

Katrina Brings a New Wave of Liability



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As the Gulf Coast braces for another hurricane season this summer, courts in Alabama, Mississippi, and Louisiana are still bogged down with thousands of lawsuits stemming from Hurricane Katrina. Most of these cases arise out of insurance coverage disputes in which the plaintiffs allege that their insurers are refusing to pay for wind or water damage that should have been covered by their policy. There is one class action, however, which boldly claims what no other Katrina plaintiff has claimed before: global warming caused Katrina, which caused plaintiffs severe harm.

But whom does one sue for global warming? In *Comer v. Murphy Oil, USA*, the plaintiff class has filed suit against various oil companies, coal companies, and chemical manufacturers (for a total of 121 defendants in the Fourth Amended Complaint) in the United States Southern District of Mississippi. The plaintiffs claim that the businesses emitted substantial quantities of greenhouse gases, and that these gases essentially caused or substantially contributed to global warming. As a result of global warming, the intensity and number of hurricanes increased in the Gulf Coast. Specifically, plaintiffs allege that the defendants' conduct increased the intensity and magnitude of Hurricane Katrina, which caused the harm at issue in the case.

The plaintiffs have a very long (very long) shot at establishing liability. As alleged, the plaintiffs must prove that the named defendants 1) emitted greenhouse gases, which 2) caused global warming, which 3) intensified Hurricane Katrina, which 4) caused them harm. These allegations do not address the central legal question which has no legal precedent: do industrial and other businesses have a legal duty ~ enforceable in court ~ to lower the emission of greenhouse gases in an effort to curb the effects of global warming? To date, our courts and our legislatures have not yet answered this question. While the plaintiffs will most likely fail, since the issues are both novel and, to a great degree, the subject of intense scientific debate (with respect to the alleged impact of "global warming" on hurricane trends), one must never underestimate the potential of an untried new theory.

Even if the plaintiffs ultimately fail, their lawsuit offers guidance for businesses interested in avoiding global warming lawsuits. The plaintiffs used environmental press releases and reports against the defendants in support of the global warming claim. For instance, one company president acknowledged in a speech that greenhouse emissions have impacted the climate on Earth. The plaintiffs cited this statement in support of their assertion that numerous defendants have admitted their role in contributing to the harmful effects of global warming. Businesses should, therefore, be prudent in commenting on global warming science. Under the Federal Rules of Evidence, statements which are contrary to one's interests are admissible in a court of law.

Businesses should therefore beware that this new theory of liability is in the making. The *Comer* lawsuit is a test case for global warming liability. As of the date of this publication, the lawsuit has not been dismissed by the court. Until the courts or legislature make a statement on the duties of greenhouse-emitting companies, such lawsuits may well continue to be filed after natural disasters in the future. Keeping that possibility in mind, business owners should be careful not to make public statements that may eventually be used against them in court.

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