Identifying and Prosecuting Disaster Relief Fraud

Presented by
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- Attorney, Manning & Marder, 1999-2001
- Senior Special Investigator, Liberty Mutual Insurance, 1995-1999
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- The State of California since 1999
- The State of Texas since 2009
- The State of Oklahoma since 2014

Professional Memberships:
- The Texas State Guard, JAG Officer Trial Defense Service, Camp Mabry, Texas
- State Guard Military Emergency Management Specialist (Basic) Qualification
- The State Bar of Texas
- The Oklahoma Bar Association
- North Texas Chapter of the IASIU
- Association of Certified Fraud Examiners

Certifications:
- Certified Insurance Fraud Investigator
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Military Experience:
- Major, JAG-C Trial Defense Service (TDS), Texas State Guard, Camp Mabry, TX, 2014 to present.

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Abstract & Notice of Non-Legal Advice

Every disaster has honest people who need assistance to get back on their feet. However, in every group there are those who are dishonest and seek to take advantage of the good-will and assistance of others.

This presentation provides an overview on the disaster management process and current trending issues and events relevant to disaster relief fraud.

*This presentation is not intended to replace or replicate advice from competent legal counsel for your jurisdiction. For specifics, always talk to your jurisdiction’s attorney!*
What Is a Disaster?

Disaster

“An incident or event at the corner of hazards and every day life that alters the normal routine of a large number of individuals or groups.”

Technically, the event or situation that causes a disaster is called a “hazard.”

• There are two types of Hazards:
  • Technological (man-made or caused events).
  • Natural (naturally occurring or caused events).
What is Emergency Management?

**Complicated Definition:** As a profession, Emergency Management seeks to mitigate the effects of a disaster or emergency that threatens to permanently alter a community’s sense of “normal;” and guide a recovery following such an event, returning a community as close to a “pre-disaster normal” as possible.

**Simple Definition:** People that help make disasters easier to deal with.

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<td><strong>Definition of All Hazards</strong></td>
<td>Tech &amp; Natural Hazards</td>
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<td><strong>Audience</strong></td>
<td>Inclusive of Community Participation</td>
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<td>Internal/Public Relations</td>
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<td><strong>Things That Might Be Said</strong></td>
<td>“We’re in this together, let’s get ourselves ready for the next big disaster that will come our way.”</td>
<td>“We’re here to keep the terrorists from taking your sense of safety and security from you.”</td>
<td>“An unknown individual sabotaged our products at an unknown time. Everyone is asked to avoid our products and throw them away until we can assure that they are safe.”</td>
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<td><strong>Goal of Discipline</strong></td>
<td>Preserve Community &amp; Lifestyle of Population</td>
<td>Preserve Community &amp; Deter Criminal Behavior</td>
<td>Preserve Organization &amp; Minimize Liability</td>
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There are two* general types of disaster declarations:

- **Major Disaster Declaration**
- **Emergency Declaration**

Not all Federal Disaster Assistance Programs are available for each disaster, depending on what is requested and the type of declaration received.
The Difference Between Disaster Declarations

**Emergency Declarations**
- Short Term.
- Single incident or relatively few incidents.
- Immediate measures can help stabilize the situation.
- Long-term Recovery Assistance is **NOT** needed.
- PA – Only Emergency (Cat. B)
- IA – Only IHG Programs
- HMGP – No

**Major Disaster Declarations**
- Long Term.
- Multiple incidents from one wide ranging situation.
- Immediate measures can help stabilize the situation
- Long-term Recovery Assistance **IS** needed.
- PA – Emergency & Permanent
- IA – All Programs
- HMGP – Yes
Declarations Process

The Stafford Act (§401) requires that: “All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State.”

As part of the request, the Governor must take appropriate action under State law and direct execution of the State’s emergency plan.

- The Governor shall furnish information on:
  - The nature and amount of State and local resources that have been or will be committed to alleviating the results of the disaster,
  - Provide an estimate of the amount and severity of damage and the impact on the private and public sector,
  - Provide an estimate of the type and amount of assistance needed under the Stafford Act.
Ex: Hurricane Harvey Disaster Declarations

**State**

PROCLAMATION

BY THE

Governer of the State of Texas

I, GREG ABBOTT, Governor of the State of Texas, do hereby issue this proclamation that certain areas in the State of Texas are designated as disaster areas in accordance with the Texas Disaster Recovery Act of 1995, as amended.

