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The Heat is On! How is the EU Regulation Wave Going to Shape Litigation Within and Outside Europe?

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The Climate Change Litigation Landscape in Europe

The climate change litigation landscape in Europe has seen significant developments in recent years, especially in the context of enforcing environmental regulations and advancing climate action. Climate Change litigation has become a tool to influence the outcome of climate governance, pushing for more ambitious policies and actions from governments and companies.

As of December 2022, there have been 2,180 climate-related cases filed globally in 65 jurisdictions[1]. While cases in the United States of America still represent an overwhelming majority of approx.70 % of all climate litigation cases, the overall percentage of cases outside the US is increasing.[2] When excluding US cases, Europe as a region has the highest percentage of cases with a share of 31.2 per cent.[3]

Key Trends of Climate Change Litigation in Europe

Climate change litigation is no longer confined to a few countries; it has spread to approximately half of all European nations.[4] This broad geographical distribution signifies an increasing recognition of climate issues across diverse legal systems and cultures within Europe.

A significant majority, around 75%, of climate cases in Europe are filed against governments.[5] This trend highlights the critical role of the state in climate governance and the efforts to hold governments accountable for their climate commitments and policies.

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[1] United Nations Environment Programme, Global Climate Litigation Report: 2023 Status Review, p. 12, <https://doi.org/10.59117/20.500.11822/43008> (26 November 2023).
[2] UNEP Global Climate Litigation Report (→ fn. 1), p. 18.
[3] UNEP Global Climate Litigation Report, (→ fn. 1) p. 18.
[4] Setzer, Narulla, Higham, Bradeen, *Climate litigation in Europe: a summary report for the European Union Forum of Judges for the Environment*, <https://www.lse.ac.uk/granthaminstitute/publication/climate-litigation-in-europe-a-summary-report-for-the-european-union-forum-of-judges-for-the-environment/> (26 November 2023).
[5] Setzer, Narulla, Higham, Bradeen, *Climate litigation in Europe: a summary report for the European Union Forum of Judges for the Environment* (→ fn. 4), p. 6.

While a smaller proportion of cases target private entities, there is a noticeable increase in litigation against corporations.[6] This shift indicates a growing acknowledgment of the private sector's role in contributing to climate change and the potential of legal action to drive corporate responsibility and sustainability.

The United Kingdom, France, Germany, and Spain collectively account for over half of all climate litigation cases in Europe.[7] This concentration may reflect the varying degrees of legal infrastructure, public awareness, and activist engagement in these countries, making them hotspots for climate litigation.

Finally, the involvement of the European Court of Human Rights (ECHR) is particularly noteworthy. The ECHR rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights[8]. Currently, there are 12 climate change actions pending before the ECHR. The involvement of the ECHR indicates an increasing reliance on human rights frameworks to address climate issues, highlighting the link between environmental and human rights. In several of the cases pending before the ECHR, the applicants argue that the Member States of the Council of Europe have violated some of the provisions of the European Convention on Human Rights when considered in light of the Paris Agreement[9]. The applicants particular rely on the respondent States' positive obligations concerning the right to life and the right to respect for private and family life.

Overall Aims and Strategies of Climate Change Litigation in Europe

The climate change actions brought in Europe in recent years followed multi-layered aims and strategies which can be broadly summarized into four categories: (i) enforcing environmental laws and standards, (ii) challenge inadequate governmental policies, (iii) hold corporations accountable for their emissions, and (iv) combat misleading environmental claims, often referred to as "greenwashing."

1. Litigation efforts aimed at integrating climate standards into government decision-making are gaining traction. Cases in this category seek to ensure that governments incorporate recognized climate standards into policy development and implementation. A notable case is the *Urgenda Foundation v. The State of the Netherlands*[10], where the court ordered the Dutch government to intensify its efforts to reduce greenhouse gas emissions, aligning with the international norms set out in the Paris Agreement.

