

COAL, INC., INTERNATIONAL COAL)
GROUP, INC., ALLIANCE RESOURCE)
PARTNERS LP, ALPHA NATURAL)
RESOURCES INC., CONSOL ENERGY)
INC., FOUNDATION COAL HOLDINGS)
INC., MASSEY ENERGY CO.,)
WESTMORELAND COAL CO., PEABODY)
ENERGY CORP., AND NATURAL)
RESOURCE PARTNERS LP,)
))
Defendants.))
))
_____)

THIRD AMENDED CLASS ACTION COMPLAINT

NOW COME plaintiffs NED COMER husband of/and BRENDA COMER, ERIC HAYGOOD husband of/and BRENDA HAYGOOD, LARRY HUNTER husband of/and SANDRA L. HUNTER, MITCHELL KISIELEWSKI husband of/and JOHANNA KISIELEWSKI, JOSEPH WILLIAMS husband of/and CYNTHIA WILLIAMS, ELLIOTT ROUMAIN husband of/and ROSEMARY ROUMAIN, JUDY OLSON, and DAVID LAIN, through undersigned counsel, appearing herein individually and on behalf of all other persons similarly situated, who file this Third Amended Complaint in accordance with this Honorable Court’s order dated 23 February 2006, and aver as follows:

The Oil Company Defendants

1.

Made defendants herein are:

- a) Murphy Oil USA, Inc. a Delaware corporation with its principal office at 200 Peach Street, El Dorado, Arkansas 71730, which may be served through its agent CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi that, at all times pertinent hereto, engaged in the exploration,

development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;

- b) Universal Oil Products Company (UOP), a Delaware corporation with its principal office at 25 East Algonquin Road, Des Plaines, Illinois 60017-1057, which may be served through its agent Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, supported and provided equipment for the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;
- c) Shell Oil Company, a Delaware corporation with its principal office at 910 Louisiana, Houston, Texas 77002, which may be served through its agent Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;
- d) Chevron Corp. d/b/a Chevron U.S.A., Inc. and Texaco, Inc., now merged as ChevronTexaco Corp., a Delaware corporation with its principal office at 6001 Bollinger Canyon Road, San Ramon, California 94583, which may be served through its agent CSC of Rankin County, Inc., Mirror Lake Plaza, 2829 Lake Plaza Drive #1502, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;
- e) ExxonMobil Corporation, a New Jersey corporation with its principal office at 5959 Las Colinas Boulevard, Irving, Texas 75039, which may be served through its agent Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;
- f) BP p.l.c. d/b/a BP Amoco Chemical Company and BP Energy Company (both Delaware corporations), a British corporation with its principal office at 1 St James's Square, London, SW1Y 4PD, UK, which may be served through its agent CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;

- g) ConocoPhillips Company, a Delaware corporation with its principal office at 600 North Dairy Ashford, Houston, Texas 77079, which may be served through its agent CSC of Rankin County, Inc., Mirror Lake Plaza, 2829 Lake Plaza Drive #1502, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi, and which at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels;
- h) American Petroleum Institute (API), a Washington D.C. non-profit corporation with its principal office at 118 North Congress Street, Jackson, Mississippi 39201, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi. API is a trade association whose membership includes the Oil and Refining companies identified herein, and at all times material hereto, had information about the threat of global warming which it failed to disclose to the public; and
- i) Oil and Refining Entities 1-100, companies whose names are not currently known but were authorized to do and doing business in the State of Mississippi that, at all times pertinent hereto, engaged in the exploration, development, production, refining, and combustion of oil, petrochemicals, and other carbon based fossil fuels.

The aforesaid defendants (sometimes referred to herein as the “Oil Company Defendants”) are liable to plaintiffs and the class of plaintiffs described herein (sometimes referred to collectively as the “Plaintiff Class”) for the reasons enumerated *infra*:

The Coal Company Defendants

2.

