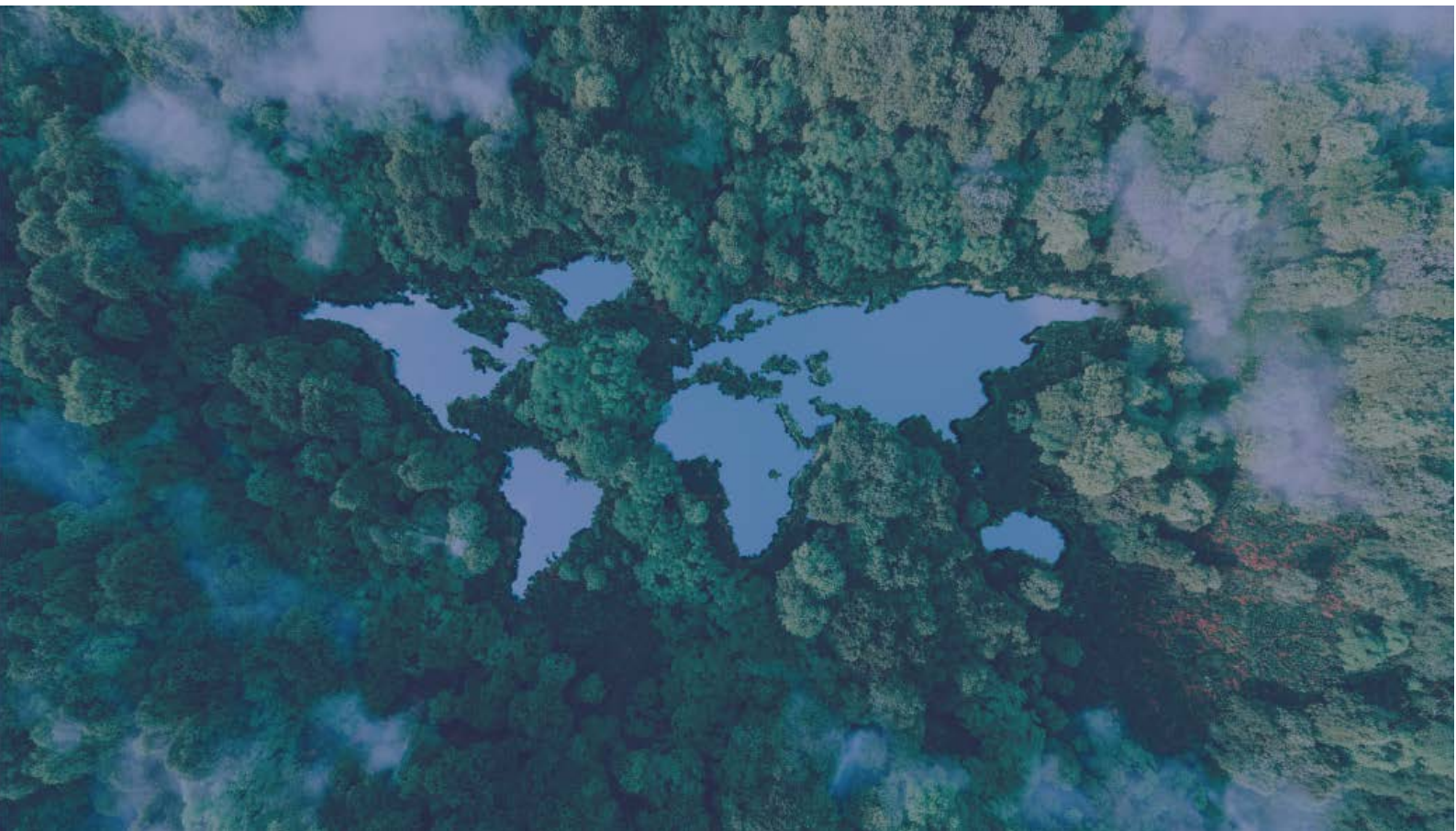




**British Institute of
International and
Comparative Law**

Global Perspectives on Corporate Climate Legal Tactics: United States of America National Report

Dr Lisa Benjamin | Alexandra Guillot





**British Institute of
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Table of Contents

Mission Statement.....	2
Vision	2
Executive Summary	5
First Wave	6
Second Wave	6
Third Wave.....	7
Acknowledgements.....	9
1. Causes of Action.....	10
A. Climate Change Law/Environmental Law Statutory Provisions	10
B. Human Rights Law.....	12
C. Tort Law	13
i. Public and private nuisance.....	15
ii. Negligent failure to mitigate or adapt to climate change.....	18
iii. Negligent or strict liability for failure to warn	18
iv. Trespass	21
v. Impairment of public trust resources	23
vi. Fraudulent misrepresentation	24
vii. Civil conspiracy	25
viii. Product liability.....	26
ix. Insurance liability.....	26
x. Unjust enrichment	26
D. Company and Financial Laws	27
E. Consumer Protection Laws	30
F. Fraud Laws.....	32
G. Contractual Obligations.....	33
H. Planning and Permitting Laws	33
I. Other Causes of Action	33
i. Anti-Idling State and City Laws	33
ii. Racketeer Influenced and Corrupt Organizations Act (RICO).....	33

2. Procedures and Evidence.....	35
A. Actors Involved.....	35
i. Who is bringing climate litigation in the USA against corporations?	35
ii. Against whom has such litigation been brought?.....	36
iii. Third-party intervenors in corporate climate litigation	36
iv. Others.....	37
B. Approach of U.S. courts to procedural issues in corporate climate litigation	38
i. Standing	38
ii. Justiciability.....	39
iii. Jurisdiction.....	40
iv. Group litigation / class actions	40
v. Apportionment of liability.....	40
vi. Costs	41
vii. Disclosures.....	41
C. Arguments and defenses	42
D. Sources of evidence.....	43
E. Limitation Periods	44
3. Remedies	46
A. Pecuniary Remedies.....	46
B. Non-Pecuniary Remedies	46
Bibliography.....	47
Appendix – Case Chart	48

Executive Summary

The U.S. has experienced the largest volume of climate litigation of any jurisdiction. Some of the earliest cases against corporations were filed in the U.S. As the jurisdiction with some of the earliest cases, problematic issues such as standing and causation, found in other jurisdictions, are also found here. Unlike many other jurisdictions, one of the main obstacles to climate litigation in the U.S. is jurisdictional: issues of federalism, assessed by both federal and state courts, have been raised and litigated over a period of several years. As a result, despite such a long history of climate litigation, the U.S. has surprisingly few cases which have reached the merits stage, other than cases in the First Wave (see below).

The high volume of climate litigation in the U.S. illustrates that the intensifying climate crisis and insufficient responses from the public and private sector are driving more people to seek climate remedies from courts (Wentz et al., 2023). In litigation, a fundamental goal is to define obligations for both governments and corporate entities to decrease greenhouse gas (GHG) emissions, address threats related to climate change, and provide remedies for climate damages. (Wentz et al., 2023). Beyond final court decisions, climate litigation also serves an important role in revealing information about corporate responsibility for climate change and can affect corporations' public reputation and their "social license" to operate in ways that adversely impact public health and the environment (Wentz et al., 2023).

Litigation in the U.S. has been a mix of actions against government entities by climate vulnerable constituents, as well as suits initiated by government entities, such as cities and states, against corporations. In this report, we only focus on litigation initiated by or against corporations. We use the definition of 'corporate climate litigation', for the purposes of this report, as court action which raises climate issues brought: (a) against or involving a corporate defendant; and/or (b) utilizing 'corporate' causes of action in company, commercial or financial law. To date, the vast majority of cases in the U.S. have been brought against corporations, although we note that more aggressive litigation tactics might be adopted by corporations moving forward, particularly around ESG mandates and new climate disclosure rules.

We are aware that broader approaches to influencing corporate climate behavior exist both through the use of other types of litigation, and outside of formal litigation channels. For example, other approaches to climate litigation could include administrative claims around permits approved or denied for projects, based on National Environmental Policy Act (NEPA) challenges, which could influence corporate climate behavior. In addition, we are aware that actions, such as legal interventions, may have legal implications or lead to litigation down the road, and are important influences on corporate climate behavior. These legal interventions would include, for example, shareholder resolutions. We have not included these broader approaches to

litigation or legal interventions in this report unless they lead to corporate climate litigation as defined above, to narrow the scope of the report. We have included in the Third Wave section some new examples of permit-based litigation which rely on state constitutional interpretations, human rights or environmental justice claims, which may lead to more cases in the future, and which we anticipate will have broader implications for corporate climate behaviour.

Due to the volume of cases, we have clustered corporate climate litigation cases into a First, Second and Third Wave, with subgroups organized into causes of action underneath each Wave. Where cases are notable or leading cases in their cluster, we identify these by case name in the sections below.

In the First Wave are the early cases brought by and against corporations and which failed largely on the basis of federal pre-emption grounds, although one case failed on the basis of causation.

The Second Wave includes mainly state-based claims against corporations based on tort, nuisance, negligence, and consumer protection, and many of these cases remain in the jurisdictional stage of decision making.

The Third Wave includes a wider variety of claims, including securities claims, shareholder derivative actions, greenwashing, as well as the use of environmental statute violations, such as Clean Water Act and Coastal Zone Management Act, as well as two cases involving agency permits applied for by or issued to corporations, which illustrate a trend towards climate justice, human rights, and public trust interpretations of state constitutions.

We describe the Waves of the litigation and include a summary chart below. We also include a fuller list of specific cases, and where they fall in particular waves and groups, in the Appendix to this report.

First Wave (initiated from approximately 2006-2012)

This included some of the very first cases brought against corporations, including the *Village of Kivalina v Exxon Mobil* (2012) and by states against utility companies, such as *American Electric Power Association v Connecticut* (2011) and against automotive companies, such as *California v GM*, 2007. Many of these initial cases failed under the political question doctrine or were displaced by federal statutes such as the Clean Air Act.

Second Wave (initiated in summer of 2017 to present day)

The second wave saw the beginning of the most vibrant stage so far of corporate climate litigation in the U.S. Together, these cases include legal action brought by states, cities, counties, municipalities, and one fishing association in the United States against corporations. The vast majority of these claims are grounded in state law and based on allegations of deceptive marketing by corporate defendants and can be seen as a

reaction to the failure of claims brought under federal law in the First Wave. The surge in climate litigation from the First Wave to the Second Wave and increased focus on consumer protection can also be seen as a response to the [#ExxonKnew](#) campaign, launched after investigative journalists published that ExxonMobil had known that burning fossil fuels would lead to potentially catastrophic climate impacts as early as the late 1970s. This second wave of cases is so voluminous, we have subdivided the cases in the Second Wave into five sub-groups based on their causes of action, as follows:

Group One: Alone in this group is the 2018 suit brought by New York City, and the only second-wave case filed in federal court, which did reach the merits stage and was dismissed.

Group Two: Cases brought by the cities of Oakland and San Francisco (“San Francisco Bay lawsuits”) set forth a narrower set of claims and substantive decisions have already been made (though not decisions on the merits).

Group Three: Cases brought by cities and counties in California, as well as other state entities around the country, based on a broader set of claims than Group Two. These suits allege a range of tort claims in addition to public nuisance, including negligence, strict liability, trespass, failure to warn, and design defect.

Group Four: Suits brought by various government entities primarily in 2020 and 2021 allege, in addition to the tort claims brought by the Group Three lawsuits, claims under state consumer protection statutes and unfair competition claims.

Group Five: Suits brought by states, the City of New York, the District of Columbia, and non-profits in the United States, have been brought solely on state-law consumer protection and unfair competition claims against carbon majors and other multinational corporations.

