Attorneys General for Hire:

A Disturbing Usurpation of Traditional State Police Powers By Private Political Activists

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Table of Contents

State Attorneys General and Municipalities Are Conducting an Aggressive Climate Change Litigation Campaign at the Behest of Outside Interests 3

The Climate Lawsuits Are the Fruition of Years of Concerted Efforts 4

Activists Seek to Expand Application of Public Nuisance Law 5

Outside Funding of the Lawsuits Raises Disturbing Questions of Influence and Ethics ... 6

The Lure of Contingent Fees at Reduced Risk 6

Privately Funded Assistant Attorneys General 7

Defendants Are Pushing Back Against These Dubious Lawsuits 10

State Attorneys General and Municipalities Are Conducting an Aggressive Climate Change Litigation Campaign at the Behest of Outside Interests

On March 29, 2016, attorneys general from 20 states and territories held a press conference in New York City advertised as "AGs United for Clean Power."[1] Joined by former Vice President Al Gore and then New York Attorney General Eric Schneiderman, and several city and county representatives, the event's announced purpose was to unveil a "historic state-based effort to combat climate change." Following this event, the participating attorneys general also signed onto a "Climate Change Coalition Common Interest Agreement" to "advanc[e] their common legal interests in limiting climate change"[2], labeling themselves the "Green 20."[3] It is thus neither a surprise nor a coincidence that, six years later, selected energy companies find themselves facing more than 20 climate change lawsuits brought by various states and political subdivisions—almost all filed by the same private law firm.

What was omitted from the "AG's United for Clean Power" presser and from the face of the climate change complaints is the unusual degree to which private movers and sponsors have pushed and bankrolled the state climate change lawsuits. In fact, these suits are the culmination of a long-running activist campaign against the oil and gas industry through which contingent fee plaintiffs' lawyers and environmental activists, with the backing of dark-money funders, have pursued plans to recruit local governments and state AGs to sue energy producers. During a secretive meeting held in La Jolla, California in 2012, activists met to develop a strategy to leverage the power of the states and the courts to achieve the assembled activists' "ultimate goal" of "shut[ting] down" the oil industry. They envisioned a dramatic transformation of this country's energy policies—not through its democratically elected officials and legislators but through the courts wielding vague state-law torts ill-suited to this context.[4] And the La Jolla meeting itself was the result of activists' efforts to target the oil and gas industry dating from much earlier, with Peter Frumhoff, a prominent member of the Union of Concerned Scientists, acknowledging that

[1] *A.G. Schneiderman, Al Gore and Coalition of A.G.'s Announce Historic Effort to Combat Climate Change*, New York Attorney General–Archived (Mar. 29, 2016) ("AG Press Conference"), https://www.youtube.com/watch?v=hd4Udhnha2A&t=198s

[2] Climate Change Coalition Common Interest Agreement, at 1, filed as Ex. D to Appendix in Support of Exxon Mobil Corp.'s Opposition to Massachusetts AG's Healey's Mot. to Dismiss the First Am. Compl., Civ. No. 4:16-cv-00469-K (N.D. Tx. Dec. 19, 2016)), ECF No. 166, https://www.mass.gov/doc/december-19-2016-appendix-in-support-of-exxon-mobil-corporations-opposition-to-ag-healeys/download.

[3] Stan Parker, AGs Signed 'Secrecy Pact' On Climate Change, Group Says, Law360, (Aug. 4, 2016), https://www.law360.com/articles/824925/ags-signed-secrecy-pact-on-climate-change-group-says.

[4] *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control*, Climate Accountability Institute, at 11, 13 (June 14-15, 2012), https://climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf.

the #ExxonKnew pressure campaign had started around 2007, the group published a 64-page report alleging that Exxon sought to "manufacture uncertainty on climate change."[5]

The Climate Lawsuits Are the Fruition of Years of Concerted Efforts

The group of activists, plaintiff lawyers, and their funders have launched a multifront offensive to enact their strategy to destroy the U.S. oil and gas industry. With tens of millions of dollars in funding, they have paid for "journalism" and "research" to support the climate lawsuits, scoured the nation to locate and recruit potential plaintiffs, paid to place allies in key governmental positions, and secured millions in funding to pay plaintiffs' lawyers to litigate the climate cases in the names of erstwhile public entities. In fact, immediately before the AGs United for Clean Power press conference, the plaintiffs' lawyers and activists who participated in the La Jolla conference gave a private briefing to the state attorneys general gathered there—a fact that the New York Attorney's General Office sought to hide from the press and public.[6]