2. Many cases challenge the adequacy and ambition of governmental climate targets. These litigations often arise from perceived gaps between a country's international

[6] Setzer, Narulla, Higham, Bradeen, *Climate litigation in Europe: a summary report for the European Union Forum of Judges for the Environment* (→ fn. 4), p. 50.
[7] Setzer, Narulla, Higham, Bradeen, *Climate litigation in Europe: a summary report for the European Union Forum of Judges for the Environment* (→ fn. 4), p. 6.
[8] The Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, <https://www.echr.coe.int/documents/d/echr/Convention_ENG> (25 November 2023).
[9] Paris Agreement, 12 Dezember 2015, <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> (26 November 2023).
[10] *Urgenda Foundation v. State of the Netherlands* [2015] HAZA C/09/00456689.

commitments and its domestic actions or policies. The Grantham Research Institute[11] highlights that such cases make up a significant portion of European climate litigation, with litigants aiming for a broader societal shift towards rigorous climate change governance.[12] One example being the ruling of the German Federal Constitutional Court of Germany (*Bundesverfassungsgericht, BVerfG*) of 24 March 2021 which declared parts of the German Climate Protection Act (*Klimaschutzgesetz*) unconstitutional because they lacked specificity for long-term emissions reduction targets. The court mandated the government to amend the law by the end of 2022, ensuring clear pathways to reduce greenhouse gas emissions post-2030.

3. Litigation against corporations mainly focuses on disincentivizing ongoing high-emission activities. An example is the case brought against *Royal Dutch Shell by Milieudefensie*[13], leading to a landmark decision where Shell was ordered to reduce its CO2 emissions by 45% by 2030, relative to 2019 levels. This case reflects the increasing trend where companies are tried to be held accountable for their alleged contributions to climate change.

4. As environmental awareness grows, so does the scrutiny of claims made by governments and businesses about their efforts to address climate change. Litigation in this area aims to hold these actors accountable for misleading the public with false or exaggerated claims about their environmental impact or sustainability practices. The 'Green Claims Directive' proposed by the European Commission seeks to address this issue by improving the reliability of green claims, potentially reducing the occurrence of greenwashing.

Climate Change Actions against Companies

The following two case examples from the Netherlands and Germany illustrate the aforementioned increase in climate change actions brought against companies and thus, provide a reference for the legal risks business are facing with a view to climate change issues.

Milieudefensie et al. v. Royal Dutch Shell plc

In the case of *Milieudefensie et al. v. Royal Dutch Shell plc*., the environmental group Milieudefensie, along with other NGOs and over 17,000 citizens, filed a lawsuit against Royal Dutch Shell. The plaintiffs accused Shell of violating its duty of care under Dutch law and human rights obligations due to its contributions to climate change. They demanded that Shell reduce its CO2 emissions by 45% by 2030 compared to 2010 levels, and to zero by 2050, consistent with the Paris Agreement. On May 26, 2021, the Hague District Court ruled in favour of the plaintiffs, ordering Shell to reduce its emissions by 45% by 2030 relative to 2019 levels across all its activities, including its own operations and the end-use emissions of its products. This decision was made provisionally enforceable, meaning Shell was required

[11] The Grantham Research Institute on Climate Change and the Environment is a world-leading multidisciplinary centre for policy-relevant research and training on climate change and the environment established by the London School of Economics and Political Science in 2008, <https://www.lse.ac.uk/granthaminstitute/> (26 November 2023).
[12] Setzer, Narulla, Higham, Bradeen, *Climate litigation in Europe: a summary report for the European Union Forum of Judges for the Environment*, (→ fn. 4), .p. 13.
[13] *Milieudefensie et al. v. Royal Dutch Shell plc.* C/09/571932 / HA ZA 19-379.

to start meeting its reduction obligations immediately, despite the possibility of an appeal. Shell appealed the decision on July 20, 2022.

Deutsche Umwelthilfe (DUH) v. Mercedes-Benz AG

In the case *Deutsche Umwelthilfe (DUH) v. Mercedes-Benz AG*, the environmental organization DUH filed a lawsuit against Mercedes-Benz at the Regional Court of Stuttgart on September 20, 2021. DUH contended that Mercedes-Benz had not committed to phasing out the sale of passenger cars with internal combustion engines by 2030, which they argued was necessary for the company to adhere to its allocated carbon budget and to uphold the fundamental right to climate protection. This action was one of the first to be based on the aforementioned decision by the Federal Constitutional Court regarding the German Climate Protection Act, which recognized that Germany has a limited CO2 emissions budget. However, on September 13, 2022, the Court dismissed the case, stating that it is up to the legislator, not the courts, to determine appropriate climate protection measures.[14] DUH announced that it intends to appeal the decision.