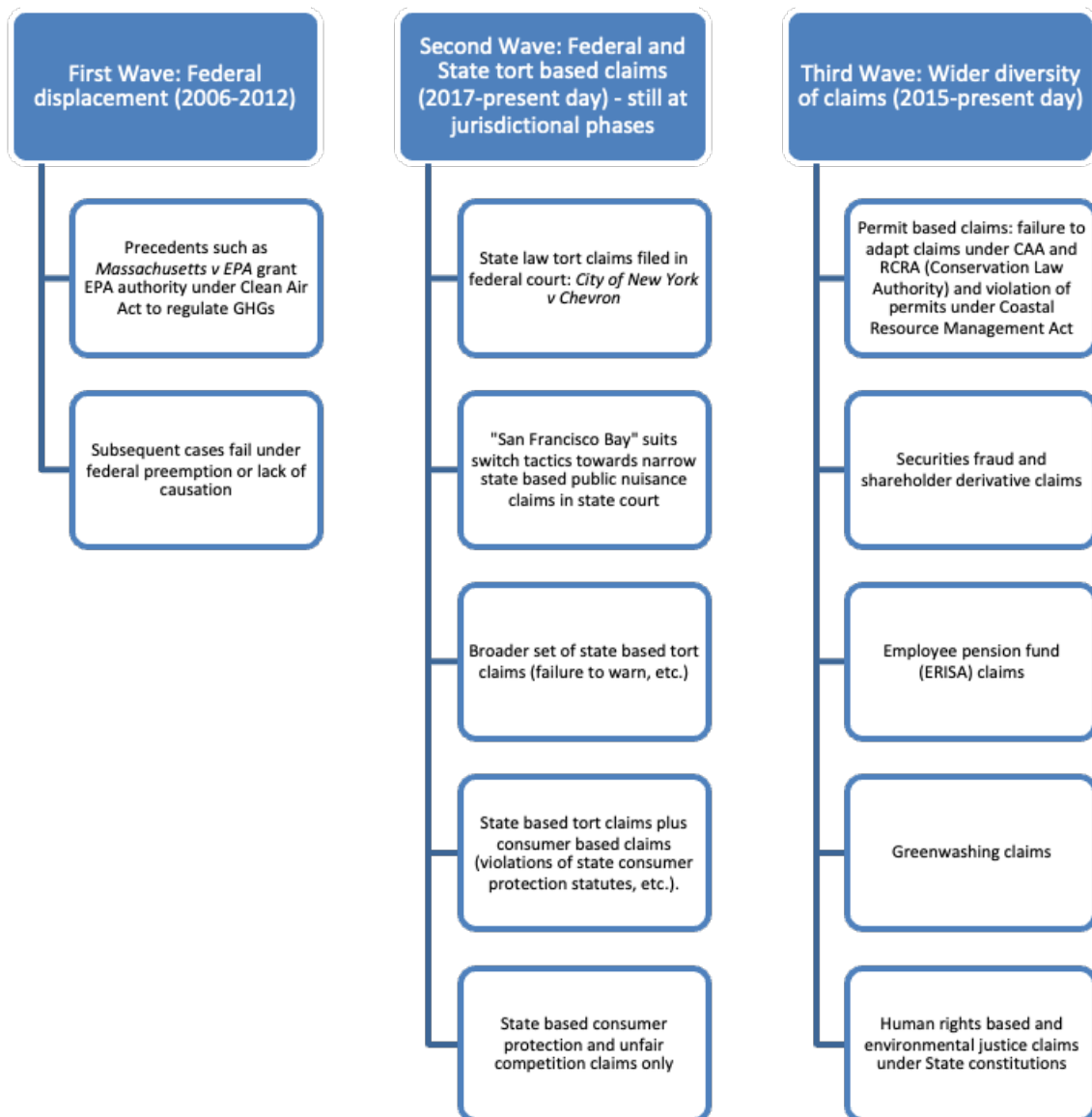
Third Wave (2015-present)

The third wave includes a larger diversity of claims brought against corporations than those found in the Second Wave, and so includes claims that involve state tort-based or consumer protection claims.

This wave includes litigation brought by shareholders and other litigants based on private law actions such as securities law, shareholder derivative actions, and directors’ fiduciary duties for corporate failures to act on climate change or for publishing misleading information. This wave also includes more traditional, citizen suit environmental claims, under the Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) for failure by corporations to adapt to the impacts of climate change, or for violations of permits issued under Coastal Zone Management Acts.

We have also included in the Third Wave two cases which we consider illustrative of potential future trends. The first was an appeal by the Hawai’i Electric Company to the

Supreme Court of Hawai'i, for refusal, by the Hawai'i public utilities commission, of a permit for the utility to build a biofuel generation plant. This case is included due to its innovative nature of invoking human rights claims in connection with climate change, based on the Hawai'i state constitution. The second is a case brought by environmental justice communities, Rise St James and others, against the Louisiana Department of Environmental Quality regarding permits issued to a plastics company, Formosa. This decision invoked issues of environmental, climate and racial justice based on the Louisiana State Constitution's public trust obligations.



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1. Causes of Action

A. Climate Change Law/Environmental Law Statutory Provisions

There is no cross-sectoral federal legislation in the United States which regulates GHG emissions. Therefore, federally based claims must be based on sector specific legislation such as the Clean Air Act, Clean Water Act etc. As discussed below, early cases also advanced claims under federal common law. Those pieces of legislation often include a cooperative federalism model, where the federal government outlines minimum requirements which states then adopt, and jurisdiction often switches to the states in the latter case.

Outcomes of cases in the First Wave of litigation in the U.S. closed the door to the use of federal common law claims against corporations due to the political question doctrine, or those claims were displaced by federal legislation such as the Clean Air Act. One of the earliest cases in the First Wave was brought by the State of California against auto manufacturers, including General Motors, in 2006. The claims were unsuccessful at the Ninth Circuit on the basis that it was a political question reserved for Presidential or Congressional action. California dropped its appeal in 2009.

The *Massachusetts v EPA* case established that the EPA could regulate GHGs as pollutants under the Clean Air Act (CAA). Under *American Electric Power v Connecticut* (2011), the Supreme Court clearly stated, however, that federal common law claims were displaced by the federal CAA, which as a result of *Massachusetts v EPA*, gave the EPA the direct authority to regulate stationary sources such as the power plant emissions.

Another early case in the First Wave was brought by the Native Village of Kivalina which sued a number of energy companies for damages for adaptation costs, and the Ninth Circuit decided their federal claims under public nuisance were also displaced by the CAA, following *AEP v Connecticut*. The Plaintiffs' claims of conspiracy by the energy companies and misleading the public on the science of climate change were not addressed.

A case in the First Wave which did not fail on the political question was *Barasich v Columbia Gulf Transmission Co.* (2006). It was a tort claim against oil and gas companies for destruction of marshland, which the plaintiffs claimed exacerbated the impacts of Hurricanes Katrina and Rita. Here the District Court in Louisiana distinguished *AEP v Connecticut*, finding that the political question doctrine was not applicable in a case which involved a claim for monetary damages, and revolved around tort claims. The claim was ultimately dismissed for failure to prove causation.

As a result of the failures of the cases in the First Wave, state-based claims, particularly tort-based claims, became more popular as articulated in the sections below.

In the Third Wave, some cases invoked environmental claims under the Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) for failure by corporations to adapt to the impacts of climate change. These claims were brought in Connecticut, Massachusetts and Rhode Island by an NGO, Conservation Law Foundation, on behalf of its members directly against Gulf Oil, Shell Oil and ExxonMobil, which all own bulk petroleum storage facilities in these states (although while the litigation was ongoing ExxonMobil sold its facility).

The case in the Federal District Court of Connecticut against Gulf Oil LP was dismissed for lack of standing, but the cases in Connecticut and Rhode Island have survived the pleadings stage (see the standing section below). The Conservation Law Foundation seeks injunctions and civil penalties for failure of these corporations to prepare these terminals for rising sea levels and other weather-related events which will cause pollution to leak from the terminals. These claims are based on RCRA and CWA requirements. These corporations hold National Permit Discharge Elimination System (or NPDES) permits under the CWA. The CWA has a federal cooperative structure whereby the EPA authorizes states to issue permits. These permits require the holders to maintain a stormwater pollution prevention plan (SWPPP) in accordance with good engineering practices and ensure implementation of Best Management Practices. Under the CWA as incorporated in the specific permit at issue, the permit holder must immediately amend the SWPPP if it proves to be ineffective.¹ The RCRA claims are based on an imminent and substantial endangerment to health or the environment.

Another permit-based case in the Third Wave has overcome federalism challenges. The Court of Appeal in the Fifth Circuit in *Plaquemines Parish v Chevron* (2022) affirmed the District Court's refusal to remove the suit from Louisiana state court to federal court. The Plaintiffs claim a violation of permits under the Louisiana State and Local Coastal Resource Management Act on the basis that the activities of oil and gas companies in the 1940s were not lawfully commenced or established, and therefore should not have been grandfathered into the state's coastal management regime. The corporations' attempts to remove the suit to federal court on the basis of the federal officer removal statute (28 U.S.C. §1442(a)(1)) failed, and so the case will proceed in state court.

¹ In this case, the Permit requires that: [t]he permittee shall immediately amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect of [sic] the potential for the discharge of pollutants to the waters of the State; (Permit Part I.C.4, at 12) (RI Complaint, p. 66).

B. Human Rights Law

There are very few cases which invoke human rights in the context of corporate climate litigation. The ground-breaking case of *Juliana v United States* (2021), which claimed the U.S. government's affirmative actions in the context of climate change were a violation of future generations' constitutional rights to life, liberty and property, was dismissed for lack of standing, although the plaintiffs have submitted a motion for leave to file an amended complaint. Most recently, state-based constitutional claims have experienced more success in the human rights context in the U.S.

There has been one successful case to date which invoked provisions of the Hawai'i state constitution in the context of human rights and climate justice. In *re Hawai'i Electric Light Co.* (2023), the Supreme Court upheld the public utility commission's (PUC's) denial of a permit to Hu Honua, which applied to the PUC for a permit to enter into a power purchase agreement to supply energy using a biomass power plant to the Hawai'i Electric Light Company (HELCO). Hu Honua appealed the PUC's decision. In 2019, the Hawai'i Supreme Court vacated the PUC's original approval, and remanded with specific instructions that the PUC consider the reasonableness of the project's costs in light of its GHG emissions, and its impacts on the constitutional right to a clean and healthful environment for the intervenors, the NGO Land of Life. In 2023, the majority opinion affirmed the PUC's consideration of the public interest in balancing the 'massive' carbon emissions the project would produce, and the failure of the proposed project to achieve carbon neutrality until 2047 (two years after Hawai'i's own 2045 net zero target), and the failure of Hu Honua to prove any reasonable basis for its carbon sequestration plans. The majority opinion notes:

'With each year, the impacts of climate change amplify and the chances to mitigate dwindle....The reality is that yesterday's good enough has become today's unacceptable. The PUC was under no obligation to evaluate an energy project conceived of in 2012 the same way in 2022. Indeed, doing so would have betrayed its constitutional duty.'

The opinion illustrates the evolution of legal interpretations of state constitutions in light of evolving scientific consensus on climate change.

Justice Wilson's concurring opinion ties the PUC's decision back to its obligations under Article XI Section 9 of the Hawai'i state constitution, which requires that the PUC protect the right of Hawai'i's people to a clean and healthy environment and to Article XI Section 1, which contains a public trust doctrine. In Justice Wilson's view, this constitutional obligation subsumes the right to a life-sustaining climate system. His opinion opens with the statement that: 'The State of Hawai'i is in a declared climate emergency.'

The opinion proceeds to cite a number of scientific papers regarding the state's vulnerability to climate change. Justice Wilson also notes:

‘Climate change is a human rights issue at its core - not only does it inordinately impact young people and future generations, but it is also a profound environmental injustice disproportionately impacting native people.’

A second case which illustrates a trend towards climate justice, is *Rise St James v Louisiana Department of Environmental Quality (LDEQ)* (2022). The case involves judicial review of a state agency’s air permits granted to Formosa Plastics Group. While the litigation does not directly involve a corporation as a party, it does illustrate a potential trend towards environmental, climate and racial justice interpretations of state constitutions, which would have broader implications for corporations. The Plaintiffs are from Welcome, Louisiana, which has a 99% minority population, 89% of whom identify as Black. The Plaintiffs describe their lands as ‘sacred’, passed down to Black residents from their great-great-great grandparents. The Court interprets this claim, describing how ‘the blood, sweat and tears of their Ancestors is tied to the land...’.

Against this backdrop of racial justice, the Court interprets a prior Supreme Court case, *Save Ourselves v La. Env’t Control Comm’n* (1984) as imposing on LDEQ a balancing obligation in order to fulfill its public trust obligations under Article IX of the Louisiana state constitution. The court held that an environmental justice analysis was mandatory under these constitutional protections, and that LDEQ must take special care to consider the impact of climate-driven disasters fueled by greenhouse gases on environmental justice communities, including those communities’ ability to recover. The Court vacated the permits granted on the basis that LDEQ’s analyses, including in relation to environmental justice, were arbitrary.

C. Tort Law

Cases in the Second Wave have been dominated by jurisdictional issues - whether to hear the case in state or federal courts. In the United States, many civil actions can be filed only in state court, such as non-diversity and non-federal question cases.² Some actions can be filed only in federal court, such as matters as to which federal jurisdiction is exclusive. But many cases can be filed either in federal or state court. In such cases, plaintiffs have a choice of whether to sue in state or federal forums. The question becomes whether there are any advantages to filing in one court rather than the other or, from the defendant’s standpoint, whether there are any advantages to removing to federal court a case already pending in state court. As discussed in further detail below,

² Congress has provided for different types of federal subject matter jurisdiction, including federal question and federal diversity. Federal courts have jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” (28 U.S.C. § 1331). This is federal question jurisdiction. Federal courts also have jurisdiction in cases between “Citizens of different states... and between a State [and its citizens], and foreign States, Citizens, or Subject.” (28 U.S.C. § 1332). This federal diversity jurisdiction requires diversity of citizenship and an amount in controversy exceeding \$75,000. *Id.*

defendants in corporate climate cases are using jurisdictional arguments to attempt to remove cases from state courts to federal courts. These defenses have delayed second-wave cases reaching the merits stage for more than six years.

As a result of the failures in the First Wave, counties, cities, and other governmental entities around the country have attempted to prevent their claims from being removed to federal court (except the *City of New York* case, which was filed in federal court) and to avoid the federal displacement doctrine, by bringing a wider set of claims grounded in state law. Those claims included not only state tort claims but also claims under state consumer protection statutes. This section will focus on the state law tort claims brought by governments in the Second Wave (claims brought under state consumer protection statutes are discussed in section 1.E. Consumer Protection Law below).

State law tort claims illustrate another change in litigation strategy in Second Wave cases to avoid federal preemption: basing claims on the marketing of fossil fuel products, rather than only on emissions of greenhouse gases. The focus on the marketing of fossil fuel products makes it less likely that a court will determine that the claims are preempted by the Clean Air Act, which regulates emissions of greenhouse gases and other pollutants, but does not address the marketing of fossil fuel products. Focusing on the companies' marketing practices may also better capture the wrongful nature of the conduct that caused the climate harms, since state tort law is better able to handle claims of wrongful marketing of products than federal common law. There is also a strong argument that anthropogenic greenhouse gas emissions represent the "paradigmatic anti-tort" (Kysar, 2011) due to the diffuse and disparate nature of their origin and their latent effects, and so shifting the focus of state law tort claims to the marketing of fossil fuel products is one way to try to avoid dismissal.

