

Cities Cannot Use State Tort Law To Sue Companies For Climate Change In Federal Court, Says Second Circuit

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The Second Circuit ruled that municipalities may not use state tort law to hold multi-national companies liable in federal court for climate change-related costs. *City of New York v. Chevron Corp.*, 2021 WL 1216541 (2d Cir. Apr. 1, 2021). As such, the court affirmed the dismissal of a public nuisance lawsuit brought by the City of New York against five oil companies to recover damages allegedly caused by the companies' global fossil fuel operations. The Second Circuit held that federal common law, rather than state law, governs claims arising out of global warming, which is a "uniquely international problem of national concern" that implicates foreign policy. Additionally, the court ruled that federal common law is displaced by the Clean Air Act, which grants the Environmental Protection Agency (rather than federal courts) the authority to regulate domestic emissions. Finally, the Court held even with respect to claims that are not subject to the Clean Air Act (*e.g.*, claims arising out of non-domestic emissions), judicial caution and foreign policy concerns mitigated against allowing such claims to proceed under federal common law.

As the court noted, the Ninth Circuit similarly affirmed dismissal of a public nuisance suit seeking damages for property damage allegedly caused by greenhouse gases emitted by gas, oil and utility companies. *Kivalina v. ExxonMobil Corp.*, 2012 WL 4215921 (9th Cir. Sept. 21, 2012) (see [November 2012 Alert](#)).

Few courts have addressed whether climate change claims, if allowed to proceed, would implicate coverage under general liability policies. As discussed in our [May 2012](#) and [October 2011 Alerts](#), the Virginia Supreme Court ruled that an insurer owed no duty to defend or indemnify global warming-related claims, finding that the underlying complaint did not allege a covered "occurrence." *AES Corp. v. Steadfast Ins. Co.*, 2012 WL 1377054 (Va. Apr. 20, 2012).

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