



Climate Change Contribution Suits

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Litigation Defendants



- “Carbon Majors”
 - Largest producers of crude oil, natural gas, coal and cement
 - Include 50 investor-owned corporations
 - Chevron
 - ExxonMobil, BP, Royal Dutch Shell
 - ConocoPhillips



Litigation Bases



- Causes of Action
 - Public and Private Nuisance
 - Failure to Warn
 - Design Defect
 - Trespass
 - Negligence



Litigation Bases



- Allegations: Climate change-related injuries resulting from “Carbon Major” conduct
 - Sea level rise and associated impacts
 - Increased frequency of severe and extreme weather (Flooding, etc.)
 - Causing infrastructure damages and public illnesses



Impediments



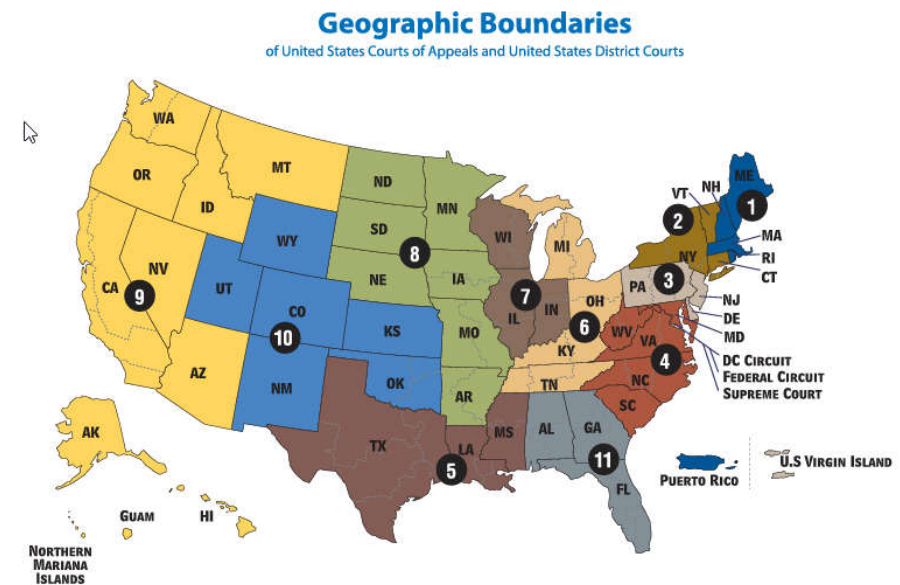
- Plaintiffs Must Show:
 - Emissions effected earth's climate
 - Emissions caused specific harm
 - Must distinguish/identify specific emissions of many emitters, AND
 - Show that specific emissions caused harm
- Problem of Capitalism, Not Management?



Current Status



- Forum – State or Federal
 - State courts initially, then Carbon Majors sought to remove
 - Baltimore Case: Eight bases for removal to federal court raised by Carbon Majors
 - Appellate courts: We only have authority for one basis; motion to remand denied as to that basis only; others not considered
 - USSC: must review ALL bases for removal raised by defendants



Current Status



- Recent Appellate Decisions – Cases Back in State Court
 - Federal common law displaced by Clean Air Act
 - Clean Air Act does not completely pre-empt state law claims
 - Defendants may seek discretionary Supreme Court review



Impact



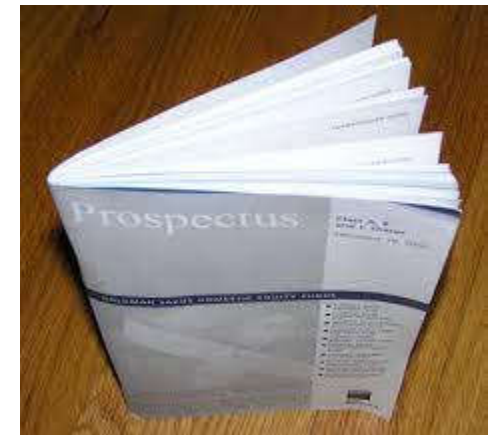
- State Court Forum – Potential Game Changer
 - State judges (many elected)
 - Heightened judicial receptiveness to climate change arguments
 - Diminished possibility of state court judges granting dismissals at pleading stage
 - Greater potential (likelihood?) of stratospheric settlements and/or judgments
- Blueprint for future similarly styled suits
- Good chance for mountainous legal costs, regardless of case outcome



New Trend: Securities and Consumer Protection Suits



- Generally, need only show that investor was purchaser or investor was deceived (or potentially could have been misled) by carbon emitter's misrepresentations.
 - Do not seek to curb or regulate greenhouse gas emissions
 - No pre-emption / no conflict with Clean Air Act
- Suits brought by states and municipalities
 - Minnesota (Minnesota v. Am Petroleum Inst.)
 - Connecticut (Connecticut v. ExxonMobil Corp.)
 - Hoboken, New Jersey (City of Hoboken v. ExxonMobil Corp.)
 - Charleston SC (City of Charleston v. Brabham Oil Co.)



New Trend: Securities and Consumer Protection Suits



- “Greenwashing” – Saying one thing publicly but doing something different privately.
 - *“Advertising and promotional material designed to convey a false impression that company is more environmentally responsible than it really is, so as to induce consumers to purchase its products.”*
- Standard, must specifically show that investor was misled by disclosure
- “Trail and Error”
 - Current theories refined for future cases
 - New and/or untested theory may emerge
- Litigation Funding as Driver



The Next Chapter



- Expansion beyond the “Carbon Majors”
 - Meatpackers
 - Mining
 - Trucking companies
 - Agriculture
 - Diesel engine manufacturers
 - Fertilizer Manufacturers
 - Any entity in “carbon chain”
- Afflictions/diseases/conditions tied to climate change
 - Mycotoxins: fungi that prosper in a warming climate
 - Vector-Borne Illnesses / Future Pandemics
 - Urban Heatwaves



Coverage Issues



- Trigger of Coverage
 - Injury in Fact
 - Exposure
 - Manifestation
 - Continuous Trigger
- Expected or Intended Defense
- Loss in Progress



Coverage Issues



- Occurrence vs. Non-Occurrence
- Application of pollution exclusions and product liability exceptions
 - Issue: Greenhouse gasses “pollutants” within CGL?
 - What about exception to exclusion that gives back limited PD and BI coverage that arises after products leave insured’s possession?
- Subrogation from 1st Party Payers
 - Wildfire - Landslides
 - Hurricanes - Floods (Government?)





Thank you

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