During the 2012 La Jolla meeting,[7] the groups developed a plan to use law enforcement powers and civil litigation to "maintain[] pressure on the [fossil fuel] industry that could eventually lead to its support for legislative and regulatory responses to global warming."[8] The attendees concluded that a "single sympathetic state attorney general might have substantial success in bringing key internal documents to light" that could be used to coerce energy companies to change their positions on climate and energy policy. The attendees also viewed litigation as a vehicle for accomplishing their political goals, with one commentator stating, "[e]ven if your ultimate goal might be to shut down a company, you still might be wise to start out by asking for compensation for injured parties."[9] Other participants stated that, "pressure from the courts offers the best current hope for gaining the energy industry's cooperation in converting to renewable energy,"[10] demonstrating that the ultimate goal of the litigation was to effect public policy changes that they couldn't through the legislative process. Thus began a coordinated effort by climate activists and plaintiffs' attorneys to enlist the state attorneys general in litigation.

In Fall 2015, the online publication *InsideClimateNews* and the Los Angeles Times published the first of the articles based on the Rockefeller-funded "journalism" targeting the oil and gas industry

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[5] Paul Barrett & Matthew Philips, *Can ExxonMobil be Found Liable for Misleading the Public on Climate Change?*, Bloomberg (Sept. 7, 2016), https://www.bloomberg.com/news/articles/2016-09-07/will-exxonmobil-have-to-pay-for-misleading-the-public-on-climate-change.

[6] Terry Wade, *U.S. State Prosecutors Met with Climate Groups As Exxon Probes Expanded*, Reuters (Apr. 15, 2016), https://www.reuters.com/article/us-exxonmobil-states/u-s-state-prosecutors-met-with-climate-groups-as-exxon-probes-expanded-idUSKCN0XC2U2; e-mail from L. Srolovic (New York's A.G. Office) to Matt Pawa (Mar. 30, 2016), https://eelegal.org/wp-content/uploads/2016/04/NY-OAG-wants-Pawa-to-not-confirm-participation-to-WSJ.pdf

[7] Notice of Removal at 3, *District of Columbia v. Exxon Mobil Corp.*, No. 1:20-cv-01932 (D.D.C. July 17, 2020), ECF No. 1, https://legacy-assets.eenews.net/open_files/assets/2020/07/20/document_cw_01.pdf.

[8] *Id.* at 4.

[9] *Id.*

[10] *Id.*

that became known as the "Exxon Knew" media campaign.[11] These stories showed at most that Exxon knew things about climate change that were consistent with what the broader scientific community and the federal government knew during the relevant times. The activists nonetheless then relied upon this Rockefeller-funded journalism to push for a federal investigation of Exxon[12] and to target other investor-owned oil and gas companies with climate lawsuits.

Activists Seek to Expand Application of Public Nuisance Law

The use of public nuisance theory has increased over time by state attorneys general.[13] Prior to the 1979 *Restatement (Second) of Torts*, public nuisance was mainly limited to criminal activities.[14] The theory was largely used to address conduct interfering with a public right, often involving the obstruction of public highways or navigable waters.[15] Even after the *Second Restatement's* adoption of public nuisance as a tort, most courts initially refused to expand the doctrine and instead deferred to the policy judgements of elected officials.[16]

Currently, over 20 climate change lawsuits are pending against oil companies. Most of the cases include a public nuisance claim. For example, Rhode Island's complaint alleges the defendant oil companies, through their "affirmative acts and omissions [] have created" and "contributed to . . . conditions" that constitute nuisance through "increasing local sea level, and associated flooding, inundation, and erosion." The complaint further alleges the companies' acts and omissions have led to "increase[ed] . . . frequency and intensity of droughts in the State" along with an increased "frequency and intensity of extreme heat days."[17]

Oil companies note that federal, state and local governments have long fostered and encouraged the production of fossil fuels. For example, the federal government emphasized this point in an

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[11] *See* Neela Banerjee, et al., *Exxon's Own Research Confirmed Fossil Fuels' Role in Global Warming Decades Ago*, InsideClimateNews (Sept. 16, 2015), https://insideclimatenews.org/news/16092015/exxons-own-research-confirmed-fossil-fuels-role-in-global-warming/; Sara Jerving, et al., What Exxon Knew About the Earth's Melting Arctic (Oct. 9, 2015), https://graphics.latimes.com/exxon-arctic/; *The Rockefeller Family Fund v. Exxon*, The New York Review (Dec. 8, 2016), https://www.nybooks.com/articles/2016/12/08/the-rockefeller-family-fund-vs-exxon/.

