

1                   MS. HEFFERN: Glad you're all here, thanks  
2 for coming, and Laura Mueller's going to introduce  
3 our guests to you.

4                   MS. MUELLER: Can we begin? Good morning.  
5 As Allison said, we have some guests here with us  
6 today from New Orleans who have graciously agreed to  
7 come give us some insight and help. They're from the  
8 law firm of Sher Garner Cahill Richter Klein &  
9 Hilbert LLC. Our first guest is Elwood Cahill.  
10 Mr. Cahill graduated from the University of  
11 New Orleans with a B.S., got his law degree from  
12 Loyola University of New Orleans. He is a member of  
13 the firm's business practice group, actively involved  
14 with many professional, civic, charitable and trade  
15 organizations including the real property, probate  
16 and trust law section of the American Bar  
17 Association. Mr. Cahill is the current secretary and  
18 treasurer of the Louisiana Bar Foundation, is a  
19 member of the board of directors of the New Orleans  
20 Bar Association, a member of the board of directors  
21 of Children's Hospital in New Orleans, and also  
22 serves as co-chair of the University of New Orleans  
23 business alumni counsel, whose purpose is to serve as  
24 an advisory group to the Dean of the business school.  
25 He has also taught as an adjunct professor and as

1 skills instructor at Loyola Law School in  
2 New Orleans. Welcome.

3 Our second panel member is James -- Jim --  
4 Garner. Mr. Garner graduated from -- got his  
5 undergraduate degree from Tulane, and I believe was  
6 valedictorian of his class, and then was also Order  
7 of the Coif and managing editor of Law Review at  
8 Tulane law school. Mr. Garner specializes in  
9 commercial and complex litigation with the firm.

10 Our third guest is Leopold, or Lee, Sher.  
11 Mr. Sher is a business lawyer who practices in  
12 commercial, real estate, and business and finance  
13 law. He has also begun specializing, I believe,  
14 probably since their tragedy, in disaster recovery.  
15 Along with his practice, Mr. Sher is involved with  
16 many professional and trade organizations, some of  
17 which include the American College of Real Estate  
18 Lawyers, where he has served as a treasurer and a  
19 member of the executive board. He's been involved  
20 with the Lenders Counsel group of the American Land  
21 Title Association, which is a group limited to  
22 75 lending lawyers who meet in conjunction with the  
23 ALTA, which is the title insurance industry trade  
24 association. He's also been a member of the real  
25 property section of the American Bar Association and

1 has served as that section's governing council.  
2 Since Hurricane Katrina, he has spoken extensively  
3 all over the country to business groups, professional  
4 organizations such as ours, on disaster recovery,  
5 disaster planning and disaster management. So  
6 welcome.

7 MR. SHER: Thank you.

8 (APPLAUSE)

9 MR. SHER: It's truly a privilege to be here  
10 with you today. Thank you very much for having us.  
11 I want to extend my personal regards to Dave Kubicek.  
12 Is Dave still here? There he is. We've been friends  
13 for many, many, many years, probably over 15 years.  
14 He and I are in the American College of Real Estate  
15 Lawyers together, along with Elwood, and it's -- I  
16 called him the other day just to see how he was doing  
17 and when I found out everything was okay, not  
18 flooded, I was relieved to hear that. So it's good  
19 to see you in person and everything's okay.

20 We always wondered when we were going  
21 through Katrina, and we still wonder to this day,  
22 whether anybody cared. And one of the messages we  
23 want to share with you today as we look out to all of  
24 you who suffered all sorts of different ways is that  
25 people do care and we care and when we were going

1 through Katrina, the outpouring of care was  
2 overwhelming. Overwhelming to the point where on a  
3 daily basis, all of us cried. We cried on each  
4 other's shoulders. We cried with each other, we  
5 cried out loud. Because what you all have gone  
6 through is in the category of unfathomable, it's  
7 unbelievable. In a 500-year floodplain, it's not  
8 supposed to happen. But you should know that we're  
9 in awe being here and we're privileged to be here  
10 because we care and there's more people out there,  
11 not just in your state, in this country and in the  
12 world who care about you. You may not know it, you  
13 may not feel it every second, but they really do  
14 care.

15           And we're just a delegation. It's not  
16 just -- we're three lawyers who happen to have lived  
17 through Katrina and we're still doing that, but we're  
18 here as representatives, we're here as ambassadors on  
19 behalf of the federal bar association of the Eastern  
20 District of Louisiana, we're here on behalf of the  
21 New Orleans Bar Association, we're here on behalf of  
22 the Louisiana State Bar Association, and we're here  
23 on behalf of the people of Louisiana, to whom so much  
24 has been given and so much will be given. Just to  
25 let you know that we -- whatever experiences we have

1    been through have been bad and what you all have been  
2    through has been terrible, and we feel for you. We  
3    feel for you.

4                    One of the other reasons we wanted to come  
5    here is to let you know that as bad as whatever we  
6    went through was, here we are today almost three  
7    years later, new suits because we lost most of our  
8    clothes when our houses were flooded, smiles on our  
9    faces, the ability to come up here and talk to you  
10   about all sorts of things, particularly legal issues  
11   because we're addressing a legal group. But however  
12   tough what you're going through is -- And it's tough,  
13   and there's nothing we're going to be able to tell  
14   you that's going to make it any less tough, it's  
15   hard, it lasts a long time, we're still going through  
16   it and we have no idea when we will end this. But  
17   today, today, our law firm is bigger than it ever was  
18   before. It's stronger. We're better lawyers. We  
19   have better business. And most importantly, we're  
20   better people for what we went through. And our hope  
21   and prayer and our wish for you is that you get it  
22   behind you as quick as possible and that when you are  
23   at the end of it or you see most of it in the rear  
24   view mirror, that you have the same sense and feeling  
25   of accomplishment, of thankfulness, that we have

1 while we're here with you today.

2           One of the things that we -- we often talk  
3 about the experience of going through this, because  
4 you know what, when you sit down with your families  
5 after you go through an experience like this, you  
6 say, we're living now, if this happened in a 500-year  
7 floodplain, what else could happen. In a floodplain  
8 that's supposed to be protected on a 500-year basis,  
9 and I understand that doesn't mean once every 500  
10 years and you all have learned that just like in our  
11 area we're in a 100-year floodplain, it doesn't mean  
12 that it happens -- it's supposed to happen  
13 statistically every 100 years, which is what  
14 everybody thinks, it's just that every year there's a  
15 1 percent chance of whatever catastrophe that you're  
16 judging doesn't occur.

17           In our case the devastation was pretty  
18 widespread. For the most part our city was ruined.  
19 How often do you get to participate in the rebuilding  
20 of a great American city? And you're sitting in one  
21 right now. And so when you're sitting with your  
22 family making the decision whether you want to  
23 continue to do this in this place, just think about  
24 that. Because although if you were listing choices  
25 of what you would want to do in life, going through

1 this is not going to be at the top of it. It's going  
2 to be at the bottom. And in this case maybe  
3 unfathomable, so it wouldn't even be on your list.  
4 But you've been through it now. You have choices.  
5 Lots of people don't want to go through this again  
6 and decided that they want to leave and do something  
7 else somewhere else.

8           Consider accepting this challenge. You have  
9 the opportunity to participate in the rebuilding of a  
10 great American city and a great American area.  
11 You're never going to have that -- hopefully (knocks  
12 on wood) -- you're never going to have that chance  
13 again, so consider doing that.

14           The other thing that we learned and why we  
15 think we're better people today than we were on  
16 August 28th, the day before Katrina hit, and what you  
17 should know before we talk about the legal issues is  
18 what our personal experiences were, and I'm going to  
19 tell you what mine was and let Jim tell you what his  
20 was and Elwood can tell you what his was. And what  
21 we want to do this morning is we don't want this to  
22 be talking heads, because whatever we think we want  
23 to talk about this morning may not be what you want  
24 to hear. And so what we would like to do is as  
25 opposed to what's on the agenda, waiting until the

1 end for questions, we would like you, if you have a  
2 question right now, to raise your hand and ask us the  
3 question, because we're here to serve you, to share  
4 with you what our experiences are, how we've dealt  
5 with this over the last three years, and so please  
6 don't ever hesitate to stop to ask a question, to  
7 correct us, to inform us as to what's going on. But  
8 this was my own experience.

9 My daughter -- I have two daughters.  
10 They're currently 23, almost 24, and 21. The  
11 21-year-old was 18 years old and she was going to her  
12 first year of college in Philadelphia. We were  
13 supposed to leave on August 29th to take her to  
14 school, to move her in. And that's a Monday. And we  
15 spent weeks before, as those of you who have had  
16 children going to college, we spent weeks before  
17 focusing in on getting her ready to go to college.  
18 Saturday before August -- we were supposed to leave  
19 on August 29, Monday. Saturday before August 29th  
20 we're focused strictly on my daughter and getting her  
21 packed and ready. And I get calls from Elwood, I get  
22 calls from Jim, people are telling us to turn the  
23 television on, that this storm is going to be pretty  
24 bad and it's going to hit sooner than anybody  
25 thought, maybe we should get out of town earlier,

1 because our focus is on getting our daughter to  
2 school.

3           So I managed to get our reservations changed  
4 from Monday to Sunday and we took off from  
5 New Orleans on Sunday. We didn't do anything to our  
6 house because our own experience is these things are  
7 duds, they don't happen, they always veer to another  
8 way, they peter out when they hit land, et cetera.  
9 We really didn't do any preparations whatsoever.

10           We happened to be on the last plane that  
11 left New Orleans on Sunday. So absolute last plane,  
12 they shut the airport down on that Sunday afternoon,  
13 August 28th, and we took off for Philadelphia and we  
14 moved our child into town. The storm came through,  
15 we understand, because we weren't there. And we had  
16 damage to our house and there was damage to other  
17 houses in the neighborhood, and we live in a very,  
18 very nice neighborhood in New Orleans. But nothing  
19 really terrible. Nothing really that bad. Some  
20 shingles flew off, some people's roofs blew down, a  
21 tree might have fallen into somebody's house.

22           What we understand -- I got a text message  
23 from Elwood a little while later in the day that  
24 there was some problems with some of the drainage  
25 canals, the walls of the drainage canals, and I

1 don't -- I live about 300 feet from the 17th Street  
2 canal, the famous 17th Street canal, which breached.  
3 And it breached not only here by my house, about  
4 2 miles from my house, but the water was so  
5 voluminous, that's the water from that canal and the  
6 other canals that did breach that pretty much flooded  
7 80 percent of the city.

8           We had -- what ultimately happened a couple  
9 of hours after the storm was over was we ended up  
10 with 6 feet of water in our house, which remained  
11 there for about 17 days. And our neighborhood is no  
12 rolling hills or rolling terrain in New Orleans, it's  
13 all flat. So if you're in a neighborhood that -- if  
14 my house has 6 feet, every house in the neighborhood  
15 has 6 feet, and that means about 10 feet of water in  
16 the street.

17           The interesting thing is, in our house, we  
18 have a nice house, 4500 feet, 3,000 feet on the  
19 ground floor, 1500 feet on the second floor, where my  
20 kids' bedrooms were. Our bedroom on the ground  
21 floor. So just imagine, we pretty much got wiped  
22 out. All of our clothes, all of the videos of the  
23 kids, the diplomas, our wedding album, the works.  
24 That special rolling pin that my wife used to make  
25 pies. Just completely wiped out.

1           If my daughter wasn't going to school, if  
2 she wasn't going to be moving into a school in  
3 Philadelphia, my wife and I would have stayed. We've  
4 stayed for virtually -- I don't remember a time when  
5 we evacuated. Jim always calls me and tells me I'm  
6 nuts for staying, but it was never ever a problem. A  
7 lot of hurricanes have blown through and whereas  
8 everybody spends hours, 14, 20 hours going one or  
9 two hundred miles on the interstate to evacuate,  
10 we're home having a good time, jogging in the  
11 neighborhood, and then when everybody has to come  
12 back and go through the process of moving furniture  
13 back outside, moving things around, we didn't have to  
14 do anything like that. So we would have stayed and  
15 we probably would have drowned, because we would have  
16 been -- we understand when the water came into our  
17 house, it would have been a time when we would have  
18 been sleeping, we think, after the storm.

19           So I'll let Jim get into what we did with  
20 our office and Elwood can do the same. But that was  
21 our personal experience. We were pretty much wiped  
22 out. And we can get into more details that are  
23 relevant. Because I did get an SBA loan, I got FEMA  
24 grants, we've rebuilt our house, we've been back in  
25 our house since last February. We've been through

1 the process that many of you and many of your family  
2 members and clients will be going through and we can  
3 talk about that. And that's why we want to open the  
4 floor for questions.

5           But the lesson, the most important lesson,  
6 throughout all this, we have clients, we have  
7 fiduciary obligations, we have loved ones, we have  
8 all these things, we have material possessions, but  
9 those things don't mean anything because when the  
10 National Guard came through our neighborhood on boats  
11 looking for people who were still in their houses or  
12 people who had drowned in their houses, when they  
13 came to our house and they put -- they spray painted  
14 the quadrant on our front door. One quadrant was the  
15 date that they came through, it was September 12th.  
16 We still did keep the door. September 12th. In one  
17 quadrant was the name of the military platoon that  
18 did the inspection. The other quadrant indicated  
19 either an EXT or an INT. EXT, exterior examination  
20 of the house, and they had radar or whatever --  
21 infrared, so they could tell whether there were any  
22 bodies in the house, dead or alive. We had EXT.  
23 EXT. So they didn't come into our house because  
24 there was nobody there. And then the last quadrant  
25 had a big zero on it. Zero to indicate that there

1 were no dead bodies in the house.

2           And so all the lessons that you learn from  
3 going through experiences like this is that material  
4 things, your livelihood, your house, all those things  
5 are very important and those are the things that we  
6 have to deal with on a daily basis, but the most  
7 important thing is your health and your life, and  
8 fortunately for us, we had no fatalities and we  
9 escaped without any kind of problems with our health.

10           MR. CAHILL: By the way, to just put a  
11 little relevance, Connie took us on a little tour  
12 around, and we were noticing on a lot of houses they  
13 had sort of green placards or green papers with the X  
14 that Lee is talking about. I don't know if any of  
15 you have actually seen those. And maybe you knew  
16 what that described. But one of the lessons I guess  
17 they learned from Katrina is it's better to put that  
18 on a piece of paper rather than spray paint it on the  
19 brick or the door or the window, which is what  
20 happened in New Orleans. They didn't use any paper.  
21 It's all just sort of a permanent record of what  
22 happened.

23           And it's very interesting, I guess, to think  
24 about how, I guess, methodical those units are when  
25 they come through. And it's sort of -- in a lot of

1 way it depersonalizes what's happened. But in case  
2 you didn't know what those are, maybe you do, that's  
3 kind of what those little green placards are in the  
4 homes in the flood area.

5 MR. GARNER: And those are now valuable  
6 artwork in New Orleans. A good friend of mine often  
7 quotes Tim O'Neal, and if I get it right, who once  
8 said, where you sit depends on where you stand. Lee  
9 and Elwood are two business lawyers. I was trained  
10 as an insurance defense lawyer, commercial litigator,  
11 and we had to evacuate in the middle of the night.  
12 Some people just had T-shirts and shorts on. I had  
13 4 feet of water in a house that's plus 5 feet above  
14 sea level. My mother's car floated over her house to  
15 the backyard, and my in-laws and brothers also had  
16 9 feet of water in the house. Which puts you in an  
17 interesting position.

18 The Monday night -- my grandmother was in  
19 Baton Rouge, we went up there. We always evacuate --  
20 as Lee said, I always do tell him he's nuts not to --  
21 but always with the expectation we're coming home.  
22 About 6 p.m. that Monday it was clear that -- I still  
23 had internet, through some wireless, through some  
24 miracle -- that the city had a lot of water on it.  
25 And if there's any doubt about how much water from

1 broken levees, you'll understand that when you read  
2 the briefs we've circulated.

