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PROVIDING CERTAINTY IN AN UNCERTAIN TIME: HOW ALTERNATIVE DISPUTE RESOLUTION CAN HELP NATURAL DISASTER VICTIMS REBUILD

Alexandra Rindenow

The effects of climate change, specifically naturally disasters, have no borders or boundaries. In recent years, there has been an uptick in natural disasters, and in the last thirty years, the number of climate-related disasters has tripled.¹ These disasters continue to have catastrophic effects, annually forcing over twenty million people from their homes.² The damage caused by natural disasters is immediate, and it is often something for which people are not adequately prepared. Swift action must be taken to ensure that these people are provided with their basic needs. The burdens of these disasters fall on both claimants and defendants—claimants wish to quickly rebuild from the devastation and defendants are hit with a large volume of claims.³ Natural disasters expose people to many types of disputes, with insurance being the main type of claim,⁴ but other potential disputes arise in the areas of construction law, employment law, family law, contract law, and property law.⁵

Mediation is the best form of ADR to handle these disputes, as it provides an open and non-adversarial environment, often producing a win-win situation for each side.⁶ When homeowners file a claim, claimants have the opportunity to accept an offer, appeal an offer they don't believe is fair, or appeal a denied claim. These claim disputes are usually settled through litigation, but that process can be lengthy and expensive.⁷ After suffering enormous losses as a result of a natural disaster, victims often will not have the time or the money—let alone the emotional bandwidth—to pursue litigation. This is where mediation can come into play.

In recent years, after natural disasters strike, states have implemented emergency mediation programs to handle the abundance of insurance claims that flood the system.⁸ These programs allow homeowner claims to be reviewed more efficiently, resulting in almost immediate payouts to claimants.⁹ Without the use of these mediation programs, many claimants have reported that it instead takes between eighteen and twenty-four months for their claims to be resolved, delaying the healing process.¹⁰ Using mediation to settle insurance claims after a natural disaster hits offers claimants the opportunity to quickly rebuild, while simultaneously relieving the burden imposed on insurance companies.

¹ *5 Natural Disasters that Beg for Climate Action*, OXFAM INT'L, <https://www.oxfam.org/en/5-natural-disasters-beg-climate-action> [https://perma.cc/8T4K-3S43] (last visited Mar. 20, 2022).

² *Id.*

³ *Natural/Mass Disaster Relief*, JAMS, <https://www.jamsadr.com/disaster-relief#overview> [https://perma.cc/89WY-X2D5] (last visited Mar. 20, 2022).

⁴ FREYA MCKECHNIE, *DISPUTE RESOLUTION FOLLOWING NATURAL DISASTERS*, NZ GOV.: MINISTRY BUS., INNOVATION & EMP. (April 2018), <https://www.mbie.govt.nz/assets/f4f8a74157/post-natural-disaster-dispute-resolution-august-2018.pdf> [https://perma.cc/2G4K-K4WJ].

⁵ *Id.*

⁶ Bobby Marzine Harges, *Disaster Mediation Programs - Ensuring Fairness and Quality for Minority Participants*, 39 CAP. UNIV. L REV. 893, 893–94 (2011).

⁷ *Id.* at 902.

⁸ *Id.* at 901–04.

⁹ Melvin A. Rubin, *Disaster Mediation: Lessons in Conflict Coordination*, 1 AM. J. MEDIATION 33 (2007).

¹⁰ POST-DISASTER CLAIMS GUIDE, NAIC, <https://content.naic.org/sites/default/files/inline-files/Claim%20Disaster%20Guide%20-%20Generic%20FINAL%207%2023%202019.pdf> [https://perma.cc/3MHW-6JTA] (last visited Mar. 20, 2022).

Take, for instance, the havoc that Hurricane Sandy and its aftermath caused to communities and individuals around the U.S. The storm destroyed over 650,000 homes, left 8.5 million people without power, and caused roughly \$70.5 billion in damages.¹¹ This hurricane was one of the costliest in American history.¹² And on top of the pain that the damage from the hurricane caused, many homeowners were subsequently shocked to discover that their insurance policies did not cover floods.¹³ Insurance companies often do not cover flood damage because the cost is so extreme.¹⁴ Due to this policy, many Hurricane Sandy claims were denied coverage by their insurers. In response to this, New York and other states affected by the storm created emergency mediation mandates, which required insurers to attend a mediation session if a claimant requested it.¹⁵ By the time that the New York-mandated program concluded, 3,360 claims had been filed, with a settlement rate of 63%.¹⁶ Similarly, New Jersey's mediation program resulted in the filing of 991 claims, with a settlement rate of 67%.¹⁷ The emergency mediation programs offered quick resolutions for all the involved parties.

While natural disasters become more prevalent each year, their magnitude, timing, and effects remain uncertain. It is important to create a plan for future disasters, in order to allow people and communities to rebuild as quickly as possible. Alternative dispute resolution can provide a sense of certainty when everything else in these victims' lives is uncertain.

¹¹ *2012 Hurricane Sandy: Facts, FAQs, and How to Help*, WORLD VISION (Sept. 18, 2018), <https://www.worldvision.org/disaster-relief-news-stories/2012-hurricane-sandy-facts> [https://perma.cc/H9R9-FDAD].

¹² *Id.*

¹³ *Why Don't Insurance Companies Offer Flood Insurance?*, KANNER & PINTALUGA (Aug. 15, 2019), <https://kpattorney.com/why-dont-insurance-companies-offer-flood-insurance/> [https://perma.cc/68CK-WS5S].

¹⁴ *Id.*

¹⁵ Saul Ewing Arnstein & Lehr LLP & Frederic M. Garsson, *New York Promulgates Emergency Mediation Regulation for Storm Sandy Claimants*, JD SUPRA (Mar. 4, 2013), <https://www.jdsupra.com/legalnews/new-york-promulgates-emergency-mediation-90307/> [https://perma.cc/4V6A-6YDZ].

¹⁶ *Disaster Relief Programs*, AM. ARB. ASS'N, <https://www.adr.org/DisasterReliefPrograms> [https://perma.cc/7UJM-YATH] (last visited Mar. 20, 2022).

¹⁷ *Id.*