

HEY GOOD SAMARITANS—GET A LAWYER!

Issue Brief

January 30, 2009

Seth M.M. Stodder

When disaster strikes, human nature impels us to lend a hand to those in need, and often to great heroism. Whether it is a small-scale accident like a car wreck, or a large-scale catastrophe like Hurricane Katrina or the Northridge Earthquake, our natural instinct is to offer assistance. Indeed, after the September 11, 2001 terrorist attacks, over 40,000 volunteers arrived at Ground Zero, looking for some way they could help pull people out of the wreckage or otherwise save lives.

Recently, however, the California Supreme Court had a message for such selfless volunteers—get a lawyer! In *Van Horn v. Watson*,¹ the California Court held that Lisa Torti could be sued and held liable for hurting Alexandra Van Horn’s back when she quickly yanked Van Horn out of a wrecked car that Torti saw was on fire and believed was about to explode. The basic message of the California Supreme Court’s decision is that, if you are going to be a “Good Samaritan” and help someone in need, you better not be negligent in doing so—or else you will expose yourself to liability.

The Court’s decision is a bit technical, as it centers on the proper interpretation of California’s “Good Samaritan” statute—which immunizes from liability anyone “who in good faith, and not for compensation, renders emergency care at the scene of an emergency.”² You’d think that would apply to Torti. Unfortunately, however, the California court interpreted the words “emergency care” in the statute to actually mean “emergency *medical* care.” So, if Torti had negligently provided CPR to Van Horn at the scene of the accident after pulling her out of the car, she would have enjoyed immunity for the CPR—but because yanking a person out of a burning car isn’t “medical” care, Torti was subject to a lawsuit.

From a legal standpoint, this is a nonsensical decision—as nothing in the statute limits its reach to “medical” care. And as the dissenting opinion noted, the distinction makes no sense as a matter of policy. The point of the “Good Samaritan” law is to “encourage persons not to pass by those in need of emergency help, but to show compassion and render the necessary aid. There is no reason why

¹ 45 Cal. 4th 322 (2008).

² Cal. Health & Safety Code § 1799.102.

one kind of lay volunteer aid should be immune, while another is not.”³ No doubt, the California Legislature did not intend to draw this distinction—and overruling the *Van Horn* decision would require only a minor technical fix to the law.

But the California court’s ruling highlights a larger national issue. In the wake of Hurricane Katrina, as with 9/11, there was an outpouring of volunteerism—as doctors, faith-based groups, and ordinary people came to the Gulf Coast to lend a hand, and save lives. Unfortunately, however, some of those volunteers got sued. And many others, including numerous church groups, decided to withhold assistance to hurricane victims for fear of incurring liability. These legal minefields compounded the disaster, increased the suffering of victims and, indeed, may have cost lives. Now the California Supreme Court—forgetting the lessons of Hurricane Katrina—has imported this legal liability minefield into California.

Obviously, the California Legislature should overturn the *Van Horn* decision, but we need a *national* solution to this issue—as our nation’s ability to respond to major catastrophes, including terrorist attacks, should not be subjected to the vagaries of state tort liability laws. We cannot afford to have volunteers sit on the sidelines when disaster strikes. In the event of a major disaster such as a terrorist attack, law enforcement and emergency response personnel will be overwhelmed—and, if anything, Hurricane Katrina demonstrated that we cannot wait around for FEMA to show up.

On the contrary, we will always need volunteers to step up and, in some cases, rescue people. The law should not discourage this, as California’s law now does. At a minimum, individuals who serve on Urban Search and Rescue (USAR) or Community Emergency Response Teams (CERTs)—trained and certified by FEMA and the Department of Homeland Security—should be immune from liability in most cases.

But even beyond this, individual volunteers or organizations—even those not affiliated with CERT or USAR teams—should generally be protected from lawsuits, no matter where the disaster strikes; whether California or Louisiana. People never know when they will be summoned to become heroes, and they should not be punished for their lack of foresight in not previously having signed up for a USAR team when the life-or-death moment of truth is upon them. People who are fearless enough to go into a burning building—or one irradiated by a dirty bomb—to save a child should not have to fear a plaintiff’s lawyer more than radiation sickness.

As we seek to build a more resilient society—one able to bend but not break when disaster strikes—we should not ignore the need for individual volunteers, let alone have our legal system scare such volunteers away from lending a hand. It’s time for a national approach to this issue.

³ *Van Horn*, 45 Cal. 4th at 334 (Baxter, J., concurring and dissenting).

Seth M.M. Stodder, a lawyer in Los Angeles and Washington, D.C., served in the Department of Homeland Security as Director of Policy and Planning for U.S. Customs and Border Protection. He teaches Counterterrorism and Homeland Security Law at the University of Southern California Law School and is a Senior Fellow at the George Washington University Homeland Security Policy Institute.

Founded in 2003, The George Washington University Homeland Security Policy Institute (HSPI) is a nonpartisan “think and do” tank whose mission is to build bridges between theory and practice to advance homeland security through an interdisciplinary approach. By convening domestic and international policymakers and practitioners at all levels of government, the private and non-profit sectors, and academia, HSPI creates innovative strategies and solutions to current and future threats to the nation. The opinions expressed in this Issue Brief are those of the author alone. Comments should be directed to hspi@gwu.edu.