[12] *See* Letter from House Representatives Ted Lieu (D-Cal.) and Mark DeSaulnier (D-Cal.) to Loretta Lynch (Oct. 14, 2015), https://lieu.house.gov/sites/lieu.house.gov/files/documents/2015.10.15%20Rep.%20Ted%20Lieu_DOJ_ExxonMobil.pdf

[13] Thomas W. Merrill, *Is Public Nuisance a Tort?*, 4(2) J. Tort L. ii (2011) (Explaining how state attorneys general with "considerable fanfare" filed actions against major utilities in the late 2000s contending that global warming is a public nuisance.).

[14] The complaints filed by the state of Rhode Island and the city of Baltimore contain the same language used in the headers for each section and include the exact same causes of action. Complaint, *Rhode Island v. Chevron*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018) ("Rhode Island Compl."); Complaint, *City of Baltimore v. BP P.L.C.*, No. 24-C-18-004219 (Md. Cir. Ct. July 20, 2018) ("Baltimore Compl."). The other complaints vary slightly, but also contain the same general factual allegations and a variant of the same causes of action and requested relief.

[15] Joshua K. Payne and Jess R. Nix, *Waking the Litigation Monster: The Misuse of Public Nuisance*, U.S. Chamber Institute for Legal Reform (March 2019).

[16] *Id*. at 6.

[17] Rhode Island Compl. ¶ 227.

amicus brief filed in the *City of Oakland* case, explaining that the "United States has strong economic and national security interests in promoting the development of fossil fuels."[18]

Today's use of public nuisance law is completely unprincipled and a far departure from any long-standing liability law. These lawsuits are attempts to subject businesses to liability to solve a societal problem—regardless of fault, who caused the harm, whether the elements of the tort are met, or even if the liability will actually address the issue.

In June 2018, U.S. District Judge William Alsup dismissed the state public nuisance claims from San Francisco and Oakland. He explained that oil, gas and other energy products are not public nuisances. They have given the world electrification and helped raise global health and living standards. "Having reaped the benefit of that historic progress, would it really be fair to now ignore our own responsibility in the use of fossil fuels and place the blame for global warming on those who supplied what we demanded?[19]

Outside Funding of the Lawsuits Raises Disturbing Questions of Influence and Ethics

To date, seven state AGs and more than a dozen municipalities from Hoboken to Honolulu have collectively filed more than 20 climate change lawsuits against oil companies. The lawsuits seek damages, abatement, disgorgement of profits, and attorneys' fees—and ignore the contributions of the countless individuals and entities that have added to global emissions and to climate change. Although the suits purportedly do not seek to hold the defendants liable for their own emissions, they single out a select group of defendants and ignore the vastly greater collective contributions to climate change by the rest of the world, including the plaintiffs.

Most of the lawsuits brought by state AGs and municipalities have been filed by contingent fee plaintiffs' firms alleging state-based torts such as public nuisance violations, plus consumer protection claims, and failure to warn. The use of contingent fee counsel to litigate these cases is but one reason to be skeptical of the motives behind the litigation.

The Lure of Contingent Fees at Reduced Risk

Contingent fee counsel will undoubtedly be the big winner in any potential recovery in these lawsuits, with contingent fee arrangements in some of these cases going all the way up to 25%-33% on certain amounts of recovery.[20] But potentially even more problematic, since 2017, Sher Edling, the law firm acting for plaintiffs in more than two dozen climate lawsuits, has also received

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[18] Amicus Curiae Brief of United States of America in Support of Dismissal at 1, *City of Oakland v. BP p.l.c.*, No. 17-cv-6011(N.D. Cal. May 10, 2018), ECF No. 245.

[19] *The Plaintiffs' Lawyer Quest for the Holy Grail: The Public Nuisance "Super Tort",* American Tort Reform Association, https://www.atra.org/wp-content/uploads/2020/03/Public-Nuisance-Super-Tort.pdf.