In response to these Second Wave, state-focused strategies, all the defendants have sought to "federalize" the state law claims, and to then reassert the largely successful arguments that resulted in dismissals of the First Wave cases (Sokol, 2020). The defendants have mainly argued in favor of displacement, which was successful before the U.S. Supreme Court in the First Wave. This defense requires a two-step process because only *federal* common law, and not state common law, can be displaced by the Clean Air Act or any other federal statute (Sokol, 2020). The first step of this argument is that the state tort claims are "preempted" by federal common law. At this step, the defendants claim that the plaintiffs' state tort claims are based on global-warming related injuries that implicate uniquely federal interests, and so must be addressed, if at all, under federal common law. In all the Second Wave cases filed in state court, the defendants have filed a notice of removal to federal court on this ground. The defendants argue that with only federal law implicated, they are entitled to remove the cases from the state courts in which they were filed. The second step of the defendants' argument is that the federal courts should dismiss the cases because the only proper

claim – the federal common law claim – is displaced by the Clean Air Act under *AEP*, or, alternatively, presents a nonjusticiable political question (Sokol, 2020).

Since 2017, all Second Wave cases (except the *City of New York* case) have been caught up in a jurisdictional battle focusing on which courts (state or federal) these state law-based claims should be brought in, and on the application of the political question doctrine to state climate tort claims. In these cases, plaintiffs face two main hurdles: preemption of their state law claims by federal common law and then, if preemption applies, displacement of federal common law by the Clean Air Act (or any other federal statute). Since New York City brought its state claims in federal court, the case did not undergo a removal battle (i.e. deciding whether the case should be brought in state or federal court) like other second-wave suits and instead went straight to the question of federal common law and displacement by the Clean Air Act. Due to a recent Supreme Court decision, however, it is likely that more Second Wave cases will proceed to the merits stage instead of remaining embroiled in this jurisdictional battle centered on the issues of preemption and displacement.

In April 2023, the Supreme Court decided to deny the petitions for writ of certiorari in the Second Wave cases brought by Baltimore and the Board of County Commissioners of Boulder County, in which the fossil fuel defendants sought review of the Courts of Appeals' decisions on those jurisdictional issues (that is, preemption and displacement). The Supreme Court's decision to deny the petitions means that the decisions of the Courts of Appeals stand as the final decision (in their respective circuits) on these jurisdictional issues. Therefore, with these final circuit decisions on jurisdictional matters, it is likely that more Second Wave cases will now move on to reach the merits stage in various state courts..

i. Public and private nuisance

To establish a prima facie case of private nuisance caused by noise, light, or odors emanating from the neighboring property of another, the plaintiff must plead and prove: (1) the defendant's unreasonable interference with the plaintiff's use and enjoyment of his or her property, and (2) material and substantial harm caused to the plaintiff as a result of the defendant's interference.³ An action for private nuisance may lie under the common law or under a statute in some jurisdictions (See, e.g. Ala. Code § 6-5-124; Alaska Stat. § 09.45.230).

A public nuisance generally refers to the unreasonable interference with the rights of the general public by creating conditions which endanger the public's health, offend the public's moral standards, or interfere with the use of public property.⁴ The essential

³ *26 Causes of Action* 2d 277 (Originally published in 2004).

⁴ *Black's Law Dictionary* 1097-1098 (8th ed. 2004).

elements of a claim of public nuisance are: (1) the existence of a public nuisance substantially caused by the defendant's conduct; (2) the defendant's actual or constructive notice of the public notice; (3) the defendant's failure to abate the public nuisance; and (4) the nuisance was a substantial factor in causing injury to the public. The precise definition of public nuisance often varies by state and is embodied in civil and criminal statutes.

The first and second group of Second Wave cases brought state law claims of nuisance and trespass. In those cases, the defendants' argument that state tort climate claims are preempted by federal common law succeeded at the district court level. However, once the cases reached the federal courts of appeals, the Second Circuit in City of New York v. Chevron Corp. found that those state law claims were preempted by federal law, while the Ninth Circuit in City of Oakland v. BP p.l.c. ("San Francisco Bay" lawsuits) disagreed. Consistent with its rulings in County of San Mateo v. Chevron Corp. and City & County of Honolulu v. Sunoco LP (Second Wave cases), the Ninth Circuit in City of Oakland concluded that state law claims of private and public nuisance were not preempted. Six Circuit courts have followed this approach in other second-wave cases by issuing rulings that climate change cases bringing state law tort claims and claims under state consumer protection statutes belong in state court. The rejection by these courts of removal of state law claims to federal court may hint that in the future, these courts could also reject the application of the federal displacement doctrine to those claims, which would significantly lessen the jurisdictional hurdles that Second Wave suits currently face.

In City of New York v. Chevron Corp., New York City filed a federal lawsuit against the five largest investor-owned fossil fuel producers seeking costs the City had incurred, and would continue to incur, to protect itself and its residents from the impacts of climate change. The City alleged that the five defendants should be responsible for these costs as they were responsible for over 11% of carbon and methane pollution and had downplayed the risks of climate change and promoted the use of fossil fuels despite the risks. The City claimed that the defendants' actions constituted an unlawful public and private nuisance and an illegal trespass on City property due to sea-level rise.

In the San Francisco Bay lawsuits, the City of San Francisco and the City of Oakland filed suit against five oil and gas companies alleging that the carbon emissions from their fossil fuel production had created an unlawful public nuisance under California public nuisance law. However, unlike New York City, the plaintiffs in the San Francisco Bay cases expressly brought their state law claims in state court rather than federal court.

In both cases, the argument that the plaintiffs' state tort climate claims are preempted by federal common law succeeded at the district court level. In the San Francisco Bay lawsuits, brought in California state court, the five fossil-fuel industry defendants removed the case, and Northern District of California Judge William Alsup denied the

cities' motion to remand. Not long after, Southern District of New York Judge John Keenan relied on Judge Alsup's opinion in agreeing with the defendants that New York City's state claims were preempted by federal common law. In making these decisions, neither judge applied a specific standard, but rather relied on Supreme Court cases recognizing that it was appropriate for federal courts to develop federal common law to deal with interstate pollution (Sokol, 2020).

Both judges also agreed with the second step of the defendants' argument, and consequently dismissed the federal common law claims that they had just concluded preempted the cities' state claims. In other words, the federal common law claims paradoxically existed only long enough to preempt the state claims, at which point they were immediately displaced by the Clean Air Act (Sokol, 2020). More precisely, both courts held that, to the extent that the claims were based on climate harms caused by domestic emissions from the defendants' fossil fuel products, they were displaced by the Clean Air Act. And to the extent that the harms claimed by the cities were caused by emissions from products outside the U.S., the courts held that the claims were barred by what appears to be a "'foreign policy' focused application of the political question doctrine" (Sokol, 2020).

In the appeal by Oakland and San Francisco of the district court's denial of remand in, and dismissal of, their suits, however, the Ninth Circuit reversed the district court's determination that federal-question jurisdiction provided a basis for removal and remanded for the district court to determine whether there was an alternative basis for jurisdiction. The defendants filed a petition for writ of certiorari for review of the Ninth Circuit's decision, but the Supreme Court denied the petition. On remand, the district court concluded that Ninth Circuit precedent in *County of San Mateo* and *Honolulu* cases (Second Wave cases) dictated that the cases be remanded back to state court. By contrast, in response to New York City's appeal of the dismissal of its suit, the Second Circuit affirmed the dismissal, largely following the reasoning of the district court's decision by Judge Keenan and concluding that the state law claims were preempted by federal law.

This potential split in reasoning between the Second Circuit and the Ninth Circuit (and the five other circuit courts that follow the Ninth Circuit's approach) on the issues of removal and preemption is particularly significant because it could have been the focus of the Supreme Court had it accepted to review the petition for writ of certiorari filed in the *Baltimore* and *Board of County Commissioners* cases, other second-wave suits. Had the Supreme Court accepted to review the petition, it could have potentially been more persuaded by the Second Circuit's reasoning than the Ninth Circuit's and have found that these types of claims belong in federal court, which would pose a significant jurisdictional barrier to these claims. The Supreme Court's denial of the *Baltimore* and *Board of County Commissioners* petition means that the decisions of the Courts of Appeals stand as the final decision (in their respective circuits) on these jurisdictional

issues. Therefore, with these final circuit decisions on jurisdictional matters, it is likely that more Second Wave cases will now move on to reach the merits stage.

ii. Negligent failure to mitigate or adapt to climate change

There have only been a few cases regarding failure to mitigate or adapt to climate change in the U.S.

In *York County v Rambo*, York County, representing bond investors such as the York Retirement Fund; City of Warren Police & Fire Retirement Commission; and Mid-Jersey Trucking Industry & Local No. 701 Pension Fund, filed a complaint against the directors and officers of PG&E. It is a class action securities claim which involves an alleged failure to disclose, in offering documents and SEC filings, by directors and officers of PG&E of the heightened risk of wildfires due to PG&E's own misconduct during the time they sold notes to investors. Essentially they claim that PG&E was in violation of California regulations to manage vegetation and reduce the risks of the ignition of wildfires from their operations. It is based on several reports which found that PG&E was responsible for igniting some of the deadliest wildfires in California's history.

The Conservation Law Foundation cases (Third Wave, covered in Section B. Climate change law/environmental law statutory provisions above) claim failure to adapt, but based on violation of statutory permits.

iii. Negligent or strict liability for failure to warn

Precise definitions of negligent or strict liability for failure to warn vary from state to state. For example, under New York Law, to make out a prima facie case of failure to warn, in negligence or strict liability, the plaintiff must show that: (1) the manufacturer owed plaintiff a duty to exercise reasonable care (that is, it knew or should have known of latent dangers resulting from intended or reasonably foreseeable unintended uses of the product; (2) the product was used in a reasonably foreseeable manner; and (3) the manufacturer's failure to warn was the proximate cause of the plaintiff's injury.⁵

In the third group of Second Wave cases, cities, and counties in California, as well as other government entities around the country, attempted to avoid the federal displacement doctrine by bringing a wider set of claims grounded in state law, including negligent and strict liability for failure to warn customers of the dangers of climate change.

For example, in *Pacific Coast Federation of Fishermen's Associations, Inc. v. Chevron Corp* (Second Wave), a commercial fishing industry trade group filed a lawsuit in California Superior Court seeking to hold fossil fuel companies liable for adverse

⁵ *Glowczenski v. Taser Int'l, Inc.*, 928 F. Supp. 2d 564, 582 (E.D.N.Y. 2013), *aff'd in part, dismissed in part*, 594 F. App'x 723 (2d Cir. 2014).

climate change impacts to the ocean off the costs of California and Oregon that resulted in “prolonged closures” of Dungeness crab fisheries. The complaint asserted five causes of action, including state claims of nuisance and claims of negligent and strict liability for failure to warn. The complaint alleged: (1) that the companies had known for decades that use of their products could be “catastrophic” and that “only a narrow window existed” for action before consequences would become irreversible; (2) the companies took actions to obscure the harms and avoid regulation, while still acknowledging and planning for climate change’s consequences internally; and (3) the companies’ actions prevented the development of fossil fuel alternatives that could have eased the energy transition towards a less fossil fuel-dependent economy. Like other Second Wave cases, the plaintiffs combined state law tort and product liability claims in the complaint in order to avoid the federal displacement doctrine; and also attempted to increase the likelihood that the case would not be dismissed by focusing on the companies’ marketing of fossil fuel products rather than greenhouse gas emissions. The case was removed to a federal court in California and proceedings were stayed pending the Ninth Circuit’s decisions on jurisdictional issues in the *County of San Mateo* (Second Wave) and *City of Oakland* (Second Wave) cases. No substantive decision has yet been made even though the Ninth Circuit ruled that the claims in those two cases belonged in state court.

The California local governments in *County of San Mateo* also brought claims for strict liability for failure to warn and negligent failure to warn, among other tort claims.

In addition to the cases brought in 2017 and 2018, the fourth group of suits brought during the Second Wave by various government entities, primarily in 2020 and 2021, allege state-law consumer protection and unfair competition claims in addition to tort claims, including negligent and strict liability for failure to warn. For example, in *Mayor & City Council of Baltimore v. BP p.l.c.*, the Mayor and City of Baltimore (Baltimore) filed a lawsuit against 26 fossil fuel companies in Maryland state court, seeking to hold them liable for injuries resulting from climate change. Like other local governments, Baltimore argued that the defendant’s conduct in producing, promoting and marketing fossil fuel products as well as their “championing of anti-science campaigns” directly and proximately caused adverse climate change impacts. The complaint alleged climate change impacts such as increasingly frequent and severe storms and flooding in the city and substantial increases in average sea level, heat waves, disruptions of the hydrologic cycle with extreme precipitation and drought and associated public health impacts. Baltimore asserted that it was particularly vulnerable to sea level rise and flooding due to 60 miles of waterfront land and that climate change already adversely affected the City’s infrastructure. Baltimore asserted several tort claims such as nuisance, trespass, negligent and strict liability failure to warn, and other product liability claims, as well as a cause of action under the Maryland Consumer Protection Act (CPA). Like other second-wave cases, Baltimore emphasized the defendant’s marketing and climate disinformation campaigns in its failure to warn claims, asserting

that “[d]efendants individually and in concert widely disseminated marketing materials” that rejected science generally accepted at the time and advanced “pseudo-scientific theories of their own” and “developed public relations materials that prevented reasonable consumers from recognizing the risk that fossil fuel products would cause grave climate changes, undermining and rendering ineffective any warnings that Defendants may have also disseminated.”