Regulatory Initiatives may foster Climate Change Litigation

The overall trend towards climate change litigation may be further boosted by regulatory initiatives on the European continent. In particular, the European Commission has adopted a set of proposals to make the EU's climate, energy, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. With its so-called ‘Green Deal’ the EU is aiming at becoming the first climate-neutral continent by 2050.

The Green Deal represents a transformative approach to climate action and encompasses a wide array of initiatives across various sectors, from energy to agriculture, to drive the transition to a green economy. Among the legislative reforms under the Green Deal, the 'Fit for 55' package is pivotal, updating existing regulations like the EU Emissions Trading System (EU ETS) as well as revising legislation concerning *inter alia* renewable energy, transport, and land use.[15]

As the EU continues to roll out these reforms, there's an anticipation of increased climate litigation. Historically, litigation has been a tool to influence the ambition and outcomes of climate policies in Europe. The 'Fit for 55' package, especially, is expected to prompt significant litigation. Litigation against companies and financial institutions may also arise from measures ensuring that the EU’s climate goals are reflected in real economic activities. Such issues could encompass corporate governance, the use of sustainability information, and consumer protection legislation, particularly regarding 'greenwashing'.[16]

The Fit for 55 package is likely to be accompanied by regulatory amendments in the areas of corporate governance and supply chain monitoring, sustainable finance and consumer

[14] LG Stuttgart Urt. v. 13.09.2022, Az. 17 O 789/21.
[15] Higham, Setzer, Narulla, Bradeen, *Climate change law in Europe: what do new EU climate laws mean for the courts?*, 23 March 2023, <https://www.lse.ac.uk/granthaminstitute/publication/climate-change-law-in-europe-what-do-new-eu-climate-laws-mean-for-the-courts/> (26 November 2023), p. 3.
[16] Higham, Setzer, Narulla, Bradeen, *Climate change law in Europe: what do new EU climate laws mean for the courts?*, (→ fn. 11), p. 11 *et seqq*.

information.[17] The most significant approach is likely to be the EU's proposed Corporate Sustainability Due Diligence Directive (CSDDD)[18], sometimes referred to as the 'EU Supply Chain Law'. Businesses that fall under the scope of the CSDDD must fulfil certain due diligence obligations regarding human rights and environmental issues along their supply chain. In order to comply with the CSDDD companies must identify actual or potential negative impacts on human rights and the environment, and take appropriate measures to prevent, mitigate and remedy them. It can be expected that (alleged) violations of the standards set out in the CSDDD might be used to assert corresponding claims against these businesses.

Conclusion

The climate change litigation landscape in Europe is characterized by a growing number of cases, the involvement of various actors (including NGOs and individual citizens), and a focus on holding both governments and private companies accountable for climate action.

The cases often involve arguments based on human rights and constitutional laws, reflecting a deeper integration of environmental issues within the broader legal framework. With a view to ongoing regulatory initiatives focusing on climate protection and sustainability, this trend is likely to continue, with climate change litigation playing an increasingly important role in shaping climate policies and actions across Europe.

CLIMATE CHANGE LITIGATION IN THE UNITED STATES OF AMERICA

In the United States climate change litigation has taken on several forms. Lawsuits brought by a State, County or Municipality against companies whose products allegedly create greenhouse emissions is the dominant and popular litigation driving much of the climate change litigation. Such lawsuits normally also allege that the companies have engaged in "greenwashing" by misleading consumers on the environmental dangers posed by their products. Regulatory actions brought by government administrative agencies to enforce the Clean Air Act and other federal or state environmental regulations related to greenhouse emissions have been used. States have sued neighbouring States over environmental policies or the lack thereof. Non-Governmental Organizations ("NGO's) have sued Federal Agencies and various States seeking to compel stricter regulations or more rigorous enforcement.

Herein we will examine these various forms of climate change litigation in the United States to identify the legal issues presented, the remedies sought and whether such litigation is anticipated to be effective going forward.[19]

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[17] Higham, Setzer, Narulla, Bradeen, *Climate change law in Europe: what do new EU climate laws mean for the courts?*, (→ fn. 11), p. 22 *et. seqq*.