3           We rented 25 houses. We moved a hundred  
4 people. Thank God for BlackBerrys. If you don't  
5 have a BlackBerry, and everybody -- unless you're a  
6 sole practitioner, you should give BlackBerrys out to  
7 everybody in the law firm. It's an expense you have  
8 to negotiate with. And the reason we did that, one  
9 of my Law Review classmates is a United States  
10 Senator from the State of Louisiana who talked to me  
11 after 911 and the only way they were able to  
12 communicate on the Hill was through pins or text  
13 messages. So you don't have to have 6 feet of water  
14 in your city not to be able to communicate. You need  
15 a terrorist act or a terrorist scare or something  
16 that just drives the mobile phone industry into  
17 oblivion. So we gave everybody a BlackBerry. It's  
18 the only way we kept going.

19           And you all probably had some sleepless  
20 nights. We were able to communicate, get everybody  
21 together. By that Wednesday we had rented 10,000  
22 square feet, we were very cozy coming out of 30,000  
23 square feet. We had housed everybody, fed everybody,  
24 and at this point in time we're doing it out of our  
25 pockets.

1           I was telling Connie and Allison today, we  
2 spent about \$500,000. And when you all obviously  
3 take care of your family and take care -- and  
4 hopefully most of you all -- most of your houses are  
5 okay, take care of your business, there's going to be  
6 an economic hurt to that.

7           And unless -- and I told somebody, you know,  
8 we need to talk about this too, we early on had to  
9 figure out what we were going to do. Because we do  
10 represent major institutions in the city, from Xavier  
11 Institute to the Methodist University to Tulane  
12 Hospital, Children's Hospital, Touro hospital, and  
13 probably every major commercial institution that  
14 these guys do deals for who needed help. And I  
15 presume everybody's a lawyer here today. You're  
16 going to have clients who need help and you're going  
17 to have to make a decision early on, are we  
18 representing the insurance industry or FEMA or those  
19 clients.

20           We picked the locals, the hometown team. We  
21 have -- we feel that we had a social commitment to  
22 rebuilding our city, as I'm sure you all do too. Has  
23 it had consequences? Yeah. One of our lawyers'  
24 mother lived in Gulfport, Mississippi, was getting no  
25 help from State Farm. I'm not picking on Lafayette

1 Insurance Company. Martha's mother, three, four  
2 weeks out, was out of money. She's borrowing from  
3 her 401(k). Martha comes to me and says we ought to  
4 file a lawsuit. I'm not going to tell any lawyer  
5 they can't take care of their mother.

6 Well, within 24 hours I got a phone call  
7 from an insurance client up in the northeast that  
8 said you filed this lawsuit, you got to dismiss it or  
9 you'll never get a case from us again. I said, well,  
10 then I'll never get a case from you again, because if  
11 you're asking me to tell a lawyer to bail out on her  
12 mother who's destitute, I don't want to represent  
13 you.

14 So those early issues we faced. We had to  
15 obviously take care of the office. We spent a  
16 boatload of money feeding people, taking care of  
17 people. Nobody missed a paycheck, which was a  
18 challenge, because I went to Chase and they told me I  
19 wasn't on the account, which was kind of interesting,  
20 but we'll talk about some of those issues today and  
21 things you may want to think about in disaster  
22 protection.

23 And somehow this leaked out to CNN earlier  
24 in the week, and CNN wanted to talk to Lee and me.  
25 And they asked the question about flood insurance,

1 because I know not everybody had it here. And my  
2 response is if I lived in Denver I'd buy it. My  
3 house is 5 feet -- plus 5 and I had 4 feet of water  
4 in it. So think about that. That's one lesson I  
5 take out of this. We've gotten through it. As Lee  
6 said, you're going to get through it.

7           You're going to have to make some business  
8 decisions as lawyers on which side of the issues you  
9 line up on and that's going to depend on how bad you  
10 were hurt probably. It's a lot easier to represent  
11 the insurance industry when nobody in your office has  
12 been hurt. When everybody in your office has been  
13 hurt, you got to do what you got to do. And if your  
14 law firm took it on the chin for a few million  
15 dollars, I can't imagine any lawyer is going to make  
16 that kind of charitable contribution.

17           We've put out briefs, we've spoken on this.  
18 You might be thinking about these issues yet. Ask  
19 questions. Share from us. I think there's two  
20 briefs, which may or may not be helpful. Because we  
21 have debated what the word flood meant and I don't  
22 know how applicable that's going to be up here. My  
23 understanding is there are sections of the levees  
24 that failed. And I actually researched Iowa law and  
25 the good news is there is no Iowa law. So Elwood.

1           MR. CAHILL: So you need to make some. Just  
2 from my own personal experience, I was very  
3 fortunate. I'm a native New Orleanian, lived there  
4 my whole life basically, and at the time of the storm  
5 I was living in a second story apartment complex  
6 downtown not far from the Convention Center or the  
7 Wal-Mart, if you watched any of the horror stories in  
8 New Orleans, but my apartment was unaffected. Didn't  
9 have a problem. My doors had blown open during the  
10 storm, but didn't have a drop of rain in my  
11 apartment, didn't lose anything.

12           I had actually taken about an hour to sort  
13 of quickly pack up some of the things in my house  
14 thinking that there might be a storm, so I took my  
15 prized possession, my big screen TV, my Sony, I  
16 wrapped it in beach towels and sheets and packed it  
17 all up, unplugged it from the wall so the surge  
18 protector wouldn't get interrupted or anything like  
19 that. And then for the weeks that I couldn't get  
20 back, I was thinking, well, with all the looting, I  
21 just packed it up nice for somebody to just take it  
22 right out of the door. But got there, the doors had  
23 blown open, my French doors on my patio, but my TV  
24 was sitting there all nicely wrapped up.

25           So I really was very, very lucky, very

1 fortunate not to have a lot of personal loss. Lots  
2 of folks that I am connected with had loss. My  
3 then-girlfriend, now wife, had a couple feet of water  
4 in her house, basically one-story house, and kind of  
5 lost everything. Doesn't take much to ruin your home  
6 if you've been in that experience, particularly when  
7 you're not planning on it and water wicks up, and if  
8 you've got anything that's cloth or paper or what  
9 have you, it's basically totally destroyed.

10           And loss of power. I don't know if anybody  
11 had any fun experiences with refrigerators, but that  
12 was a big problem in the city of New Orleans, where  
13 everybody's refrigerator sat for a couple of weeks  
14 with no power and it's basically like you got to just  
15 find some way to bury that in the backyard.

16           MR. GARNER: Don't open it.

17           MR. CAHILL: But, you know, from my  
18 perspective I was very, very fortunate, and in a lot  
19 of ways I feel fortunate that I'm there in  
20 New Orleans to be able to sort of help the City  
21 become better than it was, and I think Lee touched on  
22 that as well. I think each of you have an  
23 opportunity to do that. Not just as individuals, but  
24 as lawyers, you know. We all like to think of  
25 ourselves as professionals and having sort of a

1 higher calling, a higher duty to mankind at large  
2 and, you know, one of the organizations I was  
3 involved with early in my career had a creed that the  
4 last line was that service to humanity is the best  
5 work of life, and I think that as lawyers we try to  
6 live that in a lot of ways in what we do.

7           And so I think there is probably a higher  
8 calling, a higher burden on everybody in this room to  
9 participate in, and we know that you all are up to  
10 it. And as Lee said, we're here to just show some  
11 support in some small way to let you know that other  
12 people can commiserate, do care, and, you know, we  
13 are very, very honored to have an opportunity to come  
14 speak with you guys today.

15           Also another thing that Lee said was -- and  
16 we've now been at this not too long, but a half an  
17 hour. We really want to hear from you. We have a  
18 lot of information that we can share. Obviously a  
19 lot of it is personal. Some of it is directly legal  
20 in terms of analyzing the legal issues on how to make  
21 claims under your policies or things like that. How  
22 to get money in the interim. But really what we want  
23 to do is hear from you what issues are important to  
24 you so that we can make sure we've talked about that.  
25 So please don't be shy and any time you want,

1 somebody can certainly start with asking some  
2 particular question. Anybody want to --

3 MS. CRILLEY: We are hearing lots of rumors  
4 about SBA, that if we are financially sound and we  
5 can go into our banker and get money, although it's  
6 going to be at much higher interest rates, if we go  
7 get that money we're hurting ourself with our SBA  
8 disaster loans. I mean, I own my building, so I'm  
9 facing right now -- I've got to pay the cleanup guys,  
10 who are from Texas, and I need several -- several  
11 thousands of dollars for that. Now, I can go and get  
12 it from my bank, but I've heard if I do that then I  
13 hurt my chances for my SBA disaster loan.

14 MR. GARNER: It's amazing how quickly the  
15 Texans invade, isn't it? They were all over  
16 New Orleans.

17 Based on our experience, everybody had to do  
18 what you're talking about. Whether you go into your  
19 savings or you go into a loan, as far as I know, SBA  
20 has not denied a loan to anybody in the City of  
21 New Orleans because in the meantime -- remember,  
22 you're dealing with the federal government, and we  
23 can talk about that for days and we'll touch a little  
24 bit of that today, they're incapable of moving  
25 quickly. The only things of certainty are death,

1 taxes and the inability of the federal government to  
2 deal with an issue. You're talking about maybe three  
3 to four months out before you get SBA money unless  
4 they do something incredibly different than they did  
5 in New Orleans.

6           So I would argue self-preservation first and  
7 unless -- I'm not going to say it's impossible they  
8 changed rules after Katrina, although that would not  
9 make sense given you're out there either going into  
10 your pocket or borrowing money and the federal  
11 government must be helping you at 1.9 percent. So  
12 we've gotten the loans for several major institutions  
13 in town who either went through their endowment or  
14 borrowed the money from wealthy benefactors or  
15 borrowed from banks, and used the SBA loan to pay  
16 back that money. Good question.

17           MR. CAHILL: When you start listing things  
18 to be wary of, one of the big issues that we faced,  
19 both individually and for our clients, was  
20 contractors and whether a contractor was licensed or  
21 not. And at the time when they walked up the first  
22 time, nobody cared about that. You just needed a  
23 service, you weren't really worried about it. But we  
24 had a number of instances both for personal  
25 individual matters as well as clients where they got

1 significant work -- I guess I shouldn't say done --  
2 significant charges for work to be done or have to  
3 been done, and it turned out that there were problems  
4 with the licensure, they didn't really do the work  
5 they were supposed to do. You know, disaster can  
6 work both ways and the disaster relief folks are  
7 really there, I guess, to capitalize on a disaster as  
8 much as anybody.

9           And one of the big issues has always been  
10 licensure. I don't know what Iowa law is, one of the  
11 problems is we didn't do a lot of research on that.  
12 But in Louisiana if you are not a licensed contractor  
13 you actually don't have a claim to collect money for  
14 work that you've had done. That's one of the risks  
15 of doing business without a license. And there has  
16 been a tremendous amount of litigation over that.  
17 Most of the -- I shouldn't say most, but a number of  
18 disaster contractors seem to want to take advantage  
19 of the situation in terms of sort of getting in  
20 there, not just price gouging, but controlling the  
21 site.

22           We had a number of contractors that seemed  
23 to have relationships with insurers. They were sort  
24 of the preferred contractors for insurers. And a  
25 number of them would come in and directly -- have a

1 direct relationship with the insurer rather than the  
2 insured and say, look, don't worry about it, we'll be  
3 responsible and we'll fix it for whatever the  
4 insurance company pays us. It all sounds great  
5 except that there's no structure or no guidelines as  
6 to what they're supposed to do with the money.  
7 They're going to spend it, but they may not fix your  
8 building to a hundred percent of what it was before.  
9 They're just going to spend the money and do work  
10 with no guidelines.

11 So words to the wise, just be careful with  
12 that. I know that you need to get started, you need  
13 to start turning things around and making repairs,  
14 but try to deal with people who are reputable. Try  
15 to make sure you deal with people who are licensed.  
16 Those were very big issues that resulted in not just  
17 problems, but also a tremendous amount of litigation  
18 in Louisiana.

19 MR. GARNER: Elwood raises a good point.  
20 And one lesson from the storm, you can tell all your  
21 clients this, is that if a client -- doesn't  
22 necessarily have to be our law firm -- got a lawyer  
23 involved to deal with FEMA, deal with the  
24 contractors, they were able to go off and deal with  
25 their business and there were less problems. The

1 problems we had or have seen and litigated is where  
2 clients, either penny wise, dollar foolish, tried to  
3 do it all on their own and couldn't.

4           And Lee and I have visited with the FBI and  
5 U. S. Attorney on a contractor, not from Texas, from  
6 Florida, who interestingly -- not United Fire group,  
7 another insurance company was maybe giving kickbacks  
8 or giving preferential treatment to the insurance  
9 company, so this contractor wasn't licensed, had no  
10 real fiduciary duty or obligation to the ultimate  
11 client, and 2 million dollars of damages he's trying  
12 to tell our client are over \$500,000. And we find  
13 out he's got a real cozy relationship with the  
14 insurance company.

15           So whether it's University of Iowa, because  
16 we've dealt a lot with universities, and FEMA, or  
17 businesses, tell your clients that lawyers in  
18 New Orleans said get you all involved quickly, even  
19 if it costs them a little money. They can focus on  
20 their business. Your fiduciary obligation is clearly  
21 to them. You're not going to be able to -- if I  
22 graphed it, the people who got in trouble didn't have  
23 lawyers involved quickly.

24           MR. SHER: On the contractor issues, they're  
25 numerous, because when you think about the rebuilding

1    aftermath, the focus is the contractors.  So many,  
2    many, many of your problems or many of your clients'  
3    problems are going to arise out of the rebuilding  
4    process which involves necessarily the contractors.  
5    So licensing is an issue.

6                    Because our clients were hysterical, were  
7    immobilized, were not thinking clearly, many of them  
8    signed these one-page documents, contracts with their  
9    contractors, and we're not talking about for house  
10   reconstruction, we're talking about three or four  
11   hundred unit condo developments, we're talking about  
12   major office buildings, we're talking about  
13   hospitals.  One-page contracts with the contractors  
14   with the small print everywhere, particularly on the  
15   reverse side.

16                   The key to that document was the assignment  
17   of the insurance claim.  And we all may spend hours  
18   and hours and hours with our clients negotiating the  
19   AIA contracts with the architects and the  
20   contractors, and then it's not even good enough.  But  
21   just imagine a 2 or 5 or 12 million dollar job on one  
22   page where all of the rights of the owner with  
23   respect to an insurance claim are assigned to a  
24   contractor.  And you don't know how many times and  
25   how much time we spent on behalf of our clients

1 trying to undo that, and we did most of the time.  
2 Because it's -- trying to undo it, contractor signed  
3 a contract with an authorized representative of  
4 whoever the entity was.

5           And so you have to be -- while you're  
6 rebuilding your own home, while you're trying to get  
7 your practice together, while you're doing everything  
8 you have to do to deal with the circumstances of  
9 living here post catastrophe, of course, you can't  
10 forget the client. And you have to be somewhat  
11 active in going out to your client and advising  
12 them -- this is so simple, but they just didn't get  
13 it and don't get it -- not to sign anything without  
14 showing it to you first.

15           MR. GARNER: I'm going to interrupt you.  
16 Because I'm going to tie these two together. There's  
17 a case on Westlaw which is called St. Charles General  
18 Hospital which is a not for profit, versus BCD, which  
19 is the contractor I was talking about earlier. The  
20 judge invalidated the contract on the basis that  
21 Elwood's talking about, came in, billed the insurance  
22 company for a million and a half bucks, didn't do any  
23 work, then said you don't own the claim, I own the  
24 claim. You can't do anything. And you know what,  
25 I'm going to go dismiss the lawsuit with prejudice.

1 So you pay me -- think about this, want to think of  
2 extortion. I file the lawsuit for your insurance  
3 proceeds and unless you pay me I'm going to dismiss  
4 your claim in prejudice because it's not your claim  
5 anymore. The judge granted a TRO and invalidated the  
6 contract.

7 MR. SHER: I was the lawyer, it was 6 feet  
8 with splashing of 8 feet of water in my house for  
9 17 days. It was not uncommon, 80 percent of  
10 New Orleans was under that much water for that period  
11 of time. So the city was pretty much -- it's not a  
12 question of being shut down, it's inaccessible.  
13 After that, as the city dried out, the city was  
14 closed. There was a mandatory evacuation. You were  
15 not permitted to go into the city. And that lasted  
16 until about October 17th, I believe.

