



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

NED COMER, BRENDA COMER, ERIC
HAYGOOD, BRENDA HAYGOOD, LARRY
HUNTER, SANDRA L. HUNTER, MITCHELL
KISIELEWSKI, JOHANNA KISIELEWSKI,
ROSEMARY ROMAIN, JUDY OLSON, and
DAVID LAIN

Plaintiffs,

v.

MURPHY OIL USA, INC.; SHELL OIL
COMPANY; CHEVRON U.S.A. INC.;
EXXONMOBIL CORPORATION; BP AMOCO
CHEMICAL COMPANY; BP AMERICA
PRODUCTION COMPANY; BP ENERGY
COMPANY; BP PRODUCTS NORTH
AMERICA INC.; PLACID OIL COMPANY;
KERR-MCGEE OIL & GAS CORPORATION;
TOTAL PETROCHEMICALS USA, INC.;
CONOCOPHILLIPS COMPANY; ATLANTIC
RICHFIELD COMPANY; PIONEER
NATURAL RESOURCES USA, INC.;
OCCIDENTAL CRUDE SALES, INC.;
OCCIDENTAL ENERGY MARKETING, INC.;
TOTAL GAS & POWER NORTH AMERICA,
INC.; HESS CORPORATION; ANADARKO
PETROLEUM CORPORATION; APACHE
CORPORATION; BURLINGTON
RESOURCES OFFSHORE INC; AEP
GENERATING COMPANY; COLUMBUS
SOUTHERN POWER COMPANY, D/B/A/ AEP
OHIO; OHIO POWER COMPANY, D/B/A/
AEP OHIO; SOUTHWESTERN ELECTRIC
POWER COMPANY; AEP TEXAS CENTRAL
COMPANY; AEP TEXAS NORTH
COMPANY; APPALACHIAN POWER

) Case No.: 1:11cv220 HSO - Jmr

) **Class Action Complaint**

COMPANY; INDIANA MICHIGAN POWER)
COMPANY; KENTUCKY POWER)
COMPANY; PUBLIC SERVICE COMPANY)
OF OKLAHOMA; ALABAMA POWER)
COMPANY; GEORGIA POWER COMPANY;)
GULF POWER COMPANY; SOUTHERN)
POWER COMPANY; TENNESSEE VALLEY)
AUTHORITY; XCEL ENERGY INC.;)
NORTHERN STATES POWER COMPANY;)
NORTHERN STATES POWER COMPANY;)
PUBLIC SERVICE COMPANY OF)
COLORADO; SOUTHWESTERN PUBLIC)
SERVICE CO.; ENERGY FUTURE)
HOLDINGS CORP; CINERGY CORP.; DUKE)
ENERGY CORPORATION; NRG ENERGY,)
INC.; SOUTHERN CALIFORNIA EDISON)
COMPANY; EDISON MISSION ENERGY;)
EDISON MISSION ENERGY PETROLEUM;)
EDISON MISSION ENERGY SERVICES,)
INC.; EDISON MISSION ENERGY FUEL;)
EDISON CAPITAL; EDISON)
INTERNATIONAL; LG&E ENERGY INC.;)
LG&E POWER INC.; KENTUCKY UTILITIES)
COMPANY; WESTERN KENTUCKY)
ENERGY CORP.; CAROLINA POWER &)
LIGHT COMPANY D/B/A PROGRESS)
ENERGY CAROLINAS, INC.; FLORIDA)
POWER CORPORATION D/B/A PROGRESS)
ENERGY FLORIDA, INC.; AMEREN)
ENERGY GENERATING COMPANY; UNION)
ELECTRIC COMPANY, D/B/A AMEREN UE;)
AMEREN ENERGY RESOURCES)
COMPANY; AMEREN ENERGY FUELS AND)
SERVICES COMPANY; CENTRAL ILLINOIS)
PUBLIC SERVICE COMPANY, D/B/A)
AMEREN CIPS; CENTRAL ILLINOIS LIGHT)
COMPANY, D/B/A AMERENCILCO;)
ILLINOIS POWER COMPANY, D/B/A)
AMEREN IP; AMEREN ENERGY)
GENERATING COMPANY; AMEREN)
ENERGY MARKETING COMPANY;)
ENTERGY CORPORATION; FIRSTENERGY)
CORP.; VIRGINIA ELECTRIC AND POWER)
COMPANY; DOMINION ENERGY, INC.; DTE)
ENERGY CO.; NEXTERA ENERGY, INC.;)