Also made defendants herein are:

- a) American Electric Power Co. Inc., a New York corporation with its principal office at 1 Riverside Plaza, Columbus, Ohio 43215-2373.
- b) Southern Company Services, Inc., a Delaware corporation with its principal office at 270 Peach Tree St., Atlanta, Georgia 30308, which may be served through its agent Corporation Service Company, 506 S President St., Jackson, Mississippi 39201, and which is authorized to do and doing business in the State of Mississippi.
- c) Tennessee Valley Authority, a Federal corporation with its principal office at 400 W. Summit Hill Dr., Knoxville, Tennessee 37902-1499.

- d) Xcel Energy Inc., a Minnesota corporation with its principal office at 800 Nicollet Mall, Minneapolis, Minnesota 55402.
- e) TXU Corp., a Texas corporation with its principal office at 1601 Bryan Street, Dallas, Texas 75201-3411, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- f) Cinergy Corp., a Delaware corporation with its principal office at 139 East Fourth Street, Cincinnati, Ohio 45202, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- g) Reliant Energy Inc., a Delaware corporation with its principal office at 1000 Main Street, Houston, Texas 77002, which may be served through its agent Corporation Service Company, 506 S President St., Jackson, Mississippi 39201.
- h) Edison International, a California corporation with its principal office at 2244 Walnut Grove Avenue, P.O. Box 999, Rosemead, California 91770.
- i) E.ON AG, a German corporation doing business in the United States as Powergen and LG&E Operating Services with its principal office at E On-Platz 1, Düsseldorf, D-40479, Germany.
- j) Progress Energy Inc., a North Carolina corporation with its principal office at 410 South Wilmington Street, Raleigh, North Carolina 27601-1748.
- k) Ameren Corp., a Missouri corporation with its principal office at 1901 Chouteau Avenue, St. Louis, Missouri 63103.
- l) Scottish Power PLC, a British company doing business in the United States as MidAmerican and Pacificorp with its principal office at 1 Atlantic Quay, Glasgow, G2 8SP, UK.
- m) Entergy Corp., a Delaware corporation with its principal office at 639 Loyola Avenue, New Orleans, LA 70113, which may be served through its agent James W. Snider, Jr., 308 East Pearl Street, P.O. Box 1640, Jackson, Mississippi 39215-1640, and which is authorized to do and doing business in the State of Mississippi.
- n) Allegheny Energy Inc., a Maryland corporation with its principal office at 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.

- o) Duke Energy Corp., a North Carolina corporation with its principal office at 526 South Church Street, Charlotte, North Carolina 28202-1803, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- p) Firstenergy Corp., an Ohio corporation with its principal office at 76 South Main Street, Akron, Ohio 44308, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- q) Dominion Resources Inc., a Virginia corporation with its principal office at 120 Tredegar Street, Richmond, Virginia 23219.
- r) DTE Energy Co., a Michigan corporation with its principal office at 2000 2nd Avenue, Detroit, Michigan 48226-1279, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- s) FPL Group Inc., a Florida corporation with its principal office at 700 Universe Boulevard, Juno Beach, Florida 33408, which may be served through its agent CT Corporation System, 645 Lakeland East Sr. Ste. 101, Flowood, Mississippi 39232, and which is authorized to do and doing business in the State of Mississippi.
- t) Mirant Corp., a Delaware corporation with its principal office at 1155 Perimeter Center West, Suite 100, Atlanta, Georgia 30338, which may be served through its agent National Registered Agents, Inc., 840 Trustmark Bldg., 248 E Capitol St. Jackson, Mississippi 39201, and which is authorized to do and doing business in the State of Mississippi.
- u) AES Corp., a Delaware corporation with its principal office at 4300 Wilson Boulevard, Suite 1100, Arlington, Virginia 22203.
- v) Arch Coal, Inc., a Delaware corporation with its principal office at One City Place Drive, Suite 300, St Louis, Missouri 63141.
- w) International Coal Group, Inc., a Delaware corporation with its principal office at 200 Ashland Drive, Ashland, Kentucky 44101.
- x) Alliance Resource Partners LP, a limited partnership organized under the laws of Delaware, with its principal office at 1717 South Boulder Avenue, Suite 600, Tulsa, Oklahoma 74119.

