

## Chapter 4

# Climate Change Litigation: An Emerging Wave?

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### § 4.01. Introduction.

A decade ago, it would have been hard to find anyone who believed it might one day be possible to recover for alleged global warming-related injuries in court. Global warming is, after all, an alleged “global” phenomenon, arising from diffuse concentrations of gases in the atmosphere, and no regulatory limits have ever been placed on greenhouse gas emissions. These facts suggest that claims against discrete parties seeking to recover

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for global warming injuries could not — and should not — be entertained in court. Not surprisingly, when the first common law claims asserting global warming injuries were filed six years ago, it appeared they would have little traction. District courts dismissed the cases in the defendants' favor on early motions to dismiss.

Within the last year, however, two federal appeals courts have revived claims filed by plaintiffs alleging global warming injuries and, in doing so, have raised the possibility of a new wave of litigation involving so-called global warming torts. This chapter will discuss the allegations and decisions in the four key cases alleging tort claims for alleged global warming injuries and identify important issues to watch in this emerging area of potential liability.

## § 4.02. Climate Change Litigation.

### [1] — Overview of Litigation.

Four main cases have been filed in federal court asserting tort claims for alleged global warming-related injuries:

- *Connecticut v. American Electric Power Company, Inc.* (AEP)<sup>2</sup> — filed 2004 in New York;
- *Comer v. Murphy Oil USA*<sup>3</sup> — filed 2005 in Mississippi;
- *Native Village of Kivalina v. ExxonMobil Corp.*<sup>4</sup> — filed 2008 in California; and
- *California v. General Motors Corp.* (“GMC”)<sup>5</sup> — filed 2004 in California.

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<sup>2</sup> *Connecticut v. American Electric Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005), *rev'd*, 582 F.3d 309 (2d Cir. 2009), *reh'g en banc denied* (March 5, 2010), application to stay mandate pending certiorari filed (Mar. 11, 2010).

<sup>3</sup> *Comer v. Murphy Oil USA*, No. 05-436 (S.D. Miss. Aug. 30, 2007), *rev'd*, 585 F.3d 855 (5th Cir. Oct. 16, 2009), *vacated, reh'g en banc granted*, 2010 U.S. App. LEXIS 4253 (5th Cir. Feb. 26, 2010), *appeal dismissed* (5th Cir. May 28, 2010).

<sup>4</sup> *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), *appeal docketed*, No. 09-17490 (9th Cir. Nov. 6, 2009).

<sup>5</sup> *California v. General Motors Corp.*, No. C06-05755, 2007 WL 2726871 (N.D. Cal. Sept. 17, 2007), *appeal dismissed*, No. 07-16908 (9th Cir. June 24, 2008).