

**LEGAL SERVICES CORPORATION**  
**KATRINA CONFERENCE CALL NOTES**  
**October 3, 2006**

**Recoupment**

Ranie Thompson – Southeast Louisiana Legal Services

- Currently working on a draft of an appeals letter than deals with some constitutional issues regarding the requesting of evidence and the hearing process in regards to FEMA.

Terry Coble – The Florida Bar Foundation

- A constitutional argument is a good way to go when attempting to work through the recoupment appeals process.
- Both a court challenge and perhaps trying to see if Senator Lieberman and the other author of the FEMA amendment would be willing to entertain having provisions that would guarantee due process in recoupment cases.

Laura Tuggle – Southeast Louisiana Legal Services

- A representative in the FEMA collection office said that FEMA had allowed people to sign notes saying that the overpayment was an error as opposed to fraud. If the person made 2 to 3 payments then they could be eligible for FEMA funds again at a later date. 10 days later SLLS was inform that this process was not being practiced anymore
- Many people need ongoing rental assistance and FEMA is saying that they were not entitled to what they had gotten in personal property funding in the first place.
- After a client receives an insurance settlement FEMA wants to recoup the funds that person had originally received through their FEMA personal property assistance.
- Example: An insurance adjuster had said that the damage to a home was worth \$50,000 and the client only received a check from the insurance company for \$10,000. This person had received \$10,000 from FEMA in the form of personal property assistance and now FEMA wants this money back because the client received an insurance payment.

Ranie Thompson

- There is a provision concerning being underinsured, but the question becomes what is FEMA's definition of that?
- In some instances if an application is under review for recoupment purposes then there is a freeze on that person's payments until a decision is made.

Terry Coble

- From FEMA's perspective, the coverage that they give is not to replace what insurance provides for.
- The way they think of it is that they are providing money for the basic necessities and if you do get any amount from insurance they are going to say that person

was reimbursed for their essential necessities and, therefore, need to pay the FEMA funding back.

- Is it always the case that when people are being denied that they have received an insurance payment or are there other kinds of situations?

Ranie Thompson

- SLLS is also dealing with shared household situations where clients were evacuated to different locations and are now back together and facing duplication of benefits charges.

Terry Coble

- If people were scattered then FEMA should find that they were eligible because they were not together right after the storm.
- What FEMA is calling a duplication of assistance should not be a legitimate argument because FEMA has the discretion to overlook that rule when there is a household split after the disaster.

Laura Tuggle

- Thinks that their clients will win the housing situation, but not sure about the personal property cases.
- Since it is one household of goods it is hard to relate that to the argument that it resulted from the fact that the family was split immediately after the disaster

Terry Coble

- If the people needed that \$10,000 to establish their household wherever they were relocated to, then it is the same line of argument.
- The client received their money from FEMA and used it to set up separate households during the month's post-Katrina when they were not living together.
- If people had to set up their own separate households then that FEMA money was used legitimately. The trick is going to be proving the case with receipts for what was purchased.

Ranie Thompson

- If it is a roommate situation as opposed to a family situation, how does FEMA determine who gets the assistance?
- FEMA has no answer for that.
- There is no information in the recoupment letter that states the terms of who the other party may have been in cases of duplication of benefits.
- There is no clear basis in terms of allowing people to defend themselves against the findings.

Terry Coble

- You can deal informally with people at FEMA to figure out who they determined got the assistance or you could ask why they think that your client should not have gotten that assistance.

- Show that your client set up household separately and could not have lived with the person they lived with prior to the disaster.

Ranie Thompson

- Post-Katrina there were people who submitted applications who did not live at the address they gave, but there are also shared household violations that are not considered fraud. The recoupment letters do not indicate the other party involved.
- Doesn't want to expose her client to liability if FEMA isn't even looking at that person.

Terry Coble

- Look at your client separately and avoid looking into anyone else.

Ranie Thompson

- They have had cases where adult disabled children have received recoupment letters whose assistance requests were submitted by their parents or guardians.
- Since that child's name was on the application FEMA is coming after them for the funds.

Terry Coble

- FEMA can recoup from social security, but they can only recoup benefits over \$9,000 per year.

Ranie Thompson

- Most clients have indicated that they had applied for their FEMA benefits over the phone.
- One client had asked if she needed to file for her disabled child separately and the FEMA representative said yes, but this turned out to be incorrect and now as they go through the reviewing phase these clients are being flagged.

Terry Coble

- The whole rationale from the social security act is missing in the FEMA regulations

Ranie Thompson

- Was able to get information from the FEMA representatives about a hardship waiver, but has been unable to find the form.

Terry Coble

- Not sure of where to get the form, but the regulations that deal with this say that FEMA allows for termination of recoupment if no substantial recoupment is possible or if it would cost more to recoup than the money that would actually be returned.

Mark Moreau

- Does FEMA use IRS standards for this? They are more favorable than the SSI standards.
- Bankruptcy court is starting to use the IRS standards now

Laura Tuggle

- Has anyone had any cases where you were able to get a hardship waiver and have FEMA continue to pay for rental assistance or a trailer?

