

## *Federal Court Dismisses California's Global Warming Lawsuit against Automakers*

by Gabrielle Sigel and Oscar Marrero

Another attempt to hold private parties liable for global warming has failed. The Attorney General of California ("California") sued six major automakers, claiming the global warming effects caused by carbon dioxide ("CO<sub>2</sub>") emissions from vehicles constitute a public nuisance for which the automakers are required to pay millions in damages. *California v. General Motors Corp.*, No. C06-05755. However, on September 17, 2007, Judge Martin J. Jenkins of the United States District Court for the Northern District of California dismissed California's claim as a nonjusticiable political question.

Federal courts have recently dismissed two other nuisance cases on similar grounds. In *Connecticut v. American Electric Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005), eight states brought a nuisance claim to compel electric power generators to reduce their greenhouse gas ("GHG") emissions, and the court dismissed that claim as nonjusticiable.

*American Electric* is currently on appeal to the United States Court of Appeals for the Second Circuit. On August 30, 2007, a federal district court in Mississippi dismissed a nuisance claim brought by property owners claiming that the defendant companies' GHG emissions had contributed to global warming, which contributed to the severity of Hurricane Katrina, and which in turn damaged the property owners. See *Comer v. Murphy Oil USA, Inc.*, No. 05-CV-436LG (S.D. Miss. Aug. 30, 2007). The court in *Comer* held that the property owners lacked standing, and it also found their claim nonjusticiable.

### **Background**

California brought a nuisance action against six automakers under federal and state law, alleging that their vehicles are responsible for over 30% of California's CO<sub>2</sub> emissions. California alleged that those emissions cause global warming, which has melted the snow pack in

the Sierra Nevada, thereby reducing a large source of the state's water and increasing the risk of flooding. California also alleged that global warming is responsible for coastline erosion and increased risk of wildfires. These consequences, California claimed, constitute a public nuisance under both federal and state common law, caused by the automakers. California sought to recover the millions of dollars needed to respond to the effects of global warming. In defense, the automakers argued that a nuisance claim based on global warming presented a nonjusticiable political question. Judge Jenkins agreed with the automakers that California's federal nuisance law claim was nonjusticiable, and he granted their motion to dismiss.

### **Justiciability**

Under the U.S. Constitution's separation of powers doctrine, disputes involving political questions should be committed to the political branches of government and not

decided by the judiciary. If a court decides that a claim involves a political question, it must be dismissed as nonjusticiable. Judge Jenkins refused to hear California's federal nuisance claim, finding that to do so, he must make a policy determination on global warming, a determination which he decided must be made solely by the White House and/or Congress. To support his ruling, Judge Jenkins cited the political branches' long involvement with global warming issues, and he noted that recent Supreme Court precedent (*Massachusetts v. Environmental Protection Agency* ("EPA"), 127 S. Ct. 1438 (2007)) supported vesting global warming regulatory authority with the EPA. Judge Jenkins also ruled that the case was nonjusticiable because it implicated interstate commerce and foreign policy, areas constitutionally committed to the political branches. Finally, Judge Jenkins found that no standards were available with which he could adjudicate the case due to global warming's complex and political nature.

## Remaining Questions

Judge Jenkins did not address California's state-law nuisance claim; accordingly, he dismissed that claim without prejudice. California now has the option of refiling its suit against the automakers in state court on the state-law nuisance claim. Also, by ruling that California's federal nuisance claim was nonjusticiable, Judge Jenkins did not address whether global warming was a violation of federal common law. Should plaintiffs in another lawsuit succeed in overcoming the justiciability hurdle, they still will have to convince a court that federal common law recognizes such a claim.

## Conclusion

Taken together, *American Electric*, *Comer*, and now *General Motors* illustrate a judicial reluctance to expand common law tort liability to cover damages allegedly caused by GHG emissions. These global warming tort cases have been decided by federal district courts, and no court of appeals has yet to

decide this issue. *American Electric* is now before the Second Circuit, and *Comer* and *General Motors* may be appealed to the Fifth and Ninth Circuits, respectively. If these courts reach conflicting conclusions regarding tortious liability for GHG emissions, the Supreme Court may once more enter the global warming fray to settle that conflict. These trial court decisions, however, may lead to more pressure on Congress and the EPA to accelerate GHG emissions legislation and regulation, which will change the course of all global warming-related litigation.