- y) Alpha Natural Resources Inc., a Delaware corporation with its principal office at One Alpha Place, Abingdon, Virginia 24212.
- z) CONSOL Energy Inc., a Delaware corporation with its principal office at 1800 Washington Road, Pittsburgh, Pennsylvania 15241.
- aa) Foundation Coal Holdings Inc., a Delaware corporation with its principal office at 999 Corporate Boulevard, Suite 300, Linthicum Heights, Maryland 21090-2227.
- bb) Massey Energy Co., a Delaware corporation with its principal office at 4 North 4th Street, Richmond, Virginia 23219.
- cc) Westmoreland Coal Co., a Delaware corporation with its principal office at 2 North Cascade Avenue, 14th Floor, Colorado Springs, Colorado 80903.
- dd) Peabody Energy Corp., a Delaware corporation with its principal office at 701 Market Street, St. Louis, Missouri 63101-1826.
- ee) Natural Resource Partners LP, a limited partnership organized under the laws of Delaware, with its principal office at 601 Jefferson Street, Suite 3600, Houston, Texas 77002.

The aforesaid defendants (sometimes referred to herein as the “Coal Company Defendants”) at all times pertinent hereto, engaged in the exploration, development, mining, production and/or combustion of coal and other carbon based fossil fuels. These activities tortiously caused damage to Plaintiffs’ property in Mississippi, and are liable to plaintiffs and the class of plaintiffs described herein (sometimes 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).

Defendants’ Greenhouse Gas Emissions Cause Global Warming

3.

Defendants emit substantial quantities of carbon dioxide, methane, and other substances collectively referred to as “greenhouse gases,” increasing the concentration of these gases in Earth’s atmosphere.

4.

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.

5.

The Earth's climate has "demonstrably changed" as a result of Defendants' greenhouse gas emissions.¹ The demonstrable changes include higher and rapidly increasing air and water temperatures,² rapid sea level rise,³ melting of arctic, Antarctic, and alpine glaciers,⁴ more severe droughts,⁵ increased El Niño events,⁶ and increased weather-related economic losses.⁷

6.

Defendants' emissions have also substantially increased in frequency and intensity of storms known as hurricanes;⁸ effectively doubling the frequency of category four and five hurricanes over the past thirty years.⁹

7.

¹ Robert T. Watson, *et al.*, Intergovernmental Panel on Climate Change, Third Assessment Report: Summary for Policymakers at 4 (2001) (attached as Exhibit 1 and *available at* <http://www.ipcc.ch/pub/un/syren/spm.pdf>) (last visited April 18, 2006). The IPCC is the most relied-upon authority on global climate change issues. Their report specifically states that "[t]here is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities. Detection and attribution studies consistently find evidence for an anthropogenic signal in the climate record of the last 35 to 50 years." *Id.* at 5.

² "Globally it is very likely that the 1990s was the warmest decade, and 1998 the warmest year, in the instrumental record (1861–2000). The increase in surface temperature over the 20th century for the Northern Hemisphere is likely to have been greater than that for any other century in the last thousand years." *Id.* (internal citations omitted).

³ *Id.* at 6.

⁴ *Id.*

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ Tropical cyclones in the northern hemisphere are referred to as hurricanes and those in the southern hemisphere are referred to as typhoons.

⁹ See Webster, P.J., G.J. Holland, J.A. Curry, H.-R. Chang, *Changes in Tropical Cyclone Number, Duration and Intensity in a Warming Environment*, SCIENCE, 309 (5742), 1844-1846 (2005) (attached as Exhibit 2 and *available at* <http://www.sciencemag.org/cgi/reprint/309/5742/1844.pdf>) (last visited April 18, 2006).