Terry Coble

- After Hurricane Andrew the recoupment process only started after FEMA money was no longer being paid out.
- The best way to proceed may be to try and justify the assistance that they are trying to recoup.
- You may also want to go with your client to their federal legislator. It is an election year and this may help foster support.

Ranie Thompson

- The recoupment situation is only going to get worse and there needs to be a way to figure this out beyond a case by case basis.
- It may mean some legislative activity.
- Because of the magnitude of the storm, there will be too many people affected to even number and not many are going to know how to deal with the issue on their own.
- FEMA workers are calling people to have them enter into repayment agreements when people are not even aware of what their rights are in the recoupment process.

Laura Tuggle

- Some testimony from a FEMA deputy to Congress mentioned that FEMA was reviewing over 40,000 cases for recoupment.

Terry Coble

- FEMA's recoupment process always makes it look like people are acting fraudulently, but it is often forgotten that people just did what they were told by the FEMA intake worker over the phone.

Willie Abrams – LSC

- Who should we be having this larger conversation with?

Juliet Choi – American Red Cross

- The pro bono law firm that the Asian American Justice Center (AAJC) works with may be a place to turn to.
- The Red Cross does have an interest as recoupment relates individuals and recovery.

## **Matchmakers for Justice**

Steve Fischbach

- It is now week 3 of the pilot project.
- The types of questions that have been coming up on the cluster group conference calls are related to employment, bankruptcy, FEMA issues, housing, getting out of current leases, insurance, etc.
- Thus far things are going very well.
- The law students are required to keep a journal of all their correspondence with residents and providers, housing authorities, etc.

## **ABA**

Tony Barash

- The ABA special committee on Disaster Relief is meeting today and tomorrow in Washington, DC.
- Thus far there has been a lot of input from people dealing with a litany of things relating to disaster response.
- Representatives from FEMA are taking part in the meetings.
- The continuity and longevity of problems in the Gulf is being discussed.

## **American Red Cross**

Juliet Choi

- There is a small program that the American Red Cross is administering affiliated with its larger recovery efforts. The program is called Access to Care ([www.a2care.org](http://www.a2care.org)).
- The program deals with the unmet and ongoing needs of people with mental health or drug abuse problems.
- Individuals can self enroll on the website or by calling 866-794-HOPE, a 24/7 number available in multiple languages.
- The program allows people to get up to \$1,000 for mental health and drug abuse care at the doctor of your choice.
- Please contact Juliet if you have any ideas about how to better connect social services providers, case managers, and legal services providers together to help disaster victims.

## **State Reports**

### **Mississippi**

Sam Buchanan

- Their office is currently seeing issues related to faulty home repairs where the contractors are initiating a lien on these clients in an effort to collect money.

### **Texas**

Maria Luisa Mercado

- Continuing to do outreach
- The large issue is in Houston where 21,000 homes still need to be recertified.

### **Louisiana**

Mark Moreau

- Filed the motion for partial summary judgment in the Morris v. FEMA case today.
- They won the utility allowance case (need to get more info.), in the 5<sup>th</sup> circuit and the Supreme Court has denied review.
- Still having lots of trouble with people getting back to New Orleans because of rent problems.

### **Questions and Comments**

Maria Luisa Mercado

- Are there any other monies being dispersed other than the CDBG funds?

Mark Moreau

- TANF has a program to get people up to \$100,000 regardless of status
- So far 13 people have gotten it.

Juliet Choi

- Heard back from some of their Mississippi case workers that although some people have received money to rebuild their homes, they still do not have enough money to rebuild their homes according to code.

Sam Buchanan

- Some of the building codes have been changed since Katrina, and the construction costs have increased.
- The person may have been given a certain amount, but the cost to reconstruct may be more.

Terry Coble

- One can purchase insurance that will cover the costs associated with building to code.
- In Florida if over 50% of the home is destroyed you do have to rebuild according to code.

Mark Moreau

- The Road Home program is going to increase grants because they realize that the cost of building up to code is going to be more expensive. May be adding up to 20% or 30% onto the grant to cover this.

Terry Coble

- The voluntary agencies who come in to rebuild can often be relied on in cases where there are not sufficient services to re-build to code.
- Catholic charities, Lutheran social services, Mennonites, etc.

Juliet

- Are people on the call aware of the Coordinated Assistance Network (CAN)?
- One of the things that they have been hearing is that any agency can sign up
- Many VOADs are members of this network.

- Can the legal aid community sign up as a member of CAN?

Terry Coble

- One of the things that local legal services organizations can do is to get involved in whatever network there is locally that is comprised of these voluntary agencies
- Issues that cannot be solved legally could be solved by this network
- Legal services can help local networks with legal advice that they may not have through social services providers.
- The issue with officially joining such a network may lead to issues concerning client confidentiality.

**Next Call October 17<sup>th</sup> at 5pm EST**