[20] Agreement between City of San Francisco and Sher Edling LLP and Altshuler Berzon LLP, ¶ 4.2(1) (Nov. 1, 2018), https://climatelitigationwatch.org/wp-content/uploads/2018/12/SF-CC-2018-11-20-Legal-Services-Agreement-SF-SE-AB-FINAL-EXECUTED.pdf; Unexecuted copy of Retainer Agreement between City of Hoboken and Emery Celli Brickerhoff & Abadt LLP, ¶ VII(B)(1), http://hobokennj.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=4359&MeetingID=1891.

close to $5.3 million just from the Rockefeller-backed Resources Legacy Fund, a tax exempt 501(c)(3) organization. This money appears to be defraying Sher Edling's costs in litigating these cases, thus raising questions about the propriety of these contingent fee arrangements.

What's more, the states and municipalities are not seeking to enjoin oil and gas production and sales. They only seek money. Thus, these lawsuits do not seriously address climate change, nor will they do anything to reduce the greenhouse gas emissions they allege are the cause of climate change and global warming.

Since the 1990s, some state attorneys general have hired contingent fee plaintiffs' attorneys to target specific industries, including tobacco companies, pharmaceutical manufacturers, financial institutions, lead paint companies, asbestos manufacturers, and insurers. Beginning in 2017, state attorneys general opened a similar front against oil companies, with activists establishing and donating millions of dollars to a so-called "Collective Action Fund" to support "precedent-setting lawsuits to hold major corporations accountable for costs associated with the effects on climate of their pollutants." The Collective Action Fund was initially sponsored by the Resources Legacy Fund, which in turn issued grants close to $5.3 million to Sher Edling, the firm most often retained by state attorneys general and local municipalities on a contingent fee basis.

In 2020, it appears the non-profit New Venture Fund became the fiscal sponsor of the Collective Action Fund and continues to collect millions of dollars to fund climate litigation.[21]

The plaintiff firm representing the City of Hoboken in its climate change lawsuit against oil companies has similarly entered into an agreement under which the non-profit Institute on Governance and Sustainable Development ("IGSD") has agreed to pay its attorney fees and legal expenses through the discovery phase of the case up to $483,500. The IGSD has also received more than $16.5 million to run the Center for Climate Integrity, an organization that supports "climate cases aimed at holding fossil fuel companies and other climate polluters liable" for climate change, and actively advocates for the filing of new actions.

The climate change cases thus present an atypical—and troubling—contingent fee arrangement, one that increases the likelihood of baseless lawsuits by removing much of the financial risk that would normally be borne by the plaintiffs or the plaintiff's firm engaged in cases bringing novel and questionable legal claims.

Privately Funded Assistant Attorneys General

Another troubling development involving the state attorneys general is the placement of privately funded special assistant attorneys general (SAAGs) in their offices to support climate change (and other) lawsuits. The SAAGs' salaries and benefits are covered by grants to the New York University School of Law State Energy and Environmental Impact Center (Environmental Impact Center) that in turn are funded by a $5.6 million grant from Bloomberg Philanthropies. As a 501(c), contributions to the Environmental Impact Center are tax deductible; thus, donors are not only financing government lawsuits they are receiving tax deductions as well.

[21] *Grant* Search, MacArthur Foundation, https://www.macfound.org/grants/?q=%22Collective+Action+Fund%22 (last visited May 20, 2022).

To qualify for a privately funded SAAG, a state attorney general must "demonstrate a need and commitment to advancing clean energy, climate, and environmental matters of regional or national importance."[22] Ten attorneys general have applied for and received Bloomberg-funded SAAGs to date, including the AGs of Connecticut, Delaware, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, and Washington, D.C.

The Bloomberg-funded Environmental Impact Center provides privately paid SAAGs, who are required to devote their time to pursuing litigation against corporations involving climate change and environmental matters.[23] According to the Center's website, a state attorney general must "demonstrate a need and commitment to advancing clean energy, climate, and environmental matters of regional and national importance."

Thus, the SAAGs are private attorneys placed in public positions to exercise government authority. Yet, they are not independent or impartial because their mandate is to carry out an overtly political agenda funded by wealthy private donors. This unique setup allows well-heeled individuals and organizations to commandeer state and local police powers to target opponents with whom they disagree, raising the specter of corruption and fundamental unfairness in what should be public enforcement of the law.

