularly appropriate for business lawyers who represent clients in transactional matters. Litigators depend on the availability of the courts to carry out their responsibilities, so if the courts are closed, as was the case in much of the Louisiana and Mississippi Gulf Coast after Katrina, trials and related activities are put on hold. At the same time, representation of businesses that are trying to resurrect themselves from the effects of disaster not only benefit from legal assistance but must have it in order to achieve their objectives.

10. *Share in community healing.* Much of what has been written about disaster planning and recovery has focused on the mechanics of coping with business interruption and getting the firm back into service as soon as possible. It is apparent, however, in looking at recent disasters that lawyers play a major part in helping to heal the community at large.

Following both 9/11 and Katrina, thousands of lawyers donated their time to help individuals and businesses deal with the legal consequences of their losses, to protect their legal interests to the extent possible, and to advise them as to what steps they needed to take in order to effectuate recovery. In Louisiana, where the civil and criminal justice systems were shut down by Katrina, lawyers worked to restore order and restart the judicial machinery. Lawyers were some of the first to return to New Orleans after the storm, which signaled to the business community that recovery was possible. In short, lawyers frequently assume a leadership role in community efforts to recover from disaster.

## **Conclusion**

These 10 lessons are simple enough to understand. On some level, we all know that we should assess the risk of disaster, plan what to do if disaster strikes, and respond to disaster decisively. The record of humankind in the face of calamity demonstrates that what we know does not always translate into effective behavior, and sometimes even the best-laid plans are no match for the forces of destruction. Advance planning cannot alter the risk or magnitude of the harm, but it can improve significantly our chances of weathering the storm. For business lawyers, this advice is particularly appropriate, because they represent a critical component in the return to normalcy for the businesses/clients affected by disaster and the community as a whole.

## **Disaster Planning Resources**

### **American Bar Association**

The ABA has dedicated several resource pages to provide legal information for lawyers affected by Hurricane Katrina. This page also provides links to several other Web sites advising lawyers how to deal with disaster management.

[www.abanet.org/katrina/lawyerspractice.html](http://www.abanet.org/katrina/lawyerspractice.html)

### **American Red Cross**

Red Cross disaster relief provides shelter, food, and health and mental health services to address basic human needs when a disaster threatens or strikes. It also feeds emergency workers, handles inquiries from concerned family members outside the disaster area, provides blood and blood products to disaster victims, and helps those affected by disaster to access other available resources.

[www.redcross.org/services/disaster](http://www.redcross.org/services/disaster)

### **Association of Legal Administrators**

The ALA provides a list of disaster-planning-related articles, including "Ready for the Worst: Proper Planning Can Expedite a Law Firm's Recovery from a Disaster,"

"Weathering the Storm: Technology Disaster Planning," and "Building Better Fences."

[www.alanet.org/alasearch.aspx?UserId=1&limitLanguage=](http://www.alanet.org/alasearch.aspx?UserId=1&limitLanguage=)

### **Association of Records Management Administration**

This is a nonprofit association that offers authoritative advice for "best practices" procedures on how to manage and protect paper and electronic information.

[www.arma.org](http://www.arma.org)

### **DisasterPlan.com**

This Web site offers sample business contingency plans and earthquake response plans in order to facilitate a business's proactive efforts to configure its own plan. The site also offers substantial information on how to develop, introduce, and adopt a disaster plan with budget analysis and cost efficiency in mind.

[www.disasterplan.com](http://www.disasterplan.com)

### **Disaster Recovery Guide: Disaster Recovery Planning from A-Z**

This Web site provides "one-stop shopping" for obtaining knowledge about disaster planning. Providing links to various other helpful Web sites with the same central objective, this site offers easy-to-follow advice in starting and developing a disaster plan.

[www.disaster-recovery-guide.com](http://www.disaster-recovery-guide.com)

### **Disaster Recovery Planning Process**

This comprehensive Web site outlines the specific phases of disaster planning while explaining the relevant methodology behind the process. It also informs the businessperson that disaster plans are crucial to curtail financial disaster should a disaster occur.

[www.drj.com/new2dr/w2\\_002.htm](http://www.drj.com/new2dr/w2_002.htm)

### **Disaster Recovery World**

This Web site considers all the issues related to disaster and emergency planning, such as establishing a plan that adequately meets the needs of the business it was designed to protect.

