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■ DANIEL A. FARBER ■ JIM CHEN ■ ROBERT R.M. VERCHICK ■ LISA GROW SUN



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DISASTER LAW AND POLICY

Second Edition

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To my mother, Annette Farber Holland.

D.A.F.

To my mother and my father.

J.C.

To Laina and Egon.

R.V.

To my family: May we always be prepared.

L.G.S.

PREFACE

The significance of disaster law should be self-explanatory. Hurricane Katrina alone has involved many billions of dollars for compensation, insurance, and rebuilding efforts, and lawyers will be heavily involved for years to come in litigating claims to these funds. The loss of life on the Gulf Coast was tragic and in large part avoidable, while the task of rebuilding New Orleans seems stuck in mid-course. Smaller disasters occur on a regular basis, and the United States faces Katrina-scale disaster risk from other possible floods and earthquakes. Internationally, the threats are, if anything, graver. Law has a vital contribution to make in addressing these problems.

Apart from its practical significance, disaster law also deserves more attention because of its intellectual challenges. At first glance, disaster law seems to be nothing but a collection of legal rules of various kinds that happen to come into play when communities have suffered severe physical damage. But at a deeper level, disaster law is about assembling the best portfolio of legal rules to deal with catastrophic risks—a portfolio that includes mitigation, emergency response, compensation and insurance, and rebuilding strategies. Because of this unifying theme, we think that the topic is deserving of serious law school attention even beyond its newsworthy qualities.

The first edition of this book appeared only months after Hurricane Katrina, at a time when disaster issues were just beginning to receive sustained attention from legal scholars. In the years since the first edition was published, courses on disaster issues have begun to spring up around the country, and a small, but growing, body of legal scholarship has emerged.

New legal developments also continue to unfold. Indeed, as this book went to press, a groundbreaking decision from a federal court in Louisiana found the U.S. Army Corps of Engineers liable for its negligent maintenance of a major navigation channel. That failure, the court found, was directly responsible for flood damage in New Orleans' Lower Ninth Ward and the neighboring St. Bernard Parish after Hurricane Katrina. The ruling could pave the way for thousands of lawsuits, or one large class-action suit, that could result in tens of billions of dollars in compensation to flood victims. Or it could prompt a

legislative solution that trades future claims against the corps for a broader government compensation package, such as the one that followed the 9/11 attacks. The result depends heavily on what happens when the case is appealed (which the U.S. Department of Justice has already promised to do). This new decision, *In re Katrina Canal Breaches Consolidated Litigation* (E.D. La., No. 05-4182, Nov. 18, 2009), is a good companion to an earlier opinion related to the same litigation, which we have already included in part A in chapter 7.

The intervening years have also provided the opportunity to broaden the focus beyond Katrina and its aftermath. In addition, the original two co-authors have been joined by Lisa Grow Sun and Robert Verchick, providing an infusion of energy and an expansion in expertise.

As a result of all of these developments, we are confident that readers will find deeper analysis, broader coverage, and richer description in this edition than the last. Katrina led to important legal developments: new legislation from Congress and significant judicial decisions on compensation and insurance issues. This edition brings the reader up to date on these significant developments. We have also been able to augment our treatment of the key federal statutes and regulations considerably. In addition, we have added chapters on risk management and on international disaster issues. Finally, most chapters are capped by a problem that calls upon students to apply what they have learned in a realistic setting.

Unfortunately, the problem of natural disasters will always be with us. But the legal system can do more to mitigate the damage, care for and compensate victims, and rebuild sustainable communities. Our hope is that today's law students will take the lead in future efforts to accomplish these critical goals.

Dan Farber

Jim Chen

Robert R.M. Verchick

Lisa Grow Sun

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