In accordance with the requirements of the Texas Disaster Recovery Act of 1995, as amended, I hereby designate the areas affected by Hurricane Harvey as Disaster Areas.

I, GREG ABBOTT, Governor of the State of Texas, do hereby declare a disaster in the areas affected by Hurricane Harvey.

PROCLAMATION

By the Governor of the State of Texas

AUG 23 2017

ATTESTED BY:

PARKER STRAUSS LLP

PRESIDENT OF THE STATE

AUG 18 2017

**Federal**

FEMA-4332-DR, Texas Disaster Declaration as of 09/04/2017

**Data Layer/Map Description**

The types of assistance that have been designated for selected areas in the State of Texas.

All designated areas in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

**Designated Counties**

- No Designation
- Individual Assistance
- Public Assistance

**Data Sources**

- FEMA 4332
- Initial Declaration: 06/25/2017
- Disaster Federal Registry Notice: Amendment #5 - 09/04/2017

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Relief Is On Its Way!

Once a disaster is declared, relief efforts can go full swing

• Hurricane Harvey
Federal Government Aid

- Individual Disaster Aid
- Public Assistance
- The National Flood Insurance Program
- U.S. Small Business Admin. Disaster Loans & Grants
What Will the Federal Government Pay For?

The type of “work” allowed will depend on the type of disaster:

- Emergency Work (i.e. “Rescue”)
  - A – Debris Removal
  - B – Emergency Protective Measures
- Permanent Work (i.e. “Restore”)
  - C – Roads and Bridges
  - D – Water Control Facilities
  - E – Buildings and Equipment
  - F – Utilities
  - G – Parks, Recreational, and Other Facilities

75% to 100% Federal Cost Share

75% to 90% Federal Cost Share
The National Flood Insurance Program (NFIP)

- Aims to reduce the impact of flooding on private and public structures by making Flood Insurance more affordable.
- Administers the “Write Your Own” (“WYO”) Program
  - Began in 1983
  - Allows private insurance companies to write and service the Standard Flood Insurance Policy under their own names.
  - Companies receive an expense allowance for claims processed and policies written.
  - Federal government underwrites all losses from the NFIP.
- Rates are determined off of the Flood Insurance Rate Map (“FIRM”).
The Different Types of Disaster Fraud Schemes

- Contractor Fraud
- Fraudulent Charities
- Vendor Fraud Property
- Insurance Fraud
- Price Gouging
Contractor Fraud

During a disaster “fly by night” companies and contractors can appear, do poor work or incomplete work, then disappear.

2013 Moore Tornado: Glenn McCoy pleaded no contest to six counts of fraud after taking the insurance money of tornado victims with no intent of rebuilding their homes.

Signs of Contractor Fraud:
- Claims to be “FEMA Certified or Endorsed”—there is no such certification or endorsement.
- Requires large cash deposits up-front to begin work (30% is considered reasonable, but pay by check).
- High-pressure threats from contractor at end of work, even if it is not done to the property owner’s satisfaction.
- Reporting & Documentation that doesn’t make logical sense.
Vendor Fraud

Fake vendors posing as legitimate contact those affected by a disaster to fraudulently obtain money or personal information.

Examples:

- **Hurricane Katrina**: 2 men posed as Salvation Army workers and convinced 2500 police, fire, National Guard, and even FBI agents to give them personal data which they used to steal their identities.

- **Hurricane Harvey**: Scammers are calling people posing as insurance adjusters and claiming that Flood Insurance premiums are overdue and must be paid immediately to receive insurance benefits.

- **Hurricane Sandy**: Contractor Fraud is believed to have totaled near $5 Million by July 2017.
  - Case: Alcatec, LLC v. United States
Fraudulent Charities

These can come in the form of bogus charities that solicit for donations.

- Online scammers have designed Phishing Schemes disguised as Hurricane Harvey Relief Charities.

- Fake Site “salvationarmyonline.org” solicited nearly $50K after Katrina.

- Red Cross asked FBI to investigate 15 sites attempting to mirror its own site.

- Case:

  - State of Missouri ex rel Chris Koster v. Alivio Foundation, Inc.

Signs of a “bogus charity:”

1. Unsolicited emails asking for donations.
2. Request for checks made payable to an individual, cash, or wire transfer.
3. High-pressure tactics to procure donation.
Property Insurance Fraud

This can include inflating losses, faking repairs, claiming lost services, and sometimes deliberately causing damage to collect from insurance policies.