Like in other Second Wave cases, the fossil fuel defendants attempted to remove the case to federal court, but the federal district court for the District of Maryland remanded the case back to state court. The defendants appealed the remand order to the Fourth Circuit. The Fourth Circuit, however, affirmed the remand of the case. The defendants immediately filed a petition for writ of certiorari to the Supreme Court for review of the Fourth Circuit’s order remanding the case to state court, arguing that the Circuit erred in concluding that it was limited to reviewing removal based solely on the federal-officer removal statute (28 U.S.C.A. § 1442)⁶ rather than all jurisdictional bases asserted by a defendant. The Supreme Court agreed with the defendants, holding that appellate review of a remand order extends to all grounds for removal, not just the federal-officer statute. After the case was brought back before the Fourth Circuit in light of the Supreme Court’s decision, the Circuit ruled, for a second time, that Baltimore’s lawsuit should proceed in state court. The companies have filed another petition for writ of certiorari to the Supreme Court to review the Fourth Circuit’s second order remanding the case to state court, but this was denied in April 2023.

The petition in the *Baltimore* case presented the same two questions as the petition for writ of certiorari seeking review of the Tenth Circuit’s affirmance of the remand order in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.*, which were ultimately denied by the Supreme Court on April 24, 2023. The denial of the *Boulder County* and the *Baltimore* petitions is significant because, as explained earlier, the focus of this judgment could have been the split in reasoning between the Second Circuit in the *City of New York* case and the Ninth Circuit in the San Francisco Bay cases on the issues of removal and preemption. In other words, if the Supreme Court had accepted to review the petition, it could have potentially been more persuaded by the Second Circuit’s reasoning than the Ninth Circuit’s, finding that state climate change tort claims belong in federal court, which would pose a significant jurisdictional barrier to these claims. The Supreme Court’s denial of the *Boulder County*

⁶ “Under the federal office removal statute, suits against federal officers may be removed from state court despite the nonfederal cast of the complaint. Contrary to the general rule, the federal element requirement is met if the defense depends on federal law. In order to qualify for removal from state court under the federal officer removal statute, an officer must both raise a colorable federal defense and establish that the suit is for an act under color of office requiring the officer to show a nexus between the charged conduct and the asserted official authority.” (2 Wis. Pl. & Pr. Forms § 11:3 (5th ed.)).

and *Baltimore* petitions means that the decisions of the Courts of Appeals stand as the final decision (in their respective circuits) on these jurisdictional issues. Therefore, with these final circuit decisions on jurisdictional matters, it is likely that more Second Wave cases will now move on to reach the merits stage.

In *Platkins v. Exxon Mobil Corp.* (Second Wave), New Jersey officials filed a lawsuit in state court against fossil fuel defendants seeking damages and other relief relating to the defendants' alleged substantial role in causing climate change and resulting harms to New Jersey. The complaint, like the one in *State v. American Petroleum Institute*, claimed that climate change impacts, allegedly as a result of the defendants' actions, would "disproportionately afflict" overburdened communities by exacerbating environmental and public health stressors associated with socioeconomic and racial disparities. The complaint asserted several torts claims, including a failure to warn claim, a claim of impairment of the public trust, and violations of the New Jersey Consumer Fraud Act. A substantive decision has not yet been made.

Another case, filed in 2022, claiming failure to warn is *Municipalities of Puerto Rico v. Exxon Mobil Corp.*, but no substantive decision has been made.

As Second Wave cases proceed to the merits, the benefits and disadvantages for plaintiffs of certain types of claims are likely to emerge. For example, failure to warn claims present a potential challenge to plaintiffs because if those claims reach the merits stage, where the plaintiffs are governmental entities, courts will tend to focus on the historical knowledge of those governments (in other words, what the government knew about climate change and when it acquired that knowledge). Thus, it may be challenging for those governments, which usually have environmental agencies and scientists with knowledge of climate change working under their direction, to succeed on a claim that fossil fuel companies withheld information about climate change if a court finds that the governments themselves had knowledge of climate change.

On the other hand, failure to warn claims and claims under consumer protection statutes also hold many advantages for plaintiffs. Notably, the focus on the marketing of fossil fuel products rather than emission of greenhouse gases as the basis for these types of claims makes it less likely that a court will determine that the claims are preempted by the Clean Air Act, which regulates emissions of greenhouse gases and other pollutants but does not address the marketing of fossil fuel products. Since preemption has been such a hurdle to overcome in Second Wave cases, many plaintiffs in later Second Wave cases have followed this approach, and brought more greenwashing suits and claims under consumer protection statutes to avoid preemption.

iv. **Trespass**

Trespass to land is an invasion into another's exclusive right to possession of property. It is a direct unlawful interference with another's property. Generally, the main elements of trespass are: (1) an unlawful intrusion or invasion upon a property; (2) intent of

intrusion; (3) force; and (4) consequent injury to an owner.⁷ As an intentional tort, the intent is required. Instead of intent to trespass, intent to enter or remain on the land is required, regardless of whether the trespasser knows the land is owned by others.⁸ The owner need not prove that they suffered actual damages of value decreasing or property repairing.⁹ A nominal damage claim is permissible.¹⁰

One of the first cases to claim trespass was the *Murphy Oil* case in the First Wave, but it was dismissed.

All government plaintiffs in the first four groups of Second Wave cases brought trespass claims. For instance, in *City & County of Honolulu v. Sunoco LP*, Honolulu filed an action in state court against fossil fuel companies seeking damages for various climate harms, including bleaching of coral reefs, loss of marine life and several bird species unique to the region, flooding from sea level rise and more intense weather events, heatwaves, drought, and corrosion of the water mains of its drinking supply system from seawater intrusion. This case is notable because, as the only island state, Hawai'i is particularly vulnerable to climate change impacts. Like other second-wave cases, Honolulu combined state law tort and product liability claims in its complaint and emphasized the companies' marketing of fossil fuel products. This shift in focus on the defendant's marketing of their products is illustrated in Honolulu's trespass claim, where it asserts that the defendants "caused flood waters, extreme precipitation, saltwater, and other materials, to enter the City's real property, by distributing, analyzing, recommending, merchandising, advertising, promoting, marketing, and/or selling fossil fuel products" with the knowledge that "those products in their normal or foreseeable operation and use would cause global and local sea levels to rise [...] among other adverse environmental changes, and the associated consequences of those physical and environmental changes."

As with many other Second Wave cases, the defendants in the *Honolulu* case responded by seeking to both "federalize" the plaintiffs' state claims and to get them before federal courts. After the defendants removed the claims to federal court, the federal district court for the District of Hawai'i remanded the cases back to state court. A Hawai'i state court then denied the fossil fuel companies' motion to dismiss Honolulu's lawsuit for failure to state a claim and allowed the case to proceed. Notably, the court distinguished the Second Circuit's decision in *City of New York v. Chevron Corp.*, which affirmed the dismissal of state-law claims grounded in the fossil fuel companies' alleged production, marketing and sales of "massive quantities of fossil fuels" despite their knowledge that

⁷ 75 Am. Jur. 2d Trespass § 26.

⁸ *Newstone Development, LLC v. East Pacific, LLC*, 140 A.3d 100 (R.I. 2016).

⁹ See e.g., *Smith v. Carbide and Chemicals Corp.*, 507 F.3d 372, 172 O.G.R. 85 (6th Cir. 2007).

¹⁰ *Id.*

use of the fuels would lead to the accumulation of greenhouse gases in the atmosphere. The Hawai'i state court noted that the defendants in this case framed Honolulu's claims as seeking "de facto regulation" of global fossil fuel emissions, similarly to the Second Circuit's framing in *City of New York v. Chevron Corp.* of New York City's claims as targeting "lawful commercial activity" in a way that would push for pollution control measures that would effectively be regulating cross-border emissions. However, since Honolulu's claims were clearly stated as tort claims in its complaint, the Hawai'i court found that, based on the "well-pleaded complaint" rule, Honolulu's claims were traditional tort law claims. The court concluded that, based on that framing, neither the Clean Air Act nor federal common law preempted Honolulu's claims. The defendants appealed the court's denial of their motions to dismiss Honolulu's claims to the Hawai'i Supreme Court and the state supreme court granted the request. Significantly, this means that the Hawai'i Supreme Court will likely be the first state court to address the preemption issues in state climate change tort claims, which will provide further insights into how state courts choose to treat these types of claims.

While the Honolulu case was being heard in state court, the defendants appealed the Hawai'i district court's orders in Honolulu's case and another case brought by the County of Maui to remand the cases to the state level. The Ninth Circuit Court of Appeals declined to stay the remand orders. After ruling in County of San Mateo that the state law tort claims belonged in state court, the Ninth Circuit affirmed the remand orders in the Honolulu and Maui cases, finding that the fossil fuel defendants could not show federal jurisdiction. The fossil fuel companies have filed a petition for writ of certiorari seeking the Supreme Court's review of the Ninth Circuit's decision affirming the remand of the Hawai'i local governments' cases to state court.

v. Impairment of public trust resources

One recent trend identified is the reliance on state constitutional protections, including the public trust doctrine where applicable. We anticipate that in states with such constitutional provisions, more claims tying climate impacts to human rights and climate justice claims will be made.

Related to this trend, we anticipate more climate vulnerable communities may initiate litigation, particularly due to damage such as wildfires or other climate extremes. More research may also be needed in order to flesh out the causal chain for these types of suits, in particular to tie corporate emissions sources to specific impacts, such as damage to infrastructure, property, as well as to public health and welfare, particularly in historically marginalized communities. (Wentz et al., 2023).

Two U.S. corporate cases have asserted claims of impairment of public trust resources so far. The public trust doctrine is a common law doctrine that places obligations on government to maintain and preserve certain natural resources. For example, under New Jersey's public trust doctrine, the State has the authority and the duty to protect natural resources held by the State in the public trust for its people. Similarly, the Rhode

Island Constitution has enshrined common law to provide for broad protection of the State's natural resources, and guarantees that its citizens "shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values." R.I. Const. art I., § 17.

To prevail on a claim of impairment of public trust resources, a plaintiff must establish that: (1) defendants owed a duty; (2) defendants breached that duty; (3) the defendant's acts are the cause in fact and proximate cause of plaintiff's injury; and (4) the plaintiff suffered personal injury or personal damage.

In *Rhode Island v. Shell Oil Products* (Second Wave), the State of Rhode Island filed a lawsuit in state court asserting that twenty-one fossil fuel companies should be held liable for climate change impacts that Rhode Island has experienced and will continue to experience in the future. The complaint asserts a range of tort claims, a claim of impairment of public trust resources, and violations of the Rhode Island Environmental Rights Act. After the fossil fuel defendants removed the case to federal court, the First Circuit followed the approach of five other Circuit courts and held that these state law claims belonged in state court and were not preempted by federal law.

More recently, in *Platkins v. Exxon Mobil Corp.* (Second Wave), New Jersey officials filed a lawsuit in state court against fossil fuel defendants seeking damages and other relief relating to the defendants' alleged substantial role in causing climate change and resulting harms to New Jersey. The complaint claimed that climate change impacts allegedly as a result of the defendants' actions would "disproportionately afflict" overburdened communities by exacerbating environmental and public health stressors associated with socioeconomic and racial disparities. The complaint asserted several torts claims, a claim of impairment of the public trust, and violations of the New Jersey Consumer Fraud Act. A substantive decision has not yet been made.

The *re Hawai'i Electric Corporation* case, Justice Wilson's concurring opinion tied the Hawai'i PUC's obligations regarding permit issuance to its constitutional public trust obligations (see Human Rights section above).

vi. Fraudulent misrepresentation

No U.S. cases have brought tort claims of fraudulent misrepresentation. However, several securities cases claim fraud (see Company Law section below).

In *New York v ExxonMobil* (2018), the state of New York based their claim on the New York Martin Act and Executive Law §62(12). New York claimed that the public disclosures made by the corporation for past, present and future climate change risks were materially false and material disclosures to the public, and that ExxonMobil

engaged in a longer standing fraudulent scheme that it had factored climate change risks in its business operations (New York withdrew its earlier claims of equitable fraud and common law fraud). New York claimed that ExxonMobil's internal proxy cost of carbon used to assess future demand for oil was not aligned with its GHG cost model.

The Martin Act is specific to New York, and prohibits use of any device, scheme, or artifice, deception, misrepresentation, concealment, suppression, fraud, in communications involving the issuance, exchange, purchase or sale of securities. New York failed to prove a misrepresentation of material facts. In particular, the court found that New York failed to provide by a preponderance of the evidence that ExxonMobil made any material misrepresentation that would have been viewed by a reasonable investor as having significantly altered the total mix of information made available (citing *TSC Industries v Northway Inc* 426 UA 438 ((1976))).

Interestingly, the judge stated that 'This is a securities fraud case, not a climate change case', illustrating a judicial approach that sees these two issues as unconnected. The judge found that the corporation's internal models contained forward looking information and its financial statements were historical, and that the projections were not 'sufficiently specific' to guarantee some concrete fact or outcome to an investor. In particular, the future timelines of projects to 2030 and 2040 by the Plaintiff, New York, were determined by the judge not to be timelines that reasonable investors would consider in investment decisions in 2013 and 2016 (the projections were too tentative and too generic).