17 So we're talking about the city shut down  
18 and closed, inaccessible, for six weeks. Well, there  
19 are exceptions to every rule, you can sneak in if you  
20 had a business like we did, we could show our  
21 credentials at the check points and it was like post  
22 World War II Europe where thousands of cars would be  
23 funneled into one lane on the interstate, one of the  
24 few interstates where there was access to the city,  
25 and they would -- at that point of entry there was

1 one burly cop with shoulders out to here, it was a  
2 hundred degrees every day then, with the biggest  
3 handgun you could possibly imagine, and he would  
4 decide -- this lone guy was deciding who got to the  
5 city and who didn't. And you waited in line 4 or  
6 5 hours to get to that point. If you didn't get in,  
7 turned around and went back, 80, 100 miles, wherever  
8 it was you were living at the time. If you were  
9 lucky to get in, you could be there for a couple  
10 hours because there were curfews and you would do  
11 your business.

12           But during this period of time the people  
13 who did get in, and some people who actually lived in  
14 the city, contrary to the evacuation order, were  
15 getting things done by contractors. They were coming  
16 in from Mexico, they were coming in from Texas, they  
17 were coming in from all over. They started to get  
18 things done, and not just little things, major  
19 things. We have all these trucks out on the main  
20 thoroughfares here. Some of these companies actually  
21 got in to start doing the cleanup, to start doing the  
22 demolition, and in no case the reconstruction yet,  
23 but they were doing major work.

24           Well, city hall was shut down. City hall  
25 had -- if they had 5,000 employees, had -- city was

1 broke, had fired and laid off 3500. When we talk  
2 about a skeleton crew, for the most part we're  
3 talking about the police department, the fire  
4 department and a couple of functionaries at city  
5 hall. And so tons of work was done, sort of in a  
6 wild west way, with no permits, no licenses, by  
7 contractors that were out of state that didn't have  
8 any license. And how else were you going to do it?  
9 You couldn't call a city inspector, there were no  
10 city inspectors, so people kind of took it upon  
11 themselves to do this work.

12           The calendar passes several months and one  
13 of these -- these people who had that work done wants  
14 to refinance their property, they want to sell the  
15 property, they want to do any number of things. They  
16 have no permits or licenses for the work they did.  
17 And so they have problems. They've run into problems  
18 getting the financing. They could eventually get it,  
19 but to get an inspector out these days -- and you  
20 will experience this, unfortunately, if you have a  
21 crew at city hall of four inspectors because every  
22 once in a while they have something to inspect  
23 because there's something new being built or repaired  
24 or inspected in town, just multiply it by 2,000 or  
25 4,000 times and you know where you're going to be on

1 the list.

2 So that will kill the refinancing or  
3 financing, it'll kill the sale. And we're running  
4 into that kind of problem. So, yes, it was great for  
5 those people who could get the contractors in to do  
6 the demolition, do the repair work, but it was  
7 usually unlicensed and now they're having to come  
8 behind it and fix it for sure and/or pay the price.

9 MR. CAHILL: Do you have anything else on  
10 that?

11 MR. SHER: I just wanted to talk to you  
12 about SBA loans because I got an SBA loan for my  
13 house. And we helped other people get SBA loans, a  
14 lot of our employees and some of our clients on the  
15 business side. From the day that we applied for the  
16 home SBA loan until we were told that we got it was  
17 one year. And we qualified for the maximum, because  
18 we had a nice house and we had substantial damage --  
19 we qualified for the maximum amount that was  
20 permitted of \$200,000 on structure and \$40,000 on  
21 contents. And the interest rate was 2-1/2 percent.  
22 2-1/2 percent then, three years ago, was a fabulous  
23 deal. It's a fabulous deal today. And it's  
24 definitely a worthwhile endeavor.

25 Now, we've since settled with our insurance

1 company, so I've paid the loan back because that's  
2 part of it. You can't -- you can't eat your cake and  
3 have it too. You cannot stack all of the FEMA  
4 benefits, SBA benefits, insurance benefits -- we have  
5 a program in Louisiana called The Road Home program,  
6 which provides up to \$150,000 to anybody who had  
7 house damage as a result of Hurricanes Rita or  
8 Katrina to rebuild their house, but you can't get  
9 them all unless all of them are less than the value  
10 of the property pre-Katrina. But it was worth -- it  
11 was worth the pain.

12           The flip side is I had the ability to go to  
13 the bank and borrow the cost to rebuild my house in  
14 the meantime while I was waiting for the SBA loan.  
15 One of the reasons that the population of  
16 New Orleans, which was pre-storm 450,000, in  
17 New Orleans itself, in Orleans Parish, the  
18 metropolitan area pre-storm had a population of about  
19 1,450,000, the City itself, Orleans Parish, had a  
20 pre-storm population of 450,000. Currently the  
21 population of Orleans Parish is about 300,000. And  
22 of the 150,000 that were there pre-storm, most  
23 probably will not return. And most will not return  
24 because they don't have the wherewithal or the  
25 resources to come back.

1           The government will be great and they're  
2    doing great things for you, but they move so slowly,  
3    and you have to have the resources to spot yourself  
4    until the government comes through.

5           MR. GARNER: How many people have made a  
6    FEMA claim or SBA claim already for their law firms?  
7    Good. Make it. Because Lee talked about stacking.  
8    Theoretically -- and I say this theoretically --  
9    insurance companies are supposed to bear the risk,  
10   assuming they insured it. They're theoretically  
11   supposed to pay. Doesn't always happen. Then you've  
12   got the national NFIP program on top of that. Then  
13   you've got FEMA, then you've got SBA. NFIP is the  
14   National Flood Insurance Program. And you can buy  
15   250 and 100 on homes, meaning structure and contents,  
16   businesses could buy up to 500. And they're  
17   actually --

18           MR. CAHILL: Private insurers.

19           MR. GARNER: University had 500,000 in flood  
20   coverage in insurance companies and others did too.  
21   I don't know who represents Quaker Oats in here. I  
22   suspect their insurance program provided for flood  
23   coverage. If you can afford it, the bigger policies  
24   are covered.

25           MR. CAHILL: And even residential programs,

1 the national programs cap, as Jim said, at the  
2 250 and 100, but there is private insurance available  
3 on the market if you know about it and if you're  
4 interested in it. And it was available before  
5 Katrina and Rita and it will be available after.  
6 Just nobody either goes about it or thinks about it.  
7 We had several clients who had multimillion dollar  
8 homes with multimillion dollar art collections and  
9 they had private flood insurance that was able to  
10 help them.

11 MR. McLEOD: What has been your experience  
12 in dealing with the flood insurance carriers and  
13 adjusters, and -- I'm dealing with that right now for  
14 our homeowners association and what I'm seeing is  
15 that the adjuster comes in quickly and basically does  
16 a square foot assessment and then sticks this into a  
17 program and then comes back with an estimate that is  
18 so very unrealistic, and, of course, you have to go  
19 in quickly to get this stuff out and fortunately  
20 contractors in Cedar Rapids, anyway, are coming in  
21 and doing those things without a contract. They're  
22 just coming in and doing that if they know there's  
23 flood insurance there.

24 My question is how you -- what's your  
25 experience in dealing with the carrier once these

1 bills start coming in and getting advances to pay  
2 these folks and then next year, what can you expect  
3 as far as getting flood insurance.

4 MR. SHER: In answer to your question, I'll  
5 start it with the end of the SBA loan story. When I  
6 was told one year after I first applied for the SBA  
7 loan that I was going to -- I qualified and I was  
8 going to get the money, and I got the money pretty  
9 quickly after that, it was put in my account, wired  
10 into my account, I probably made about 400 phone  
11 calls and written innumerable e-mails and letters to  
12 get to that point. We probably collected for our  
13 clients in the neighborhood of three quarters of a  
14 billion dollars in benefits, whether it's private  
15 insurance, the NFIP insurance, other forms of grants  
16 or whatever. And some of them huge, hundred million  
17 dollars or more, some of them on the tiny side.

18 In every case, we're lawyers, so we know  
19 how -- the importance of the chain of evidence. You  
20 can't let a contractor do any demolition work without  
21 first assembling and gathering the proof. You got to  
22 have the pictures. You got to have the videos. You  
23 got to know that the person you're dealing with has  
24 authority to talk to you.

25 The way to do that, of course, is they're

1 not going to give you a certificate that says I have  
2 authority to act on behalf of NFIP or for Travelers  
3 Insurance. You have to do e-mails. You confirm to  
4 these people, just one e-mail after another, you have  
5 to confirm every single thing so that if the time  
6 comes when it's not resolved favorably for you or for  
7 your client, you have the guts of a lawsuit that you  
8 get ready to file. Every one of our lawsuits that  
9 was filed when we have to file them was this thick  
10 (indicating), and it consisted of e-mails and notes  
11 and estimates and videos and pictures, et cetera.

12           We can't -- from the -- from an insurance  
13 company's point of view, from the government's point  
14 of view, it doesn't exist if it's not in that stack.  
15 They will not -- it just doesn't -- it wasn't there.  
16 That table, if it was thrown out, there's no picture  
17 of it, it doesn't exist. It's not there.

18           Now, one of the things that we did was put  
19 pressure on all of these parties to advance funds, to  
20 give you -- even the National Flood Insurance people,  
21 the federal government, had a policy of advancing  
22 20 percent of what they initially estimated to be the  
23 damage. It may not be the amount you ultimately  
24 collect because I don't know if we ever got an  
25 estimate from anybody anywhere who we were trying to

1 negotiate with that was --

2 MR. GARNER: Realistic.

3 MR. SHER: -- that was high. We never got  
4 one of those. I don't think -- I don't even think we  
5 got one that was even close to correct, at least not  
6 the initial ones. But if you press them, private  
7 insurers, government benefits, they -- you probably  
8 will be able to get an advance. But you just have to  
9 assume that every claim you're working on is going to  
10 go to litigation or to an administrative board or  
11 body or to mediation or arbitration or something  
12 else. And the proof has to be perfect.

13 MR. GARNER: There's a case I e-mailed to  
14 Allison that's right up your alley, and also typifies  
15 what happens when you don't get a lawyer involved.  
16 It's called Marseilles Homeowners Condominium  
17 Association -- that's really up your alley -- versus  
18 Federal National Insurance Company, docket number  
19 065431. And we were hired after NFIP. You know  
20 what, one year's passed and you've got to give me a  
21 sworn proof of loss. I got all this mountain of  
22 paperwork saying the condo association has  
23 1.8 million dollars in loss, but in the fine print,  
24 go look at 44 CFR Section 62.23 and read the National  
25 Flood Insurance Act which is at 42 U.S.C. 4001. It

1 is form over substance.

2           Now, private insurance is a little bit  
3 different. At least Louisiana law, I did look at  
4 some Iowa -- like I said earlier, you all don't have  
5 a lot of law. In Louisiana law, I've called the  
6 insurance company and said, you know what, a tornado  
7 hit my house and I'm incurring losses, that's proof  
8 of loss. You don't have to have a special form. The  
9 federal government is the federal government. And  
10 get them, as soon as possible, because I got the  
11 requirements in this case. You know, prompt written  
12 notice of loss, got to be in writing, as Lee said.  
13 Not in writing, it didn't exist. The fact that we  
14 didn't have internet or anything, it was too bad, too  
15 bad, so sad, you got to get it to us in writing.  
16 Scribble it on toilet paper.

17           As soon as reasonably possible, put it in  
18 the best possible order so that we may examine it.  
19 Give them a chance to come examine it. I did. I  
20 went and separated it, took pictures of it. Course,  
21 they weren't there on time, so I gave them the  
22 pictures and the video. Prepare an inventory of  
23 damaged property. They need a list. I don't know  
24 why, but they need a list. They need a certain  
25 format for that list. I'm happy to go through that.

1 We'll talk about it afterwards.

2           Within 60 days after loss, send us a proof  
3 of loss which is your statement of the amount you're  
4 claiming under the policy and sworn to by you. Now,  
5 60 days after the proof of loss. Whatever the first  
6 day of floods were will mark that day. If you miss  
7 that day, you got no claim. And we're taking that up  
8 to the 5th circuit right now. Allison has a series  
9 of e-mails between the U.S. judge on that. Even our  
10 most liberal heart-felt judges are enforcing this.

11           Case law is horrible, and in this case, this  
12 condo association of well-to-do retirees, 60-,  
13 70-year-old people who did well all their life, are  
14 now facing 2 million dollars in losses, because  
15 despite the fact they had everything perfectly  
16 beautiful, Walt did a great job, like this much  
17 stuff, handed it to the adjuster. Fidelity admitted,  
18 did I get it? Yes. But I didn't get the sworn proof  
19 of loss.

20           MR. RUSH: Any troubles amending?

21           MR. GARNER: If you get it in, the answer is  
22 yes.

23           MR. RUSH: If you timely file --

24           MR. SHER: You just need something in.

25           MR. GARNER: Get something in.

1           MR. SHER: Something in within the time  
2 period. You got to remember, this happened after the  
3 adjuster was out there, took the pictures, did the --  
4 the adjuster did it all, but the proof -- the piece  
5 of paper with Form 4694, whatever the number is,  
6 wasn't submitted.

7           MR. GARNER: I heard one thing about --  
8 we've been talking about -- they're asking me -- it's  
9 always like 10 cents on the dollar. I don't know  
10 whether there's been an inflation factor. When I say  
11 inflation, what happens, whole city's wiped out, it's  
12 the free market at work. Plumber used to cost a  
13 thousand dollars a day, now he costs three thousand  
14 dollars a day. They don't take that into  
15 consideration.

16           In my experience, my flood people were  
17 great. I had a guy from Montana came in, he did  
18 every Garner, my parents, my brother, my me. Paid  
19 us, give me this, told me what to do. I've got a  
20 75-year-old aunt who they never paid a nickel to  
21 until I wrote a nasty letter to them. And if she  
22 doesn't have a nephew who's a lawyer who can write a  
23 nasty letter, she doesn't get paid.

24           Another rule. In the event a policyholder  
25 disagrees with the insurance adjustment, settlement

1 or payment of the claim, a policyholder -- to come  
2 back to maybe your question -- may submit to the  
3 insurer a proof of loss from one year within the date  
4 of loss. That's the second key date. So 60 days,  
5 get them the original thing. Get them -- here is all  
6 my stuff, here's my damage. Trust me. Unless you  
7 get the guy from Montana, Carl, who did my house,  
8 you're going to disagree with him. And you've got  
9 one year. And if you miss it, it's like in  
10 Louisiana -- I think it's laches in a common-law  
11 jurisdiction. I mean, the right is destroyed. This  
12 NFIP stuff is a malpractice trap.

13 And before I forget, Elwood mentioned excess  
14 flood. A whole branch of litigation in Louisiana has  
15 grown on some issues that I think you all definitely  
16 deal with. Whether you, my broker or agent, should  
17 have told me I should have flood, NFIP coverage and  
18 if I had it, should you have told me there's private  
19 market excess coverage. There has been a whole  
20 branch of litigation on whether an agent --

21 MR. CAHILL: Fiduciary duty.

22 MR. GARNER: Should you have told me, look,  
23 you live in a 500-year floodplain, so it could  
24 happen. I'm telling you it's available and you  
25 should buy it. Because a lot of people -- I saw one

1 lady on the morning news here in Cedar Rapids two  
2 weeks ago saying no one told me about flood  
3 insurance. So that's going to be an area of  
4 litigation too. Should the agent or broker have told  
5 you to buy it. Particularly the people we saw this  
6 morning with Connie -- I shouldn't say people, the  
7 houses, entire neighborhoods, and in the businesses,  
8 should you have told me I could get private placement  
9 insurance.

10 MR. CAHILL: And one of the problems with  
11 flood insurance, it's different than homeowner's.  
12 This is depreciated value insurance. And it's  
13 also -- there's no attorney's fees against the  
14 government. There's no bad faith damages or anything  
15 like that.

16 MR. GARNER: No matter how bad they are.

17 MR. CAHILL: So you're fighting for every  
18 nickel. State Farm does my homeowners, and -- you  
19 don't really get a policy directly from the federal  
20 government, you get it issued as, I guess, agent for  
21 the government. And so one of the issues that I saw  
22 some, and I'm sure Jim saw a lot of it as well, your  
23 adjuster would come in and he's spending his  
24 company's nickel out of the homeowner's policy and  
25 he's spending the government's nickel out of the

1 flood policy. So we can probably give you a really  
2 good settlement on the flood policy, but we're not  
3 going to be able to give you any money on the  
4 homeowner's policy.