Sometimes involves “soft fraud” which is honest people taking an opportunity.

• Case:
  • U.S. ex rel Rigsby v. State Farm Fire & Casualty Company
The Law: Duplication of Benefits

“You can’t duplicate”

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

- 42 USC § 5155(a) (West 2016)

“The Fed gets their money back”

A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of Title 31, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

- 42 USC § 5155(a) (West 2016)
The Law: Duplication of Benefits: What Is The Takeaway?

As much as you might not like your finance section getting into your “Wheaties,” they do it for a very good reason.

Make sure that you know what your insurance payout is covering and what it is not covering so you can prove it to State/FEMA processes.

The Insurance settlement needs to be reasonable, not a “please go away” amount.
Price Gouging

Price gouging occurs when businesses or individuals increase the price of goods that are in demand or in limited supply in a disaster zone.

• This is fairly apparent, but it takes specific evidence to prove a case.

• Price gouging can be seen outside of a disaster area.
Examples of State Anti-Gouging Laws

The Emergency Price Stabilization Act – HB 2231

• When the Governor declares a state of emergency, a merchant may not increase the price of goods more than 10% above the price that was charged within the previous 30 days of the declaration. This is effective for 30 days thereafter, and for 180 days thereafter for prices to repairs, remodeling and construction.

• Price gouging is a Misdemeanor punishable with:
  • Fines up to $1,000 per violation.
Examples of State Anti-Gouging Laws

TX – § 17.46 (b) of the Deceptive Trade Practices Act, makes it unlawful during a disaster to:

• Sell or Lease fuel, food, medicine, or another necessity at an exorbitant price or demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine or another necessity.
  • Consumers may file a complaint directly with the Attorney General’s Office

LA – Revised Statute § 29:732:

• During a state of emergency as declared by the governor or as declared by the parish president, the prices charged or value received for goods and services sold within the designated emergency area may not exceed the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency, unless the price by the seller is attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends, or to reasonable expenses and charges and attendant business risk incurred in procuring or selling the goods or services during the state of emergency.
Hypothetical - Price Gouging

Price gouging is going on in a disaster-stricken area that has been left relatively unchecked by the state due to the massive size of the impact area.

- Individuals and firms are allegedly gouging the prices on services related to replacement equipment/items and construction costs.
- Costs cause insurance payouts to meet policy limits/settlements and begin drawing FEMA assistance under either an IA or PA program (SBA Loans are not available in this hypothetical).

What can be done?
The Legal Methods of Fighting Fraud

- Common State Prosecutorial Tools
- Federal Statutory Tools
  - RICO Action
  - Qui Tam Action
Hypothetical – Price Gouging: RICO Action

• What are the options under Civil RICO?

  • RICO is “Racketeer Influenced and Corrupt Organizations Act”.
  • The problem here is defining and proving a pattern of a “Racketeering Activity” is within the disaster.
  • May not be most appropriate for isolated instances, but is an avenue to go down for prosecutors in the event organized crime comes into play.
State Prosecutorial Tools

On the state level, prosecution is an option under a variety of statutes.

• Ex. Oklahoma
  • 76 OS § 2, 4 - contractor fraud in construction and related areas
  • 15 OS § 57, 58, 59, 60 – general fraudulent claims, such as that by an insured filing an excessive property damage claim
Hypothetical – Price Gouging: Qui Tam Action

• Can an insurer bring a Qui Tam action?
  • The Federal False Claims Act allows for the government or private parties to bring an action against someone defrauding the government.
  • If the private party notifies the government, and the government does not want to take action; the individual can prosecute on behalf of the government and keep a portion of the proceeds from the case.
  • An insurer could possibly be a relator for FEMA in that it could help recover the benefits duplicated in a price gouging situation.
I’ve found a fraudster, what do I do?”
(after I deny the claim, of course!)
The National Center for Disaster Fraud

• Call The National Center for Disaster Fraud
  • Est. in 2005 after Hurricane Katrina
    • Received more than 70,000 complaints involving more than 50 natural and man-made disasters
  • Once reported, the complaint is sent to the proper authorities for investigation and prosecution

• Regional Disaster Fraud Task Forces after disaster hits an area, most recently in East Texas after Hurricane Harvey

www.justice.gov/disaster-fraud
Conclusion

Identifying disaster relief fraud can be difficult given the emotional ties to “saving people.”
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