A number of securities cases claim fraud (see Company Law section below). *Fentress v ExxonMobil* (2019), a class action complaint, was dismissed under the Employee Retirement Income Securities Act (ERISA). Plaintiffs claimed ExxonMobil failed to disclose climate change information in an employee stock option plan (ESOP). The employees claimed that ExxonMobil knew or should have known that the stock had become artificially inflated in value due to fraud and misrepresentation. The ongoing case of *Ramirez v ExxonMobil* (2016) claimed on the basis of facts similar to the New York investigation of ExxonMobil, but was brought by investors in public stock in the company - a pension fund. The pension fund claims material misstatements or omissions by ExxonMobil regarding the misrepresentation of the price of oil and the proxy cost of carbon, and failure to disclose losses and abandoned assets.

vii. Civil conspiracy

Only two U.S. cases have brought claims of civil conspiracy. The elements of a civil conspiracy are: (1) an agreement between two or more individuals; (2) to do an

unlawful act or to do a lawful act in an unlawful way; (3) resulting in injury to plaintiff inflicted by one or more of the conspirators; and (4) pursuant to a common scheme.¹¹

In *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.* (Second Wave), three Colorado local government entities filed a lawsuit in state court against fossil fuel companies seeking damages and other relief for the companies' role in causing climate change. The plaintiffs amended their complaint to add a civil conspiracy claim to their claims of public and private nuisance, trespass, and unjust enrichment as well as a claim of deceptive trade practices under the Colorado Consumer Protection Act. As in other Second Wave cases, the defendants removed the case to federal court, but the federal district court in Colorado remanded the case back to state court. The defendants then appealed the remand order to the Tenth Circuit Court of Appeal, which affirmed the remand order. The fossil fuel companies have filed a petition for writ of certiorari seeking review of the Tenth Circuit's opinion upholding the remand order.

The plaintiffs in *Municipalities of Puerto Rico v. Exxon Mobil Corp.* also asserted a claim of conspiracy to commit common law consumer fraud and deceptive business practices against fossil fuel companies.

viii. Product liability

The elements of a products liability claim are that (1) a product was in a defective condition unreasonably dangerous for its intended use; (2) the defect existed at the time the product left the defendant's control; and (3) the defect proximately caused the plaintiff's injury.¹²

In *Dorris v. Danone Waters of America* (Second Wave), a greenwashing class action lawsuit was filed in federal court in October 2022, asserting state law claims of fraud and unjust enrichment, breach of warranty and violations of the California Consumers Legal Remedies Act and the New York General Business Law. A substantive decision has yet to be made.

ix. Insurance liability

There have been no insurance liability claims against corporations in the U.S. so far.

x. Unjust enrichment

There elements must be established in order that a plaintiff may succeed in a claim based on unjust enrichment. These elements are: (1) a benefit conferred on the defendant by

¹¹ See e.g., *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214 (Tex. 2017); *Insurance Co. of North America v. Morris*, 981 S.W.2d 667 (Tex. 1998); *Applied Advert., Inc. v. Jacobs*, No. HHDCV156059689, 2016 WL 6603587, at *4 (Conn. Super. Ct. Oct. 6, 2016).

¹² *Restatement (Third) of Torts: Prod. Liab.* § 1 (1998).

the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value.¹³

In *Dorris v. Danone Waters of America* (Second Wave), the plaintiffs asserted state law tort claims including unjust enrichment.

State law claims of unjust enrichment were also asserted in *Municipalities of Puerto Rico v. Exxon Mobil Corp.* and *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.* (Second Wave cases).

In a Third Wave case, *REM Corporate Derivative Litigation (2020)*, members of the Saratoga Advantage Trust claimed unjust enrichment as well as waste of corporate assets and breach of fiduciary duties as part of a securities case against ExxonMobil. It is currently pending in the Northern District of Texas where it was joined with the *Ramirez v ExxonMobil* case (see Company and Financial Laws section below).

In another Third Wave case, *Perri v Crosky*, shareholders brought a claim in 2021 on behalf of a company, Danimer Scientific, against directors and officers, including for unjust enrichment due to breach of fiduciary duties by failing to correct false and misleading statements, and omissions of material facts, made by the company regarding its product.

D. Company and Financial Laws

One of the earliest cases based on company law was brought by students at Harvard College against the President and Fellows of Harvard College and the Harvard Management Company requesting an injunction and request to divest the University's endowment from fossil fuel investments. The claim was dismissed in 2016 by the Supreme Court of Massachusetts for lack of standing against a charitable corporation (see below), but also on the basis that the claim on behalf of rights of future generations to be free from intentional investment in abnormally dangerous activities did not exist as a tort.

Later cases in the Third Wave invoke the Employee Retirement Income Securities Act (ERISA). Claims have been made under ERISA by employees invested in pension funds operated mainly by fossil fuel companies. ERISA requires a fiduciary to act with the 'care, skill, prudence and diligence under the circumstances then prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use in

¹³ § 68:5. Restitution independent of liability on contract—Unjust enrichment, 26 Williston on Contracts § 68:5 (4th ed.).

the conduct of an enterprise of like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

In *Lynn v Peabody Energy Corporation* (2016), employees of the Peabody retirement fund sued for breach of fiduciary duties by Peabody, and the fiduciaries of three ERISA-governed employee stock option plans (ESOPs), which were made available to Peabody employees. Employees claimed it was a breach of fiduciary duties to continue to offer Peabody stock in the ESOPs when it was imprudent to do so due to the collapse of coal prices during the class period (this was a class action). The District Court of Missouri granted Peabody's motion to dismiss on the basis that the duties of loyalty and prudence under ERISA require a high bar for breach of those duties. Impending bankruptcy was not considered a special circumstance which would overcome the presumption of prudence under ERISA.

In *Fentress v ExxonMobil* (2019), a class action complaint was brought under ERISA for the failure of ExxonMobil to disclose climate change information to employees in an ESOP between November 2015-2016. The employees claimed that ExxonMobil knew or should have known that the stock had become artificially inflated in value due to fraud and misrepresentation due to the fall in oil prices in 2014 and the failure by ExxonMobil to report impairment to their reserves. The claim was dismissed as the court found the claim was based on insider, non-public information, and the plaintiffs failed to prove that a prudent fiduciary in the ESOP could not have concluded that corrective disclosure would do more harm than good.

Another class action suit, in a similar vein to the *Fentress* case, survived the pleadings stage. In *Ramirez v ExxonMobil* (2016) the Greater Pennsylvania Carpenters Pension Fund alleged material misstatements and loss caused by the company. In facts similar to the New York investigation of ExxonMobil, the pension fund claims material misstatements or omissions by ExxonMobil regarding the misrepresentation of the price of oil and the proxy cost of carbon used by the company. The court held that 'a reasonable investor would likely find it significant that ExxonMobil allegedly applied a lower proxy cost of carbon than it publicly disclosed'. The pension fund also claimed a failure to disclose losses incurred at the corporation's Canadian Bitumen Operations, and no recognition of impairment of reserves at the Rocky Mountain Dry Gas Operation on SEC Form 10-K, in addition to material misstatements regarding reserves at the Kearl Operation that the corporation knew would have to be de-booked. Several cases, such as the *REM Corporate Derivative Litigation* case (2020) against ExxonMobil, filed in New Jersey by the Saratoga Advantage Trust, have been transferred to join the *Ramirez* case in Northern Texas.

There have been several cases claiming material misstatement or greenwashing against companies and their directors. York County, representing bond investors such as the York Retirement Fund, City of Warren Police & Fire Retirement Commission and Mid-Jersey Trucking Industry & Local No. 701 Pension Fund, filed a complaint against the

directors and officers of PG&E (which had then filed for bankruptcy) in *York County v Rambo* (2019). The claim involves a failure to disclose, in offering documents and SEC filings, the heightened risk of wildfires due to PG&E's own misconduct during the time they sold notes to investors. The Plaintiffs are claiming under California's inverse condemnation law which imposes strict liability for damage as a result of the design, construction and maintenance of utility facilities.

In *Commonwealth v ExxonMobil* (2019), Massachusetts staved off a motion to dismiss by ExxonMobil under Massachusetts' anti-SLAPP (strategic litigation against public participation) laws. The court held that the civil enforcement action being brought by Massachusetts for deceptive practices perpetrated by Exxon against Massachusetts investors and consumers related to climate change was not subject to the anti-SLAPP legislation.

A number of recent claims have been filed by shareholders and investors, including for greenwashing, illustrating a new trend in the Third Wave. In *Perri v Crosky*, shareholders brought a derivative action against the directors and officers of Danimer Scientific for breach of fiduciary duties, unjust enrichment, waste of corporate assets and violations of securities law for false and misleading claims regarding the biodegradability of plastics sold by the company. A claim by investors was filed in 2021 against the company itself, Danimer Scientific, in a federal securities class action for the company's allegedly false and misleading statements regarding the plastic product (*Rosencrants v Danimer Scientific Inc* (2021)). In a similar case, *Fagan v Enviva*, a securities class action was filed against a wood pellet company for greenwashing. In *Jacob v Bloom Energy* (2020), shareholders successfully sued to gain access to books and records in order to investigate the company's clean energy claims.

There have been several cases involving shareholder proposals regarding climate change being excluded from proxy materials, with mixed outcomes. Proxy materials are circulated by a company to its shareholders before annual general meetings. The eligibility of shareholder proposals is governed by Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. §78n(a), and a shareholder proposal rule promulgated by the Securities and Exchange Commission, Rule 14a-8.3.

In the *Tosdal v Northwestern* case (2020), Mr Tosdal, a shareholder, requested the public utility, Northwestern, to include in its proxy materials a proposal that the utility cease coal fire generation as part of its generation mix, and replace it with renewable energy and storage facilities to produce electricity. Northwestern refused, and the company was granted summary judgment by the court, which held that the shareholder proposal dealt with the company's ordinary business, and was excludable from proxy materials by the company on those grounds.

A similar case, *NYC Employees Retirement System v TransDigm* (2019), settled with acceptance by the aerospace corporation, TransDigm, of the proposed shareholder resolution into its proxy materials after public employees in NYC (firefighters and

teachers' pension fund holders) sued on the basis of the initial refusal of the corporation to circulate their proposal to shareholders. The shareholder proposal requested that the company adopt a policy with time-bound, quantitative, company-wide goals for managing greenhouse gases in accordance with the Paris Agreement.

It is likely that more claims will be made under securities and other financial laws. This trend has already started to take off in Third Wave claims, and we anticipate it is likely to continue, particularly given recent SEC requirements in climate change disclosure rules. This activity may also spur on more aggressive litigation tactics by corporations or fossil fuel friendly states, who may sue in order to prevent climate or ESG obligations being instituted by agencies or other financial actors such as institutional investors. This activity may spur a large variety of industry-versus-industry based claims (for example, recent legislation passed in Kentucky targeting banks climate and ESG practices, which motivated bankers to sue the Attorney General in Kentucky) (further discussed in section 2(A)(iv)). These corporate-based suits are likely to rely on First Amendment (protected corporate speech) grounds.

E. Consumer Protection Laws

Consumer protection laws in the U.S. are increasingly being used to mount climate litigation against corporations, as illustrated in the fourth and fifth groups of Second Wave cases. The key statutes in this field are various state consumer protection and consumer fraud laws.

The fourth group of Second Wave cases were brought by various government entities, alleging both tort claims and consumer protection claims. For instance, in 2021, Anne Arundel County and a city in the county, the City of Annapolis, (“Maryland cases”) filed suits in state court against fossil fuel companies for the consequences of climate change in the county, asserting state law claims of trespass, nuisance, negligence, strict liability and violations of the Maryland Consumer Protection Act (CPA).

Like allegations in earlier Second Wave lawsuits, the City and County alleged that they had suffered and would continue to suffer severe injuries due to climate change, including inundation and loss of property in the City's case, loss of tax revenue, damage to infrastructure and increased costs to prepare the City for the impacts of climate change, as well as sea level rise and storm surge in the County. The City and County also alleged violations of the CPA. Specifically, the County alleged that the fossil fuel companies, despite knowing for more than fifty years that greenhouse gas emissions from their fossil fuel products would have significant adverse impacts on climate and sea levels, concealed the risks of climate change and promoted false and misleading information, including “misleading and deceptive greenwashing” campaigns targeted at County residents to create doubts regarding the impacts of fossil fuels. The fossil fuel companies removed the case to federal court in the United States District Court for the District of Maryland but the County and the City were ultimately successful in remanding

the cases back to state court. However, the district court temporarily stayed its remand order in both cases while the Supreme Court considered the petition for writ of certiorari seeking review of the Tenth Circuit's affirmation of the remand order in *Board of County Commissioners of Boulder County v. Suncor Energy*. Since the Supreme Court denied review of the petition, meaning that the Tenth Circuit's decision stands as the final decision on the remand order in the *Board of County Commissioners* case, it is likely that the remand orders in the *Anne Arundel County* and the *City of Annapolis* cases will no longer be stayed. However, the fossil fuel companies have already appealed the remand orders to the Fourth Circuit, renewing their allegations that the actions are removable to federal court.

The fifth group of Second Wave cases were brought by states, the City of New York and non-profits against fossil fuel companies and other corporations based on state law consumer protection claims. These cases reiterate previous court rulings in Group Two and Group Three cases that state law claims are not preempted by federal law. Three cases brought under the District of Columbia Consumer Protection Procedures Act (CPPA) – one brought by the District of Columbia and two by non-profits – illustrate this trend in the context of state law consumer protection claims.