Since these arrangements have come to light, a number of observers have agreed that they should end. For example, former Washington Attorney General Ken Eikenberry expressed concern that "several AG's offices are at risk of becoming conduits for advancing a privately funded political agenda."[24]

Additionally, Virginia became the first state to prohibit the state's attorney general from accepting the Bloomberg-funded SAAGs. There, the legislature inserted a provision in the state budget bill requiring that any employee working in the Attorney General's office be state or federal government employees paid solely from public funds.[25] Then-Governor Ralph Northam signed the bill into law. A similar bill is now being considered in Minnesota, a state that has received two Bloomberg-funded SAAGs who are reportedly working full time on the state's climate case, and which office is currently looking to hire yet another fellow.[26]

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[22] How to Hire an NYU Law Fellow, State Energy & Environmental Impact Center, NYU School of Law, https://stateimpactcenter.org/ag-work/fellows-program/hire (last visited June 8, 2022).
[23] *Id*.
[24] *Former Washington State Attorney General Ken Eikenberry: Bloomberg funds state AGs to file politically motivated lawsuits*, Manufacturers' Accountability Project, (Jan. 23, 2019), https://mfgaccountabilityproject.org/2019/01/23/former-washington-state-attorney-general-ken-eikenberry-bloomberg-funds-state-ags-to-file-politically-motivated-lawsuits/.
[25] Valerie Richardson, *"Virginia blocks Mike Bloomberg's climate lawyers,"* The Washington Times (Mar. 3, 2019), https://www.washingtontimes.com/news/2019/mar/3/virginia-blocks-mike-bloombergs-climate-lawyers/.
[26] Office of Revisor of Statutes – SF 2818, Minnesota Legislature, https://www.revisor.mn.gov/bills/bill.php?b=senate&f=SF2818&ssn=0&y=2022 (last visited June 8 2022); Job posting for Assistant Attorney General – Environmental and Natural resources Division, Star Tribune, https://jobs.startribune.com/job/408130/assistant-attorney-general-environmental-and-natural-resources-division/ (last visited June 8, 2022).

Ethical questions also have been raised about the use of private funding, channeled through NYU's Environmental Impact Center, to pay SAAG salaries and benefits.[27] Critics argue it violates state rules against providing outside benefits to elected officials by allowing private interests to fund certain positions within a state attorneys general's office to sue a specific industry.[28] Such arrangements also likely violate federal and state anti-corruption statutes which make it unlawful to "directly or indirectly give[], offer[], or promise [] anything of value to any public official … or person selected to be a public officials, for or because of any official act to be performed," except as "otherwise … provided by the law."[29]

For example, New York's ethics law provides that no state employee "shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding…or other matter before any state agency, whereby his compensation is to be dependent or contingent upon any action by such agency...."[30] Critics note that Bloomberg Philanthropies expressly requires SAAGs to work directly on environmental and climate change cases.[31] Additionally, the New York Attorney General's application for the Bloomberg-funded SAAG strongly suggested that the funds sought would be used specifically to work on climate change litigation against the oil and gas companies.[32] Some have argued this type of arrangement runs counter to the New York Public Officer's Law.[33]

Perhaps most troubling is that Bloomberg-funded SAAGs are aimed directly at a particular industry and present serious questions about government independence and due process rights. As noted by attorney and legal commentator Andrew Grossman, the "problem would be apparent to anybody if you're talking about a conservative donor paying for a special attorney general to investigate and prosecute [P]lanned [P]arenthood on any possible ground that might be out there."[34]

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[27] Lesley Clark, *State AGs Rebuked for 'Soliciting Billionaires' in Climate Cases*, E&E News (June 6, 2022), https://www.eenews.net/articles/state-ags-rebuked-for-soliciting-billionaires-in-climate-cases/.

[28] See Editorial Board, *State AGs for Rent*, Wall Street Journal (Nov. 6, 2018), https://www.wsj.com/articles/state-ags-for-rent-1541549567; *see also* Mark Moore, *Bloomberg Program Reportedly Put Lawyers in AG Offices to Advance Climate Change Agenda*, New York Post (Feb. 18, 2020), https://nypost.com/2020/02/18/bloomberg-program-reportedly-put-lawyers-in-ag-offices-to-advance-climate-change-agenda/.

