


**EXCLUSIVE REPORTS**
[Houston > Print Edition](#)

Friday, July 11, 2008

# Alaskan village tries tobacco tactics

Kivalina suit against 24 energy companies makes similar case in global warming litigation

 Houston Business Journal - by [Ford Gunter](#) Houston Business Journal

[Print Article](#) [Email Article](#) [Reprints](#) [RSS Feeds](#) [Add to Del.icio.us](#) [Digg This](#)

Native Village of Kivalina and City of Kivalina v. ExxonMobil Corp., et al. attracted little attention when the lawsuit was first filed on Feb. 26.

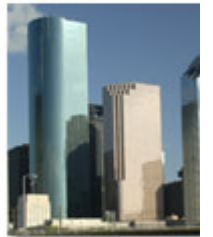
The Alaskan fishing village, population 400, sought \$400 million in damages related to global warming from 24 major energy companies.

On June 30, energy defendants filed motions to dismiss in the Northern California District of the U.S. District Court, using arguments that have so far proven successful in four previous cases of a similar nature. Courts have been reluctant to consider litigation against big business for damages caused by global warming, claiming climate change is more under the jurisdiction of policy-makers in Washington, D.C.

But this case could be different. Unlike the others, it's not a class-action lawsuit. Even more significant, the plaintiff's attorneys have taken a page out of the tobacco litigation book. Tacking on conspiracy allegations to the standard public nuisance claims pursues the same strategy used against Big Tobacco.

"We have in our case allegations that the defendants conspired with each other to mislead the public," says Steve Susman, a partner with Houston law firm Susman Godfrey LLP and co-lead attorney on the Kivalina case.

Lawyers accused various tobacco companies of jointly misleading the public for decades on the effects of cigarette smoking. Susman and his team at the Houston-based firm allege that exploration and production, power and coal companies have conspired to mislead the public about causes and effects of global warming through industry-sponsored trade groups, seen as "scientists for hire" in some circles.


**HOUSTON  
BUSINESS JOURNAL**

[See](#)

Search for Jobs

[View Houston Jobs](#)
**BEGINNERS TO BIG!**
**Entrepreneur**


- [How to write](#)
- [SBA Loan P](#)

**Featured profil**

- [Polished pla](#)
- [Ex-Marine w](#)

Alaskan village tries tobacco tactics - Houston Business Journal:

Three Houston-based defendants -- ConocoPhillips Co., Shell Oil Co. and Reliant Energy Inc. -- either did not return phone calls or declined to comment on pending litigation.

Dynegy Holdings Inc., through spokesman David Byford, stated: "The suit lacks merit and we will vigorously oppose it."

Closely following the case is Jonathan Shoebottom, a litigation partner in the Houston office of Dallas-based Thompson & Knight LLP.

The specialist in environmental litigation has authored an article on the four precedent cases (see box), but is not involved in the Kivalina case or any other climate change litigation.

Shoebottom recognizes that the relationship between energy companies and industry trade groups is an emerging legal issue.

"There's been a lot of pleading about industry trade groups, the participation of companies in industry trade groups, and what they knew and learned about the impacts of their business on global warming," he says.

The deadline for responding is Sept. 18. A court decision denying the motions to dismiss would initiate a discovery phase allowing plaintiff's lawyers to access everything from climate change studies commissioned by the defendants to internal memos on global warming.

Shoebottom says getting past the motions to dismiss and into the discovery phase could produce documents from all defendants concerning their actions and responses to climate change litigation that may be used by other plaintiffs in separate litigation.

"The strategy was to carefully choose a plaintiff with best chance to get past motion to dismiss," he says.

## RELOCATION COST

The Inuit village of Kivalina has been told by the U.S. Army Corps of Engineers that the town will have to relocate in the next 10 years because rising tides, warming ocean temperatures and more frequent storms have battered the ice sheath that has served as a protective barrier for centuries. Relocating all 400 residents could cost up to \$400 million, the lawsuit claims in setting that amount in damages.

Susman is careful in choosing words to describe the end goal.

"A reasonable goal would be to have some of the large defendants agree to relocate this tiny little village," he says. "Not pay them a nickel in money, not pay us big fees. It's not about money. Just to undertake the expense of relocating them to the mainland."