- c. Chevron U.S.A. Inc., a Pennsylvania corporation with its principal office in California;
- d. ExxonMobil Corporation, a New Jersey corporation with its principal office in Texas;
- e. BP Amoco Chemical Company, a Delaware corporation with its principal office in Texas;
- f. BP America Production Company, a Delaware corporation with its principal office in Texas;
- g. BP Energy Company, a Delaware corporation with its principal office in Texas;
- h. BP Products North America Inc., a Maryland corporation with its principal office in Illinois;
- i. Placid Oil Company, a Delaware corporation with its principal office in Oklahoma;
- j. Kerr-McGee Oil & Gas Corporation, a Delaware corporation with its principal office in Texas;
- k. Total PetroChemicals USA, Inc., a Delaware corporation with its principal office in Texas;
- l. ConocoPhillips Company, a Delaware corporation with its principal office in Texas;
- m. Atlantic Richfield Company, a Delaware corporation with its principal office in Illinois;
- n. Pioneer Natural Resources USA, Inc., a Delaware corporation with its principal office in Texas;
- o. Occidental Crude Sales, Inc., a Delaware corporation with its principal in California;
- p. Occidental Energy Marketing, Inc., a Delaware corporation with its principal in California;
- q. Total Gas & Power North America, Inc., a Delaware corporation with its principal office in Texas;

- r. Hess Corporation, a Delaware corporation with its principal office in New York;
- s. Anadarko Petroleum Corporation, a Delaware corporation with its principal office in Texas;
- t. Apache Corporation, a Delaware corporation with its principal office in Texas; and
- u. Burlington Resources Offshore Inc., a Delaware corporation with its principal office in Texas;

3.

Also made defendants herein are the following (hereinafter the “Coal Company Defendants”):

- a. AEP Generating Company, an Ohio corporation with its principal office in Ohio;
- b. Columbus Southern Power Company, d/b/a/ AEP Ohio, an Ohio corporation with its principal office in Ohio;
- c. Ohio Power Company, d/b/a/ AEP Ohio, an Ohio corporation with its principal office in Ohio;
- d. Southwestern Electric Power Company, a Delaware corporation with its principal office in Ohio;
- e. AEP Texas Central Company, a Texas corporation with its principal office in Ohio;
- f. AEP Texas North Company, a Texas corporation with its principal office in Ohio;
- g. Appalachian Power Company, a Virginia corporation with its principal office in Ohio;
- h. Indiana Michigan Power Company, an Indiana corporation with its principal office in Ohio;
- i. Kentucky Power Company, a Kentucky corporation with its principal office in Ohio;

- j. Public Service Company of Oklahoma, an Oklahoma corporation with its principal office in Ohio;
- k. Alabama Power Company, an Alabama corporation with its principal in Alabama;
- l. Georgia Power Company, a Georgia corporation with its principal in Georgia;
- m. Gulf Power Company, a Florida corporation with its principal office in Florida;
- n. Southern Power Company, a Delaware corporation with its principal office in Georgia;
- o. Tennessee Valley Authority, a Federal corporation with its principal office in Tennessee;
- p. Xcel Energy Inc., a Minnesota corporation with its principal office in Minnesota;
- q. Northern States Power Company, a Minnesota corporation with its principal office in Minnesota;
- r. Northern States Power Company, a Wisconsin corporation with its principal in Wisconsin;
- s. Public Service Company of Colorado, a Colorado corporation with its principal office in Colorado;
- t. Southwestern Public Service Co., a New Mexico corporation with its principal office in Texas;
- u. Energy Future Holdings Corp, a Texas corporation with its principal office in Texas;
- v. Cinergy Corp., a Delaware corporation with its principal office in Ohio;
- w. Duke Energy Corporation, a Delaware corporation with its principal office in North Carolina;
- x. NRG Energy, Inc., a Delaware corporation with its principal office in New Jersey;
- y. Southern California Edison Company, a California corporation with its principal office in California;

