

Energy Producers Score Big Win in New York Climate Change Case

In a significant victory for fossil fuel companies, on April 1, 2021, the Second Circuit Court of Appeals affirmed the dismissal of New York City’s claims against five multinational oil companies, holding that municipalities may not utilize state tort law to hold multinational oil companies liable for damages caused by global greenhouse gas emissions. *City of New York v. Chevron*, Second Cir. Case No. 18-2188. The Second Circuit reasoned that the City’s suit impermissibly sought to substitute the federal statutes and international treaties regulating greenhouse gas emissions, “which are the product of the political process,” with a patchwork of state law claims. Finding that global warming is not well-suited to the application of state law, the Second Circuit held that (1) federal common law, not state law, applied to the City’s claims, (2) the Clean Air Act supplanted federal common law, and (3) judicial caution and federal policy concerns precluded any of the City’s remaining international claims.

According to its 2018 Complaint, a 520 mile coastline makes New York City “exceptionally vulnerable” to global warming and its corresponding effects, such as rising sea levels. To protect itself from these impacts, the City has initiated billions of dollars in climate resiliency infrastructure spending to protect the public and City property. The City claims that international fossil fuel producers, including Chevron, ConocoPhillips, Exxon Mobil, Royal Dutch Shell, and BP should shoulder these costs under state law theories of public nuisance, private nuisance, and trespass. In July 2018, the Southern District of New York disagreed, granting Defendants’ motions to dismiss with prejudice.

The Second Circuit affirmed the District Court’s decision for three reasons.

First, it found that federal common law displaced the City’s tort claims. Federal common law exists, according to the Second Circuit, over “few and restricted” issues, including where a federal rule is necessary to protect uniquely federal issues. The Second Circuit determined that, what it characterized as a “nuisance suit seeking to recover damages for the harms caused by global greenhouse gas emissions,” could not proceed under New York law because precedent supported the application of federal law to disputes over interstate air or water pollution.

Second, the Second Circuit held that the Clean Air Act displaced the City’s federal common law claims where domestic emissions are involved, and that this displacement did not resuscitate the City’s state law claims. Citing previous greenhouse gas emissions cases, the Second Circuit found that the federal Clean Air Act displaced the City’s federal common law nuisance and trespass claims. It also emphasized that this displacement did not “snap” the City’s state law nuisance claims “back into action.”

Finally, the Second Circuit held that claims concerning foreign emissions were an inappropriate extraterritorial reach of federal common law. The court held that the Clean Air Act did not displace the City’s federal common law claims with regards to harms caused by foreign emissions. Nonetheless, the Second Circuit noted that case law required federal courts to “proceed cautiously when venturing into the international arena so as to avoid unintentionally stepping on the toes of the political branches.” Due to the potential confusion and foreign policy complications that allowing the City to proceed with its international claims would sow, the Second Circuit upheld the dismissal of any claims predicated on foreign emissions under principles of judicial caution.

The Second Circuit’s decision will likely have an impact on numerous other suits brought by states and municipalities against energy defendants based on similar theories. For example, although

the City of New York originally filed its claims in federal court, most states and municipalities have brought state law claims in climate change cases in state court, which defendants then removed. This has resulted in years of litigation over whether the cases should proceed in state or federal court, with the Supreme Court expected to weigh in this year. Defendants will cite the Second Circuit's holding that federal common law applies to state law claims seeking damages based on greenhouse gas emissions as supporting federal jurisdiction over such claims. Plaintiffs will argue that the Second Circuit's holding does not apply in the removal context, where other federal district courts have held that state law claims do not arise under federal law. Irrespective of whether these claims ultimately proceed in state or federal court, defendants will rely upon the Second Circuit's holding to seek dismissal of any state law claims seeking damages based on greenhouse gas emissions. For this reason, it is expected that the City will seek *en banc* review by the full Second Circuit.

If you have any questions about the issues addressed in this Client Alert, or if you would like a copy of any of the materials we reference, please do not hesitate to contact us:

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