Special Seminar on Emergency Preparation and Response

Preparation through Planning: Legal Issues

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“History shows again and again how nature points out the folly of man.”

*Blue Oyster Cult “Godzilla” Spectres (1977)*
I. Assumption:

A. The port has a homeland security (NIMS) plan

B. The port has an emergency (disaster) response plan

C. The port is not the jurisdiction issuing emergency orders

D. The port has a tariff/rules asserting its jurisdiction and addressing liability and responsibility for damage to facilities and cargo.
“An author doesn’t necessarily understand the meaning of his own story better than anyone else.”

Alice in Wonderland
II. Tariff and Rules:

Does Port Tariff . . .

A. directly address/reference to the emergency (disaster) plan? Is your plan provided to shippers/vendors?

B. express waive port liability for force majeure conditions?

C. waive common carrier status for cargo claims?

D. waive demurrage claims associated with force majeure conditions?

E. address/provide indemnity against environmental claims associated with forced majeure conditions?
“Read the directions and directly you will be directed in the right direction.”

*Alice in Wonderland*
III. Emergency (Disaster) Response Plan:

a. Is the port plan integrated with a multi-jurisdictional plan?

b. Is the port plan capable of execution without mutual aid?

c. Does the port plan waive liability claims consistently with the port tariff/rules?

d. How is the port plan implemented?
III. Emergency (Disaster) Response Plan:

e. What happens when the port plan is implemented?

f. What happens if the port plan is not implemented; or if the port plan is not implemented timely?
“We are all mad here.”

Alice in Wonderland
IV: Immunity, Immunity, Immunity

A. Government Immunity
   1. General Rule
   2. Exceptions

B. Federal/State Tort Claims Acts

C. Discretionary Function Exception
   1. Two-Part Test
   2. Restated Test
   3. Purpose
IV: Immunity, Immunity, Immunity

D. Basis for Claims

1. Negligent failure to plan
2. Failure to implement the plan
3. Acts of third parties operating under Mutual Act Agreements
4. Acts of port employees outside their jurisdiction
5. Failure to secure or protect cargo
6. “Act of God” defense
“It’s a poor sort of memory that only works backward.”

Through the Looking Glass
V: Other Tariff/Emergency Plan Issues

A. Force Majeure

B. Environmental Claims
   1. Strict liability
   2. Defenses
   3. Waivers vs. defense
   4. Employee exposures
V: Other Tariff/Emergency Plan Issues

C. Personnel
   1. Who stays?
   2. Health and safety
   3. Rates of pay
   4. Discharge
   5. Workmen’s Compensation/other benefits
“It would be so nice if something made sense for a change.” Alice in Wonderland
“First the hurricane, then the disaster.”