[18] Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071> (26 November 2023).

[19] Columbia University maintains a database of U.S. Climate Change Litigation at https://climatecasechart.com/

States, Counties and Municipalities vs. Big Oil, Car Manufacturers and Others

A prime example of a State suing the producers of fossil fuels seeking damages caused by global warming is *Platkin vs. Exxon Mobil Corporation.*[20] In *Platkin* the New Jersey Attorney General has sued several large oil companies along with the American Petroleum Institute. Plaintiff alleges that the Defendants had been long aware of the hazards of the products they sold to the environment and their contribution to global warming. Nevertheless, the Defendants allegedly engaged in greenwashing campaigns touting their products as climate friendly or otherwise green products. The State alleges that it has been damaged by rising sea levels, more frequent coastal flooding, more powerful hurricanes, the degradation of water quality, more polluted waterways, warmer temperatures and a more polluted atmosphere.

The State asserts causes of action for failure to warn, negligence, impairment of the public trust, trespass, public nuisance, private nuisance, and violations of the State's Consumer Fraud Act.

In almost all of the judicial actions that have been filed by states, counties. and municipalities the Plaintiff's have alleged public nuisance as a primary cause of action. Of all the causes of action that Plaintiff's are wielding the public nuisance claim is at once a novel cause of action and if successful a very effective tool for Plaintiffs.

Public nuisance has been described as an "ancient tort," dating back to twelfth-century England, and originated as a "criminal writ to remedy actions or conditions that infringed on royal property or blocked public roads or waterways." Originally public nuisance was criminal in nature and brought only by the crown but was later expanded to allow private persons with a "special injury" to seek injunctive relief to stop the nuisance.[21]

Historically, public nuisance cases typically involved some form of injury caused by the Defendant's land. Public Nuisance cases typically involved problems such as noxious odors from a hog pen[22] or a private bridge that interfered with navigation on a stream.[23] Some cases acknowledged that a breach of the peace caused by activity on Defendant's land was a public nuisance such as indecent performances.[24]

In 1972 public nuisance was used for the first time as a cause of action in an environmental dispute. During that year the U.S. Supreme Court recognized public nuisance under Federal Common Law as a tool to enjoin polluters. In, *Illinois v. City of Milwaukee, Wisconsin*[25] the State of Illinois had sued four municipalities in Wisconsin for polluting Lake Michigan. The State of Illinois asserted public nuisance, among other causes of action. The U.S. Supreme Court agreed with the cause of action and allowed such cause to sustain claims

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[20] *Platkin vs. Exxon Mobil Corporation et. al.* Pending in the Superior Court of New Jersey, Law Division, Cause No. MER-L-001797-22.
[21] Michelle L. Richards, *Pills, Public Nuisance, and Parens Patriae: Questioning the Propriety of the Posture of the Opioid Litigation*, 54 U. Rich. L. Rev. 405, 418 (2020).
[22] *Gay v. State*, 90 Tenn. 645, 18 S.W. 260 (1891).
[23] *Carver v. San Pedro, L.A. & S.L.R. Co.*, 151 F. 334, 334 (C.C.S.D. Cal. 1906).
[24] *Fed. Amusement Co. v. State ex rel. Tuppen*, 159 Fla. 495, 496, 32 So. 2d 1, 1 (1947).
[25] *Illinois v. City of Milwaukee, Wis.*, 406 U.S. 91, 92 S. Ct. 1385, 31 L. Ed. 2d 712 (1972), disapproved in later proceedings sub nom. *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 101 S. Ct. 1784, 68 L. Ed. 2d 114 (1981)

to enjoin the cities from polluting Lake Michigan. A hotly contested issue was whether Federal Law preempted the public nuisance claims. As the Court stated:

> It may happen that new federal laws and new federal regulations may in time pre-empt the field of federal common law of nuisance. But until that comes to pass, federal Courts will be empowered to appraise the equities of the suits alleging creation of a public nuisance by water pollution.[26]

The matter was remanded to the District Court for further proceedings. After the Court issued its opinion Congress created the Federal Water Protection Act of 1972. In 1981 the Supreme Court issued its second opinion in the case, *Milwaukee II,* and noted its earlier opinion set forth in *Illinois v. City of Milwaukee* was no longer applicable as any nuisance claim would be preempted by the 1972 federal statute.[27]

Since 1972, Plaintiffs in mass tort cases have expanded the use of public nuisance particularly in opioid litigation.[28] In recent years public nuisance claims have become ubiquitous in climate change litigation.

