

Well, I didn't expect [this one](#).

The Fifth Circuit, in *Comer v. Murphy Oil Co.*, has agreed to follow the Second Circuit by construing *Massachusetts v. EPA*'s standing holding very broadly. It has allowed a class action by private plaintiffs on a common-law public nuisance claim, for damages occurring from greenhouse gas emissions, to move forward.

More to come on this one when I have a chance to finish the opinion. But a couple of points:

- 1) *Comer* represents a case of private plaintiffs suing private defendants; thus, it has a different procedural and remedial posture from either *Massachusetts v. EPA* or *Connecticut v. AEP*. But if anything, the test here should have been even harder, because the *AEP* plaintiffs are asking for an injunction, and so do not have to point to specific damages.
- 2) The Fifth Circuit might be the most conservative federal appellate court in the country: if it is going in this direction, then certiorari might soon follow.