Susman and his co-lead in the Kivalina case, Steve Berman of Hagens Berman Sobol Shapiro LLP in Seattle, were tobacco litigation adversaries when the two squared off in the 1990s. Susman defended Philip Morris USA Inc. against a 13-state class-action lawsuit filed by Berman as part of the conspiracy-charged litigation that eventually led 46 states to settle with the four main tobacco companies for more than \$200 billion -- the largest civil settlement in U.S. history.

Others look at the linkage between tobacco and global warming from a different

## Business Resources

### Starting a Business:

Sponsored by

[iContact®](#)

**Seizing opportunity:**

Spotting a trend was key to getting company growth

### Sales & Marketing

Sponsored by

[Hoovers®](#)

**Connected:** Network

guru has made a career from helping people

### Business Strategy

**Adapt:** Ability to change

has kept this business going through generations.

### Technology

Sponsored by [AT&T](#)

**Clear connections:**

Making VoIP connections with small businesses brings growth.

### HR & Hiring

Sponsored by [SkillSoft®](#)

**Getting out:** Take care planning your comparisons.

## Featured Jobs

- [Solar Developer](#)
- [Endur Openlink D](#)
- [Territory Sales Manager](#) Holdings, Inc.
- [Controller](#) - confidential
- [Director of Nursing](#) [Search Jobs |](#)

[Post](#)

## SPOTLIGHT EMPI

perspective.

Pages: [1](#) [2](#) [Continue Reading →](#)

**READER COMMENTS**

[Contact the Editor](#)

[Need Assistance?](#)

[More Latest News →](#)

[More News Headlines](#)

[Popular News Stories](#)

**Latest News**

- [Comcast rolls out new southeast Texas calling option](#)
- [Survey: Higher costs, prices in store for U.S.](#)
- [Houston Symphony achieves year of note](#)
- [Study: Don't believe the hype on 'superstar' CEOs](#)
- [Venture capital investments 'stable' in second quarter](#)

**Business Pulse Survey**

[How does your company plan for meetings and training sessions?](#)

Are you ready to take control of your career?  
Be your own boss?

**CITY GUIDE SPOTLIGHT - HOUSTON**



- [Attractions in Houston](#)
- [Cocktails in Houston](#)
- [Hotels in Houston](#)
- [Restaurants in Houston](#)

Sponsored by:



You want it all. Challenging every day. Innovation and communications technology environment where innovation is rewarded. You want a career with scope and reach

[Click here to learn more](#)

**Houston Real Estate**

**Featured Property**

Rate: \$12.60-\$13.20  
Building Size: 14,440  
Use Type: Lease

[→ More Houston Real Estate](#)

**Sponsored Links**

[Travel Service](#)

**Houston Business Texas Articles**

**EXTRA**

**America's dreamtowns**

[Bizjournals ranks the small towns with the best quality of life.](#)

- [Profiles of the 10 highest-ranked towns](#)
- [Survey: Where would you like to live?](#)
- [Rankings of 140 towns](#)



**Search Press Releases**

Search by Company, Organization, or Keyword



She needs to get 2000 managers that are used to the OLD WAY used to the NEW WAY.

**HOUSTON**  
**BUSINESS JOURNAL**

Welcome, [mmiura@susmangodfrey.com](mailto:mmiura@susmangodfrey.com)  
[Account](#) | [Email Alerts](#) | [Sign Out](#)

Visit Sales [Lists](#) and [Leads](#)

[HOME](#) | [ONLINE EDITION](#) | [PRINT EDITION](#) | [SUBSCRIBE](#) | [MARKETPLACE](#) | [BUSINESS RESOURCES](#) | [EVENTS](#)

Search Keywords

[GO](#) [Search Archive](#)

[News by Company](#) | [News](#)

**EXCLUSIVE REPORTS**

[Houston](#) > [Print Edition](#)

Friday, July 11, 2008

## Alaskan village tries tobacco tactics

Kivalina suit against 24 energy companies makes similar case in global warming litigation

Houston Business Journal - by [Ford Gunter](#) Houston Business Journal

[Print Article](#)

[Email Article](#)

[Reprints](#)

[RSS Feeds](#)

[Add to Del.icio.us](#)

[Digg This](#)

"They're not taking a page (out of tobacco litigation), they're trying to write a whole new chapter," says Joseph Speelman, chief of litigation, compliance and security for LyondellBasell Industries, a Dutch company with a huge presence in Houston. (Lyondell is not named in the suit.)