- z. Edison Mission Energy, a Delaware corporation with its principal office in California;
- aa. Edison Mission Energy Petroleum, a California corporation with its principal office in California;
- bb. Edison Mission Energy Services, Inc., a California corporation with its principal office in California;
- cc. Edison Mission Energy Fuel, a California corporation with its principal office in California;
- dd. Edison Capital, a California corporation with its principal office in California;
- ee. Edison International, a California corporation with its principal office in California;
- ff. LG&E Energy Inc., a Kentucky corporation with its principal office in Kentucky;
- gg. LG&E Power Inc., a Delaware corporation with its principal office in Kentucky;
- hh. Kentucky Utilities Company, a Kentucky corporation with its principal office in Kentucky;
- ii. Western Kentucky Energy Corp., a Kentucky corporation with its principal office in Kentucky;
- jj. Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., a North Carolina corporation with its principal office in North Carolina;
- kk. Florida Power Corporation d/b/a Progress Energy Florida, Inc., a Florida corporation with its principal office in Florida;
- ll. Ameren Energy Generating Company, an Illinois corporation with its principal office in Missouri;
- mm. Union Electric Company, d/b/a Ameren UE, a Missouri corporation with its principal office in Missouri;

- nn. Ameren Energy Resources Company, an Illinois corporation with its principal office in Missouri;
- oo. Ameren Energy Fuels And Services Company, an Illinois corporation with its principal office in Illinois;
- pp. Central Illinois Public Service Company, d/b/a Ameren CIPS, an Illinois corporation with its principal office in Illinois;
- qq. Central Illinois Light Company, d/b/a AmerenCILCO, an Illinois corporation with its principal office in Illinois;
- rr. Illinois Power Company, d/b/a Ameren IP, an Illinois corporation with its principal office in Illinois;
- ss. Ameren Energy Generating Company, an Illinois corporation with its principal office in Missouri;
- tt. Ameren Energy Marketing Company, an Illinois corporation with its principal office in Missouri;
- uu. Entergy Corporation, a Delaware corporation with its principal office in Louisiana;
- vv. FirstEnergy Corp., an Ohio corporation with its principal office in Ohio;
- ww. Virginia Electric and Power Company, a Virginia corporation with its principal office in Virginia;
- xx. Dominion Energy, Inc., a Virginia corporation with its principal office in Virginia;
- yy. DTE Energy Co., a Michigan corporation with its principal office in Michigan;
- zz. Nextera Energy, Inc., a Florida corporation with its principal office in Florida;
- aaa. Florida Power & Light Company, a Florida corporation with its principal office in Florida;

- bbb. The AES Corporation, a Delaware corporation with its principal office in Virginia;
- ccc. Arch Coal, Inc., a Delaware corporation with its principal office in Missouri;
- ddd. International Coal Group, Inc., a Delaware corporation with its principal office in West Virginia;
- eee. Alpha Natural Resources Inc., a Delaware corporation with its principal office in Virginia;
- fff. CONSOL Energy Inc., a Delaware corporation with its principal office in Pennsylvania;
- ggg. Foundation Coal Holdings Inc., a Delaware corporation with its principal office in Maryland;
- hhh. Massey Energy Co., a Delaware corporation with its principal office in Virginia;
- iii. Westmoreland Coal Co., a Delaware corporation with its principal office in Colorado;
- jjj. Peabody Energy Corp., a Delaware corporation with its principal office in Missouri;
- kkk. Rio Tinto Energy America Inc., a Delaware Corporation with its principal office in Wyoming;
- lll. The North American Coal Corporation, a Delaware Corporation with its principal office in Texas;
- mmm. Ohio Valley Coal Co., an Ohio corporation with its principal office in Ohio;
- nnn. BHP Minerals International Inc., a Delaware Corporation with its principal office in Texas.

