A recent U.S. Supreme Court ruling found the Environmental Protection Agency was obligated to regulate greenhouse gases according to the Clean Air Act and take action to control greenhouse emissions.

The outcome of that case, *Massachusetts v. Environmental Protection Agency*, could forecast more climate change litigation. While raising awareness about the federal government’s role in protecting the environment, this case also has the potential to create a snowball effect. Special interest groups and private individuals are poised to use this decision to obtain significant monetary awards against those defendants contributing to global warming. And, if insurers issue relevant property and/or liability policies supporting any entity potentially responsible for greenhouse gas emissions, the carriers ultimately could be left with unlimited exposure.

There’s a clear challenge in demonstrating the link between greenhouse gases and harm to plaintiffs, as compared with tobacco or asbestos litigation where there’s a limited universe of potentially responsible defendants. *Massachusetts v. EPA* illustrates the situation’s complexity, with both majority and minority opinions noting the myriad sources of greenhouse gases. The problem is not just in the United States; Europe, Russia, China and India are contributing as well. Even cows are blamed for a significant amount of greenhouse gases.

Despite this, private interest groups and some individuals already have commenced litigation, and insurers need to be ready. Case in point: A group of Mississippi homeowners sued certain energy and chemical companies alleging their normal business activities contributed to global warming and aggravated property damage caused by Hurricane Katrina. The companies’ liability insurers have vigorously attacked the plaintiffs’ inability to demonstrate causation between global warming and the named defendants.

Although the court allowed plaintiffs to file a third amended complaint, the court noted plaintiffs would eventually have to prove how any individual company, or the collective actions of a group of companies, contributed to global warming through emissions. This was seen in the 2006 case, *Comer v. Nationwide Mutual Insurance Co.*

Also in 2006, in *Barasich v. Columbia Gulf Transmission Co.*, the court went even further, dismissing an entire class action due to lack of substantial evidence linking greenhouse gas emissions from the named defendants to the harm claimed by plaintiffs.

These recent court rulings demonstrate that plaintiffs cannot currently provide admissible evidence of a defendant’s specific contribution to global warming and therefore, specific or measurable harm to plaintiffs. Due to current limitations of climate science and the fact that greenhouse gas sources are so widespread, it is difficult to account for contributions of specific polluters, either individually or collectively on an industrywide basis.

However, if and when science is able to meet the legal requirements of the Federal Rules of Evidence and causation, climate change lawsuits are likely to generate significant damage awards. In the meantime, as these cases heat up, insurers need to aggressively attack climate change plaintiffs on the issue of causation—where they are weakest.

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