5           So there was a little bit of that going on  
6 or a lot of that going on. I don't know whether  
7 that's really going to be the case here, because I'm  
8 assuming, unless we get really creative, most of this  
9 sounds like flood. I don't want to make any  
10 judgments here, but it sounds like that. So maybe  
11 that one issue is not there.

12           AUDIENCE MEMBER: Any plaintiff's decision  
13 on the fiduciary duty that have come down?

14           MR. GARNER: You mean on the agents and  
15 brokers? Yeah.

16           MR. SHER: It's an E and O question.

17           MR. GARNER: Our storm affected everybody.  
18 We're representing a bunch of federal adjusters.  
19 There's a case called Roby, who's a U.S. -- R-o-b-y,  
20 reported by Judge Hitner, actually, out of Texas,  
21 which was assigned the case, because everybody in  
22 Louisiana was recused, and he found -- State Farm  
23 removed it, arguing no diversity, and he found that  
24 there is a claim under Louisiana law for the agent to  
25 have done a better -- I mean, we stated a claim -- we

1 stated a cause of action, because Karen, the judge  
2 who was our client, said they never told me this,  
3 never told me this. Judge Hitner, who was a Texas  
4 judge, found a cause of action in that. And there's  
5 probably 15 cases on that.

6 MR. SHER: So there's two issues there. The  
7 first issue is the agent didn't tell the client  
8 anything about flood insurance. You didn't tell me I  
9 needed flood insurance. And then the second question  
10 was whether there's excess flood insurance available.  
11 And I don't know how many of you knew or know that  
12 excess flood insurance is available.

13 MR. CAHILL: Here we are -- Jim may have  
14 known. I didn't know. I had no idea.

15 MR. GARNER: I didn't know.

16 MR. SHER: And I didn't have it on my house.  
17 I have it today and it's a very expensive  
18 proposition. Jim has it on his house. And it's an  
19 expensive proposition. Because our houses were  
20 flooded and the insurance companies nevertheless have  
21 come in and underwritten that risk. Not much of one,  
22 because the first layer is with the federal  
23 government at 250 for the building and a hundred for  
24 the contents.

25 Now, with respect to the agents in Elwood's

1 example, the State Farm agent had the homeowners or  
2 the commercial property policy and was also the agent  
3 administering the NFIP policy. There's a rule, a  
4 federal rule, that says that if you sustain at a  
5 property more than a thousand dollars of flood damage  
6 in a 10-year period, then your policy is no -- can no  
7 longer be administered by a private insurer. That  
8 policy -- and I don't know what the policy behind  
9 this is, but that policy moves to the NFIP.

10 And so we were dealing with two kinds of  
11 adjusters. We were dealing with the routine  
12 adjusters attached to the major companies, whether it  
13 was United Fire or State Farm or whatever who did  
14 their own policies plus administered on behalf of the  
15 government, and then the adjusting groups that were  
16 hired directly by the federal government.

17 My own experience with them was that the  
18 adjusters hired by the federal government were in  
19 most cases a little better than the adjusters that  
20 were attached to the private companies. And that  
21 could have just been random, who knows.

22 MR. GARNER: They were overwhelmed.

23 MR. CAHILL: Jim mentioned you had to give  
24 them a list of the contents. I guess from a legal  
25 standpoint we can all understand it. From a

1 practical standpoint you have to sit back and chuckle  
2 sometimes. One of our partners who's not here with  
3 us today lived on a zone that took on a lot -- he  
4 lived very close to Lake Pontchartrain, so he took on  
5 a lot of water. He had a two-story town home at the  
6 time. There was even water a little bit above the  
7 first floor. And so he was talking to his insurance  
8 adjuster for the flood and the guy said I need a list  
9 of contents. And Rick said let me just give you a  
10 list of the only thing that survived which is my blue  
11 couch. Everything else is gone. I mean, I clearly  
12 suffered a loss. I'm not going to take the time to  
13 make a list of everything in my house. But, you  
14 know, ultimately had to take the time to make the  
15 list.

16 MR. GARNER: You got to do it. Maybe this  
17 is a good place, because I'm going to disagree with  
18 Elwood on one thing. Don't jump to the conclusion  
19 it's all flood as the industry once argued.  
20 Particularly -- let's talk about -- we're talking  
21 about clients, let's talk about us, right? My  
22 understanding is a lot of law firms were downtown,  
23 right, and every week we're out we lose \$500,000 of  
24 billable time. I presume whatever you lost wasn't  
25 pocket change, and I don't know what kind of extra

1 expenses if any you all incurred for moving people,  
2 for buying new computers. Talked to Rick, who is not  
3 here with us because he had surgery. Rick and I  
4 within 24 hours bought a hundred computers, we signed  
5 a lease, we bought furniture, we bought a hundred  
6 telephones. We were spending money.

7           Regents insurance policy -- And that is a  
8 handout I did on commercial properties, you've got  
9 dependent property coverage, you've got power outage  
10 coverage, and you've lost power. And while the  
11 policy -- yeah. I mean, clearly everybody --  
12 everybody who's downtown had a business interruption.  
13 Nobody's going to argue business is not being  
14 interrupted. And our space itself, but for the  
15 putrid refrigerators, which are clearly covered even  
16 if it's flood, your refrigerator's covered, and  
17 several computers which were power outages from  
18 surges, if you had storm electrical surges, if you  
19 were on the 4th floor or the 24th floor, whatever you  
20 are, the electrical surges to your equipment is  
21 covered. That's covered.

22           You got to read your policies closely  
23 because the commercial policies are written a little  
24 bit more broadly. Yes, ma'am.

25           MS. BEYER: We're kind of -- not to be rude,

1 because the issue's already arisen that you're  
2 talking about. And what they're telling us is  
3 because it's flood related, we didn't have flood  
4 insurance, you know, it's not covered. And I'm  
5 thinking, first of all, do we know it was flood  
6 related or were the sewers backing up in our  
7 basement, and isn't that covered.

8 MR. GARNER: Exactly.

9 MS. BEYER: I mean -- Do you see?

10 MR. GARNER: Absolutely.

11 MS. BEYER: Can you just address that issue?

12 And it's going to be to the mat.

13 MR. GARNER: Where you stand depends on  
14 where you sit, right?

15 MS. CRILLEY: Well, and some of us, my  
16 building isn't even in the 500-year floodplain and  
17 so, you know, I've tapped into my policy also and  
18 they said, flood related. I said what about sewer?  
19 Flood related. What about the loss of power? Flood  
20 related, flood related, flood related. We all have a  
21 lot of clients that are not on any floodplain either,  
22 and they're facing the same thing under homeowners'  
23 policies. I mean, this community, by and large what  
24 we're all being told is there isn't any coverage.

25 MR. GARNER: Welcome to south Louisiana.

1           MS. BEYER: Because we for the most part did  
2 not have flood insurance. I know very few people who  
3 had flood insurance. Am I right?

4           MR. SHER: But even if you did, it wouldn't  
5 have business interruption on a flood policy.

6           MR. GARNER: Unless you paid very  
7 expensive -- they sell what Lee's talking about. Be  
8 very expensive.

9           MR. SHER: Did anybody have business  
10 interruption, flood coverage?

11          MS. BEYER: There's a flood exception  
12 though.

13          MR. SHER: But, no, no. Just a separate  
14 policy. You probably could have bought it -- hardly  
15 anybody had it in Louisiana. Business interruption  
16 for when there's a flood and none of the rest of the  
17 policies cover it. Did anybody have that?

18          MR. GARNER: You got to fight to the mat.  
19 Unless you have Chubb. I will plug Chubb, Chubb's  
20 the best insurer in the world. Chubb did what they  
21 did to protect the people, meaning their insureds,  
22 their customers. One, get a forensic engineer, you  
23 might have one already. Do the hydrologist analysis.  
24 We have had cases where experts are opining that the  
25 sewage backed up long before the flood water got

1 there. My undergraduate is engineering, so I have  
2 some sense of that, and it's probably true. I think  
3 a jury will more likely than not buy that from the  
4 testimony. So that's a good way to fight it.

5           Look at the power outage coverage because it  
6 says we will cover you for power outage even if  
7 there's an excluded loss, because power outage is  
8 generally covered. So if you're on the 4th floor of  
9 a building, if you're not on the 1st floor of a  
10 building, I can pretty well bet you the power went  
11 out long before the flood water got there. Civil  
12 authority, did they shut down the city? Was there an  
13 order?

14           MS. CRILLEY: Yes. They ordered us to  
15 evacuate, turn off the power.

16           MR. GARNER: Get a copy of that and tender  
17 it to the policy. At least 30 days of civil  
18 coverage. And that's most --

19           MR. CAHILL: 14 days on homeowners.

20           MR. GARNER: Most business policies are  
21 30 days. Homeowners, Elwood's right, 14 days. To  
22 the extent you've incurred extra expenses because of  
23 the civil authority, if you had to move your office  
24 to get something temporary and you have that expense,  
25 you can collect that. So don't -- I just wanted to

1 correct him, you know, when you're taking it on the  
2 chin, don't jump to the conclusion it was a flood, it  
3 was all flood related. I don't know if there were  
4 any broken levees. I saw on the news there's broken  
5 levees someplace. That's going to be an issue.

6           You all -- you've got two cases, TNT case  
7 out of Missouri where somebody actually manipulated  
8 the sandbags and the levee failed and the  
9 8th circuit did not find coverage. And there's a  
10 Sioux City case versus Cincinnati Insurance Company,  
11 Northern District of Iowa, where rainwater leaked  
12 through a pipe and the district judge said that's  
13 water damage, we're not covering it.

14           What I can share with you, you know, the  
15 Bible says Noah, other things talk about flood in a  
16 natural context versus -- one of our judges,  
17 Kitty Kimball, in oral argument said if my dishwasher  
18 overflows, puts 2 feet of water in my kitchen, what  
19 do you call that? A flood. You're going to tell me  
20 that's not covered? That's not covered. Well,  
21 you're calling it a flood, but it would be covered.

22           So don't give up. Do your discovery.  
23 Please feel free to get our briefs off the website.  
24 The industry knew there was an issue before Katrina  
25 with manmade versus natural. They knew it. They

1 changed their policies. Not everybody implemented  
2 that. And there's a lot of discovery on that issue.

3           So I think -- I haven't done the discovery  
4 on the sewage stuff. But, look, I still represent  
5 some insurance companies. And generally discovery  
6 into the underwriting files never helps the insurance  
7 company. Okay? All right. And I would go to the  
8 mat, and if you want -- whatever other questions  
9 anybody has on this issue. But you've got -- was  
10 there a hand over here?

11           AUDIENCE MEMBER: I just wondered if you  
12 guys have run into, the branch off the city authority  
13 is when they set up a blockade and said you're not  
14 allowed in here even though there's been no damage to  
15 your property, at that point they're not letting you  
16 in there and as a result you lose anything.

17           MR. GARNER: You collect under civil  
18 authority because the idea is the civil authority  
19 coverage does not require -- it says civil authority  
20 stopped me from getting to my house or office. So  
21 that they should pay you right away on that, or  
22 tender right away on that.

23           MR. SHER: How bad was the rain before  
24 the --

25           AUDIENCE MEMBER: Since April? Above us.

1           MR. SHER: And the reason I ask the  
2 question, was there any wind damage? Any wind or  
3 water intrusion damage because it doesn't take much  
4 to trigger the business interruption coverage. If  
5 you have -- it's just flood and -- however it turns  
6 out, it turns out not favorable and there's no  
7 coverage under the policy because flood is excluded,  
8 but it doesn't take much to trigger coverage under  
9 the policy, particularly business interruption. So  
10 if you have water intrusion from the top of your  
11 building, whether it damaged your space or not, some  
12 insurers took the position that if the building is  
13 damaged by a covered peril then we're going to pay.

14           MR. GARNER: That's our claim. I was  
15 getting there earlier. We had no damage on the 27th  
16 and 28th floors of our building, but the chillers  
17 were knocked out by winds on top. So Travelers was  
18 great with us and paid us.

19           And just conceptually, coming off Lee's  
20 point, if you can find some covered damage, that's  
21 where you got to go. Because the theory of BI  
22 coverage is you've got interruption and you got it  
23 restored. Right? Either when you should have been  
24 back or when you reasonably should have relocated,  
25 whatever.

1           Then you've got -- think of it this way. I  
2 think of the fire station or the gas station that  
3 burns down. Forget mass catastrophes like this. As  
4 soon as you rebuild, is your business the way it was,  
5 the way it was before the catastrophe? No. So then  
6 you've got extended BI, which is ramp-up period. So  
7 if you can find one day of damage that probably takes  
8 care of you. There were some other questions over  
9 here.

10           AUDIENCE MEMBER: Mine changes the subject.

11           MR. SHER: Can you hold on? Let's try to  
12 finish this out if possible.

13           MR. McLEOD: On the issue of clients and  
14 businesses that are within the 100- or 500-year  
15 floodplain that didn't have government flood  
16 insurance this year or even if they did, what can  
17 they expect next year? Can they go get this \$250,000  
18 flood insurance?

19           MR. GARNER: Yes.

20           MR. McLEOD: But how do they calculate the  
21 premium for that? Is that on the district or how --

22           MR. CAHILL: I personally experienced, flood  
23 insurance really didn't go up very significantly at  
24 all. The \$250,000 federal program, very reasonably  
25 priced program. I don't know what it costs here. In

1 Louisiana it's about 450 bucks or \$500 maximum.

2 MR. GARNER: Essentially free. It's cheap.

3 MR. McLEOD: But what if you have claims for  
4 millions of dollars?

5 MR. SHER: You're not going to have that  
6 under the NFIP because it's capped at 250 for  
7 residential and 500 for commercial. Let me tell you  
8 two things. My premium for 250,000 building and 100  
9 for contents was about \$750 per year. After the  
10 storm, after I got paid in full, it went down to  
11 \$519. Thank you, federal government.

12 MR. GARNER: It's because the levees are  
13 better.

14 MR. SHER: The other thing is with respect  
15 to homeowners' association, let's get back to that,  
16 because one of the things that -- we run a business  
17 too and we all have houses and some people have  
18 investments. As we go through these things and we  
19 learn all this information, we got to take a little  
20 piece of it and park it on the side for the future,  
21 the lesson learned. We have to deal with our clients  
22 now, deal with our personal problems. But there's  
23 lessons learned. And one of the lessons learned  
24 particularly in a homeowner's situation, if you want  
25 to maximize your coverage then you insure every

1 single structure separately so instead of having  
2 \$500,000 on the unit, if there's a parking deck,  
3 another 5 --

4 MR. GARNER: Each unit.

5 MR. SHER: Well, each unit.

6 MR. GARNER: Marseilles, the case I told you  
7 about, where they don't want to pay 1.9 million,  
8 there was 12 million dollars of coverage because they  
9 sold each unit. I mean, if you're in good shape with  
10 a condo, just make those deadlines.

11 MR. SHER: Don't think because you're on the  
12 12th floor of a condo and the flood waters obviously  
13 hopefully would never get up that high that you  
14 cannot insure that for \$250,000.

15 MR. NIDEY: I'm in a commercial building and  
16 it's condominium and I have government flood  
17 insurance for \$250,000. The building association has  
18 government flood insurance for \$500,000. And I'm  
19 being told by an adjuster that my responsibility --  
20 my share of responsibility for the common area, that  
21 my policy won't cover that because the \$500,000 cap  
22 has already been reached.

23 MR. GARNER: In the Marseilles case, they  
24 didn't take that position. I mean, that's the same  
25 federal government. They allowed everybody's policy

1 to respond.

