

CAN'T BEAR GLOBAL WARMING? SUE THE BASTARDS!

By Alan Pittman



Scientists warn that global warming could cause mass extinctions, famine, disease, hurricanes and floods that could kill, sicken or leave homeless, not just polar bears, but hundreds of millions of people.

In the face of such injury on a global scale, what's a forlorn environmentalist to do? Sue the bastards, says a growing legal movement.

About 200 Lawyers and activists at the Public Interest Environmental Law Conference at the UO Feb. 27 packed a lecture hall to hear about a test case at the cutting edge of suing for global warming.

"People are getting hurt now," said Matt Pawa, a lead attorney for Kivalina, Alaska. Kivalina sued two dozen of the world's largest oil, coal and utility corporations last year after melting sea ice exposed the barrier island to storms and left the Eskimo village of 400 at risk of falling into the sea, he said. Pawa said the town's lawsuit is set for pre-trial oral argument next month. "Kivalina is the wave of the future," he said.

Pawa, whose firm is in Massachusetts, cited research by World Health Organization scientists that global warming could kill 150,000 people a year and by the U.N. predicting five million illnesses and tens of millions displaced. "Kivalina, I believe, is only one of the first," Pawa said.

The fossil fuel corporations have compared the Kivalina lawsuit to suing for the weather and argue that warming in Kivalina isn't traceable to their pollution. Global warming is a political, not judicial, issue, they say.

Pawa admits some other attorneys have said he "must be crazy" to pursue such an unproven legal action. But people said the same about lawsuits against big tobacco and

segregated schools that produced radical change, Pawa said. "It would be improper for big corporations to be destroying the atmosphere and not commit a tort."

MELTING KIVALINA

Ice is vital for Kivalina, above the Arctic Circle in northwest Alaska. Historically, ice formed a protective buffer around the island against winter storms, according to Brent Newell, who's helping Kivalina as legal director of the Center on Race Poverty and the Environment.

"The ice plays a very important role," Newell said, describing how the Kivalinans hunt seals on flows.

After years of global warming, the protective ice around Kivalina forms months later and melts months earlier, leaving the island exposed and battered by storms. Newell said the island's permafrost is also melting. "Permafrost melting is a

lot like soft ice cream," he said. Kivalina "is being destroyed and the culture is being overwhelmed by the rapid changes," Newell said.

Almost half the island has disappeared to erosion, threatening the town's airstrip, fuel tanks, generators and school. The state spent millions in a failed attempt to build a sea wall. Now the Army Corps of Engineers and the Government Accountability Office estimate that the entire village must be relocated at a cost of up to \$400 million.

"It's over; they must relocate," said Pawa. "That infrastructure is going to be gone, maybe this winter, maybe next," he said. "They will become global warming refugees."

ESKIMO TORT

Pawa said the people of Kivalina, some of whom live 16 to a shack without running water, can't afford the millions of dollars to move their town.

But the fossil-fuel companies, including Exxon Mobil Corp., which made a record-breaking \$45 billion in profits last year, can. Besides ExxonMobil, Kivalina is also suing companies like Shell, BP, Chevron, Duke Energy, the Peabody coal company and the energy conglomerate that owns Oregon's PacifiCorp. The corporations are liable for the \$400 million global warming "nuisance" they created, the lawsuit alleges.

"To get a court to recognize this is hard," Pawa said. But "the courts are beginning to get the point," he said, citing recent victories in global warming litigation.

Pawa noted a recent 9th Circuit federal ruling on fuel efficiency rules recognizing that the global problem may require local action. He also noted recent Vermont and California cases recognizing the harms of human-caused global warming. "The scientific consensus is getting into the courtroom," he said.

But courts have ruled against at least two previous global warming lawsuits. Pawa said the coming oral arguments May 18 on whether this case too will be thrown out "will shed light on whether global warming is and can be a tort."

LEGAL CLIMATE

The Kivalina tort and other global warming lawsuits like it could face a cold reception in court.

An obvious question concerns how specific companies can be liable for a global pollution problem with millions of sources. A key legal argument Pawa is making is joint and several liability. The legal concept dates back to a 19th century water case where a big polluter was found liable even though it wasn't the only source of the mixed pollution in a river. "You don't have to sue everybody," Pawa said.