"Tobacco litigation was driven by the plaintiffs' bar seeking money and really nothing more," Speelman says. "It took all this money away from tobacco companies and established annuities at the firms from the tobacco companies. Cigarettes went from \$4 a pack to \$7 a pack and there are more kids smoking cigarettes now than before. And several billionaire trial lawyers are running around looking for something to do and one of the things they're trying to do is climate change."

While the tactics may be similar, Speelman doesn't think the motivation behind climate change litigation is the same.

"The people who run it are true believers," he says. "The end is not necessarily money, although it will certainly make a lot. It is changing the world."

To that end, Susman agrees. All 19 Kivalina attorneys are working pro bono.

"The bare minimum is that we are causing people to talk about the issue. People are focusing on the problem," Susman says. "If this increases the public awareness and the frequency of the debate, than we accomplished something."

### POLITICS AND JUSTICE

Political doctrine has been the biggest obstacle to overcome in pursuing climate change



**HOUSTON**  
**BUSINESS**  
*Journal*



See

Search for Jobs

[View Houston Jobs](#)

**BEGINNERS TO BIG:**

**Entrepreneur**



- [How to write](#)
- [SBA Loan P](#)

**Featured profil**

- [Polished pla](#)
- [Ex-Marine w](#)

litigation.

Susman, interviewed before motions to dismiss were filed, expected the standard climate change litigation defense.

"Their main argument is going to be the one that has been successful, that these are political questions, not justiciable ones," Susman says. "We do think our case is different than the other cases. We will try to distinguish the other cases."

The motions to dismiss are, in fact, along those lines. A main argument is lack of subject matter jurisdiction, under which the issue of political doctrine falls.

If legal standing is found to exist, the plaintiffs still have an uphill battle to prove causation -- that emissions and actions from the defendants contributed to global warming, which caused the water to rise and is forcing the village to move.

Lyondell's Speelman considers the case to be "very undemocratic" with "alarming" implications.

"It's stepping into an area that should be reserved for policy debate among the democratic institutions of government," says Speelman.

"The problem with climate change litigation is that it is based on a premise that something could be done, that it's reversible, that it can be slowed down," he notes. "That issue needs to be delved into before we start taking money from people."

Whatever the outcome, few think the courts will actually award the full \$400 million sought in the Kivalina case.

"What I think is more likely is the impact it will have for the intimidation value," Speelman says.

He points out that Duke Energy Corp. dropped 14 permits for coal powered plants across the country when threatened with legal action from environmental groups.

Shoebottom of Thompson & Knight says just getting past the motions to dismiss could be considered a victory for Kivalina.

"If they are able to get one of these lawsuits into discovery, that's going to have some impact in other courts," he says. "Even if they don't ultimately prevail, if they're able to obtain documents and depositions from defendants, their strategy may be to learn a lot from the defendants."

*fgunter@bizjournals.com* ☎ 713-395-9627

Pages:

## READER COMMENTS

(0) Comments

Welcome Monika Miura

## Business Resource

### Starting a Business:

Sponsored by

[iContact®](#)

**Seizing opportunity:**

Spotting a trend was key to getting a company going

### Sales & Marketing

Sponsored by

[Hoovers®](#)

**Connected:** Network

guru has made a career from helping people

### Business Strategy

**Adapt:** Ability to change

has kept this business

going through

generations.

### Technology

Sponsored by [AT&T](#)

**Clear connections:**

Making VoIP connections

with small businesses

brings growth.

### HR & Hiring

Sponsored by

[SkillSoft®](#)

**Getting out:** Take care

planning your comparisons

outings.

## Featured Jobs

- [Solarc Developer](#)
- [Endur Openlink D](#)
- [Territory Sales Manager](#) Holdings, Inc.
- [Controller](#) - confidential
- [Director of Nursing](#)

[Search Jobs](#) |

[Post](#)

## SPOTLIGHT EMPLOYERS