2 MR. NIDEY: Okay.

3 MS. HEFFERN: Jim, the Marseilles case is  
4 posted on the Linn County website.

5 MR. CAHILL: If there's no other lesson,  
6 always buy flood insurance at least from the federal  
7 government. My mom called me in about June of '05,  
8 which is about two months before the storm hit. She  
9 said, you know, I've been paying this flood insurance  
10 every year. It's like \$425. Do I really need that?  
11 And I thought about it for about a second, and then I  
12 said, you know, the worst is she's going to be mad at  
13 me for \$425 if I said yes. If I said no, little did  
14 I know, two months later we had Katrina. So you  
15 always pay for flood insurance. It's the cheapest  
16 insurance out there.

17 MR. SHER: And the other thing is, we talk  
18 to people around the country, based on our own  
19 experiences there's no such thing as too much  
20 insurance. When you look back when you haven't used  
21 it and you say, gee, I paid all these premiums all  
22 these years, I've just frittered this money away,  
23 we've never had one person come to us and say, you  
24 know what, if that insurance had been available for  
25 the damages that would have been covered by, I

1 wouldn't have paid the premium for it. If I had the  
2 chance to relive it, that I wouldn't pay the premium  
3 for it.

4 MR. GARNER: Buy insurance.

5 MR. SHER: Buy insurance.

6 MR. GARNER: And your question, I'd tell  
7 clients, go get it now for next year. You may have  
8 an issue if you're not repaired because nobody wants  
9 to really insure an unrepaired property. But if you  
10 had no real damage, buy it. And when you get  
11 repaired, buy it. There's a 30-day waiting period,  
12 buy it.

13 MS. CRILLEY: I have a question about safety  
14 deposit boxes, ours and our clients. Banks are  
15 taking the position that they have no liability. Our  
16 policies are taking the position it's flood. Guys  
17 have any theories, anything you guys have worked on  
18 with safe deposit boxes?

19 MR. GARNER: Your best case right now is  
20 probably go against the bank, because they probably  
21 had bought flood coverage. Probably. Maybe not, but  
22 probably.

23 MR. CAHILL: So they may have some insurance  
24 that would cover you for that loss. By the way, we  
25 were talking about safety deposit boxes on the way

1 over here and just the preservation of paper and  
2 other types of things that are flood affected and  
3 apparently there's a freeze-dried method that is  
4 fairly successful. The public records in New Orleans  
5 parish, the salient mortgage records, are kept in the  
6 basement. Great place for them, right? And they  
7 were flooded. And I guess it was a Canadian company  
8 that had this service where they came in --

9 MR. GARNER: Swiss.

10 MR. CAHILL: Swiss? Took them out,  
11 freeze-dried them and basically restored most of  
12 their records. I don't understand how it works so  
13 I'm not going to talk about the technical side of it.  
14 But I guess my point is there still is -- even though  
15 you think something is otherwise ruined, there may be  
16 still some capacity.

17 MR. GARNER: Think about the value of those  
18 litigators. They tell me all the time those  
19 documents are unimportant. Documents in the  
20 basement, which is kind of catacombed to the  
21 Superdome, go back to the late 1600's, the title, you  
22 take it back to the sovereign. They had to do that.  
23 So what they did was they laid them out -- once the  
24 Convention Center was cleaned up, I mean, you're  
25 talking a million square feet, they went and laid out

1 all those documents and freeze-dried them, and  
2 they're there.

3 MR. SHER: We had a question in the back.

4 AUDIENCE MEMBER: Dealing with FEMA, what  
5 experience have you had with appealing evaluations of  
6 cost to repair that FEMA has made?

7 MR. GARNER: Appeal -- once again, it's kind  
8 of like NFIP. We've been pretty successful, watched,  
9 appeal, and be careful if you got to file a lawsuit  
10 where you file. Some suits have to be brought in the  
11 court of claims in D.C. Some suits can be brought  
12 locally. It's all dependent on the nature of the  
13 suit, whether it's contract with FEMA -- The case  
14 with one of our clients, Dale Burger, where FEMA came  
15 in, rented the parking space, tore it up, didn't  
16 repair it. FEMA benefit claims, most of which have  
17 to be brought -- you got to follow the same sort of  
18 form over substance procedure and pursue the claim in  
19 District of Columbia.

20 MR. CAHILL: One of the things that you get  
21 caught up in the -- I guess the chaos and the trauma  
22 of these kind of things and every once in a while you  
23 have to find a moment to just chuckle or find some  
24 humor in something. It helps you get through the  
25 day. One of the fun things is sort of all the

1 acronyms that grow out of this for FEMA. If you  
2 haven't heard them, we'll tell them to you later off  
3 the record.

4 MR. SHER: Let's finish up on FEMA. We've  
5 made claims for our clients against FEMA or we've  
6 worked with FEMA pretty extensively, probably one of  
7 our first meetings for a client, this would have been  
8 a few days after the storm was with FEMA. Our client  
9 was a nonprofit charitable hospital, the only one in  
10 Orleans Parish, so this is an acute care hospital,  
11 500 beds, it was the only one that really survived.  
12 It was a children's hospital that didn't have damage.  
13 But every single other hospital was inundated. So  
14 this was the only hospital. And it had substantial  
15 wind damage and other kinds of damage and if there's  
16 ten reasons why the city was able to come back it was  
17 because this hospital was able to reopen pretty  
18 quickly.

19 And we met with FEMA and they were as nice  
20 and as gracious as possible on September 7th, this is  
21 a couple days after the storm, and we're still  
22 working with them because they still haven't paid  
23 every claim. And we're talking about giving us new  
24 elevators, we're talking about doing some generator  
25 replacement, those kinds of things. This client

1 suffered about 60 or 70 million dollars in loss, and  
2 maybe 90 million dollars in losses. Unfortunately,  
3 we were -- without the insurance money, this hospital  
4 would not have returned, and without this hospital,  
5 maybe the city wouldn't have returned. We felt  
6 privileged that we got to do that work on behalf of  
7 that nonprofit.

8           And that's what Jim was talking about, when  
9 we were at the fork in the road, whether we go with  
10 our hearts and go with the nonprofit institutions who  
11 we were lucky enough and fortunate enough to  
12 represent or whether we go with our old clients,  
13 which was the insurance industry, because we couldn't  
14 do both, and we went with our hearts. And this was  
15 very gratifying that they came back. And eventually,  
16 insurance paid for all of their losses except for the  
17 deductible.

18           And we can talk about how the deductibles  
19 work, because it's a surprise to most people how  
20 deductibles work. But the deductible in that case  
21 was about 7-1/2 million dollars. And that's where  
22 FEMA comes in. FEMA will fill that void, and we're  
23 still collecting that 7 million dollars from them,  
24 but if we had accepted their first response, we would  
25 have gotten nothing, not one penny. Every time they

1 come out with a decision, we appealed it and every  
2 time we appealed it we got a little more and a little  
3 more and a little more. And in the case of that  
4 client, we never did have to file suit. Now, with  
5 other clients, we have cases pending in the court of  
6 claims in D.C. for some hotel clients and some other  
7 businesses and then in some cases we have pretty much  
8 all resolved now, the cases that we filed locally in  
9 the federal court.

10 MR. GARNER: How many people have actually  
11 met with FEMA? I'm curious. Have you had a second  
12 meeting yet? Was it the same person?

13 AUDIENCE MEMBER: I met with FEMA at my  
14 house and they came in for about 10 minutes, took two  
15 pictures in the basement, and then got a report back  
16 from them. Because I don't live in Cedar Rapids, I  
17 live in a rural area, and I don't know -- that's one  
18 of the questions I was going to ask you about  
19 coverage in rural areas outside of the city that were  
20 also damaged by water, runoff in a town or what have  
21 you, that seeps in, and no coverage for -- by my  
22 homeowner's insurance, you make your FEMA claim, and  
23 then one of the responses is, oh, that was just  
24 deferred maintenance on your home. So there's  
25 nothing there. And so there's a FEMA decision, does

1 that have any sort of like res judicata upon the SBA  
2 decision on whether or not they're going to loan you  
3 anything? They're telling me that those inspections  
4 are done separately, that they don't influence each  
5 other, but I don't believe it. And so I'm wondering,  
6 even if -- so if the SBA loan goes through or they  
7 come out and do the investigation, do I still need to  
8 appeal the FEMA decision that says deferred  
9 maintenance on that?

10 MR. GARNER: I would appeal it regardless.  
11 Our experience is -- and that's why I was asking the  
12 question, whether it was Tulane University, Xavier,  
13 Touro, the hospitals, I never met the same person  
14 twice. That's part of the struggle, is you're  
15 meeting somebody, you give them your project  
16 worksheets and then they change the deck on you, you  
17 meet with whole new people. I would appeal it and I  
18 would -- it's good to be cynical. I would appeal it.  
19 But if they're talking I'd be shocked.

20 MR. CAHILL: Even from a personal standpoint  
21 where you could get living assistance, supplemental  
22 living assistance if you were out of your home, we'd  
23 have people that would call and you'd get one person  
24 that would tell you no and you'd call back a half  
25 hour later that would tell you yes or vice versa.

1 It's just -- it's really very, very random when it  
2 comes to that.

3 MR. SHER: The follow-up goes back to what  
4 we said before. Whomever you talk to, you get the  
5 full spelling of their name. You get their telephone  
6 number, who they're with. I'll tell you about who  
7 they're with in a second and why that's important.  
8 And a call-back telephone number and hopefully both a  
9 land line and a cell phone. And more likely than not  
10 you'll never talk to that person or hear from that  
11 person again. Sometimes you'll even be told that  
12 person doesn't exist. It happened many times. So --  
13 and the e-mail is very important, because you want to  
14 have that stack of evidence.

15 AUDIENCE MEMBER: Is it okay to cash the  
16 FEMA checks as they come in? I've gotten a check for  
17 about \$12,000 for one client. It's certainly not --  
18 she should be -- it's an individual client, she  
19 should get the full amount. I have notified FEMA  
20 that we're going to appeal, I asked for the copy of  
21 the FEMA inspection report. And I said, is it okay  
22 if I cash this check, this isn't going to have any  
23 adverse impact on my ability to claim more money.  
24 They said, no, no, no. I don't know. Is that true?

25 MR. GARNER: Did you get a name?

1           AUDIENCE MEMBER: Yes, I did.

2           MR. GARNER: Okay. What I have done, this  
3 is real life, I write on the back of the check, I  
4 write her or him with the letter, I say with the  
5 complete full reservation of right pursuant to the  
6 agreement of FEMA with Mr. or Mrs. Jones. That's the  
7 way I'd write the endorsement.

8           AUDIENCE MEMBER: All right. But you didn't  
9 have any problem having cashed the checks?

10          MR. GARNER: No. Do it --

11          MR. CAHILL: Who knows what your experience  
12 might be.

13          MR. GARNER: Be careful. We had none,  
14 but --

15          MR. CAHILL: You control the endorsement, so  
16 why not. Most banks will still take it. I know  
17 we've been at this for a little bit of a while, maybe  
18 take a 5- or 10-minute break. One of the things I  
19 guess we want to talk about is the state of the rule  
20 of law and how the court is doing, state and federal.  
21 We want to take that back to our judiciary as well.

22                   (A brief recess was taken.)

23          MS. HEFFERN: I just want to make one other  
24 announcement, kind of a reminder. We are scheduled  
25 to go for another hour with our guests from

1 New Orleans. We want to make sure that your  
2 questions get answered. So they have agreed that if  
3 there are still outstanding questions, we can run a  
4 little longer. We'll just shorten up our business  
5 meeting. So I don't want you to feel that at noon  
6 you have to quit. If you have any questions, they  
7 are going to be on a 5:00 flight for New Orleans.  
8 But they'll stick around a little bit to ask them  
9 some questions. So this will be casual. You can  
10 pick up your lunch and find a place to sit and that's  
11 how we're going to run the lunch hour. So with that  
12 we can get back to our program.

13 MR. SHER: We had a couple of questions in  
14 the break, couple hundred questions, but there were  
15 two areas that we wanted to chat with you about. One  
16 is the environmental issue or issues. The other is  
17 sort of a practical question, and that is if you  
18 represent a tenant in an office building and the  
19 owner of the building has decided because of severe  
20 damage from flooding that the owner was just going to  
21 take over the building, gut all the space, whatever,  
22 I guess whatever the leases said, gut all the space  
23 and start from scratch, what can your client who's  
24 the tenant do at that time vis-a-vis the landlord,  
25 vis-a-vis the landlord's insurer, which you should

1 never forget about on behalf of your tenant, and  
2 vis-a-vis the tenant's own insurer, and then  
3 vis-a-vis possibly any kind of other benefit program  
4 like a FEMA program or an SBA program or something  
5 like that.

6 MR. CAHILL: Very quickly on the  
7 environmental side, I guess my experience has been it  
8 hasn't really been a tremendous amount of what I  
9 would call truly environmental problems, meaning  
10 industrial leaks, contamination, that sort of thing.  
11 We did have a major refinery about 5 miles south of  
12 the City of New Orleans located right on the river  
13 that suffered severe flooding because of the levee  
14 breach, and some of their storage tanks were  
15 compromised and had an oil spill that kind of  
16 contaminated, if you will, a fairly large residential  
17 area and there was a big class action lawsuit that I  
18 think just recently was settled. And so a number of  
19 people received benefits from it. But I don't think  
20 there was any kind of long-term contamination that  
21 exists going forward, unless I'm just wrong about  
22 that. There doesn't appear to be any --

23 MR. GARNER: That was overrated.

24 MR. CAHILL: What we found is that from that  
25 standpoint, from a truly contamination standpoint, it

1 just kind of gets washed away. Sunlight kills a lot  
2 of bacteria, time kills a lot of that, water flow  
3 washes it away. We didn't really find even with all  
4 the standing water and all the kinds of things that  
5 went on, we haven't found any really kind of bad  
6 sites in the city that were contaminated because of  
7 the flooding that happened.

8           The other side of that is sort of a mold  
9 issue. Clearly, from that standpoint mold has been a  
10 serious issue in New Orleans for a long time, even  
11 before the storm, just given our climate, our  
12 temperature, our humidity. Any time HVAC gets out of  
13 balance, you know, mold just grows. And as Jim can  
14 tell you, Jim's done a lot -- when I say a lot -- a  
15 lot of serious litigation on that. Mostly from the  
16 property owners' side. Mold is prevalent. I kind of  
17 scratch my head and wonder why mold wasn't a problem  
18 a hundred years ago before air conditioning.

19           But part of the problem is, as you will hear  
20 from Jim, is that wall coverings, wallpapering, wall  
21 coverings have adhesive that I guess is actually a  
22 food source for the molds, an organic food source  
23 which causes further problems. But, anyway, that, I  
24 guess, existed before the storm and continues to be a  
25 problem post storm, and I'm assuming that

1 notwithstanding the climate's probably a little  
2 milder here than where we are, that mold's probably  
3 going to be an issue that will be a -- no pun  
4 intended -- outgrowth from this storm. But it's  
5 Jim's real specialty.

6 MR. GARNER: It's a problem, one that is  
7 mushrooming. I understand the general counsel from  
8 United Fire is in the room today, I at least want to  
9 shake your hand after taking me to the Supreme Court  
10 this year. I was asked about mold off the record,  
11 and the issue about mold, but I want to tell you the  
12 battles we've won. A policy five, six years ago,  
13 they didn't talk about mold. If you got an all risk  
14 policy, that's a risk. Even if -- let's say in -- I  
15 know some of the lawyers we've met are in the USBank  
16 building, first floor floods, power's out, you get  
17 condensation, you get mold. That's all risk, it's  
18 not excluded. The flood didn't cause it. The flood  
19 waters didn't go up to the fourth floor. Mold grew  
20 in the condensation. Condensation wasn't with the  
21 flood. In one case, in the Sher case, Judge  
22 Max Duval distinguished that by saying, you cannot  
23 distinguish the vapor in water from, let's say, the  
24 river water, right, from damage from river water. So  
25 there are subtleties here. Unless it clearly

1 expressly excludes mold. But for what happened, but  
2 for the power outage, but for the condensation, you  
3 would not have had mold. I've defeated that motion.  
4 We've won that coverage, I'm arguing it next  
5 Wednesday in federal court, I anticipate winning it  
6 next week.