One of the most prevalent and problematic greenhouse gases is methane,¹⁰ which the EPA has determined is twenty-one times more effective at trapping atmospheric heat than carbon dioxide.¹¹

8.

Defendants release methane into the atmosphere through their mining and drilling operations. A prime example is the venting (intentionally releasing) of methane from oil and gas wells, this represents a significant portion of annual methane emissions in the United States.¹² To the extent that the defendants fail to capture and reinject methane into the ground, and to the extent that methane enters the atmosphere as a direct result of Defendants' mining, transporting, pumping, piping, refining, combustion, and/or distribution activity, Defendants actively increase global warming by releasing methane into the atmosphere.

9.

There has been a perilous increase in the atmospheric concentration of carbon dioxide from approximately 280 parts per million (ppm) at the outset of the Industrial Revolution to 381 ppm during 2005. If current trends continue, including Defendants' willful refusal to employ currently available mitigation technologies, the concentration of carbon dioxide is likely to exceed 700 ppm by the end of this century. According to the Intergovernmental Panel on Climate Change (IPCC), this could lead to global warming of between 1.4 and 5.8°C with concomitant increases in the frequency and magnitude of tropical cyclones (2005's Category 5

¹⁰ See Intergovernmental Panel on Climate Change, Third Assessment Report: Climate Change 2001, Fig. 2-2 (attached as Exhibit 3).

¹¹ See U.S. EPA, Global Warming Potentials and Atmospheric Lifetimes (attached as Exhibit 4 and available at <http://www.epa.gov/nonco2/econ-inv/table.html>) (last visited April 18, 2006).

¹² See Government Accountability Office, Natural Gas Flaring and Venting: Opportunities to Improve Data and Reduce Emissions at 18 (July 2004) (attached as Exhibit 5 and available at <http://www.gao.gov/new.items/d04809.pdf>) (last visited April 18, 2006).

Hurricanes Katrina, Rita, Emily, and Wilma as examples) and other severe weather conditions, plus damage to many natural ecosystems.

10.

Defendants have engaged in activities which have produced the greatest source of the greenhouse gases that cause Global Warming.

11.

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.

12.

There is now an overwhelming consensus within the scientific community that the planet Earth is getting warmer, this temperature increase is a direct result of the illegal and tortious conduct of these defendants, and the problem is getting worse. There is now more carbon dioxide in the Earth's atmosphere than at any other point in the past 650,000 years.

Defendants' Actions Were a Proximate and Direct Cause of the Increase in the Destructive Capacity of Hurricane Katrina

13.

On 29 August 2005 Hurricane Katrina struck the Mississippi Gulf Coast causing extensive and catastrophic damages by force of wind and related weather events all of which caused loss of life and property as more fully described herein.

14.

Upon striking the Mississippi Gulf Coast, Hurricane Katrina spawned tornados, mesovortices, wind shear, a massive storm surge and related weather events which caused damage, death and injury to persons, homes, businesses and other property interests across the State of Mississippi.

15.

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, all of which were a direct and proximate result of the defendants' greenhouse gas emissions.

This Court Has Jurisdiction and Venue is Proper

16.

This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 because it involves a dispute between citizens of different states and the matter in controversy exceeds \$75,000.

17.

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.

18.

This case presents discrete and justiciable questions (whether Defendants' emissions of greenhouse gasses caused damage to Plaintiffs' property, and, if so, the extent of those damages). There are manageable standards for resolving the controversy (common law claims of nuisance, unjust enrichment, negligence, civil conspiracy, and intentional torts including fraudulent

misrepresentation and concealment and trespass, with all such causes of action being cognizable under the laws of the State of Mississippi and appropriate legal regimes imported by the applicable choice of law rules). These issues are neither textually committed to a coordinate political department nor do they implicate the primary authority of the executive or legislative branch.¹³

19.