4.

Also made defendants herein are the following (hereinafter the “Chemical Company Defendants”):

- a. EI DuPont de Nemours & Co., a Delaware corporation with its principal office in Delaware;
- b. Honeywell International, Inc., a Delaware corporation with principal office in New Jersey; and
- c. The Dow Chemical Co., Inc., a Delaware corporation with its principal office in Michigan;

Jurisdiction and Venue

5.

This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it involves a question arising under the federal common law of nuisance. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because complete diversity exists between Plaintiffs and Defendants and because the amount in controversy exceeds \$75,000. Furthermore, this court has jurisdiction over Plaintiffs' declaratory action pursuant to 28 U.S.C. § 2201 because there are real, substantial, and justiciable issues in controversy between the parties to this action with respect to federal preemption of claims arising from Defendants' emissions of certain greenhouse gases, as well as Defendants' liability for injuries arising from those emissions.

6.

Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. §§ 1391-92 because a substantial part of the events giving rise to these claims occurred in this District and a substantial part of property that is the subject of the action is situated in this District.

7.

The defendants at all times pertinent hereto, engaged in the exploration, development, mining, production and/or combustion of coal, petroleum, natural gas and other carbon-based fossil fuels. These activities tortiously caused damage to Plaintiffs' property in Mississippi, and the Defendants are liable to Plaintiffs and the class of Plaintiffs described herein (referred to collectively as the "Plaintiff Class") for the reasons enumerated infra. Consequently, these Defendants are deemed to be doing business in Mississippi and are subject to the jurisdiction of this Court pursuant to Miss. Code Ann. § 13-3-57 (West 2006). In addition, many of the Defendants are registered to do business in Mississippi, and this Court also has jurisdiction over those defendants pursuant to the Mississippi Business Corporation Act, Miss. Code Ann. § 79-4-15, *et seq.*

8.

This cause of action was filed originally on September 20, 2005, twenty days after Hurricane Katrina devastated the Mississippi Coast and Southeast Louisiana. After first being dismissed by the United States District Court for the Southern District of Mississippi on grounds relating to Political Question and Standing, a three judge panel of the United States Fifth Circuit Court of Appeals reversed the District Court and re-instated three of Plaintiffs' claims (Opinion attached as Exhibit "A"). Defendants then applied for a hearing En Banc before the U.S. Fifth Circuit and after multiple recusals of judges of the Fifth Circuit the case was accepted for En Banc hearing thereby vacating the decision of the three judge panel pursuant to a local rule. Subsequently an additional judge disqualified herself and the Court determined it had lost its quorum to act pursuant to its own rules (see the Court's decision dismissing appeal attached as Exhibit "B"). On May 28, 2010, a majority of the non-disqualified judges decided that as it had

no quorum, it could only dismiss the appeal. Plaintiffs filed a Petition for Writ of Mandamus with the United States Supreme Court, which the Court denied in January 2011. Plaintiffs duly commenced this action within the time allowed under Mississippi law, and their suit was defeated on procedural grounds due to the inability of the United States Court of Appeals to form a quorum. The present suit was filed within one year of dismissal. Therefore, Plaintiffs' claims are timely pursuant to Section 15-1-69 of the Mississippi Code.

9.

Plaintiffs have standing to pursue this action because: a) Plaintiffs sustained concrete injuries (in the form of property damage and other injures alleged in more detail below); b) Defendants' tortious emissions of greenhouse gases proximately caused and/or contributed these injures; and c) Plaintiffs seek monetary damages from Defendants that will redress their injuries.