7           Because there's not like -- Lafayette  
8 Insurance Company last week, the ordinance issue,  
9 upgrading the ordinance, okay? There's a building  
10 across the street from the Supreme Court. It's one  
11 of the oldest buildings in the city of New Orleans.  
12 The same person that designed or laid out the City of  
13 Washington, D.C., designed this building, Henry  
14 Latrobe. There's damage, no flood water, just  
15 damage. Says you got to put back purple slate.  
16 Insurance company says that's an upgrade, we're not  
17 paying for that. But what caused the event was the  
18 hurricane not -- somebody didn't wake up one day and  
19 say, hey, I got mold in my building, you, insurance  
20 company, pay for it. But for the catastrophic events  
21 that happened to this city -- there's a case called  
22 Lake Charles Harbor Terminal versus Imperial  
23 Casualty & Indemnity, United States 5th Circuit, very  
24 distinguished judge, Al Rubin, wrote the opinion out  
25 of the U.S. 5th circuit. The 5th circuit in our case

1 conveniently ignored it, but I'll rely on it. He  
2 basically said, look, this is a catastrophic loss,  
3 this is why you bought insurance, okay? You know,  
4 this was not mold that grew in your building just  
5 because. It's there because of the catastrophe that  
6 happened to the City. And what Judge Rubin said  
7 is -- he read the policy and said, in a case of a  
8 catastrophe, this language is gibberish, that's an  
9 exact quote, and found coverage.

10           So I would -- e-mail me later, I'll e-mail  
11 you some of these cites. We got Allison as much as  
12 we could quickly to come up here. So my opinion, if  
13 you had a fair judge calling things, not somebody  
14 who's lobbied by the insurance companies is they find  
15 it -- to answer your question.

16           MR. SHER: Going back to the general  
17 environmental issues, I would venture to say that  
18 some people decided not to return to rebuild in  
19 New Orleans because of the fear of environmental  
20 contamination. The EPA came in right after the  
21 waters receded and did testing on a random basis  
22 everywhere where flood waters were. And remember,  
23 we're not talking about the Mississippi River in  
24 New Orleans, we're talking about Gulf of Mexico salt  
25 water. So they both probably have some interesting

1 elements to them, but we're talking about salt water,  
2 which is much more corrosive. And it's in the swamp  
3 water category. So that was in my living room for  
4 17 days. And in my yard.

5           But the EPA came in, they did testing on a  
6 regular basis, probably on a monthly basis, and they  
7 were backed up by the Department of Environmental  
8 Quality, which is our Louisiana version of the EPA,  
9 and they did testing and they tested and they tested  
10 and they tested for about 18 months until they did  
11 the last test and the findings of the last test were  
12 that the soil, the air, and anything else that they  
13 would test were pretty close to the testing they had  
14 done and had on file pre storm.

15           So notwithstanding the hysteria,  
16 notwithstanding the concern that all of this toxic  
17 material was in the flood waters and that would ruin  
18 the city, ruin the houses, ruin the groundwater, ruin  
19 the ground, none of that turned out to be the case.  
20 Does that mean that there won't be any contamination  
21 problems here? We don't know. But presumably just  
22 be wary of any kind of hysterical reaction to that.  
23 You don't want somebody making a decision about  
24 whether to rebuild, whether to insure, whether to do  
25 whatever they're going to do based on an alarmist

1 view of things as opposed to the facts, which, trust  
2 us, EPA's going to be here, they're under pressure,  
3 and you probably know this already, to continue to do  
4 testing, because that's pretty much their job.

5 MR. GARNER: Yeah. I mean, the only true --  
6 I remember talking to my children's doctor three days  
7 after the storm. The ultraviolet light from the sun  
8 will kill the bacteria within a few days. There was  
9 a refinery, you all might remember, there was a  
10 refinery down river from my hometown where an oil  
11 tank ruptured and put crude oil over so many square  
12 miles. That was a true environmental issue, and I  
13 saw in the paper today that there was a tank, a  
14 gasoline tank that floated someplace. You probably  
15 have those kind of contamination issues. I was  
16 talking to Connie earlier, where her daughter skis,  
17 you have elevated bacteria levels in Cedar lake. But  
18 I don't see any long-term issues.

19 MR. SHER: Before we developed the property  
20 on either side of the river, and you know that the  
21 rivers -- the rivers flooded then too and that water  
22 receded back into the banks and we're not afraid to  
23 live in those places now or to do business or to  
24 conduct our lives in those places now because nature  
25 seems to have a way of taking care of those things,

1 with the exception of the isolated pockets where you  
2 have real petroleum pollution or some other kinds of  
3 pollution.

4 MR. GARNER: Before we move off the business  
5 interruption insurance, and these are the issues near  
6 and dear to your hearts, one way or another, there's  
7 going to be a lot of work for lawyers. Read the  
8 business interruption policies closely, because your  
9 carriers -- when we get to the coverage part --  
10 cannot take a credit for storm related revenues. And  
11 that -- I didn't know that until I learned it in the  
12 process of dealing with this. So, you know, I lost  
13 X, but I had a hundred -- whether I'm defending the  
14 industry or prosecuting the industry, these cases are  
15 connected to storm, connected to the river. They  
16 cannot take a credit for that.

17 And it's the flip side. We saw it a lot in  
18 New Orleans, I don't know if you're going to see it  
19 here. The industry says we don't insure loss of  
20 market. Right? You know, I'm a gas station on --  
21 and Connie can help me, on the west side, east side  
22 of the river, where all those houses were messed up.  
23 That gas station owner, quote, unquote, lost his  
24 market because everybody around him or her is gone.  
25 If you're not going to insure loss of market, you

1 can't take a credit for casualty related income. So  
2 think about that when you all are doing your own  
3 claims.

4 MR. CAHILL: And just to make sure you're  
5 following that, that means that probably, when we  
6 first got started, we weren't working at a hundred  
7 percent day one, but whatever level we were working  
8 on, probably 60, 70, 80 percent of what we were  
9 working on, was storm related. It wasn't necessarily  
10 ongoing business because that was all kind of on  
11 hold. So basically all of the revenues from all that  
12 work would not count against the income that the  
13 insured would take credit for. So basically our  
14 income was, let's say, potentially zero if you're  
15 working a hundred percent on storm related. So even  
16 though you actually have revenue, you would be  
17 entitled in essence to collect above that, because as  
18 Jim says, they can't take credit for the excess.

19 MR. GARNER: If you're not going to -- if  
20 you're going to say your loss to market I'm not going  
21 to cover, then they can't benefit from the  
22 catastrophe. So that's another key issue for law  
23 firms. And how do you value practice? We're hourly  
24 billers. We're really commercial defense lawyers.  
25 So it's easy, right, money in, money out, hours

1 billed. If you haven't already, get together your  
2 P and L's, your open case list by month. I'm trying  
3 to think. I think they asked us for -- that's  
4 principally what they asked for, show me the number  
5 of cases and your income statements.

6 For us it's '03 and '04, they wanted to see  
7 the two years preceding and where we're going. You  
8 got to look at trends. Our trend before the storm,  
9 our profits were 16 percent up September 1st, 2005,  
10 and they got to assume the trends are going to  
11 continue.

12 MR. SHER: As opposed to averaging. Your  
13 rates are higher, your business is better, there's  
14 more going on. Why would you average anything? If  
15 anything, you'd take the prior year and then you fold  
16 into that any adjustments -- and adjustments means  
17 increases in your rates and the increase in the  
18 number of lawyers you have and the increase of your  
19 business. So your policy ought to pay you the higher  
20 amount, not anything that is in the average category.

21 MR. GARNER: And mitigation costs, some  
22 people actually returned to New Orleans, right, in  
23 October, and gasoline wasn't where it is now, but it  
24 was a lot for the time. Remember it jumped \$1.70 to  
25 \$3 a gallon. We gave supplements to associates and

1 staff to make the drive from New Orleans to  
2 Baton Rouge to help with that and Travelers paid for  
3 that. To the extent we got a full office working, it  
4 mitigates our loss. They covered travel. They  
5 covered a lot of that stuff.

6 So think about it. What I told clients, and  
7 again this is where you stand, you're spending all  
8 this money, you got to figure out -- unless you're  
9 Bill Gates, you got to figure out how to recover it.  
10 Write everything down that's connected to the event.  
11 Claim it. And some carriers say I'm not paying  
12 anything, some work with you. Some actually try to  
13 find buckets to put it in, like Chubb and others, so  
14 they do try to help you. So save all the receipts,  
15 make a list, keep an Excel spreadsheet.

16 MR. SHER: With regard to costs, they're in  
17 different categories when you have a catastrophe.  
18 There's pre catastrophe costs. Let's say, for  
19 example, what it costs to get a laborer to come out  
20 and swing a hammer. Pre catastrophe the market may  
21 be \$15 an hour or \$18 an hour. At catastrophe, \$36  
22 an hour, \$40 an hour, if you can find somebody to do  
23 that work. Then there is fantasy land which is what  
24 adjusters use to adjust your claim which is either a  
25 regional average or a national average or some dated

1 information, may not even be your market. And you  
2 have to -- and then there's a post-post catastrophe  
3 cost which is not going to be at catastrophe, it's  
4 going to be lower than that, but our own experience  
5 is it's going to be much higher than pre catastrophe.

6           So just keep that in mind in terms of making  
7 your claim. Because there's reality and then there's  
8 either fantasy or theory. And the reality is when  
9 you sign the contract or your client signs the  
10 contract to make the repair, to do the rebuilding or  
11 whatever it is, it's going to be -- that's going to  
12 be the actual cost. That's going to be the market.  
13 And that's really if you have the right insurance,  
14 that's what the insurance is going to pay.

15           There's a couple -- Jim was talking about  
16 death and taxes being certain. When I was growing  
17 up, I know I learned the saying about rain, sleet,  
18 hail, with the mail. The New Orleans post office I  
19 don't think returned -- and this is the federal  
20 government. Conceptually it's difficult to imagine  
21 why an operation like that really couldn't mobilize  
22 when you consider how vast that bureaucracy is and  
23 just restore the New Orleans post office. We're  
24 still having -- this is almost three years later.  
25 We're still having problems with mail delivery. The

1 New Orleans post office probably didn't get  
2 reestablished for, what, 18 months? It was a long  
3 time.

4 MR. GARNER: About 18 months.

5 MR. SHER: Why do I raise that? Well, we  
6 didn't get mail for months. We have no idea -- there  
7 are certain things out there just never got delivered  
8 to us. Our mail was being delivered to Houston. And  
9 if any part of it was coming back, it was going to  
10 Baton Rouge. For all we know, it came up here and it  
11 came back down to New Orleans. The reason I raise  
12 that is because it raises -- we're going to get to  
13 your issue.

14 But the reason I raise that is because of  
15 notice and the effectiveness of notice. We don't  
16 have any idea how your mail has been affected up  
17 here. But getting into one of the issues that is so  
18 important, it's important in mortgages, it's  
19 important in leases, and it's important in contracts.  
20 And it's important because when a catastrophe like  
21 this occurs and there is property damage and there is  
22 disruption and there is dispossession, your  
23 contracts, your client's contracts, your own  
24 contracts with other contracting parties, require you  
25 to do something within a certain period of time, and

1 that's usually triggered by some sort of notice. I  
2 have a casualty, I cannot -- I cannot gain access to  
3 the premises. Therefore, I want an abatement of  
4 rent. You got to do that within a certain period of  
5 time or you lose the right to make the claim.

6 That's number one. Number two, you don't  
7 want to be in that building anymore because you have  
8 to be in business in the next two days, but the  
9 landlord has gutted the space or decided that they're  
10 going to gut the building or not even open the  
11 building again, they don't want to, they want to  
12 abandon the building. And so you have to make a  
13 decision -- you have to send some sort of notice that  
14 you're making a choice, that you don't want to be in  
15 that building, you want to cancel your contract in  
16 some fashion.

17 And so not only is the notice important,  
18 which underscores how important it is to get out the  
19 contracts. We were getting calls -- one of the  
20 things that happens during this kind of catastrophe  
21 is that you lose all sense of time. Night and day  
22 disappeared for us. Saturdays and Sundays  
23 disappeared for us. It was all the same to us.  
24 Those days -- and I know you're experiencing the same  
25 thing. An adjuster can come out on Saturday

1 afternoon or Sunday morning --

2 MR. GARNER: Or Sunday night.

3 MR. SHER: Or Sunday night. When we moved  
4 to Baton Rouge, soon as Jim was -- Jim got us -- my  
5 wife and me a very nice house to live in.

6 MR. GARNER: Rental car.

7 MR. SHER: Rental car. We moved into a city  
8 that pre storm had 350,000 people, the day after the  
9 storm had 700,000 people, and all of those 350,000  
10 people wanted a place to live. We got our water  
11 service turned on by Baton Rouge waterworks Sunday  
12 night at 11:30 p.m.

13 So for everybody, all those time periods  
14 disappear. One of the things that we were asked to  
15 do, because we're fortunate enough to represent the  
16 major owner of most of the high-rise Class A office  
17 buildings in town, we spent Saturdays and Sunday  
18 nights reading leases, hundreds of them. We've since  
19 read thousands of leases because they all contain  
20 three or four key things. One is whatever kind of  
21 notice you have to give about something. The second  
22 is they all provide for casualty insurance and who  
23 provides the insurance and how that insurance is  
24 divvied up. And then they all provide for who -- not  
25 only who bears responsibility for the casualty, but

1 any kind of rights you have with respect to damage or  
2 destruction to the space.

3           And if the landlord has given you notice  
4 that the landlord intends not to rebuild or the  
5 landlord expects you to do this, that or the other,  
6 and you never get the notices, the notice isn't  
7 given. If they followed -- if the U.S. government is  
8 not delivering -- so you really don't know what's  
9 going on, you have no idea.

10           Our advice to our clients was whatever you  
11 could do -- whatever notices we sent out, we're not  
12 going to rebuild, we are going to rebuild, we're  
13 expecting you back on the premises, whatever it was,  
14 we always got -- because we had control of that. We  
15 made sure that -- we tried every way possible. When  
16 we sent a notice, we PDF'd it, we e-mailed it, we  
17 sent it by regular mail, we tried to do FedEx press,  
18 we tried to do regular mail, we just did it every way  
19 possible just so there's no question about what the  
20 parties' intentions were down the road.

21           MR. GARNER: And Elwood can tell the story  
22 about the mail going to Nashville.

23           MR. CAHILL: It's really an adjunct to  
24 what's going on. We talked about the problem with  
25 the people at the site, disaster contractors trying

1 to take advantage of the situation. All sorts of  
2 people and companies can try to take advantage of the  
3 company. We happened to represent a woman who had  
4 made an investment in a freestanding Shoney's  
5 restaurant -- I'm sorry, in a suburb of New Orleans,  
6 and she owned the ground and leased it to Shoney's on  
7 a long-term basis and had just recently bought it  
8 before the storm.

9 Shoney's is, at the time, located in  
10 Tennessee. The landlord is located in Oregon. The  
11 store is in Louisiana. The store was slightly  
12 affected by the storm, but not very much, and was  
13 reopened within about three weeks of the storm. And  
14 then became sort of the number one Shoney's in the  
15 nation because it was the only place you could get  
16 food in that area.

17 Shoney's at the time had decided that they  
18 wanted to do this systematic renegotiation of the  
19 leases across the country with their landlords, and  
20 somebody said, oh, well, hurricane down in  
21 New Orleans, that should give us the right to do  
22 something with our rent payments to withhold rent  
23 payments.

24 MR. GARNER: This is all documented in  
25 e-mails.

1           MR. CAHILL: Our client didn't get. Sent  
2 another notice saying under the lease if you don't  
3 pay me by this date so much, we have the right to  
4 terminate the lease, and they said no, no problem.  
5 And their advice that was given was who in their  
6 right mind is going to terminate some tenant's right  
7 under the lease because of Katrina. There's some  
8 sympathy, that notwithstanding the letter of the  
9 document or the letter of law, there's going to be  
10 some slack that's given. And I think Shoney's felt  
11 like what court or what judge or what jury is going  
12 to give us trouble for being a little late on our  
13 rent in this affected area.

14           Well, long story short, they just -- as Jim  
15 said, the underwriting files of insurers are never  
16 helpful for the insurers. Well, the internal files  
17 at Shoney's were never helpful for them either, when  
18 people said, yeah, I know we're in default, just  
19 don't pay her until I tell you. You know, basically  
20 we're going to get her to capitulate, don't worry  
21 about it. But the argument to the court was, well,  
22 we didn't want to submit the payment because we  
23 didn't want some check, as Lee said, lost in the  
24 mail, to go floating down the flooded streets of  
25 New Orleans. There was no check. It was a wire

1 transfer.