In *District of Columbia v. Exxon Mobil Corp.*, the District of Columbia alleged that the oil and gas companies had engaged in “deceptive and unfair conduct” in violation of the CPPA by misleading consumers about “the central role their products play in causing climate change, one of the greatest threats facing humanity.” The complaint alleged: (1) that D.C. had to develop a heat emergency plan to address an increased number of extreme heat days; (2) that D.C. was experiencing “more frequent and extreme precipitation events and associated flooding”; and (3) that impacts were especially severe in low-income communities and communities of color. The fossil fuel defendants removed the case to federal court and argued that the Second Circuit's decision affirming the dismissal of New York City's climate change case in *City of New York v. Chevron Corp.* (Second Wave) confirmed that the plaintiff's claims necessarily arise under federal law. The federal district court for the District of Columbia (D.D.C.) found no federal jurisdiction for D.C.'s consumer protection lawsuit and granted D.C.'s motion to remand the case to state court. The D.D.C., and then later the D.C. Circuit Court of Appeals, declined to stay the remand order.

In *Earth Island Institute v. Coca-Cola Co.* and *Earth Island Institute v. BlueTriton Brands* (both Second Wave cases), the D.D.C. similarly found no federal jurisdiction for Earth Island Institute's consumer protection lawsuits brought under the CPPA. However, after the case was remanded to state court in *Earth Island Institute v. Coca-Cola Co.*, the D.C. Superior Court dismissed the case, finding that Earth Island failed to state a claim because Coca-Cola's statements were “aspirational in nature” and therefore not in violation of the CPPA.

F. Fraud Laws

Only a few corporate cases so far have been brought under fraud laws in the U.S. The definition of “fraud” varies from state to state. “Actual fraud”, as opposed to fraudulent misrepresentation, is fraud involving guilt (e.g. scienter, guilty knowledge) and may include anything false said or done to the injury of the property rights of another. Actual fraud is intentional fraud. The elements of actual fraud are: (1) A false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled and (6) resulting damage to the party misled.¹⁴

In *State v. American Petroleum Institute* (2020), the State of Minnesota brought a lawsuit in state court against members of the fossil fuel industry for allegedly causing climate change harms by misleading the public by downplaying the threat of climate change and the role of their products in causing climate change. Minnesota’s case is the first to name the American Petroleum Institute, the major industry trade association of which the defendants in these cases are members and whose actions are extensively documented in all the complaints. The complaint alleged state law claims of fraud, negligence, and strict liability, and violations of the Minnesota Uniform Deceptive Trade Practices Act and the Minnesota False Statement in Advertising Act. Minnesota’s complaint is also notable because it emphasizes the disproportionate impact of climate change on the most vulnerable residents in the state, including communities of color, those living in poverty, the elderly and children. The fossil fuel defendants sought to “federalize” the state tort claims by arguing that federal common law preempted them and initially removed the case to federal court, but the U.S. District Court for the District of Minnesota granted Minnesota’s motion to remand the case to state court. In August 2021, the district court stayed its order remanding Minnesota’s lawsuit in light of the uncertainty generated by the Supreme Court’s decision in *Mayor & City Council of Baltimore v. BP p.l.c.* and the Second Circuit’s decision in *City of New York v. Chevron Corp.* The fossil fuel defendants then appealed the stayed remand order in the U.S. Court of Appeals for the Eighth Circuit. In March 2023, the Eight Circuit issued its decision that Minnesota’s claims are not removable to federal court and joined five other circuits in rejecting the fossil fuel defendants’ jurisdictional arguments.

In *Swartz v. Coca-Cola Co.* (2021), a group of plaintiffs brought a class action in California federal court against Coca-Cola Company and other defendants, asserting a state law claim of fraud and violations of several California consumer protection statutes. The complaint alleged that Coca-Cola and other defendants’ advertising, marketing, and sale of water in plastic bottles labeled as “100% recyclable” constitutes

¹⁴ 8B M.J. FRAUD AND DECEIT § 3 (2023).

unlawful, unfair, and deceptive business practices. However, the lawsuit was ultimately dismissed.

In *Dorris v. Danone Waters of America*, another greenwashing class action lawsuit was filed in federal court in October 2022, asserting state law claims of fraud and unjust enrichment, breach of warranty and violations of the California Consumers Legal Remedies Act and the New York General Business Law. A substantive decision has yet to be made.

G. Contractual Obligations

There are no cases involving contractual obligations in the U.S.

H. Planning and Permitting Laws

See the Conservation Law Foundation cases above under section 1.A. (Climate Law/Environmental Law) regarding the CWA and RCRA permits, as well as the Hawai'i Electric Utilities case under section 1.B. (Human Rights) and the *Rise St. James v LDEQ* above.

I. Other Causes of Action

Other causes of action that have been applied in U.S. corporate climate litigation include violations of anti-idling laws and the Racketeer Influenced and Corrupt Organizations Act (RICO).

i. Anti-Idling State and City Laws

In *People v. Jofaz Transportation, Inc.*, the New York State Office of the Attorney General (OAG) brought an enforcement action against three school bus contractors for New York City, alleging violations of New York State and New York City restrictions on idling vehicles. The complaint alleged that emissions from the idling buses “both harm public health and contribute to climate change.” The State asked the court to direct the companies to ensure their buses comply with legal limits on idling, to require the companies to implement education and training for their management and employees regarding the health and environmental effects of exhaust and the idling laws and regulations, to require that the companies monitor compliance with idling laws, and to impose civil penalties.

ii. Racketeer Influenced and Corrupt Organizations Act (RICO)

In *Municipalities of Puerto Rico v. Exxon Mobil Corp.*, sixteen Puerto Rico municipalities filed a class action in the federal district court for the District of Puerto Rico seeking to hold oil and coal companies liable for losses resulting from storms during the 2017 hurricane season and ongoing economic losses since that time. The municipalities asserted fourteen causes of action under federal and Puerto Rico law, including claims under the federal Racketeer Influenced and Corrupt Organizations Act (RICO).

The *Puerto Rico* complaint alleged that the defendants were responsible for increasingly intense storms and other physical climate change impacts in Puerto Rico, which they alleged were intensified by climate change “as accelerated by Defendants’ consumer products and conduct.” The municipalities alleged that (1) based on Richard Heede’s work, the defendants were responsible for 40.01% of all global industrial greenhouse gas emissions from 1965 to 2017; and that (2) these collective emissions were a “substantial factor” in the increase in the intensity of the 2017 Atlantic Hurricane Season” and other physical climate change impacts in Puerto Rico. The complaint alleged a “corporate worldwide strategy” to hide information linking the defendants’ products to acceleration of climate change and to an increased likelihood “that Puerto Rico would be ravaged by dangerous, deadly storms” as part of its RICO claims. No substantive decision has yet been made.

The municipalities’ RICO claims against fossil fuel companies follow a litigation strategy previously used in tobacco litigation. Because the tobacco industry and the fossil-fuel industry have many similarities, strategies in tobacco litigation can also be useful in climate litigation against corporations (Olszynski et al., 2017). Specifically, in *United States v. Philip Morris USA, Inc.* (2006), the U.S. government brought a lawsuit against nine cigarette manufacturers and two-tobacco-related trade organizations, alleging violations of RICO by engaging in numerous acts of fraud to further a conspiracy to deceive the American public about nicotine addiction and the health effects of cigarettes and environmental tobacco smoke. In that case, the government was successful as the United States District Court for the District of Columbia held the tobacco defendants liable for the RICO violations.

2. Procedures and Evidence

A. Actors Involved

i. Who is bringing climate litigation in the USA against corporations?

In the First Wave, it was largely states (eight states plus New York City brought claims against power plants in *AEP v Connecticut*), NGOs (three private land trusts were also plaintiffs in *AEP v Connecticut*) or communities (for example, Kivalina Village and the City of Kivalina). In the *Murphy Oil* case, a group of private Mississippi Gulf Coast residents and property owners, who suffered damage in Hurricane Katrina, sued private companies.

In the Second Wave, local governments, mostly cities and counties, as well as states, brought the majority of climate actions. In the initial Second Wave suits, New York City and the cities of Oakland and San Francisco brought claims against fossil fuel companies. In the third group of Second Wave cases, several counties, the city of Honolulu and the state of Rhode Island brought claims against fossil fuel companies. Notably, in the *Pacific Coast Federation of Fishermen's Association* case, a class of plaintiffs from one industry sued another industry over climate impacts. In the Second Wave's fourth group of cases, a similar mix of cities, counties and states brought climate actions against fossil fuel companies. That group includes *City of Charleston v. Brabham Oil Co.*, the only case so far brought by a government entity in a state that predominantly votes for or supports the Republican Party. In the fifth group of Second Wave cases, New York City, the District of Columbia, states and an NGO (*Beyond Pesticides v. Exxon Mobil Corp.*) brought consumer protection claims against fossil fuel producers. Other NGOs brought consumer protection claims against vendors of products whose use contributes to climate change (Earth Island Institute brought actions against Coca-Cola Co. and BlueTriton Brands and Greenpeace, Inc. brought claims against Walmart, Inc.).

In the Third Wave, a larger diversity of claimants are bringing cases, including NGOs (Conservation Law Foundation, as well as the Harvard Climate Justice Coalition of students, and environmental justice communities such as Rise St. James) as well as shareholders, employees and pension fund and bond holders. States have also brought cases against corporations (for example New York and Massachusetts' investigations of ExxonMobil).

ii. Against whom has such litigation been brought?

A large variety of corporations have been sued in the U.S.

In the First Wave, the defendants included five major electric power companies (largely private entities as well as one federally owned corporation, the Tennessee Valley Authority) which operated a fossil fuel power plant. At the time of the *AEP v Connecticut* case, these were the largest sources of CO₂ emissions in the U.S. In the *Native Village of Kivalina* case (also in the First Wave) several private energy companies were sued, including ExxonMobil, Chevron and BP Plc (including BP Products North America). In *California v GM*, the State of California sued several auto manufacturers, claiming their emissions were causing significant damage to the state. In the *Murphy Oil* case, a large variety of companies were sued, including coal companies like Arch Coal, public and private utility companies, oil and gas companies such as Shell, Chevron, ExxonMobil and BP, as well as minerals companies such as BHP Minerals, as well as Dow Chemical Company. Such a large variety of corporations have not been subject to one suit since then, as claims have been more targeted at certain sectors.

In the Second Wave, the defendants were almost exclusively fossil fuel producers. Defendants in Groups One to Four were all fossil fuel producers or an association of those companies (*State v. American Petroleum Institute*). This trend began to change in Group Five as NGOs also brought actions against vendors of products whose use contributes to climate change (Earth Island Institute brought actions against Coca-Cola Co. and BlueTriton Brands and Greenpeace, Inc. brought claims against Walmart, Inc.).

In the Third Wave, a larger diversity of claimants and defendants have appeared. Fossil fuel corporations such as Shell, ExxonMobil and Gulf Oil were subject to claims by the NGO Conservation Law Foundation. In addition, states such as New York and Massachusetts instigated investigations. A diversity of defendants are included in the Third Wave, including utility generators in the Hawai'i case, employee pension funds, directors and managers of companies, as well as renewable energy utilities such as wood pellet companies, and plastics companies, such as Danimer Scientific and Formosa

iii. Third-party intervenors in corporate climate litigation

In *New York v ExxonMobil* (2018) (Third Wave), Energy Policy Advocates, a non-profit corporation, and its Board member Robert Schilling, moved to intervene in the case for the "limited purpose" of seeking public access to certain judicial documents which have been filed in the case. A New York trial court ultimately denied the motion to intervene.

In *re Hawai'i Electric Company* (Third Wave), an NGO, Life of the Land, intervened in the Public Utility Commission ("PUC") hearing and originally appealed the PUC's approval of the power purchase agreement. They are an energy, environmental and community action group, who claimed the right to a clean and healthful environment under the state constitution. In *Plaquemines Parish v Chevron* (2022), the state of

Louisiana intervened. We anticipate more environmental justice and climate vulnerable communities may intervene in cases moving forward.

iv. Others

The majority of corporate defendants in the U.S. so far have been oil and gas companies. The Third Wave illustrates a wider diversity of corporations which have been sued, from wood pellet and plastics companies, large retailers such as Walmart and Coca-Cola, to utilities companies. This group could be extended in the future to non-state actors in other GHG intensive industries, such as automakers, transportation and materials (i.e. steel) companies, agricultural and other food and beverage companies, as well as financial institutions and other firms who finance and market GHG intensive products. This may be particularly likely where these companies operate in or near environmental justice communities in a state with constitutional environmental protections.

Corporate actors, including financial institutions, who either support or oppose ESG (environmental social governance) reporting, are potential intervenors in climate litigation cases. In *Hope of Kentucky, LLC v. Cameron* (2022), a trade association for banks in Kentucky and an affordable housing financier challenged the Kentucky Attorney General's investigation of violations related to ESG (environmental social governance) investment practices. In October 2022, the Attorney General issued six subpoena and civil investigation demands (CIDs) to banks. Among other claims, the complaint alleged that the Attorney General violated a Kentucky law enacted in 2022 that imposed restrictions on state investments in and contracting with companies that engage in "energy company boycotts". Texas passed a similar law that prohibits most state government entities from contracting with companies that "boycott" fossil fuels (in other words, that have reduced or cut investments in the oil and gas industry). Florida also passed an anti-ESG bill, effective on July 1, 2023, barring state officials from investing public money to promote ESG goals and prohibiting ESG bond sales. With an increase in anti-ESG legislation in the country, more actors, like the bank association in the *Hope of Kentucky* case, may choose to intervene in climate litigation against corporations.

