

# Forecast for Success— Expert Advice on the Weather

Like the aching bones within them, premises liability cases can be affected by the weather. Proving weather conditions, and the resulting impact on the premises, can be essential: from precipitation tracked onto a tile floor to creation of a dangerous condition through the negligent removal of snow and ice. Weather can also be material to hosts of other causes of action:



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- Automobile cases. Weather conditions at the time of the accident are often at the heart of a “sudden emergency” or “unavoidable accident” defense.
- Product liability claims. Product performance can be impacted in many ways by humidity, precipitation, wind, etc. Issues of an injury producing foreseeable use/misuse can relate to contact with nature’s elements.
- Outdoor event insurance claims. Rain/event cancellation insurance

polices may reference precipitation levels at the nearest weather station as determinative of the obligation to pay policy benefits.

- Property and casualty insurance claims. Not all weather and natural disasters may be covered in a given policy.
- Construction litigation. Weather related delay, damage during construction, and workplace injury/OSHA issues are common.

## Weather Records and Imagery— As Easy as Pointing and Clicking:

When weather information is needed, reliable resources are readily available. This installment of Expert Advice is an accumulation of helpful

information on obtaining weather records, and getting that information into evidence.

## The National Climatic Data Center

Of the weather-related resources available to the public, The National Climatic Data Center (NCDC) provides perhaps the easiest access to historical weather and climatic data. The NCDC bills itself as the world’s largest active archive of weather data. It is a federal agency within the Department of Commerce, charged with a duty to collect and record weather and climatic conditions. The NCDC serves as a national archive and data repository for weather records of the National Weather Service, Military Services, Federal Aviation Administration, and the Coast Guard, as well as data from voluntary cooperative observers, and participating suppliers from around the world.

Certified records and compilations of data can be obtained from the NCDC evidencing the weather and climatic conditions practically anywhere, and for any time period. The NCDC’s archives include weather observations dating from weather-related diaries of Ben Franklin and Thomas Jefferson, to present day reports from the most sophisticated of weather stations. Requests can be made for a report reflecting a particular weather station or multiple stations. There are thousands of such stations around the country—though not all station data is available for immediate viewing via the Internet.

While the NCDC has literally hundreds of different publications, subscriptions, and data compilations available for purchase, the usual climatic report requested will show a month of pertinent data, captured hourly, at a given location. The report provides documentation of temperature, precipitation, wind, sky cover, visibility, pressure, as well as the time of sunrise and sunset. The reports are self-explanatory, though they require a bit of study. For many weather stations, the report can be ordered online for a charge of \$4.00, or otherwise by letter or phone for \$5.00.<sup>1</sup> Again, data from

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some stations is not available on the Web, and data from those stations must be requested by some other means of contact. Archived satellite images and radar images can also be obtained.<sup>2</sup> Time-sequenced satellite photographs and radar can be effective tools to convey the reality of the weather to your jury.

### **Perhaps a Local Weather Personality Can Get it Right?**

If you need more than the NCDC can provide, you may want to contact a local television or radio meteorologist. For instance, data collected at an official NCDC weather station may not help you if the station is far from the site of the incident. Many local meteorologists now maintain weather data collection stations throughout the broadcast area, whether in private homes, or local schools. You may therefore be able to obtain data from a collection site closer to the accident with the assistance of a local meteorologist. Additionally, while weather records are generally decipherable to the lay person, issues such as wind chill, thaw, freezing, dew points, and the like may impact your case, and a trained meteorologist may be best suited to interpret the records you ultimately obtain.

### **Admitting the Information into the Record**

Once the records are obtained, getting them into evidence should be easy. A 1973 Kentucky Supreme Court case on point admitted certified records from the National Climate Center (predecessor in name to the NCDC, or so it appears), holding: "A weather report consisting of a printed document bearing the certification of the director of a national climate center stating that it was an official publication of the national oceanic and atmospheric administration and compiled from

records on file at the national climate center had sufficient authenticity to be admissible." *Berry v. Com*, 490 S.W.2d 741, (Ky. 1973); see also *City of Madisonville v. Nisbet's Adm'r*, 270 Ky. 248, 109 S.W. 2d 593 (1937).

Finally, should you employ a local meteorologist and use locally-collected weather data, the meteorologist can likely get his or her records into evidence under the business records hearsay exception of KRE 803, or the individual responsible for taking the readings in question may be the proper person to call for authentication.

In sum, obtaining records from the NCDC may be all that you need in your case. Should you prefer to use a meteorologist, be advised to seek references from fellow KATA members or other counsel having previously worked with him or her. Use KATA's ListServ to network and discover helpful information about the expert. Request references and background information on any expert with whom you are interested in working. Confirm the pertinent schedule of fees and document terms concerning payment

and billing before engagement. Clearly convey your case timetables with respect to discovery and trial, and leave ample time for the scheduling and preparation of this expert for his or her discovery and trial depositions. Remember, experts can make or break your case. Choose wisely!<sup>3</sup>

<sup>1</sup> The NCDC can be accessed at [www.ncdc.noaa.gov](http://www.ncdc.noaa.gov). Climatic reports can be obtained via the Web site, or by contacting: Climate Services Branch, National Climatic Data Center, Room 468, 151 Patton Avenue, Asheville, North Carolina 28801-5001, (828) 271-4800, Fax: (828) 271-4876, Email: [ncdc.info@noaa.gov](mailto:ncdc.info@noaa.gov)

<sup>2</sup> NCDC archived satellite images and data are available by contacting: Satellite Services Group, National Climatic Data Center, Room 120, 151 Patton Avenue, Asheville, North Carolina 28801-5001, (828) 271-4850, Fax: (828) 271-4876, Email: [ncdc.satorder@noaa.gov](mailto:ncdc.satorder@noaa.gov)

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