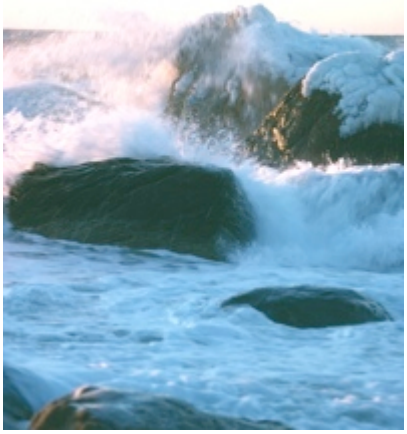
Written by **Rebecca Terrell** on September 19, 2011

Insurance Not Liable for Global Warming Claims

The Virginia Supreme Court has ruled in favor of an insurance carrier in an unprecedented case involving global warming. The court unanimously held that Steadfast Insurance Company is not obligated to cover court costs for the Virginia-based energy group AES Corporation under its liability policy in another lawsuit before the Ninth Circuit Court of Appeals in California.AES is one of 24 companies sued in that case by an Alaskan coastal village for damage to its community from global warming.



The villagers of Kivalina blame greenhouse gas emissions from the defendants' business operations for shoreline erosion they say will force relocation of their town. The ruling for Steadfast sets a precedent that businesses involved in climate change liability lawsuits may not be covered by their liability policies.

In *AES Corp. v. Steadfast Insurance Co.*, the utility argued Steadfast had a duty to defend because Kivalina accused AES of negligence, a provision covered in its liability policy. The Virginia court ruled that Kivalina's claims do not amount to negligence or an accident but that AES acts intentionally in emitting greenhouse gases.

Justice S. Bernard Goodwyn wrote, "Kivalina plainly alleges that AES intentionally released carbon dioxide into the atmosphere as a regular part of its energy-producing activities. Kivalina also alleges that there is a clear scientific consensus that the natural and probable consequence of such emissions is global warming and damages such as Kivalina suffered. Whether or not AES's intentional act constitutes negligence, the natural and probable consequence of that intentional act is not an accident under Virginia law."

Goodwyn's opinion stands in stark contrast to the original ruling of the Ninth Circuit judge in favor of the defendants. On September 30, 2009, Judge Saundra Brown Armstrong dismissed Kivalina's complaints as "not justicable under the political question doctrine," which means the court does not consider global warming a topic for the judicial branch of government to decide. Instead it is a political question to be settled by Congress. Armstrong also wrote the "Plaintiffs otherwise lack standing under Article III of the United States Constitution."

Following Armstrong's ruling, the village council filed an appeal, *Kivalina v. ExxonMobil Corp. et. al.*, which is still pending in California. AES's co-defendants in the lawsuit are 23 oil, gas, coal and utility companies.

Kivalina is an Eskimo village founded in 1905 by the Federal Bureau of Indian Affairs (BIA). According to the Alaska native corporation NANA, "the original permanent settlement known as Kivalina was located on the coast of the mainland." BIA mistook a seasonal hunting ground on Kivalina's barrier reef as the year-round village. The federal agency built a school there and threatened to imprison natives who did not enroll their children. "This order compelled the people of the original Kivalina … to migrate

to the Kivalina created by the BIA," reports NANA. After the migration, more than 70 percent of the town's population was wiped out by starvation and disease, and it took a century for the village to rebuild its numbers to the roughly 400 Inupiaq Eskimos who live there today.

NANA says current storm waves and surges are eroding the village's barrier reef which is normally protected by sea ice. They blame global warming for making the ice form later and melt sooner than usual. Residents want to relocate to an area southeast and inland from the current location, and their current lawsuit seeks $400 million in damages to do so.

Several months before they filed the suit, villagers made a presentation to the Alaska Climate Impact Assessment Commission in which they reported erosion has been a problem on the barrier reef since 1952. Eleven years later, in 1963, residents voted whether to relocate then. The vote was split 50/50, so the move never took place.