10.

This case presents discrete and justiciable questions (whether Defendants' emissions of greenhouse gasses proximately caused damage to Plaintiffs' property, and, if so, the extent of those damages). There are manageable standards for resolving the controversy, namely the Mississippi statutes and common law jurisprudence controlling claims of nuisance, trespass, and negligence. These issues are neither textually committed to a coordinate political department nor do they implicate the primary authority of the executive or legislative branch.

11.

Plaintiffs do not ask this Court to regulate greenhouse gas emissions or change national policy regarding climate change. Instead, Plaintiffs seek legal redress for the damages caused by these Defendants. To deny Plaintiffs that opportunity would violate their fundamental and Constitutional rights to have access to justice (embodied in the common law, the Magna Carta,

the 5th, 7th, 9th, and 14th amendments to the United States Constitution, and Art. 3 of the Mississippi Constitution).

Claim 1: Public and Private Nuisance

12.

Defendants emit substantial quantities of carbon dioxide, methane, halocarbons, and other substances collectively referred to as “greenhouse gases,” increasing the concentration of these gases in Earth’s atmosphere. Increasing the concentration of greenhouse gases in the atmosphere increases the amount of solar energy trapped by Earth’s atmosphere, resulting in warmer air and water temperatures. The Defendants have been aware of this phenomenon for decades.

13.

The Earth’s climate has “demonstrably changed” as a result of Defendants’ greenhouse gas emissions. Rising sea levels and increasing hurricane intensity are among the observable impacts of this climate shift.

14.

Defendants’ activities are among the largest sources of the greenhouse gases that cause Global Warming. Numerous Defendants have admitted the validity of mainstream global warming science as well as their role in contributing to the harmful effects of global warming.

15.

Despite warnings from scientists and governmental agencies about the adverse effects of their activities on the environment in general and global warming in particular, the Defendants have knowingly and willfully continued to engage in the activities which cause Global Warming. Further, the Defendants have taken no action to mitigate the severe consequences of their

activities on human health and the environment, despite the existence of currently available mitigation technologies which the Defendants refuse to employ.

16.

On 29 August 2005 Hurricane Katrina struck the Mississippi Gulf Coast. Upon striking the Mississippi Gulf Coast, Hurricane Katrina's winds and storm surge caused damage, death and injury to persons, homes, businesses and other property interests across the State of Mississippi.

17.

Prior to striking the Mississippi Gulf Coast, Hurricane Katrina had developed into a cyclonic storm of unprecedented strength and destruction, fueled and intensified by the warm waters and warm environmental conditions present in the Atlantic Ocean, Caribbean Sea, and the Gulf of Mexico. These high sea surface temperatures, which were a direct and proximate result of the defendants' greenhouse gas emissions, increased the intensity and magnitude of Hurricane Katrina.

18.

Plaintiffs own property near the Mississippi Coast that was damaged by Hurricane Katrina on or about August 29, 2005. Specifically, their homes and property were destroyed by Katrina's destructive winds and storm surge, which effects were increased in frequency and intensity by Defendants' emissions of greenhouse gases.

19.

Plaintiffs' property also is damage by sea level rise as a result of submersion and/or increased exposure to hurricanes.

20.

Moreover, as a result of Defendants' activities, Plaintiffs' insurance premiums for their coastal Mississippi property have risen dramatically, and the resale values of their homes and property values have plummeted.

21.

The Defendants' behavior and greenhouse gas emissions result in material annoyance, inconvenience, discomfort, injury, and/or hurt to the public and the Plaintiffs in particular, as described more fully infra.

22.

Defendants' carbon dioxide and other greenhouse gas emissions affect the interstate, ambient air in ways neither addressed by the Clean Air Act or other federal environmental laws, nor regulated by the Environmental Protection Agency or other federal agencies. Consequently, Plaintiffs' claims sound in Federal Common Law nuisance in addition to all other state law claims described herein.