[www.disasterrecoveryworld.com](http://www.disasterrecoveryworld.com)

### **Disaster-Resource.com**

This Web site serves as a hybrid portal and research bank, which allows navigators to take a proactive approach in order to locate helpful information, potential vendors, and organizations in efforts to facilitate disaster planning and readiness.

[www.disaster-resource.com](http://www.disaster-resource.com)

### **FEMA Emergency Management Guide for Business & Industry**

This guide offers a step-by-step approach to emergency planning, response, and recovery for companies of all sizes. The Emergency Management Guide for Business & Industry is

produced by the Federal Emergency Management Agency (FEMA). It can be viewed in html or pdf format at [www.fema.gov/business/guide/index.shtm](http://www.fema.gov/business/guide/index.shtm).

## **Florida Bar Disaster Plan**

One of the most comprehensive sites is organized by J. R. Phelps, director of the Florida Bar's Law Office Management Service. The Model Disaster Plan Outline from the site appears in the forms section at [www.flabar.org](http://www.flabar.org).

## **Law Practice Today**

Several online-converted articles address planning, recovery, and continuity of a disaster-struck law firm, including the protection of information and clients. These articles are published in the ABA's Law Practice Management Section. Representative articles include:

*Avert Disaster: Protect Your Practice with Online Backups*

[www.abanet.org/lpm/lpt/articles/tch10051.html](http://www.abanet.org/lpm/lpt/articles/tch10051.html)

*Disaster Planning After the Apocalypse*

[www.abanet.org/lpm/lpt/articles/mtt10051.html](http://www.abanet.org/lpm/lpt/articles/mtt10051.html)

*Disaster Recovery and Business Continuity*

[www.abanet.org/lpm/lpt/articles/slc10051.html](http://www.abanet.org/lpm/lpt/articles/slc10051.html)

*Disaster Recovery Planning*

[www.abanet.org/lpm/lpt/articles/mgt10054.html](http://www.abanet.org/lpm/lpt/articles/mgt10054.html)

*Lawyer Leaders: The Opportunity of Katrina*

[www.abanet.org/lpm/lpt/articles/mba10051.html](http://www.abanet.org/lpm/lpt/articles/mba10051.html)

*Protect Your Clients and Yourself: Prepare for Disaster Before it Happens*

[www.abanet.org/lpm/lpt/articles/mgt10057.html](http://www.abanet.org/lpm/lpt/articles/mgt10057.html)

*Protecting Your Computer*

[www.abanet.org/lpm/lpt/articles/tch10052.html](http://www.abanet.org/lpm/lpt/articles/tch10052.html)

*Ten Tips in Dealing with Disaster Recovery and Business Continuity Issues*

[www.abanet.org/lpm/lpt/articles/mgt10053.html](http://www.abanet.org/lpm/lpt/articles/mgt10053.html)

*Would You and Your Practice Survive These Common Disasters?*

[www.abanet.org/lpm/lpt/articles/mgt10055.html](http://www.abanet.org/lpm/lpt/articles/mgt10055.html)

## **LAWPRO Magazine**

An informational online-converted article titled "When Lightning Strikes . . . Are You Prepared?" is aimed at encouraging disaster preparation by planning, preparing, and protecting the firm's knowledge, database, property, and people. It can be found in pdf format at [www.practicepro.ca/LawPROmag/WhenLightingStrike.pdf](http://www.practicepro.ca/LawPROmag/WhenLightingStrike.pdf).

### **State of Louisiana**

The Office of Homeland Security and Emergency Preparedness "Sample Debris Management Plan" may be accessed through this Web site.

[www.lope.state.la.us](http://www.lope.state.la.us)

### **Managing Practice Interruptions**

This Web site contains an online, 36-page booklet helping lawyers organize a disaster recovery plan. The site includes a short quiz to help determine a lawyer's or a law firm's ability to recover from an unforeseeable disaster. It also provides a step-by-step instructional guide to devising and instituting a plan to prepare for disaster survival in pdf format.

[www.practicepro.ca/practice/Practice\\_Interruptions\\_booklet.pdf](http://www.practicepro.ca/practice/Practice_Interruptions_booklet.pdf)

### **Managing Practice Interruptions Spreadsheet**

This site provides a blank spreadsheet and a sample spreadsheet to aid the lawyer or law firm in identifying and assessing any weaknesses in disaster readiness.

