In re Winter Storm Uri : How a Winter Storm Became a Multi-District Litigation

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I. Background on the Storm

In February of 2021, Winter Storm Uri hit Texas. Many Texans endured freezing conditions and widespread power outages. Because temperatures reached an all-time low and hundreds of residents sought to warm their homes at the same time, Texas experienced forced power outages due to increased demand.[1]

The impact of the storm led many to blame various industry groups and lawsuits began flooding Texas courts. Some countered that the storm was an Act of God, a disaster that no one could have adequately prepared for. Others, however, argued that industry groups arguing that they should have implemented procedures to better weather the storm.

II. Lawsuit

a. Types of Claims

In the aftermath of Winter Storm Uri, many individuals initiated lawsuits against various entities within Texas's energy sector, accusing the defendants of inadequate preparation for, and response to, the storm. The lawsuits generally alleged that despite receiving warnings from the Public Utility Commission (Commission), the Federal Energy Regulatory Commission (FERC), and the Electric Reliability Council of Texas (ERCOT), the defendants failed to take sufficient steps to prepare for the winter storm. The plaintiffs further alleged that the defendants were aware that the facilities were vulnerable to freezing temperatures. While Winter Storm Uri was unprecedented in its severity, the plaintiffs argued that such a storm was foreseeable because of prior warnings and similar storm that struck Texas in 2011.

[1] Emily Foxhall, *Lawsuits pile up two years after Texas' devasting storm*, THE TEXAS TRIBUNE, (Feb. 14, 2023), https://www.texastribune.org/2023/02/14/texas-winter-storm-lawsuits-anniversary/#:~:text=When%20the%20storm%20struck%20just,keep%20up%20with%20the%20need.

The various Texas lawsuits were consolidated into one multi-district litigation. While there were many claims asserted, plaintiffs in the established Multidistrict litigation had four claims in common: Negligence, Gross Negligence, Private Nuisance, Tortious Interference with an Existing Contract, and Civil Conspiracy.

b. Number of Lawsuits

Because the winter storm impacted every county in Texas, lawsuits against industry groups were filed across the state. The plaintiffs included individuals from approximately 40 counties. The first case that was filed was *White v. NRG* [2], on behalf of 118 plaintiffs. Shortly after, *Turner v. NRG* was filed with 94 plaintiffs. All told, over one-hundred lawsuits were filed across the state. On the other side of the matter the defendants varied among natural gas providers, power generators, transmission and distribution companies, public power utilities, ERCOT, co-generation facilities, and retail electric providers. The power generators included wind, solar, methane gas, biomass, and hydroelectricity producers.

III. White – Federal Court

In March 2021, Robert White and over 100 other Texas residents sued more than 100 power generation and distribution companies in Harris County, Texas.[3] The named defendants were categorized into two groups: (1) the Power Generators, which own and operate power generation facilities and contract with distributors, and (2) the Power Distributors that transmit and issue the generated power through lines that deliver the electricity to customers.[4] The plaintiffs argued that they suffered damages for loss of life, personal injuries, property damage, medical expenses, and emotional distress.[5] Moreover, the plaintiffs asserted many state-law claims against the companies such as negligence and gross negligence, breach of contract, and strict liability for engaging in abnormally dangerous activity, among others.[6] The plaintiffs alleged that the defendants failed to adequately prepare the power grid for freezing temperatures and failed to

[2] Plaintiff's Original Petition, Exhibit A, White v. NRG Texas Power, 2021 WL 805383.
[3] *White v. Bastrop Energy Partners LP,* No. CV H-21-870, 2021 WL 4295320, 1 (S.D. Tex. Sept. 21, 2021)
[4] *Id*.
[5] *Id*. at 2.
[6] *Id*.

warn customers about the risk of power outages.[7] Essentially, the lawsuit centered around allegations that the Power Generators and Power Distributors, both individually and collectively, failed to adopt recommended measures to "weatherize" their facilities and equipment against the impending winter storm.[8] Shortly after filing, the defendants removed the case to federal court under the Class Action Fairness Act (CAFA).

The question the Southern District of Texas faced was whether the court had federal removal jurisdiction under CAFA. CAFA allows for state-law claims or mass actions to be heard in federal court if certain conditions are met.[9] Under CAFA, federal removal jurisdiction is present if there are 100 or more plaintiffs who are minimally diverse, an amount in controversy of at least $5 million, and a timely removal request is made.[10] While the parties met the statutory thresholds for submitting the case for removal, at conflict was whether the "single event[11]" exclusion or the "local controversy" exception of CAFA applies.[12] If either was present, the case must be remanded to state court.

The "single event" exception provides that when all claims in a lawsuit arise from a single event or occurrence within the state where the action was filed, CAFA does not grant federal jurisdiction.[13] The defendants argued that the petition described a series of distinct events leading up to Winter Storm Uri, while the plaintiffs maintained that Winter Storm Uri itself constituted the single event underlying their claims. Moreover, plaintiffs also invoked the "local controversy" exception, which applies when significant relief is sought from a local Texas defendant.[14] Ultimately, the Court remanded the *White* case back to state court, ruling that the ERCOT grid operates as a Texas-based system, and lawsuits related to it should be handled in Texas state courts.[15]

[7] *Id*.
[8] *Id*.
[9] *Id*. at 3.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*. at 8.
[15] *Id*. at 14.

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