B. Approach of U.S. courts to procedural issues in corporate climate litigation

i. Standing

In the U.S. federal courts, there are three elements to establish standing: injury, traceability and redressability. The plaintiff must have suffered an injury in fact, which is fairly traceable to the challenged conduct of the defendant, and which is likely to be redressed by a favorable judicial decision. An injury in fact must be an injury that is an invasion of a legally protected interest, which is particularized, concrete and actual or imminent. The injury must be specific to the litigant and not theoretical. Organizations bringing public interest litigation may have standing to sue in federal court based on either an injury to the organization in its own right or its status as the representative of its members who have been injured. The doctrine of “associational” or “representational” standing permits an organization, in certain circumstances, to premise standing entirely on injuries suffered by its members, even absent a distinct injury to itself. This doctrine does not eliminate the constitutional requirement of a live case or controversy between the parties, but it recognizes that injury to an organization’s members may satisfy the requirements of Article III and allow the organization to litigate in federal court on their behalf. A number of the earlier cases in the U.S. in the First Wave faced procedural hurdles, in particular in relation to standing. The early case of *Kivalina v ExxonMobil* is an example of an attenuated causal chain leading to a court finding no standing on behalf of the plaintiffs.

The plaintiffs in *Murphy Oil* in the First Wave sued a number of corporations for damages wrought by Hurricane Katrina. The plaintiffs targeted carbon major corporations due to their contributions to climate change, which the plaintiffs claimed led to the unprecedented strength of the storm. The plaintiffs pointed to the knowledge of carbon major corporations about climate change and their lack of action to use technology or their profits to combat it. The case suffered from a number of procedural oddities, however. While the district court dismissed the case for various reasons, including lack of standing, an appellate panel in the U.S. Court of Appeals for the Fifth Circuit concluded that the plaintiffs had standing to bring claims of public and private nuisance, trespass and negligence, which all depended on a causal link between emissions and destruction of their property. The case was ultimately dismissed due to lack of quorum on an en banc review by the Fifth Circuit.

In the Third Wave, a case brought by the Conservation Law Foundation (CLF), *Conservation Law Foundation v Gulf Oil LP*, was dismissed for lack of standing by the Federal District Court in Connecticut. In that case, the court found that there was no injury in fact to the members of CLF who recreated in and around the terminal (associational standing was claimed). The Plaintiffs failed to prove a ‘real and imminent threat of future injury’. While the claims did articulate at great length the future impacts from climate change, the court found they were not specific enough on whether or how

such impacts would immediately lead to discharge of pollutants from the terminals. The claims showed harms to the environment from climate change would occur, but were not specific enough regarding harms to the plaintiffs. The court stated:

Plaintiff must allege, more than simply that the risk of severe weather events and flooding is increasing; it must allege that such increased risk presents a ‘real and immediate threat of future injury’ to its members.

The alleged risks of an 18% increase in flooding by 2030 were held to be insufficient for standing.

However, similar cases brought by *Conservation Law Foundation v Shell Oil* in Connecticut and Rhode Island have survived the standing challenge at the pleadings stage, and have been allowed to proceed. In those successful cases, courts found that there was an injury in fact, traceable to the challenged conduct, and redressable with a favorable decision, but only in relation to near-term impacts given the requirement for ‘imminence’ to be established under the injury-in-fact limb. In these cases, the CLF was successful in tying the impacts from climate change to harms to their members.

In an early Third Wave case, the students at Harvard who formed the Harvard Climate Justice Coalition and sued the President and Fellows of the College as well as the Harvard Management Company, did not have standing against a charitable corporation. In that case, usually the Attorney General would have standing, but for the students, special standing would have to apply for a claim that arises from a personal right that directly affects the individual member of a charitable organization. This special standing would usually apply to a person in administration or management of a public charity and the student members did not qualify.

ii. Justiciability

Claims around justiciability in the U.S. have largely revolved around challenges that climate change is a political question, and so not justiciable by the courts. In the First Wave, a claim brought by the State of California against auto manufacturers, including General Motors, in 2006 was dismissed. The claims were unsuccessful at the Ninth Circuit on the basis that it was a political question reserved for Presidential or Congressional action.

In the Second Wave, state-based claims brought in New York against five fossil fuel companies also failed under a “‘foreign policy’ focused application” of the political question doctrine (Sokol, 2020). In *City of New York v. Chevron Corp.* (2018), the U.S. District Court for the Southern District of New York found that New York’s claims presented nonjusticiable political questions as the claims would “severely infringe” upon matters “within the purview of the political branches.” After the City filed an appeal to the U.S. Court of Appeals for the Second Circuit, the Circuit affirmed the dismissal of the City’s lawsuit and agreed with the district court that New York’s state claims were nonjusticiable because “foreign policy concerns foreclose New York’s proposal here to

recognize a federal common law cause of action targeting emissions emanating from beyond our national borders.”

iii. Jurisdiction

In the Second Wave, all of the claims brought are grounded in state law, and can be seen as a reaction to the failure of claims brought under federal law which occurred in the First Wave. The first and second group of cases in the Second Wave brought state law claims of nuisance and trespass. The Second Circuit in *City of New York v. Chevron Corp.* found that those state law claims were preempted by federal law. Meanwhile, the Ninth Circuit in *City of Oakland v. BP p.l.c.*, consistent with its rulings in the *County of San Mateo* and *Honolulu* cases, concluded that state law claims of private and public nuisance were not preempted. In total, six Circuit courts have followed this approach in the third and fourth groups of second-wave cases by issuing rulings that climate change cases bringing state law tort and consumer protection claims belong in state court. The fifth group of second-wave cases were brought by states, the District of Columbia, the City of New York and nonprofits against fossil fuel companies and other corporations based on state law consumer protection claims. These cases reiterate previous court rulings in other second-wave cases that state law claims are not preempted by federal law.

iv. Group litigation / class actions

A number of class action lawsuits have been brought in the U.S. These predominantly include claims under ERISA brought by employees of fossil fuel companies (see section 1.D. above Company and Financial Law). These include cases such as *Lynn v Peabody Energy Corporation* (2016), *Fentress v ExxonMobil* (2019) and a series of consolidated cases pending in the District of Northern Texas initiated by *Ramirez v ExxonMobil* (2016) (joined by *REM Corporate Derivative Litigation* (2020)), or members of a class which purchased securities during a set period, such as *Fagan v Enviva* (complaint filed in 2022) or bond investors such as the York Retirement Fund, City of Warren Police & Fire Retirement Commission and the Mid-Jersey Trucking Industry & Local No. 701 pension fund in *York County v Rambo* (complaint filed in 2019) suing directors and officers of PG&E. These cases are usually brought by members of the employee pension fund on behalf of all employees or investors in the pension fund or corporation during the stated class period.

v. Apportionment of liability

There are very few cases which have reached or been resolved at the merits stage, so apportionment has not been determined yet. In order to be successful, more scientific research, particularly around the responsibility of various actors in the fossil fuel supply chain, may be needed (Wentz et al., 2023).

Joint liability may exist as a result of the concurrent negligent acts of two or more defendants or by imputing the negligence of an active defendant to a passive one, such

that the passive defendant is “vicariously liable” for the other’s torts. Joint liability may also be imposed for non-negligent tortious conduct. An action against alleged joint tortfeasors is generally considered both joint and several.

Under the rule of joint and several liability, each tortfeasor who contributes to the plaintiff’s harm is individually liable for the entire amount of the plaintiff’s damages. The plaintiff may seek full recovery from any or all of the wrongdoers. Joint and several liability assures the plaintiff full recovery so long as at least one of the tortfeasors is solvent and is subject to the court’s jurisdiction. The burden of apportioning liability among the multiple defendants is then left to the wrongdoers themselves. Joint and several liability applies among “joint tortfeasors,” meaning those who: (1) act in concert in committing a wrong; (2) breach a joint duty owed to the plaintiff; or (3) whose concurrent acts of negligence combine to produce a single indivisible injury to the plaintiff. Joint and several liability is also applied to parties who, although not properly called “joint tortfeasors,” are nonetheless each held individually responsible for the entire amount of the plaintiff’s harm.

vi. Costs

The American rule is that costs are borne by each party. The only exception to this rule is if the federal statute in question contains fee-shifting provisions for citizen suits, or under the Equal Access to Justice Act which provides for fee recovery, but only in suits against government agencies.

vii. Disclosures

Due to jurisdictional defenses mounted by corporations, very few cases beyond the First Wave in the U.S. have reached the merits stage. Despite this, a larger number and variety of claims have been launched in the past decade. Due to a recent Supreme Court decision, it is likely that many state-based lawsuits in the Second Wave will now proceed to the merits stage. Even if many of these cases are not successful, disclosure of information by fossil fuel companies may have a large public impact on public perceptions of these corporations’ operations. Other GHG-intensive industries and actors are also likely to be subject to litigation in the future, including the financial industries.

C. Arguments and defenses

In the First Wave, defendants were largely successful in arguing the case involved a political question best addressed by Congress and so was not justiciable, for example in *AEP v Connecticut*. This argument was not successful in *Barasich v Columbia Gulf Transmission*, where the Plaintiffs only claimed monetary damages, and not an injunction.

In the Second Wave, defendants are using jurisdictional arguments to attempt to remove cases from state courts to federal courts. These often frame the case as a political question, or seek removal under federal officer removal statutes, which state that any officer (or any person acting under that officer) may remove to federal court a civil action commenced in state court when the claims are for or relating to any act under color of such office. These defenses have not been successful so far (except in the *City of New York* case), but have delayed cases reaching the merits stage by many years.

In public nuisance cases, defendants may also use the balancing test used by some courts to determine whether there has been an unlawful public nuisance, as a defense. There is a public nuisance when “an intentional invasion of another’s interest in the use and enjoyment of land is unreasonable.” (Restatement 2d of Torts, Section 829A). If courts elect to follow the Restatement’s approach, “unreasonableness” can be determined based on a balancing test: “if the harm resulting from the invasion is severe and greater than the other should be required to bear without compensation.” (R. 2d of Torts, Section 829A). This test, when applied, can be a difficult hurdle for plaintiffs to overcome because courts may find that there is no “unreasonableness” in the use of fossil fuels when plaintiffs also “benefit[] from and participate[] in the use of fossil fuels”, for example, as a source of power. Applying the test in *City of New York*, the S.D.N.Y. followed that line of reasoning in concluding that there was no “unreasonableness”: “it is not clear that Defendants’ fossil fuel production and the emissions created therefrom have been an ‘unlawful invasion’ in New York City, as the City benefits from and participates in the use of fossil fuels as a source of power, and has done so for many decades.” Therefore, plaintiffs should be aware of the potential use of the balancing test as a defense in public nuisance claims.

In the *CLF v Gulf Oil LP* case, defendants successfully deployed a lack of ‘imminence’ in dismissing the claim for lack of standing (see above). While the court confirmed the *Massachusetts v EPA* holding that the harms associated with climate change are serious and well recognized, it also found that, in relation to imminence for an injury in fact, for standing to be proved:

Plaintiff must allege, more than simply that the risk of severe weather events and flooding is increasing; it must allege that such increased risk presents a ‘real and immediate threat of future injury’ to its members.

The alleged risks of an 18% increase in flooding by 2030 were held to be insufficient for standing.

Plaintiffs overcame the imminence defense in related cases brought by CLF against Shell Oil and in Connecticut and Rhode Island. In those cases, the court found standing at the pleadings stage - that there was an injury in fact, traceable to the challenged conduct and redressable with a favorable decision, but only in relation to near-term impacts (to satisfy the 'imminence' requirement). The court found that the imminence requirement ensures that harm has either happened or is sufficiently threatening. Specifically, some of the allegations of harm out to 2100 were not acceptable by the court under this test, but near-term harms from foreseeable weather events were acceptable as impending harms at the pleadings stage. The court provided this guidance:

The Complaint makes clear that a major weather event, magnified by the effects of climate change, could happen at virtually any time, resulting in the catastrophic release of pollutants due to Defendant's alleged failure to adapt the Terminal to address these impending effects. While it may not occur for many years, the fact that it is certainly impending is enough to meet the standard.

D. Sources of evidence

The traditional approach of tort law in common law countries follows the general 'but for' test: but for the defendant's actions, the plaintiff would not have suffered harm. In the U.S., tortious conduct must be a factual cause of harm for liability to be imposed. Conduct is a factual cause of harm when the harm would not have occurred absent the conduct.

While not a case involving corporations, the Supreme Court case of *Massachusetts v EPA* is a leading one in this jurisdiction regarding causation in the U.S. Several states submitted a petition for rulemaking to the EPA, and the Supreme Court remanded the issue back to the EPA, finding that GHGs could be regulated as an air pollutant under the Clean Air Act, and also dismissed the agency's findings around causation. Justice Stevens noted that the harms associated with climate change were serious and well recognized. In addition, he noted that because the changes associated with climate change were widely shared did not minimize Massachusetts' interest in the outcome of the litigation (Massachusetts enjoyed special solicitude as a state for standing purposes). As the EPA had failed to dispute the existence of a causal connection between GHG emissions and global warming, its failure to regulate, at a minimum, contributed to Massachusetts' injuries. Even though the EPA claimed India and China would offset U.S. emissions, the court found the EPA 'overstated its case' in that regard.