[29] 18 U.S.C. § 201(c).

[30] N.Y. Pub. Off. Law § 73.2.

[31] *New York AG's Application to NYU Law Environmental Fellows*, Scribd, https://www.scribd.com/document/391601290/NY-AG-s-Application-NYU-Law-environmental-fellows (last visited June 8, 2022).

[32] Id.

[33] John Solomon, *Michael Bloomberg, Exxon and the Ethical Pollution of Buying Justice*, The Hill (Oct. 25, 2018) https://thehill.com/hilltv/what-americas-thinking/413236-michael-bloomberg-exxon-and-the-ethical-pollution-of-buying.

[34] Michael Bastasch, *'Law Enforcement For Hire?' Mike Bloomberg Is Paying For 'Legal Fellows' To Help Democratic State Attorneys Resist Trump*, Daily Caller (Jun. 27, 2018), https://dailycaller.com/2018/06/27/bloomberg-legal-fellows-attorneys-general-offices/.

Defendants Are Pushing Back Against These Dubious Lawsuits

As this coordinated climate change litigation has unfolded, the energy companies have fought back on both a procedural and a substantive level. In particular, the companies contend that state and local governments may not assert state tort claims to hold multinational petroleum producers liable for the damages caused by *global* greenhouse gas emissions that were the byproduct of the tremendous worldwide growth and development that followed the industrial revolution.[35] According to the energy companies, the lawsuits improperly seek judicial regulation of greenhouse gas emissions, which is exclusively the purview of the federal legislative and executive branches. The energy companies argue that under our constitutional structure these actions, which seek damages for alleged injuries caused by interstate and international greenhouse gas emissions, must be governed by federal law, not state law.[36] The energy companies note that the state attorneys' general claims arise from the companies' nationwide and global activities, along with the activities of billions of fuel producers and consumers throughout the world, including the U.S. government. Although the energy companies do not dispute the science behind climate change, they stress the continuing importance of fossil fuels to the world's economy, powering homes, hospitals, and factories, while supplying raw materials from which innumerable consumer, technological, and medical devices are fashioned. They further argue that litigation is not the proper mechanism to accomplish these objectives and that the plaintiffs' novel claims and legal theories are unfounded and misplaced.

Additionally, the energy companies point out that the state AG and municipal lawsuits seek to hold them liable for the consequences of longstanding decisions by the federal government regarding national security, maintaining the national strategic petroleum reserve program, mineral extraction on federal lands, and development of outer continental shelf lands. Indeed, the plaintiffs in these cases seek damages for injuries that they allege are caused by the cumulative impact of emissions emanating from every state in the nation and every country in the world. The energy companies further note that the states and local governments themselves are significant consumers of fossil fuels and have enacted and implemented many regulatory schemes that both support and greatly benefit from the fossil fuel industry.

Drawing on publicly available information, the energy companies also highlight the fact that the state AG cases are the product of special interest groups and plaintiffs' lawyers who aim to influence energy policy and obtain discovery to be used outside of the litigation itself.[37]

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[35] Defendants-Appellants' Opening Brief at 1, *Delaware v. BP America, Inc.*, No. 22-1096 (3d Cir. Mar. 15, 2022),, ECF No. 114, http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2022/20220315_docket-22-1096_brief.pdf.

[36] *Id*. at 16.

[37] Martin Johnson House, *"Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control,"* Union of Concerned Scientists and Climate Accountability Institute, at https://protect-us.mimecast.com/s/OCDNCXD5W1hXX9zLjC6vMeO?domain=climateaccountability.org.

Last year, the U.S. Second Circuit Court of Appeals provided the energy companies a significant victory when it held that municipalities may not utilize state tort law to hold energy companies liable for alleged damages caused by global climate change.[38] And most of the current litigation has been focused on whether the cases belong in federal or state court, with a recent Fourth Circuit decision in the *Baltimore*[39] climate lawsuit criticizing the Second Circuit's reasoning and increasing the possibility that the Supreme Court will have to resolve the conflict between the circuits.

Stay tuned.

[38] *City of New York v. Chevron Corp*., 993 F.3d 81 (2d Cir. 2021).
[39] *Mayor and City Council of Baltimore v. BP, P.L.C.*, 31 F.4th 178 (4th Cir. 2022).