Plaintiffs do not ask this Court to regulate Global Warming or change national global warming policy. 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, Magna Carta, the 5th, 7th, 9th, and 14th amendments to the United States Constitution, and Art. 3 of the Mississippi Constitution).

20.

To the extent that this petition raises political issues, those issues are subordinate to the plaintiffs' physical and monetary damages. Furthermore, although Global Warming causes tremendous damage to the environment, public health, and public and private property every year, there is a dearth of meaningful political action in the United States to address Global Warming problems.¹⁴ Thus, to the extent that the political process has failed to provide people

¹³ It is also evident that Article III resolution is the only viable choice here as the branches of government authorized by Articles I and II of the U.S. Constitution have refused to act, either by virtue of corruption of the process or the tortious and illegal conduct of these Defendants in misleading and manipulating those branches of government into inaction and taking the wrong actions in those instances where they have acted.

¹⁴ This is due, at least in part, to the substantial gap in political power between the people who cause global warming (a relatively concentrated group of powerful, well-connected, and wealthy companies), and the interests most affected by global warming (including the Plaintiffs in this case).

harmful by global warming with means to recover for their injuries, the Courts must execute their Constitutional mandate embodied in Article III of the U.S. Constitution.

Unjust Enrichment

21.

There have been significant increases in the price of gasoline, diesel fuel, jet fuel, natural gas and other end-use petrochemicals to which the Oil Company Defendants have fraudulently attributed, at least in part, to a lack of domestic oil refining capacity and the cost of compliance with domestic environmental regulations. These artificially inflated prices, justified by patent untruths, constitute illegal profiteering. This profiteering on the part of the Oil Company Defendants has (through their manipulation of gasoline, diesel fuel, jet fuel, natural gas and other petrochemicals prices) resulted in billions of dollars of tortiously manufactured profits during the same period in which they failed to employ state of the art technological and commercially viable options to reduce their production of these environmentally harmful greenhouse gases.

22.

In addition to the foregoing tortious price manipulation (ironically under the guise of increased costs caused by Hurricane Katrina, a classic example of fraud in the offing crying out for application of estoppel), the Oil Company Defendants have continued to raise the price of gasoline beyond genuine market-driven levels, all of which has resulted in such record-breaking profits that even Congress was forced to initiate inquiry.¹⁵ For example, Shell Oil Company alone raised its price of gasoline 6 times over a ten day period immediately following the landfall

¹⁵ This Congressional inquiry has predictably resulted in no Article II action to stop the profiteering. Perhaps the most telling detail of these hearings was the fact that the investigating Senate Committee refused to require that the oil company executives be sworn before giving their “testimony.”

of Hurricane Katrina.¹⁶ Defendants' concerted activity continues to force gasoline (and the other aforementioned products') prices above competitive market value. This activity constitutes price gouging and other market manipulation in violation of law by which the Oil Company Defendants have been unjustly enriched at the expense of members of the Plaintiff Class and other consumers.¹⁷ Certain members of the Oil Company Defendant Class have been sued and/or criminally investigated for price gouging by the Attorneys General of New Jersey, Florida, and other states, reminiscent of the States taking action where the Federal Government would not.

23.

The Oil Company Defendants have committed multiple violations of federal and state environmental regulations and laws. These violations have further harmed the environment and are increasing the production of greenhouse gases and the effects of Global Warming (*e.g.* rising ocean temperatures, increases in tropical cyclone frequency and strength, and rising sea levels). In violating various environmental laws, Defendants have wrongfully generated tremendous profits at the expense of the Plaintiffs, the public, human health and the environment.

Civil Conspiracy and Aiding and Abetting

24.