23.

Defendants' continuous and/or recurring emissions of carbon dioxide and other greenhouse gas into the atmosphere are unreasonable. These emissions injure Plaintiffs and Plaintiffs' property on the Mississippi Gulf Coast by increasing tropical storm activity and intensity in the Gulf of Mexico and increasing sea level, which increase the risk of wind and flood damage to Plaintiffs' property.

24.

The injuries caused by Defendants' emissions are an unreasonable invasion of Plaintiffs' property rights.

25.

Plaintiffs are particularly affected by Defendants' actions because they live in low-lying coastal areas on or near the Gulf of Mexico. These areas are at a greater risk of wind and flood damage as a result of the sea level rise and increasing tropical storm activity caused by Defendants' emissions. Consequently, Plaintiffs suffer more severe injuries than the general public as a result of Defendants' unreasonable and injurious emissions.

26.

The Defendants' greenhouse gas emissions have contributed to sea level rise, which has a number of severe consequences including, but not limited to the following:

- a. Direct loss of private property as land is subsumed under rising sea levels and destroyed by saltwater intrusion.
- b. Loss of the use and quiet enjoyment of private property caused by rising sea levels, saltwater intrusion, increased water temperatures, increased tropical storm activity, loss of habitat used for hunting and fishing and other recreation, and numerous other forms of property damage.
- c. Loss of the use and enjoyment of public property and public trust resources;
- d. Increased risk of property damage and loss as a result of hurricane activity and rising sea levels in the Gulf of Mexico caused by Defendants' greenhouse gas emissions.

27.

Plaintiffs and the Plaintiff Class are entitled to compensation for the injuries set forth in paragraph 41 in an amount to be established at trial.

Claim 2: Trespass

28.

Plaintiffs re-allege paragraphs 1-27.

29.

Defendants' behavior and greenhouse gas emissions caused saltwater, debris, sediments, hazardous substances, and other materials to enter and remain on Plaintiffs' and Plaintiff Class's property.

30.

The entry of these materials caused physical harm and destruction to Plaintiffs' and the Plaintiff Class's property.

31.

Plaintiffs and the Plaintiff Class are entitled to compensation for the injuries set forth in paragraph 41 in an amount to be established at trial.

Claim 3: Negligence

32.

Plaintiffs re-allege paragraphs 1-31.

33.

The Defendants had and continue to have a duty to conduct their business in such a way as to avoid unreasonably endangering the environment, public health, and public and private property, as well as the citizens of the State of Mississippi.

34.

The Defendants breached their duties by emitting substantial quantities of greenhouse gases, knowing that such emissions would unreasonably endanger the environment, public health, and public and private property interests.

35.

The Defendants' greenhouse gas emissions contributed to global warming, which caused the Plaintiffs' and Plaintiff Class's injuries.

36.

Defendants are also strictly liable for the injuries that result from their greenhouse gas emissions. Defendants knew that their emissions were likely to contribute to widespread and severe injuries to residents of low-lying coastal areas in and around the Gulf of Mexico by increasing both sea levels and tropical storm intensity, frequency and magnitude. In light of this potential for widespread, catastrophic injury, and given that the injuries Plaintiffs suffered (wind and flood damage from intense tropical storm activity in the Gulf of Mexico) are precisely those which make Defendants' emissions abnormally dangerous, Defendants should be held strictly liable for the injuries caused by their emissions.

37.

In the alternative, if Defendants' activity did not directly cause the increase in sea surface temperatures which fueled Hurricane Katrina, their actions nevertheless have increased and will continue to increase the risk of more intense tropical cyclones and other storms, as well as sea level rise (through melting of glacial ice and thermal expansion) in the immediate future. These activities put Plaintiffs' property at greater risk of flood and storm damage, and dramatically increase Plaintiffs' insurance costs.

38.