As the U.S. Supreme Court noted in *Milwaukee II* the defense of federal preemption may hold some power for Defendants in climate litigation. The United States Court of Appeals for the Second Circuit cited *Milwaukee II* in finding that a case was properly removed to federal court because the state law claims asserted by the City of New York against oil companies were preempted by federal law and denied a motion to remand the case to state court.[29]

However, the U.S. Third Circuit Court of Appeal came to the opposite conclusion. The court explained that preemption may be a valid defense but to remove a case to federal court based upon such defense requires complete preemption. Federal law completely preempts state law only when there is (1) a federal statute that (2) authorizes federal claims "vindicating the same interest as the state claim."[30] The court found that the claims were not completely preempted by a federal statute and therefore remanded the claim to state court. Other appellate courts have likewise remanded climate change cases to state court.[31] The U.S. Supreme Court has not yet granted writ of certiorari to address the arguments concerning remand of a matter for lack of complete preemption, however the Supreme Court has denied cert in several of the matters where remand was ordered.

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[26] *Illinois v. City of Milwaukee, Wis.*, 406 U.S. 91, 107, 92 S. Ct. 1385, 1395, 31 L. Ed. 2d 712 (1972).
[27] *City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304, 101 S. Ct. 1784, 68 L. Ed. 2d 114 (1981).
[28] *In re Nat'l Prescription Opiate Litig*., 589 F. Supp. 3d 790 (N.D. Ohio 2022). *See also City & Cnty. of San Francisco v. Purdue Pharma L.P*., No. 18-CV-07591-CRB, 2022 WL 3224463, at *59 (N.D. Cal. Aug. 10, 2022) (Court permitted public nuisance claim to proceed against pharmacy.)
[29] *City of New York v. Chevron Corp*., 993 F.3d 81, 90 (2d Cir. 2021).
[30] *City of Hoboken v. Chevron Corp*., 45 F.4th 699, 707 (3d Cir. 2022), cert. denied sub nom. *Chevron Corp. v. City of Hoboken, New Jersey*, 143 S. Ct. 2483, 216 L. Ed. 2d 447 (2023).
[31] *Rhode Island v. Shell Oil Prods. Co*., 35 F.4th 44, 50–51 (1st Cir. 2022); *Mayor & City Council of Balt. v. BP P.L.C.*, 31 F.4th 178, 238 (4th Cir. 2022); *City & Cnty. of Honolulu v. Sunoco LP*, 39 F.4th 1101, 1106-07 (9th Cir. 2022); *Cnty. of San Mateo v. Chevron Corp*., 32 F.4th 733, 744 (9th Cir. 2022); *Bd. of Cnty. Comm'rs of Boulder Cnty. v. Suncor Energy* (U.S.A.) Inc., 25 F.4th 1238, 1246 (10th Cir. 2022).

Other defenses will also be powerful for the Defendants given that the causes of global warming are myriad and there appears to be no path to prove proximate cause as to any one defendant among a sea of participants in the market place. Likewise proving that global warming and its effects on any one storm or weather incident would seem to not be possible under present evidentiary rules. Establishing reliable expert testimony related to causation and damages also is challenging for the Plaintiffs. As one legal scholar has noted, certain paradigms that presently exist in the American tort system may change as a result of rulings that could potentially be made in the climate change litigation.[32]

U.S. Administrative Agencies Face Challenges and Limits:

An example of the government suing private companies for violation of the Clean Air Act and state statutes related to global warming is the case of the *United States vs. Hyundai Motor Company*.[33] In that case the U.S. Environmental Protection Agency ("EPA") on behalf of itself and the California Air Resources Board ("CARB") sought monetary penalties and injunctive relief against Hyundai for allegedly falsifying fuel economy and greenhouse gas emissions claims for over one million Hyundai and Kia vehicles with model years 2012 and 2013. The EPA prevailed and imposed a $100 million dollar fine. The largest fine ever issued in the history of the Clean Air Act. Additionally, Hyundai was required to forfeit 4.75 million greenhouse gas credits and entered a consent decree requiring it to change its process for certifying the emissions of its vehicles.

