



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.”

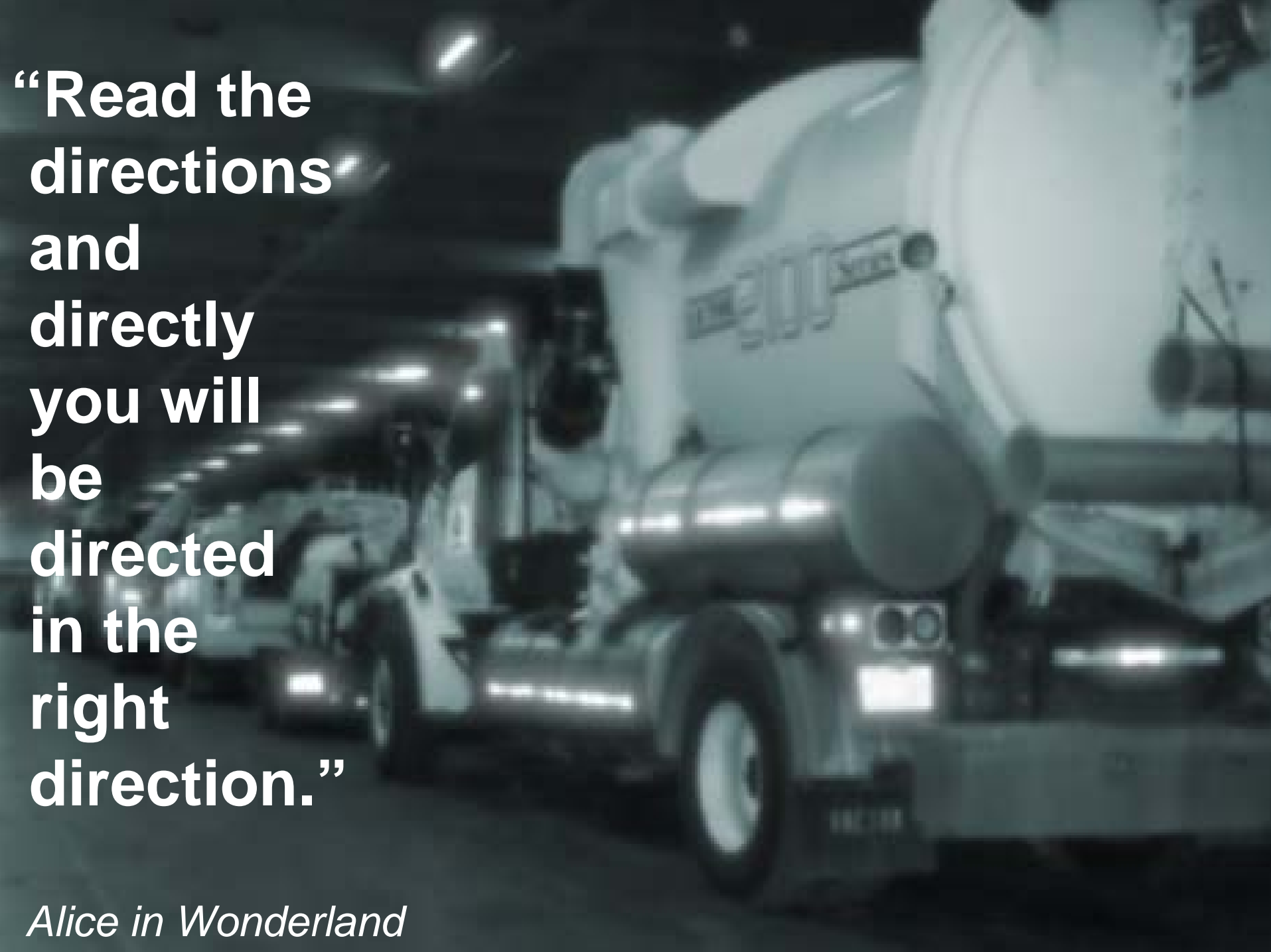
Alice in Wonderland

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?

A line of white delivery trucks is shown in a dark tunnel. The trucks are illuminated by overhead lights, creating a strong contrast with the dark surroundings. The perspective is from the side of the trucks, showing their front and side profiles. The text is overlaid on the left side of the image.