The American Petroleum Institute (API) and its constituent members have been aware for many years of the dangers posed by the build-up of the greenhouse gasses and the direct

¹⁶ Juan Gonzalez, *Shell Game at Gas Stations Pays Big*, NEW YORK DAILY NEWS, Sept. 8, 2005.

¹⁷ In other words, Defendants are holding onto profits to which they are not lawfully entitled. *See Fordice Const. Co. v. Cent. States Dredging Co.*, 631 F. Supp. 1536, 1538-39 (S.D. Miss. 1986) ("Mississippi law provides that, in an action for unjust enrichment, 'the plaintiff need only allege and show that the defendant holds money which in equity and good conscience belongs to the plaintiff.' The requirements of proof of unjust enrichment are neither technical nor complicated and, [Plaintiffs] can state a claim against Defendants on the basis that [Defendants] were unjustly enriched because they received the profits...they should not have been permitted to [receive].").

relationship to the activities of their members who are the Oil Company Defendants. Despite this knowledge, the API and its members, the Oil Company Defendants, have collectively and unlawfully disseminated misinformation about the relationship between the activities of its members and Global Warming.

25.

The API and other Oil Company Defendants have engaged in concerted financial activity—far in excess of \$1 million—in furtherance of a tortious civil conspiracy to “reposition global warming as theory rather than fact.”¹⁸ In addition, “from 2001 to 2003, ExxonMobil [alone] donated more than \$6.5 million to organizations that attack mainstream climate science and oppose greenhouse-gas controls.”¹⁹ All of this activity has been part of a concerted and tortious effort to intentionally decrease public awareness and divert public policy activity away from the real dangers associated with Global Warming and the known need to restrict the emission of greenhouse gasses.²⁰

26.

¹⁸ Sandi Doughton, *The Truth About Global Warming*, THE SEATTLE TIMES, Oct. 9, 2005 (attached as Exhibit 6) (citing “memos first uncovered by former Boston Globe journalist Ross Gelbspan”).

¹⁹ *Id.*

²⁰ Specific evidence of this conspiratorial conduct is documented by a 1998 New York Times article (attached as Exhibit 7), in which API, Exxon, Chevron and The Southern Company admit their efforts (via lucrative financing and admitted targeting of mercenary “scientists”) to intentionally deceive, mislead and perpetrate a fraud upon these Plaintiffs, the public and the government—all with the specific intent to continue to be unjustly enriched at the expense of the public, human health and the environment.

This conspiracy²¹ delayed and otherwise interfered with individual and government action to address Global Warming, and consequently contributed to Plaintiffs' injuries enumerated *supra* and *infra*.

27.

In financing and otherwise orchestrating the effort to suppress genuine Global Warming science and divert public policy activity away from greenhouse gas regulation, Defendants aided and abetted this illegal conduct by knowingly providing substantial assistance to persons engaged in wrongful conduct, all of which contributed to the losses and injuries sustained by the Plaintiffs and the Plaintiff Class.

Public and Private Nuisance

28.

Defendants have willfully, wrongfully, unreasonably, unwarrantably and unlawfully used their property and conducted their business to mine, drill, manufacture, release, vent, and/or combust substances in such a way as to produce massive amounts of greenhouse gasses.

29.

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*.

30.

²¹ A stated goal of this illegal conspiracy was to prevent government action by disseminating false information which would preclude Senate ratification of the Kyoto Treaty. *Id.* (noting that among the conspirators' goals was "a campaign to recruit a cadre of scientists who share the industry's views of climate science and to train them in public relations so they can help convince journalists, politicians and the public that the risk of global warming is too uncertain to justify controls on greenhouse gases like carbon dioxide").