2 MR. GARNER: To Oregon.

3 MR. CAHILL: And the landlord was in Oregon  
4 and the tenant was in Tennessee, so unless they were  
5 going to bring the check by pack mule -- but that was  
6 their position and they were dead-set, you know,  
7 using that as a leverage. Really unrelated -- good  
8 news is we got in federal court, had this discovery  
9 where these memos said they knew that it wasn't a  
10 problem. And had a motion for summary judgment that  
11 said the lease was terminated. So now we had the  
12 ability -- their rent went up by about 175 percent or  
13 something like that. But, you know, they were happy  
14 to pay and we were happy to get it.

15 But it's just an example of how, you know,  
16 otherwise good-intentioned companies, I'm sure  
17 Shoney's is a fine company, thought they could take  
18 advantage of this kind of thing. And in this case  
19 the good news is it backfired. You never know -- you  
20 know, the woman, had she not been a little more --  
21 had she been a little less head-strong, a little less  
22 financially independent, she probably would have  
23 said -- because they were calling her every day,  
24 saying, look, I can get you your check tomorrow, all  
25 you have to do is sign these documents. And had she

1 capitulated, they would have won. So that's another  
2 lesson to learn, always take another look at that and  
3 try not to let people take unfair advantage of that.

4 MR. SHER: Let's talk more about the time  
5 periods. You got to get to your clients before they  
6 call you because a lot of times our clients called us  
7 and it was too late. The time periods we're talking  
8 about, usually in leases and mortgages and other  
9 contracts, usually it's 30 days, 60 days, 90 days.  
10 When you look at the -- and so notices have to go  
11 out, and you all are approaching close to the 30 days  
12 from the first incident you all had.

13 The time periods that get out of whack are  
14 the periods of restoration. And when you're  
15 drafting -- the transactional lawyers in the room,  
16 when you're drafting documents, you just think in the  
17 theoretical way about time periods. Well, of course,  
18 everybody can reconstruct within 180 days. At worst  
19 270 days. Usually it's 90 days. Well, that's not  
20 the case. Those periods don't work as a practical  
21 matter because we're here almost three years later  
22 and we're still talking about reconstruction and  
23 we're going to be talking about that for a long  
24 period of time.

25 So it's a point of drafting, it's a note for

1 drafting for the future. You got to be realistic  
2 about it. And depending on who you represent. If  
3 you represent the landlord, if there's an abatement  
4 of rent period, you want it to be as short a period  
5 of time as possible. If you're a tenant, you want it  
6 to be as long a period of time as possible.

7           The time periods with respect to making  
8 claims on insurance policies, a lot of times it's  
9 contractual. In other words, the insurance policy  
10 itself says that you got to make a claim within a  
11 certain period of time. Otherwise you lose it.  
12 Usually it's tied into whatever your statute of  
13 limitations is for making those kinds of claims or  
14 under that kind of contract. In Louisiana it's --  
15 even though it's a contract, the insurance contracts  
16 can provide for a period of claim of one year, after  
17 which time you lose that right. The normal contract  
18 statute of limitations in Louisiana is ten years, but  
19 the law specifically says you can limit that to one  
20 year.

21           With respect to making claims against  
22 insurance companies, whether you're the landlord and  
23 it's your policy, whether you're the lender and it's  
24 your borrower's policy and you're a named insured  
25 specifically in any number of ways or you're not,

1 whether you're the tenant, whether you're an employee  
2 of a tenant, whether you're the contractor, you  
3 should never give up the possibility -- no matter  
4 what happens, even if the landlord has decided on its  
5 own that it's going to gut your building and has made  
6 the decision on its own that gut the building and  
7 redo it, whether you're in agreement with it or not,  
8 whether your lease provides for that or not, you may  
9 have a claim against the landlord's insurer for your  
10 losses. You just don't know. And at this point in  
11 time even if the gutting has occurred, it's really  
12 not too late. It's not too late until the statute of  
13 limitations --

14 MR. GARNER: Make the claim.

15 MR. SHER: -- that runs on that kind of  
16 claim has run.

17 MR. GARNER: On period of restoration, I  
18 think there's zero law in Iowa. There wasn't a lot  
19 of law in Louisiana. But 911 helped that. There's  
20 two cases you all need to look at. One is  
21 Duane Reade versus St. Paul Fire & Marine Insurance  
22 Company which is at 265 F.Supp.2d 302, the district  
23 court decision. That's at one end of the spectrum.  
24 I'll talk about that in a second.

25 The other case, Zurich American Insurance

1 Company versus ABM Industrials which is at 411 Fed.  
2 3d 384 Federal Circuit. And they're at opposite ends  
3 of the spectrum. Duane Reade, as you probably know,  
4 is -- they're like CVS and Walgreen's. They're on  
5 every block of New York. There was a Duane Reade  
6 near the PAC trains. They argued by period of  
7 restoration, I got terrorism exclusion, they were  
8 paid business interruption. They said I need years  
9 to get back. District court said, wait a second, you  
10 got -- one of these things -- Duane Reade, you can go  
11 up Broadway six blocks and in six months you will be  
12 in business and be there. Court found a relatively  
13 short period of restoration.

14 Talking about the ABM case. Who is ABM?  
15 ABM had the janitorial service on the Twin Towers.  
16 Okay? So what is the period of restoration there?  
17 The industry argued obviously it should be a very  
18 short period. ABM said wait a second, where can I go  
19 and get a janitorial source contract on something  
20 like the Twin Towers? And the court agreed with the  
21 insured there and said theoretically it's going to  
22 take ten years to rebuild the Twin Towers. That's  
23 your period of restoration.

24 So that gives you kind of opposite ends of  
25 the spectrum depending on where you fall in. If you

1 had a business downtown that's going to take a while  
2 to go back unlike the mechanic who can go to higher  
3 ground and put up a mechanic shop. That's really the  
4 only case law there is. It cuts into leases and it  
5 cuts into insurance, but it's more of a common sense  
6 approach.

7 MR. CAHILL: One of the things we want to  
8 do --

9 MR. GARNER: Ask questions.

10 MR. CAHILL: One of the things we want to  
11 talk about a little bit is the state of the court  
12 system here, both state and federal. And I know  
13 that's going to be on your program a little later.  
14 We're interested to learn as much as you are. We're  
15 here, as Lee said, as emissaries of the Federal Law  
16 Association and the New Orleans Bar Association and  
17 the State Bar Association. And our courts -- our  
18 judges have asked us, what's going on out here, what  
19 can they do to help. And just get some feedback.

20 I know some of our federal judges have been  
21 in touch with your judges. Some of our Louisiana  
22 state Supreme Court justices asked us to find out.  
23 Jim and I were reading very briefly the article in  
24 your paper, I guess it's Judge Reade, getting ready  
25 to reopen in some temporary space. What's going on?

1 Have all the courts been closed so far, are any of  
2 the courts actually operating now? Do they have  
3 special orders already in effect extending deadlines  
4 and things like that? Can you guys tell us? Does  
5 anybody know?

6 MR. McLEOD: Space is a big issue. Space.

7 MR. CAHILL: From a rule of law, have they  
8 suspended rules, have they suspended deadlines?

9 MS. ALT: No.

10 MS. CRILLEY: Federal deadlines --

11 MR. SHER: Let's tell you what happened --

12 MR. CAHILL: So if a statute of limitations  
13 ran out between the day of the flood and today and  
14 the court's not open, you're telling me there's no  
15 extension of that?

16 MR. McLEOD: Our courts are open. Hand file  
17 by going to an outlying county or you can file by  
18 mail.

19 MR. CAHILL: Federal as well?

20 AUDIENCE MEMBER: Electronic filing still.

21 MR. SHER: Our experience in Louisiana was  
22 that the governor by virtue of the power given to her  
23 under the Louisiana constitution and statutory law  
24 issued an executive order, and actually a series of  
25 executive orders, that did everything you could

1 possibly imagine to suspend -- to suspend any kind of  
2 statute of limitations, any kinds of deadlines in  
3 responding to matters in court, any kinds of  
4 deadlines for evictions. As a matter of fact,  
5 evictions were pretty much eliminated for four months  
6 or so. And whether or not you as the bar association  
7 have the power to lobby your governor or your  
8 government to do that or to have somebody look at it,  
9 you really ought to do that.

10           Because the sophisticated clients you have  
11 who can afford you and afford us probably have the  
12 wherewithal to do remote filing or to do electronic  
13 filing. But there's so many people out there -- you  
14 got the people with the 8 feet of water in their  
15 houses, for all you know their rights are slipping  
16 through their fingers now and that's just not right.

17           MR. CAHILL: And they can't even get their  
18 lawyers because you're not back in your office. Jim,  
19 I think, had sent Allison some orders --

20           MR. GARNER: Our chief judge sent -- I'm  
21 going to give them to Allison. It's not just the  
22 court system. I'll come back to some insurance  
23 issues too. Governor Blanco issued two executive  
24 orders saying you can't get dropped, right, when  
25 you're not in your house and actually the insurance

1 commissioner, Jim Donelon, suspended the right to  
2 drop beyond that. Because think about it, for the  
3 people across the river, a knee-jerk reaction of  
4 insurance company is "place is destroyed, I don't  
5 want to insure you anymore." You go to get a loan,  
6 you've got to get a loan to fix it, what's the bank  
7 say? You've got to have insurance. So it's a  
8 Hobson's choice.

9           So there's an order about keeping insurance  
10 in effect and hoping the people in Des Moines would  
11 see the wisdom of that. Louisiana has a statute that  
12 says if you've been with me for three years, you  
13 can't cancel me absent two or three orders. Rule 23,  
14 HRI Properties versus RSUI Indemnity ran into that  
15 issue. A hotel owner, 18 hotels, was trying to  
16 rebuild the hotels. RSI tried to cancel -- and these  
17 people got money, so they're repairing them. They  
18 got the pockets to do it. But as soon as an  
19 insurance company cancels, what, you got default on  
20 the mortgage. So that kinds of ties in mortgages and  
21 insurance.

22           MR. CAHILL: And there were even some  
23 related issues, where the insurance company would  
24 say, we have the right to cancel you on, say, what is  
25 today, July 1st, but we'll renew you, but, oh, by the

1 way, your premium is now 185 percent or 285 percent  
2 of what your premium was before. And what one of the  
3 results of the extension of those deadlines was that  
4 that insurance ran in effect basically at the same  
5 premium at least for that extended period of time and  
6 they weren't able to necessarily immediately ratchet  
7 up the premium. Not to say that the premium might  
8 not ultimately go up because of market events, but at  
9 least not because of the deadline of your extension  
10 or renewal. We were pretty successful in getting  
11 some litigation to stop any insurance companies from  
12 doing that and actually the insurance commissioner  
13 stepped in and tried to help that problem as well.

14 So the state courts -- was the state court  
15 here locally affected? Is the building itself  
16 affected?

17 MS. CRILLEY: It's going to be relocated for  
18 six to nine months into a college -- community  
19 college location building.

20 MR. CAHILL: Has it opened yet?

21 MS. CRILLEY: Yes, this week. This Monday.

22 MR. CAHILL: In addition to filings, are  
23 they having court hearings?

24 MS. CRILLEY: Yes.

25 MR. SHER: Jury trials?

1           AUDIENCE MEMBER: No jury trials.

2           MR. SHER: We didn't have jury trials in  
3 state court for about nine months or so, maybe longer  
4 than that in federal court.

5           MR. McLEOD: There's a lot of records and  
6 evidence, going to have to reconstruct files.

7           MR. SHER: We just didn't have the jury  
8 venire. They were gone.

9           AUDIENCE MEMBER: They're saying that it's  
10 not that we don't have the jury. There is no room in  
11 Kirkwood to bring in the jury, bring them in, set up  
12 the panels. So they're looking at Kennedy High  
13 School as a possible location for jury trials.  
14 They're also looking at the outlying counties. I  
15 know this because I went over to the courthouse and  
16 talked to Sosalla and asked him what they were going  
17 to do.

18           MR. CAHILL: This is state again?

19           AUDIENCE MEMBER: Yeah, this is state. But  
20 the defendants may not want to go to another county  
21 and -- you know, there you're not going to be able to  
22 force them to have a criminal matter heard in a rural  
23 county that is probably more conservative with  
24 criminal penalties, you know, et cetera. You can see  
25 it all unfolding. So they'll probably come to a bit

1 of a halt.

2 MR. CAHILL: We were talking jurisdictional  
3 issues at the break. Where someone was talking about  
4 the federal court wanting to empanel a grand jury,  
5 but jurisdictionally you can't have a grand jury sit  
6 outside the district. So I guess it's the same kind  
7 of issues in terms of where defendants will be  
8 entitled to their venue, I guess.

9 MR. McLEOD: I've got an insurance question.  
10 If someone is fortunate enough to get a check from an  
11 insurance company for flood damage and that property  
12 has a mortgage and the insurance carrier puts the  
13 owner of the property's name on the check and the  
14 mortgage company, how is that handled? What do you  
15 do? How do you get the money to the people that are  
16 owed the money who worked on your property?

17 MR. GARNER: Most mortgagors --  
18 mortgagees -- I get the "e" and the "or" wrong --  
19 I've worked with particularly in this real estate  
20 market, they've got sort of a fiduciary obligation to  
21 let you put it back in the asset. There's been  
22 litigation over that where the mortgagees want to  
23 come in and take all the money, and a recent case  
24 decided in New Orleans, the one may be near and dear  
25 to your hearts, what primes the lawyer's lien or the

1 mortgagee's lien. Your client hires you. Let's say  
2 I hire you at an hourly fee, you go collect \$250,000  
3 and they're ready to pay you and your name's on the  
4 check, who trumps who? The courts in Louisiana have  
5 said, look, but for the lawyer, there's probably no  
6 money coming, so the lawyer's lien is going to trump  
7 the mortgagee's lien. Directly in your question,  
8 hopefully you're dealing with a lender who has  
9 somewhat of a heart because some of them are taking a  
10 hard line and say give me all the money. And  
11 depending on your mortgage you may have no rights in  
12 this issue.

13 MR. DAY: We have this issue in front of the  
14 Iowa Supreme Court right now. Attorney's lien.

15 MR. CAHILL: And I don't know what your  
16 state law rule will be, but under Louisiana law a  
17 lawyer does have a lien for his or her fees, so I  
18 guess because judges are lawyers, maybe that helped  
19 that decision. I don't know.

20 MR. SHER: With respect to the question  
21 about the mortgagee snatching the money, that's been  
22 a big problem, because the magnitude of our problem  
23 was -- or it was and is, we had -- we lost about  
24 250,000 structures, combination of houses and  
25 buildings. And that's in southeast Louisiana.

1 That's without regard to Rita, which was in southwest  
2 Louisiana. And so that's a lot of mortgages, lots of  
3 mortgages.

4           And for the transactional lawyers in here,  
5 on both sides, the mortgage most likely says that the  
6 lender mortgagee gets the casualty proceeds, period.  
7 Doesn't say that the mortgagor can request and the  
8 mortgagee within some reasonable parameters can grant  
9 the mortgagor the right to use those proceeds to  
10 rebuild. The mortgagee gets paid. So by contract  
11 the mortgagee's going to snatch the money. And many  
12 of the out-of-state lenders, the conduit lenders,  
13 really wanted to do that.

14           And we don't do a lot of residential work.  
15 We don't really do any. We're a commercial firm.  
16 But we helped people out. We helped -- because it  
17 happened to some of us, and it happened to some of  
18 our employees and it happened to some of our  
19 individual clients. And we were able -- in many  
20 cases we were able to work through that with them.  
21 But the document usually says that the mortgagee gets  
22 the check. Now, as a practical matter, when you have  
23 that many buildings ruined in that small an area,  
24 there's not many lenders who want to own a lot of  
25 that or any of it. And so unlike the mortgage

1 foreclosure crisis that's occurring all over the  
2 country now because of these sub prime loans, we're  
3 really not experiencing that because there's not any  
4 lenders who want to own this property. They really  
5 don't. They want to -- they want their mortgages to  
6 be paid on a regular basis or they're ready to walk  
7 away from the property. But that issue, that  
8 friction, that has been a sore spot for lots of  
9 people and it's retarded the recovery of our area  
10 because of that fight.