**“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 yariff/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 pal 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

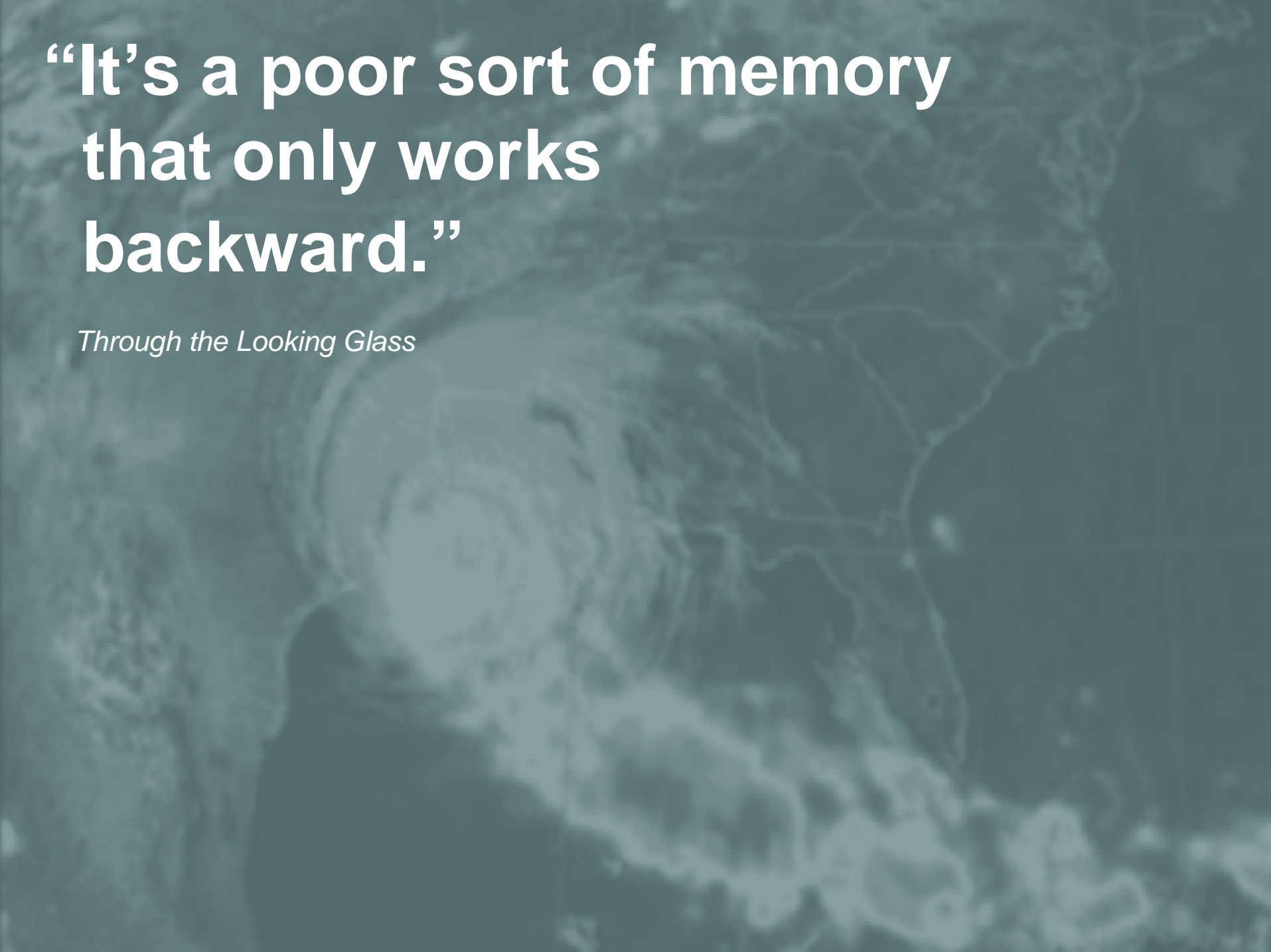
1. Two-Part Test
2. Restated Test
3. Purpose

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*



An aerial photograph of a large hurricane over the Gulf of Mexico. A semi-transparent map of the United States is overlaid on the image, with the Gulf of Mexico region highlighted in a lighter shade. The hurricane's eye and spiral bands are clearly visible.

**“First the hurricane,
then the disaster.”**

graffiti