## Climate and Clean Technology Law Practice Members

### Robert L. Graham, Partner

Co-Chair, Climate and Clean Technology Law Practice  
rgraham@jenner.com  
312 923-2785

### Gabrielle Sigel, Partner

Co-Chair, Climate and Clean Technology Law Practice  
gsigel@jenner.com  
312 923-2758

### Donald E. Batterson, Partner

dbatterson@jenner.com  
312 923-2607

### David A. Churchill, Partner

dchurchill@jenner.com  
202 639-6056

### Barbara M. Flom, Partner

bflom@jenner.com  
312 923-2639

### Bill S. Forcade, Partner

bforcade@jenner.com  
312 923-2964

### Ronald B. Grais, Partner

rgrais@jenner.com  
312 923-2810

### Richard J. Gray, Partner

rgray@jenner.com  
312 923-2939

### E. Lynn Grayson, Partner

lgrayson@jenner.com  
312 923-2756

### John J. Hamill, Partner

jhamill@jenner.com  
312 923-2684

### Mark R. Heilbrun, Partner

mheilbrun@jenner.com  
202 639-6013

### Donald S. Horvath, Partner

dhorvath@jenner.com  
312 923-2668

### Matthew L. Jacobs, Partner

mjacobs@jenner.com  
202 639-6096

### Vincent E. Lazar, Partner

vlazar@jenner.com  
312 923-2989

### Christopher D. Liguori, Partner

cliguori@jenner.com  
312 923-2789

### Edward F. Malone, Partner

emalone@jenner.com  
312 923-2852

### Lorelie S. Masters, Partner

lmasters@jenner.com  
202 639-6076

### Gail H. Morse, Partner

gmorse@jenner.com  
312 923-2672

### Raymond N. Nimrod, Partner

rnimrod@jenner.com  
312 923-8306 • 212 891-1653

### Adam Petravicius, Partner

AdamP@jenner.com  
312 923-2621

### Donald I. Resnick, Partner

dresnick@jenner.com  
312 923-2656

### Lawrence S. Schaner, Partner

lschaner@jenner.com  
312 923-2689

### Steven M. Siros, Partner

ssiros@jenner.com  
312 923-2717

### William R. Stoughton, Partner

wstoughton@jenner.com  
214 746-5748

### James A. Vroman, Partner

jvroman@jenner.com  
312 923-2836

### Anne S. Kenney, Of Counsel

akenney@jenner.com  
312 840-8676

### Henry M. Schaffer, Of Counsel

hschaffer@jenner.com  
312 840-7673

### Ruth A. Schoenmeyer, Of Counsel

rschoenmeyer@jenner.com  
312 840-8651

### Kathy C. Weinberg, Of Counsel

kweinberg@jenner.com  
214 746-5789

### Kristen M. Boike, Associate

kboike@jenner.com  
312 923-8366

### Patricia L. Boye-Williams, Associate

pboye-williams@jenner.com  
312 840-8631

### Frank Eichenlaub, Associate

feichenlaub@jenner.com  
312 840-7247

### Brian C. Haussmann, Associate

bhaussmann@jenner.com  
312 840-7474

### Keri L. Holleb Hotaling, Associate

khotaling@jenner.com  
312 840-8629

### J.H. Jennifer Lee, Associate

jenniferlee@jenner.com  
312 840-7670

### Katherine Rahill, Associate

krahill@jenner.com  
312 840-8618

### Allison A. Sapsford, Associate

asapsford@jenner.com  
312 923-8347

### Shorge K. Sato, Associate

ssato@jenner.com  
312 923-2641

### Alexandra E. Weisfeld, Associate

aweisfeld@jenner.com  
312 840-8606

## Office Locations

### Chicago

330 N. Wabash Avenue  
Chicago, IL 60611-7603  
312 222-9350

### Dallas

1717 Main Street  
Suite 3150  
Dallas, TX 75201-4647  
214 746-5700

### New York

919 Third Avenue  
37th Floor  
New York, NY 10022-3908  
212 891-1600

### Washington, DC

601 Thirteenth Street, N.W.  
Suite 1200 South  
Washington, DC 20005-3823  
202 639-6000