Insurance companies have begun to incorporate the risks associated with global warming into their premiums, which has dramatically increased Plaintiffs' insurance costs. Thus, Defendants are directly responsible for the increased risk to Plaintiffs' property as well as the concomitant increases in costs to insure Plaintiffs' property.

39.

The increases in Plaintiffs' insurance costs attributable to global warming are distinct and quantifiable, as are the increases in risk of flood and storm damage, as evidenced by numerous risk analyses performed by the insurance industry and other groups.

40.

Consequently, Plaintiffs seek recovery of all increases in their insurance premiums that are attributable to Defendants' greenhouse gas emissions and the flooding and storm risks associated therewith.

41.

In addition to all other relief sought against the Defendants, the Plaintiffs and Plaintiff Class seek and are entitled to receive punitive damages from the Defendants for their conduct which amounts to willful indifference, extreme recklessness, gross negligence and an illegal conspiracy to prevent dissemination of scientific information regarding the specific hazards created by Global Warming.

42.

As a direct and proximate result of Defendants' conduct, Plaintiffs and the Plaintiff Class have sustained the following non-exclusive damages:

- a. Loss of property;

- b. Loss of the use and enjoyment of their property;
- c. Loss of their business and/or income;
- d. Incurred clean-up expenses, past, present and future;
- e. Disruption of the normal course of their lives;
- f. Loss of loved ones;
- g. Mental anguish and emotional distress;
- h. Personal injury;
- i. Hedonic damages;
- j. Increased insurance costs;
- k. Decreased availability of insurance;
- l. Litigation, Expert Witness Fees, and Court costs; and
- m. Such other elements of damage as may be shown at trial.

Claim 4: Declaratory Judgment

43.

Plaintiffs re-allege paragraphs 1-42.

44.

Several Defendants have been sued by various states, individuals, and other entities for damages arising from Defendants' greenhouse gas emissions.

45.

Although there are no federal statutes or regulations governing emissions of carbon dioxide, Defendants have repeatedly taken the stance that state law claims arising from such emissions are preempted by federal law.

46.

Plaintiffs now seek a declaration that state law tort claims arising from the defendants' emissions of carbon dioxide are not preempted by Federal law.

Class Designation

47.

Plaintiffs seek to have this matter certified and maintained as a class action as to a class of plaintiffs who were residents of and/or property owners in the State of Mississippi who suffered loss and harm as a result of Hurricane Katrina. Plaintiffs meet the class-certification requirements of Fed. R. Civ. P. Rule 23 because:

- a. the class of Plaintiffs harmed by Defendants' actions is so numerous that joinder of all members is impracticable;
- b. there are questions of law or fact common to the class;
- c. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- d. the representative parties will fairly and adequately protect the interests of the class;
- e. if Plaintiffs pursued claims against defendants individually, it would create a risk of inconsistent or varying adjudications and might establish incompatible standards of conduct for Defendants;
- f. adjudication in this matter will, as a practical matter, be dispositive of other Plaintiffs' claims who are not parties to this adjudication, and a decision in this case might substantially impair or impede their ability to protect their interests; and

- g. questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and therefore a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Request for Jury Trial

48.

Plaintiffs request a jury trial.

Prayer for Relief

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for relief and judgment against Defendants as follows:

- a. for such damages as are reasonable in the premises for all losses sustained by Plaintiffs, including litigation expenses, expert witness fees, legal interest, attorneys' fees and all costs of this proceeding;
- b. for a declaration that state law tort claims arising from defendants' carbon dioxide emissions are not preempted by federal law;
- c. certification of this matter as a class action for the class of plaintiffs who were residents of and/or property owners in the State of Mississippi who suffered loss and harm as a result of Hurricane Katrina;
- d. punitive and exemplary damages for the willful, wanton and grossly negligent conduct of the Defendants; and
- e. such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted this 26th day of May, 2011.

Respectfully Submitted:
F. Gerald Maples, P.A.



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