The Defendants' greenhouse gas emissions have contributed to sea level rise,²² 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 caused by the subsumption and erosion of public beaches.
- d. Loss of the use and enjoyment of public trust resources caused by subsumption of and saltwater intrusion into habitat for fish and wildlife. The destruction of this habitat reduces its utility for hunters, fisherman, birdwatchers, boaters, campers, and other recreationists.
- e. Increased risk of property damage and loss as a result of hurricane activity in the Gulf of Mexico. Coastal wetlands and beaches act as a natural buffer and barrier to cyclonic storms in the Gulf of Mexico, and to the extent that they are being destroyed by rising sea levels, coastal residents have become much more prone to storm damage.

Trespass

31.

²² Robert T. Watson, *et al.*, Intergovernmental Panel on Climate Change, Third Assessment Report: Summary for Policymakers at 6 (2001) (previously attached as Exhibit 1).

The 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.

32.

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

Negligence

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.

Fraudulent Misrepresentation and Concealment

36.

Defendants actively engaged in Public Relations and Public Policy campaigns to divert the public's attention from the dangers posed by Global Warming.²³

²³ Examples of this are found in the activities discussed in Exhibits 6 and 7.

37.

Supported by “science” they knew to be false and misleading, and which was financed and manufactured by the very same revenues which were illegally generated by the activities set forth in paragraphs 21-23, Defendants made false and material misrepresentations about the existence of Global Warming, the extent of Defendants’ greenhouse gas emissions and the threats Global Warming posed to public health, the environment and these Plaintiffs.

38.

Defendants made these materially false statements intending to persuade the Federal Government and state governments to refuse to regulate the emission of greenhouse gases, and to seduce the general public into consuming more of Defendants’ products.

39.

At the time Defendants made these materially false statements, the public and State and Federal Governments did not know that Defendants’ statements were false. The State and Federal Governments, acting upon Defendants’ statements and representations, refused to regulate greenhouse gas emissions. The public had a right to rely and did rely upon Defendants’ statements, and continued to consume products in ways that increased Global Warming, all of which resulted in continued and increased profits to the Defendants. Plaintiffs’ and Plaintiff Class’s injuries were proximately caused by that reliance.

Injuries

40.

As a direct and proximate result of the activities of the Defendants (including their production of environmentally harmful by-products), there has been a marked increase in global temperature which, in turn, produced the conditions whereby a storm of the strength and size of

Hurricane Katrina would inevitably form and strike the Mississippi Gulf Coast resulting in extensive death, injury and destruction. As a result thereof, the Plaintiff Class has 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) Litigation, Expert Witness Fees, and Court costs; and
- k) Such other elements of damage as may be shown at trial.

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.

The Chemical Manufacturer Defendants

42.

Also made defendants are:

- a) EI DuPont de Nemours & Co., a Delaware corporation with its principal office at 1007 Market Street, Wilmington, Delaware 19898 which may be served through its agent CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.
- b) Honeywell International, Inc., a Delaware corporation with principal office at 101 Columbia Road, Morris Township, New Jersey 07962 which may be served through its agent Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201.
- c) The Dow Chemical Co., Inc., a Delaware corporation with its principal office at 2030 Dow Center, Midland, Michigan 48674 which may be served through its agent CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.
- d) American Chemistry Council, Inc., a New York Corporation and trade association with its principal office at 1300 Wilson Blvd., Arlington, Virginia whose membership includes members of the Chemical Manufacturer Defendants, and who had information about the threat of global warming which it failed to disclose to the public.

These Defendants, at all material times, engaged in the production and release of compounds known as “Halocarbons.” These activities tortiously caused damage to Plaintiffs’ and Plaintiff Class’s property in Mississippi, and are liable to plaintiffs and the class of plaintiffs described herein (sometimes 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).

43.

These defendants, which comprise the “Chemical Manufacturer Defendants”, are liable to the Plaintiffs and Plaintiff Class for the following reasons:

Halocarbons

44.

The Chemical Manufacturer Defendants manufacture a class of chemicals known as “halocarbons” which include fluorocarbons (“FCs”), chlorofluorocarbons (“CFCs”), hydrofluorocarbons (“HFCs”), and hydrochlorofluorocarbons (“HCFCs”).

