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THE EVIDENTIARY ADMISSIBILITY OF EXTREME WEATHER EVENT ATTRIBUTION OPINIONS

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A new field of climate science seeks to link specific weather events?like hurricanes, wildfires, or heatwaves?to human-caused climate change. These types of expert opinions have often been touted as a means to support climate change litigation that seeks compensation for the emissions of greenhouse gases from specific companies or industries, or that challenges inaction by governmental entities in regulating greenhouse gas emissions. These ?attribution opinions? are intended to show that a specific plaintiff has been harmed because of a specific extreme weather event and so has standing to seek relief or compensation for this harm. As most climate change cases have been resolved to date on justiciability concerns or other procedural grounds, there has been little analysis as to whether these types of attribution opinions would survive an evidentiary challenge as to their admissibility.

In addition to the standard set by the Federal Rules of Evidence, state courts have adopted a variety of different tests for determining the admissibility of expert opinions. However, there are common principles that are generally applicable. By examining the methodologies identified in published articles from prominent purveyors of attribution science, this article examines whether these types of extreme weather event attribution opinions would be considered to meet these admissibility standards for expert opinions. The article concludes that, as currently described in the scientific literature, these attribution opinions would have difficulty satisfying the evidentiary standards for admissibility.

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