The case represents the power of the EPA and other agencies to hold companies responsible for violating the Clean Air Act and other statutes. However, the nature of such claims is preventative. Statutes and regulations related to pollution were established to stop pollution from occurring and to compel clean up and remediation of specific identifiable spills or other releases of pollutants. Governmental agencies are not equipped with laws or regulations which seek to impose penalties for the overall effects of global warming from the otherwise legal sale, use or release of greenhouse gasses.

The ability of the EPA and other governmental agencies to impose fines and other forms of penalties has also come under scrutiny lately. In *Jarkesy vs. Securities and Exchange Commission*[34] the SEC had imposed fines on a hedge fund advisor for securities fraud. The Defendant claimed it was unlawful for the SEC to impose penalties without a jury trial. The Fifth Circuit agreed that the imposition of the fines by the SEC violated the Defenandant's rights to a jury trial. The U.S. Supreme has granted writ of certiorari and will hear the case in the coming months. If upheld, this case could potentially extend to other agencies including the EPA which would significantly curtail the EPA's enforcement powers.

Actions on Behalf of Private Citizens

It is rare that private citizens under U.S. law have standing to sue for public harms. However, some groups are trying or have tried to bring claims seeking damages for global

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[32] Douglas A. Kysar, *What Climate Change Can Do About Tort Law*, Yale Law School, Public Law Working Paper No. 215, Douglas A. Kysar, Environmental Law, Vol. 41, No. 1, 2011, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1645871

[33] *United States v. Hyundai Motor Co*., 77 F. Supp. 3d 197, 200 (D.D.C. 2015).

[34] *Jarkesy v. Sec. & Exch. Comm'n*, 34 F.4th 446 (5th Cir. 2022), cert. granted, 143 S. Ct. 2688 (2023), and cert. denied, 143 S. Ct. 2690 (2023).

warming personally effecting them. In, *Pacific Coast Fed'n of Fishermen's Associations, Inc. v. Chevron Corp*[35] the Association sued on behalf of itself and all of its members claiming that global warming has harmed the fisheries of the U.S. West Coast and seeks damages for the economic impact to the fishing businesses of its members. The case has been successfully removed to federal court under the Class Action Fairness Act. As this matter progresses it will be instructive to see what standing issues are raised and whether this group of private actors are able to forge a path forward.

In *Bush v. Rust-Oleum Corp*[36], a class action was filed on behalf of California consumers against the Defendant for selling cleaning products that were alleged to be non toxic and earth friendly. The Plaintiff alleged that these were misrepresentations. The Plaintiff also alleged violation of the Unfair Competion Law, deceptive advertising, breach of warranties and unjust enrichment. Plaintiff seeks injunctions and disgourgement of profits. Defendants challenged the standing of Plaintiff to bring such suits and claimed that other statutory conditions precedent were not met prior to filing suit. The court denied the motion to dismiss. The case is now proceeding and it will be an interesting to examine the role that private actors may play in seeking damages for a contributions to global warming.

Future of Climate Change Litigation in the United States

Most of the significant climate change litigation has been filed in the past few years. Many of the cases have spent years in the state courts and federal courts arguing over whether the federal courts have jurisdiction over such claims. Most of the cases have been remanded to state court and the U.S. Supreme Court has not sought to intervene in such decisions to remand.

The parties to these actions will now forge ahead with novel concepts of law to determine whether public nuisance, negligence and misrepresentation allegations can succeed to produce damages for climate change related injuries.

Over the next two years the courts are likely to permit discovery on climate change litigation, Defendants are likley to file summary judgment motions, and expert witnesses will be challenged. As these legal developments proceed we may see changes in the paradigms of tort law.

[35] *Pac. Coast Fed'n of Fishermen's Associations, Inc. v. Chevron Corp*., No. 18-CV-07477-VC, 2023 WL 7299195 (N.D. Cal. Nov. 1, 2023).
[36] *Bush v. Rust-Oleum Corp*., No. 20-CV-03268-LB, 2021 WL 24842, at *1 (N.D. Cal. Jan. 4, 2021)