45.

These chemicals are entirely artificial and do not exist in nature. They are also powerful heat-trapping agents—a pound of halocarbon gas is tens of thousands of times more effective at trapping heat than an equivalent amount of carbon dioxide.²⁴ In addition, halocarbons can persist in the atmosphere thousands of times longer than either carbon dioxide or natural gas.²⁵ Thus, while halocarbon emissions are relatively small by volume, their impact on the global warming effect is enormous and long-lasting.²⁶

46.

In manufacturing these dangerous greenhouse gases, the Chemical Manufacturer Defendants substantially contribute to the global warming effects described *supra*.²⁷ As such they are liable to the Plaintiffs and Plaintiff Class for the same damages described *supra*.

47.

The Plaintiff Class further seeks 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:

²⁴ See U.S. EPA, Global Warming Potentials and Atmospheric Lifetimes (previously attached as Exhibit 3) (noting that the global warming potential (GWP) of halocarbons ranges from 140 to 23,900—that is, they trap between 140 and 23,900 times as much heat as carbon dioxide on a per-particle basis).

²⁵ *Id.* (noting that some halocarbons persist in the atmosphere for 50,000 years)

²⁶ See U.S. EPA, In Brief: The U.S. Greenhouse Gas Inventory at 7 (April 2005) (noting that in 2003 halocarbons amounted to the equivalent of 137 trillion grams of carbon dioxide emissions) (attached as Exhibit 8 and *available at* <http://yosemite.epa.gov/oar/globalwarming.nsf/content/ResourceCenterPublicationsGHGEmissionsUSEmissionsInventory2006.html>) (last visited April 18, 2006).

²⁷ See Intergovernmental Panel on Climate Change, Third Assessment Report: Climate Change 2001, Fig. 2-2 (previously attached as Exhibit 3).

- 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.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray for relief and judgment against the Oil Company 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) 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;
- c) punitive and exemplary damages for the willful, wanton and grossly negligent conduct of the Defendants; and
- d) such other and further legal and equitable relief as this Court deems just and proper.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray for relief and judgment against the Coal Company 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) 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;
- c) punitive and exemplary damages for the willful, wanton and grossly negligent conduct of the Defendants; and
- d) such other and further legal and equitable relief as this Court deems just and proper.

WHEREFORE, PREMISES CONSIDERED, plaintiffs further pray for relief and judgment against the Chemical Manufacturer Defendants as follows:

- a) for such damages as are reasonable in the premises for all losses sustained by plaintiffs, including litigation expenses, legal interest, attorneys fees and all costs of this proceeding;
- b) certification of this matter as a class action as to 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;
- c) punitive and exemplary damages for the willful, wanton and grossly negligent conduct of the Chemical Manufacturer Defendants; and
- d) such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted this 18th day of April, 2006.

s/ F. Gerald Maples
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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 18 day of April, 2006, electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of this filing to the following:

Richard L. Forman rforman@fpwk.com
Mary S. Johnson msj@JGMcLaw.com
David L. Martindale dmartindale@hortmanharlow.com,
 jniemeyer@hortmanharlow.com

And further certify that I have caused to be deposited in the U.S. mail a copy of such pleading, postage prepaid to the following Non-ECF parties:

Chevron Corporation
Attn: Charles A. James
6001 Bollinger Canyon Rd.
San Ramon, CA 94583, U.S.A.

Murphy Oil USA
Attn: James E. Baine
Murphy Oil Corporation
200 Peach Street
P.O. Box 7000
El Dorado, AR 71731-7000

Universal Oil Products Co
Attn: Michael Van de Kerckhove
25 East Algonquin Road
Des Plaines, IL 60017-5017

Service of added defendants will be as required by Rule 4 of the Federal Rules of Civil Procedure.

s/ F. Gerald Maples
F. Gerald Maples