[www.practicepro.ca/practice/VulnerabilityWorksheet.pdf](http://www.practicepro.ca/practice/VulnerabilityWorksheet.pdf)

### **Maryland Bar Disaster Plan**

This site offers an article on "Disaster Planning: Protecting Your Firm, Your Clients and Your Family."

[www.msba.org/departments/loma/articles/officemngmt/disasterplan.htm](http://www.msba.org/departments/loma/articles/officemngmt/disasterplan.htm)

### **Minnesota Historical Society Materials on Document Preservation**

[www.mnhs.org/preserve/conservation/emergency.html](http://www.mnhs.org/preserve/conservation/emergency.html)

### **National Fire Protection Association**

The National Fire Protection Association provides codes and standards, research, and training in order to educate the public, thereby minimizing worldwide engulfing fires and preventing grave fire loss. The 300 codes advocated on this Web site influence the design, architecture, and construction of every building erected in the United States and even worldwide in order to protect against fires and fire damage.

[www.nfpa.org/index.asp?cookie%5Ftest=1](http://www.nfpa.org/index.asp?cookie%5Ftest=1)

### **Non-Profit Coordinating Committee of New York**

This Web site contains an all-inclusive guide to disaster readiness, offensive planning

strategies, and business continuity in Word format.

[www.npccny.org/info/Disaster\\_Planning.doc](http://www.npccny.org/info/Disaster_Planning.doc)

### **Northeast Document Conservation Center (NDCC)**

The Northeast Document Conservation Center's mission is to advance conservation and preservation efforts of libraries, museums, historical organizations, and other institutions. This site offers links to other vital disaster planning sites that outline an organized approach to disaster planning.

[www.nedcc.org/resources/leaflets/3Emergency\\_Management/03DisasterPlanning.php](http://www.nedcc.org/resources/leaflets/3Emergency_Management/03DisasterPlanning.php)

### **Oklahoma Bar Disaster Plan**

[www.okbar.org/members/map/articles/disaster.htm](http://www.okbar.org/members/map/articles/disaster.htm)

### **Public Entity Risk Institute**

This organization provides governmental agencies, small businesses, and small nonprofit organizations advice and counseling for risk management. It provides links to yearly Risk Management Yearbooks that examine past disasters and resultant effects to achieve a "lessons-learned" proactive approach to disaster planning and hazard mitigation.

[www.riskinstitute.org/PERI/PTR/ptr\\_emergency.htm](http://www.riskinstitute.org/PERI/PTR/ptr_emergency.htm)

### **Rothstein Associates**

This association specializes in disaster survival consulting. Its Web site features the most up-to-date information regarding disaster planning for businesses. Additionally, the Web site provides a disaster recovery forum, where professionals and novices can share their ideas, ask questions, and raise issues regarding disaster strategies.

[www.rothstein.com](http://www.rothstein.com)

### **Tennessee Bar Association**

The Tennessee Bar Association provides "Disaster Recovery: Steps to Take in Recovery Effort," an itemized list of practical steps to be taken in the areas of damage assessment and business continuation.

[www.tba.org/tnbarms/disaster.html](http://www.tba.org/tnbarms/disaster.html)

### **U.S. Department of Homeland Security**

The U.S. Department of Homeland Security has devoted a Web site focusing on emergency preparedness and response stemming from all natural hazards and man-made disasters. This Web site offers valuable information regarding both emergency planning and business continuity planning.

[www.ready.gov](http://www.ready.gov)

### **U.S. National Archives and Records Administration**

From the home page, look up emergency preparedness. You may also enter the Web address below. It will bring you right to "Vital Records and Records Disaster Mitigation and Recovery: An Instructional Guide."

[www.archives.gov/records-mgmt/vital-records/index.html](http://www.archives.gov/records-mgmt/vital-records/index.html)

### **U.S. Navy Disaster Planning Bibliography**

This Web site offers one of the most comprehensive, useful, and specific disaster-related list of references available on the Internet.

[www.navy.mil](http://www.navy.mil)

This list of online resources has been updated from one that appeared in Gary A. Munneke and Anthony E. Davis, *The Essential Formbook: Comprehensive Management Tools for Lawyers, Volume IV*, (American Bar Association, 2004).

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