11 AUDIENCE MEMBER: A follow-up on that, if  
12 you have a situation where the mortgage company  
13 didn't cooperate, would they then foreclose and did  
14 they ask for deficiency judgment against your -- and,  
15 second, does FEMA money work the same way? In other  
16 words, let's say you couldn't get them to work out a  
17 deal with the mortgage company. The mortgage company  
18 snatches the money. You know, buyer can't pay,  
19 doesn't want to put money into a house that they  
20 don't any longer have an interest in. Then does the  
21 mortgage company come back, foreclose on the  
22 property, and do they go after the property owner for  
23 more money?

24 MR. SHER: They could. They could. We just  
25 haven't seen a lot of that.

1           AUDIENCE MEMBER: And secondly then, if FEMA  
2 writes a check to a homeowner for repairs, does the  
3 mortgage company have the right to intercept that  
4 money?

5           MR. GARNER: No. They have no right to that  
6 because that's a grant. One of the issues in  
7 litigating the Xavier/Travelers case is Travelers  
8 said we should get credits from donations from the  
9 government, from your donors, your alumni, that's all  
10 money you're getting. We should get credit for that.  
11 We should get credit for the SBA loan, we should get  
12 credits for the FEMA loans. The judge said no. The  
13 fact that somebody has a charitable heart, I'm not  
14 going to give the insurance company or the mortgagor  
15 the benefit of that.

16           AUDIENCE MEMBER: So they have to rebuild?

17           MR. GARNER: That's an equitable argument  
18 that has been successful. Have lenders, particularly  
19 out of state lenders, tried to squeeze people? Yes.  
20 But we've defended some of those actions on the  
21 basis, wait, judge, you got -- at some point equity,  
22 you know, law -- one of the judges -- at some point  
23 in time, is that what the contract says? Yeah. But  
24 look what these people are doing to me. I want to  
25 take the money and put it back. I'm current on my

1 loan. Let me do that. And the judges have said they  
2 could do that.

3 MR. SHER: We know that everybody here is  
4 scrupulous and will give good advice to their  
5 clients, but many clients -- because we're talking  
6 about desperate people, desperate people -- many  
7 clients receive checks from their insurance companies  
8 that are made payable to the lender and to them and  
9 their temptation is just to deposit the check and the  
10 banks -- the banks -- you know how the banks work,  
11 they're just going to put the check through and put  
12 the money into the account.

13 You really have to talk your clients out of  
14 any temptation to do that. If there is any -- if  
15 there's a contractor's name on there, before that  
16 check is deposited or negotiated, everybody who's a  
17 named payee on that check ought to endorse it and  
18 agree among themselves where that money is going to  
19 go. Because otherwise you're talking about -- I  
20 don't know if anybody from the U. S. Attorney's  
21 office is here or DA's office, but otherwise you're  
22 really talking about pretty serious crimes. So no  
23 matter what the temptation is --

24 MR. GARNER: Don't do it.

25 AUDIENCE MEMBER: But not the same answer

1 with FEMA, right?

2 MR. GARNER: Correct. Because that's a  
3 government grant.

4 MR. CAHILL: If FEMA's check was jointly  
5 payable, you'd have the same issue. Even an  
6 insurance check, I think if you got an insurance  
7 check that wasn't jointly payable --

8 MR. GARNER: If it's payments on contents,  
9 they don't have a UCC or any issue in the contents.  
10 FEMA --

11 AUDIENCE MEMBER: But there's definitely  
12 some tax obligations, if you don't do it, I think  
13 there's probably fraud.

14 MR. GARNER: Your mortgage probably does not  
15 say -- probably does not say if you get a government  
16 grant to repair your property, we get it.

17 MR. SHER: But the mortgage probably says  
18 that any money that you receive that contractually is  
19 otherwise owed to the mortgagee, you receive it in  
20 trust, then you have to turn it over to us.  
21 so . . .

22 MR. RUSH: Landlord/tenant question.  
23 Assuming the lease is somewhat vague, what theories  
24 of recourse does the tenant have against the  
25 landlord's policy?

1           MR. SHER: Well, the landlord's policy is  
2 going to cover certain things. It may cover contents  
3 of whatever kind that are on the premises. And I  
4 guess it boils down to insurance questions of  
5 insurable interest and as your interests may appear.  
6 If the policy covers, let's say, equipment that  
7 belongs to the landlord but you're a dentist and it's  
8 your equipment that was damaged, then you're not  
9 going to be able to make a claim against the landlord  
10 for your equipment. But if the lease provides that  
11 the landlord provides all insurance for personal  
12 property and property damage on the premises, then  
13 even if you, as the dentist, put the dentist chair  
14 there, put the x-ray equipment, put the walls up, put  
15 the finishes on the wall, you might be able to make a  
16 claim against your landlord's insurance policy. It's  
17 not real specific.

18           MR. GARNER: You know, you talk about people  
19 who -- loss, you lost -- put everybody on notice.  
20 That's what I told everybody. Put everybody on  
21 notice. Written notice. Give written notice to the  
22 landlord, notify the insurers, put them on notice.  
23 Unless you've got \$10 of loss, you know, if you got  
24 real loss, put everybody on notice and go figure it  
25 out later on.

1           MR. SHER: Three years later what we've seen  
2 is it gets parceled out, but what you don't want is  
3 you don't want the time period to run --

4           MR. GARNER: Some people legitimately the  
5 insured doesn't owe, and move on. In our case, most  
6 people had -- they didn't have internet to go look up  
7 the insurance policies, right? I mean, somebody --  
8 CNN, I think you were asking me, you know, what do  
9 you do with the insurance policy? Well, now I put  
10 them on a little drive and put them in my pocket, so  
11 I always got my insurance policy with me. But how  
12 many people actually read their insurance policies  
13 before this event, maybe you did, maybe you didn't.  
14 Most people didn't read them until after the event.  
15 Put everybody on notice. Any other questions?

16           AUDIENCE MEMBER: I have another question  
17 regard to landlord/tenant. You indicated in  
18 New Orleans parish there were no evictions for a  
19 period of months. And I was wondering if you could  
20 share with us, were there limitations, was it only  
21 residential, was it commercial and residential, was  
22 it only as far as properties that were flooded or  
23 wind damaged or was it a blanket for the entire  
24 parish?

25           MR. SHER: It was across the board. It was

1 every -- all of the above. It just -- it shut it  
2 down. First of all, the courts were closed until  
3 January 1st. The courts were closed for four months,  
4 so effectively you couldn't have any evictions for  
5 four months. And then thereafter the courts took it  
6 upon themselves for all sorts of obvious reasons.  
7 Because when you evict somebody you also have the  
8 right to put their stuff on the street. And most of  
9 the people weren't there. So you had -- and  
10 Louisiana law permits tacking of notices in only two  
11 instances. One is evictions, and one I think is a  
12 habeas corpus. Obviously habeas corpus didn't apply  
13 here, but evictions would.

14           But when you all come down and visit us,  
15 which we encourage you to do and we'll take you on  
16 the Katrina ride, you go for miles and miles and  
17 miles and miles and miles and then some more miles of  
18 housing just like you have across the river. And  
19 there's nobody there now. And so tacking a notice on  
20 the door wouldn't make any sense.

21           That doesn't mean that the people can stop  
22 paying rent, they're not using the space anymore, and  
23 maintain their lease in perpetuity. That doesn't  
24 mean that. But for some reasonable period of time,  
25 for people who were there, who wanted to get back, it

1 just wasn't fair that their leases might be  
2 terminated or their rights to occupy ended, and so  
3 the courts, recognizing that mercy was appropriate  
4 then, just sort of shut it off.

5 MR. GARNER: As part of our pro bono work,  
6 and Lee kind of spearheaded this, Tulane University  
7 students, we both went to Tulane, we -- Elwood went  
8 to the University of New Orleans, but we both went to  
9 Tulane. What happened was and a judge from Missouri  
10 whose daughter was going to Tulane, and this judge, a  
11 smart lady judge, said you know what, there's going  
12 to be a shortage of housing. So the unscrupulous  
13 landlords, I'm doubling your rent. I want the check  
14 within seven days.

15 And what we did was help students prevent  
16 that and when you get a call from a real lawyer, that  
17 kind of backs most people down. The rent's current,  
18 there's no damage, don't throw his or her stuff out.  
19 But with our shortage of housing, the sharks came out  
20 and thought all of a sudden they were going to triple  
21 rent and evict people for technicalities, and so we  
22 were able to help a lot of Tulane students.

23 MR. SHER: If the bar association here wants  
24 to do some pro bono work with the University of Iowa  
25 students, it may want to open a hot line to assist

1 students who might be having problems with their  
2 landlords. We did that -- Tulane is not -- it's a  
3 private university, it's not a large school, and we  
4 did it for the law school principally. But we must  
5 have handled a hundred matters, maybe more than a  
6 hundred matters, for students and we had no problems  
7 whatsoever. We handled them successfully. And it's  
8 what Jim said. Once a lawyer makes a phone call or  
9 writes a letter, then usually the landlord, who's  
10 trying to take a little advantage, back steps.

11 MR. CAHILL: The other thing is if you  
12 haven't reached out to the ABA, the ABA has a pretty  
13 good network across the country, where they actually  
14 have grants that are available for that. They funded  
15 and helped organize a call center for the entire  
16 state of Louisiana basically because when we had  
17 Katrina and Rita sort of both under the state, you  
18 know, a fair amount of state was affected, and they  
19 established a statewide toll free call center staffed  
20 by lawyers to try and just answer questions.

21 You know, the average person's not here in  
22 the audience today, right, these are all trained  
23 professionals. What does the average person do,  
24 where do they turn, who do they talk to? So you guys  
25 may want to reach out to the ABA. They may have

1 certainly all kinds of money to help you do that. I  
2 think those are all great things.

3           The other side is more sort of the human  
4 side of this that everybody needs to be aware of.  
5 And I'm sure you may already be, but if not, sort of  
6 percolate through. This kind of tragedy and trauma  
7 has an effect on the fiber of our community, and, you  
8 know, whatever ills existed before are just going to  
9 be magnified now. So things like domestic violence  
10 and those kinds of things are just going to get  
11 ratcheted up because people are already -- you know,  
12 if they have proclivities, they're going to be  
13 heightened given the stress of having to go through  
14 this, living in displaced quarters, all that. So  
15 it's something to be mindful of. There's going to be  
16 a need for a lot of healing in the community for that  
17 sort of thing.

18           MR. GARNER: And be talking about issues or  
19 fight FEMA or defend the insurance industry, whatever  
20 side. Taking it more down to the personal level with  
21 lawyers, our bar association, and it was a little bit  
22 controversial, created a fund. We did have a few  
23 lawyers who lost their practices and one in Lee's  
24 neighborhood went back to his house and blew his  
25 brains out. Depression -- I don't know how bad --

1 somebody lost their whole practice, you're going to  
2 get through it. You know, the lawyer I'm talking  
3 about got the phone call, flood, no coverage, FEMA  
4 denied, thought he lost all his clients. One of my  
5 children's pediatricians did the same thing. And  
6 he's a professional, these are educated people.  
7 These people you think would get through it.

8 Be cognizant and sensitive to that. I don't  
9 know whether the bar association has done something,  
10 but, you know, we had a few plaintiff's lawyers who  
11 lost everything, lost all their files, they lost all  
12 their clients, and didn't have the strength or  
13 support to say, look, the world's not over, it's  
14 going to be all right. There's going to be a lot of  
15 litigation one way or the other, they're going to  
16 come back. And they never saw the rebuilding. In a  
17 time of absolute despair, they didn't have it.

18 MR. CAHILL: So friends, family, but also  
19 clients. Clients need their hands held as well.  
20 They're as human as all of us. And there's something  
21 about that. It's just an adjunct to what we're doing  
22 here. But part of it is to reach out and remind you  
23 guys that there's a humanity to all this and you need  
24 to find the time to -- and there's a grieving process  
25 and all of that and I think you can't underestimate

1 the effect of that.

2 MR. GARNER: And I know Elaine Anderson will  
3 help as much as possible. I'm the president of our  
4 Federal Bar Association. I know Virginia Schlueter,  
5 I had the indigent defendants programs coming up here  
6 with the FBA up here, particularly defending  
7 criminals and some of the criminal issues. They got  
8 a right to speedy trial. One of the real issues we  
9 had in New Orleans, so do I -- because you lost the  
10 evidence. I'm a bad person. Do I get out because of  
11 the storm? You're going to be dealing with those  
12 issues. And we've dealt with them. Sometimes good,  
13 sometimes bad. You know, learn from our mistakes and  
14 then learn from the things we did right.

15 MR. SHER: One of the things I wanted to  
16 mention, not in closing, because we want to keep it  
17 open as long as possible, we've talked a lot about  
18 making claims against insurance companies and making  
19 claims against FEMA and SBA and the federal  
20 government and you probably will have some statement  
21 equivalent of all of those. I mentioned before also  
22 that Touro Infirmaries, one of the hospitals -- the  
23 only hospital in Orleans Parish that was able to come  
24 back, and the city probably wouldn't have come back  
25 without it, and however hard it is to make insurance

1 claims, FEMA claims, all those things, without the  
2 insurance industry, without FEMA, without the SBA,  
3 without the city, the state, the federal government,  
4 without all of that assistance, we wouldn't be able  
5 to come back.

6           So we're not talking about a game. The way  
7 we view it is there's programs in effect, there's  
8 policies in effect, there's contracts, insurance  
9 contracts in effect, and we're -- our job as lawyers  
10 are to interpret those for our clients, to zealously  
11 advance the interests of our clients for those kinds  
12 of things. It's not a game, not anybody bad or good,  
13 but without all of those resources, we wouldn't have  
14 been able to return and you all won't be either. We  
15 just have to be mindful of that.

16           But also, also, be a little selfish about  
17 it. So talk to your congressman, talk to your public  
18 officials, get them to do things in Washington that  
19 will make a difference in your future. Get grants to  
20 come down here. All the money doesn't have to go all  
21 the places that the federal government sends it.  
22 Choices have to be made. There's discretion.

23           MR. GARNER: We can take some from Iraq.

24           MR. SHER: Wherever you want to take it  
25 from, take some for yourself, because this is a great

1 country here and we all look out for each other. And  
2 when any one of us has trouble, we're all interested,  
3 we get help. And that needs to move around and it  
4 should move around. It's really the right thing to  
5 do. So be a little selfish. Exercise the rights  
6 that your clients have against whomever it is on the  
7 other side.

8           And just be mindful and remember that we're  
9 all here for you all. We've been through it before,  
10 we don't want to go through it again. But you got  
11 plenty of support, you have plenty of sympathy. We  
12 feel for you. We hope it's painless. We wish you  
13 hadn't had to go through it. But when you go through  
14 it, we hope you feel like we do, that all -- all  
15 around you come out as better people, better  
16 citizens, and we have a better society as a result of  
17 it.

18           MR. CAHILL: And you all have our contact  
19 information or at least Allison can make it  
20 available. To the extent you don't think of a  
21 question now, you didn't get a chance to ask it, you  
22 have our phone numbers, our e-mails, our addresses.  
23 We'll be happy to try to continue dialogue on a going  
24 forward basis, you know, even long distance, so . . .

25           MR. GARNER: Thank you all.

1 (APPLAUSE)

2 MS. HEFFERN: Everyone get a chance to ask  
3 any burning questions before we break for lunch?  
4 There are going to be box lunches. Please help  
5 yourself. We're going to give you a little bit of a  
6 break. We're going to have a short business meeting  
7 because I am so looking forward to voting in a new  
8 president. So please try and be back in our your  
9 seats by 12:30. And it's very casual. So we don't  
10 have tables and chairs anywhere. You just grab a  
11 seat here in the room.

12 I would like to extend my personal thanks to  
13 our guests from New Orleans and I'd like to give them  
14 one more round of applause. I'm going to tell you a  
15 little bit more later about how this all came  
16 together. But they have gone above and beyond by  
17 being here today. So please another round of  
18 applause.

19 (APPLAUSE)

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