Climate attribution science has played a major role in lawsuits in the Second Wave. The increased reliance on climate attribution science is most visible between first-wave and initial second-wave cases with the publication of Richard Heede's groundbreaking quantitative analysis of historic fossil fuel and cement production records of 90 leading investor-owned, state-owned, and nation-state producers of oil, natural gas, coal and cement in 2013. His study concluded that these 90 carbon-major entities were

responsible for 63% of cumulative worldwide industrial emissions of carbon dioxide and methane from 1854–2010. Heede’s carbon-major study has been further developed by attribution science. Another study by Ekwurzel et al. built on the initial work by Heede, tracing the emission contributions of several carbon-major corporations to the rise in global mean surface temperatures. These studies have helped close the causation gap highlighted in initial second-wave cases. However, whether the factual “responsibility” identified in these studies can be translated into legal “responsibility” is unclear, particularly within tort law.

The role of climate attribution science in climate litigation is illustrated by the climate tutorial ordered by the federal judge, William Alsup, who oversaw the “San Francisco Bay” cases. Due to the complexities of climate science, Judge Alsup scheduled a tutorial in which he asked both sides to present the history of climate science and “the best science now available on global warming, glacier melt, sea rise, and coastal flooding.” However, the parties did not have the opportunity to dive deeper into the scientific basis for attributing climate-related harms to these companies because the case was dismissed before it went to trial. Ultimately, the science discussion had little impact on the decision since Judge Alsup dismissed the case on grounds entirely unrelated to climate science (Burger & Wentz, 2018). Like the court in *City of New York v. Chevron Corp.*, Judge Alsup dismissed the case on the grounds that the issue of determining rights and assigning responsibility for damages caused by fossil fuel use was a nonjusticiable political question that should be resolved by the executive and legislative branches.

Climate science, and its particular effects in Hawai’i, played a prominent role in the concurring opinion of Justice Wilson in the *re Hawai’i Electric Company* case in the Third Wave.

As more cases reach their merits stage in the U.S., we anticipate more reliance on climate studies, in particular attribution studies, will be evident.

E. Limitation Periods

There are different limitation periods for different causes of action. For example, for securities claims, under the Securities Act, claims are barred “unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence.” 15 U.S.C. § 77m. The one-year period “begins to run once the plaintiff did discover or a reasonably diligent plaintiff would have discovered the facts constituting the violation—whichever comes first.” This became an issue in the *Barnes v Edison* case (2019) regarding when statements were made by the public utility, Edison, and its motion to dismiss for untimeliness. Plaintiffs claimed that factual statements made in the company’s June 2017 prospectuses concealed the risk of wildfires, which the court found should have been revealed when the Thomas wildfire occurred in December 2017. Although the

hurdle in establishing untimeliness was described as high, the Defendants succeeded in their motion to dismiss on this basis as the Plaintiffs missed the one year window to file a claim from that date.

For public nuisance claims, states have adopted a variety of statutes of limitations, ranging from two to five years, or even longer. The limitations period will depend on whether the nuisance is “permanent” or “temporary”. Where the nuisance is deemed permanent, the cause of action must be brought within the statutorily specified period of years from the date that the permanent nuisance was created or occurred. Where a nuisance is temporary or continuing in nature, the plaintiff may bring the action at any time, although the statute of limitations will prevent recovery for injuries occurring before the limitation period. The general concept is that if a nuisance is “continuing”, then the actor inflicts new harm on the property on each occasion. (Statutes of limitation, 1 State Environmental L. § 3:18 (2022)).

For product liability claims, such as design defect or failure to warn claims, the limitations period is governed by a “discovery rule”. The discovery rule provides that the limitations period on product liability claims begins (1) when a plaintiff discovers, or should have discovered, that the plaintiff has been harmed, or may have been harmed, by the defendant’s conduct; or (2) when a plaintiff, through the exercise of reasonable diligence, discovers, or should have discovered, that he or she has a possible cause of action, that a claim exists, or that there is reason at least to suspect a factual basis for the elements of a cause of action. (Discovery of harm and its cause, Am. L. Prod. Liab. 3d § 47:34 (2023)).

For claims brought under various state deceptive trade practice or consumer protection acts, the statute of limitations generally begins to run on an action under state deceptive trade practice or consumer protection acts when the cause or right of action has accrued or arisen. Thus, reasoning that no cause of action could have accrued before the entire scope of the improper actions is made known to the defrauded party, some courts have held that the limitations periods in actions based upon deceptive trade practice or consumer protection statutes commenced to run from the time the complained of actions were or should have been discovered. (18 A.L.R.4th 1340 (1982)).

3. Remedies

A. Pecuniary Remedies

In the First Wave, the Native Village of Kivalina claimed damages for adaptation costs - the land where the Village was located was being eroded by wave action and storms. While the remedy they sought differed from the abatement remedy requested in the *AEP v Connecticut*, their claims were still displaced by the Clean Air Act.

In the Second Wave, in *Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.*, the complaint sought money damages and other relief, including remediation and abatement of the public nuisance and trespass. Notably, the complaint expressly disclaimed requests to enjoin oil and gas operations or sales, to enforce emissions controls, relief related to injuries on federal lands, or relief based on defendants' lobbying activities. In *King County v. BP p.l.c.*, King County in Washington State sought an order of abatement requiring the fossil fuel defendants to fund a climate change adaptation program for the County as well as compensatory damages for the costs the County had already incurred.

In the Third Wave, in *CLF v Shell Oil (in Connecticut) Conservation Law Foundation* requested civil penalties for failure to adapt. In the Connecticut decision at the pleading stage, the District Court found that civil penalties, which are designed to punish culpable individuals and deter future violations (as opposed to damages which are designed to extract compensation or restore the status quo), were appropriate and assessed similarly to requests for injunctive relief. In *Rise St James v LEDQ*, plaintiffs were successful in securing the vacation of permits previously granted to Formosa.

A shareholder derivative action in the Third Wave, *Perri v Croskey*, seeks restitution from directors and officers and an order disgorging profits made by them in performance-based payments and any other compensation gained by the defendants due to their breach of fiduciary duties. The securities class actions, such as *Rosencrants v Danimer*, claim to recover damages caused by violations of federal securities law.

B. Non-Pecuniary Remedies

In the First Wave, in *AEP v Connecticut*, an injunction was sought in order to cap CO2 emissions, and decrease them on an annual basis moving forward. This type of remedy has not been sought or replicated in other cases.

In the Second Wave, in *City of New York v. Chevron Corp.*, the City of New York, in addition to monetary damages, sought an injunction to abate the public nuisance and trespass should the defendants fail to pay the damages for past and permanent injuries. The case, however, was dismissed.

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Appendix – Case Chart

Wave	Case Name	Filing Date	Causes of Action
First Wave	American Electric Power Co. v. Connecticut	2004	Federal Common Law — Nuisance, State Law—Nuisance.
	Comer v Murphy Oil USA, Inc.	2005	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Tort Law.
	California v. General Motors Corp.	2006	State Law—Nuisance.
	Barasich v Columbia Gulf Transmission Co.	2006	State Law—Tort Law.
	California v. General Motors Corp.	2006	State Law—Nuisance
	Native Village of Kivalina v. ExxonMobil Corp.	2008	Federal Common Law—Nuisance, State Law—Nuisance.
Second Wave	City of New York v. Chevron	2018	State Law—Trespass, State Law—Nuisance.
	City of Oakland v. BP P.L.C.	2017	State Law—Nuisance, Supremacy Clause.
	Cty. of Santa Cruz v. Chevron Corp.	2017	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Supremacy Clause.
	Cty. of San Mateo v. Chevron Corp.	2017	State Law—Trespass, State Law—Nuisance, State Law—Negligence, Supremacy Clause, State Law—Tort Law.

Rhode Island v. Shell Oil Products	2018	State Law—Trespass, Public Trust Doctrine, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Rhode Island Constitution, Rhode Island State Environmental Rights Act.
King Cty. v. BP P.L.C	2018	State Law—Trespass, State Law—Nuisance.
Pacific Coast Fed'n of Fishermen's Ass'ns, Inc. v. Chevron Corp	2018	State Law—Nuisance, State Law—Negligence, State Law—Strict Liability.
City & County of Honolulu v. Sunoco LP	2020	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability.
County of Maui v. Sunoco LP	2020	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability.
Mayor of Baltimore v. BP P.L.C.	2018	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Maryland Consumer Protection Act
Board of County Commissioners of Boulder County v. Suncor Energy (U.S.A.), Inc.	2018	State Law—Trespass, Conspiracy, State Law—Nuisance, State Law—Unjust Enrichment, Colorado Consumer Protection Act
City of Charleston v. Brabham Oil Co.	2020	South Carolina Unfair Trade Practices Act, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Maritime Law—Trespass.

	Delaware v. BP America Inc.	2020	State Law—Trespass, Delaware Consumer Fraud Act, State Law—Nuisance, State Law—Negligence
	City of Hoboken v. Exxon Mobil Corp.	2020	New Jersey Consumer Fraud Act, State Law—Trespass, State Law—Nuisance, State Law—Negligence
	State v. American Petroleum Institute	2020	State Law—Fraud, State Law—Negligence, State Law—Strict Liability, Minnesota Consumer Fraud Act, Minnesota Uniform Deceptive Trade Practices Act, Minnesota False Statement in Advertising Act.
	Anne Arundel County v. BP p.l.c.	2021	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Maryland Consumer Protection Act
	City of Annapolis v. BP p.l.c.	2021	State Law—Trespass, State Law—Nuisance, State Law—Negligence, State Law—Strict Liability, Maryland Consumer Protection Act
	Platkin v. Exxon Mobil Corp.	2022	New Jersey Consumer Fraud Act, State Law—Trespass, Public Trust Doctrine, State Law—Nuisance, State Law—Negligence, Failure to Warn

	Municipalities of Puerto Rico v. Exxon Mobil Corp.	2022	Sherman Antitrust Act, Conspiracy, Failure to Warn, State Law—Strict Liability, Common Law Consumer Fraud, Rule 7 of Puerto Rico Rules Against Misleading Practices and Advertisements, Puerto Rico Nuisance Statute (32 L.P.R.A. §2761), Strict Liability—Design Defect, Negligent Design Defect, State Law—Unjust Enrichment, Racketeer Influenced and Corruption Organizations Act (RICO).
	Commonwealth v. Exxon Mobil Corp.	2019	Massachusetts Consumer Protection Act
	District of Columbia v. Exxon Mobil Corp.	2020	District of Columbia Consumer Protection Procedures Act
	Connecticut v. Exxon Mobil Corp.	2020	Connecticut Unfair Trade Practices Act
	Beyond Pesticides v. Exxon Mobil Corp.	2020	District of Columbia Consumer Protection Procedures Act
	Greenpeace, Inc. v. Walmart Inc.	2020	State Law—Unfair Competition, California Unfair Competition Law.
	Vermont v. Exxon Mobil Corp.	2021	Vermont Consumer Protection Act
	City of New York v Exxon	2021	New York City Consumer Protection Law
	Earth Island Institute v Coca-Cola Co.	2021	District of Columbia Consumer Protection Procedures Act
Third Wave	Harvard Climate Justice Coalition v. President & Fellows of Harvard College	2014	State Law—Tort Law, Massachusetts Uniform Prudent Management of Institutional Funds Act
	People of the State of New York v. Exxon Mobil Corporation	2015	State Law—Fraud, New York Martin Act, New York Executive Law § 63(12)
	Lynn v Peabody Energy Corporation	2015	Employee Retirement Income Security Act of 1974 (ERISA)

	Ramirez v ExxonMobil	2016	Securities Act of 1933 / Securities Exchange Act of 1934
	Fentress v ExxonMobil	2016	Employee Retirement Income Security Act of 1974 (ERISA)
	Conservation Law Foundation v. ExxonMobil Corp.	2016	Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA)
	Conservation Law Foundation, Inc. v. Shell Oil Products US	2017	Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA)
	NYC Employees Retirement System v TransDigm	2018	Securities Act of 1933 / Securities Exchange Act of 1934
	York County v Rambo	2019	Securities Act of 1933 / Securities Exchange Act of 1934
	Commonwealth v ExxonMobil	2019	Massachusetts Consumer Protection Act
	Tosdal v Northwestern	2019	Securities Act of 1933 / Securities Exchange Act of 1934
	REM Corporate Derivative Litigation	2019	Waste, Securities Act of 1933 / Securities Exchange Act of 1934, State Law—Unjust Enrichment, Breach of Fiduciary Duty
	Jacob v Bloom Energy	2020	Delaware General Corporation Law
	Rise St James v Louisiana Department of Environmental Quality (LDEQ)	2020	Clean Air Act (CAA), Louisiana Constitution, Louisiana Environmental Quality Act
	Perri v Crosky	2021	Waste, Securities Act of 1933 / Securities Exchange Act of 1934, State Law—Unjust Enrichment, Breach of Fiduciary Duty
	Rosencrants v Danimer Scientific Inc	2021	Securities Act of 1933/Securities Exchange Act of 1934
	Conservation Law Foundation v. Gulf Oil LP	2021	Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA)

	Conservation Law Foundation v. Shell Oil Co.	2021	Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA)
	Fagan v Enviva	2022	Securities Act of 1933/Securities Exchange Act of 1934
	Plaquemines Parish v Chevron	2022	Louisiana State and Local Coastal Resources Management Act.
	re Hawai'i Electric Light Co.	2023	Hawai'i Climate Change Laws, Hawai'i Constitution, Hawai'i Public Utilities Law

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