

# Climate in the Courts: Climate Change Liability and Litigation

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Air & Waste Management Association  
13<sup>th</sup> Annual Hot Air Topics Conference  
January 14, 2010 – Houston, Texas

# It's not a forecast if the storm's already here

- Already active trial docket nationally on climate change litigation
  - Over 200 active matters and prior decisions
  - Types: broader, more various than expected
    - NEPA, Endangered Species
    - Insurance coverage disputes
- Most notable actions: federal common law nuisance actions

**ChicagoTribune.com**

## **Lawsuit challenges group's effort to get greenhouse gas emissions cap in New Mexico**

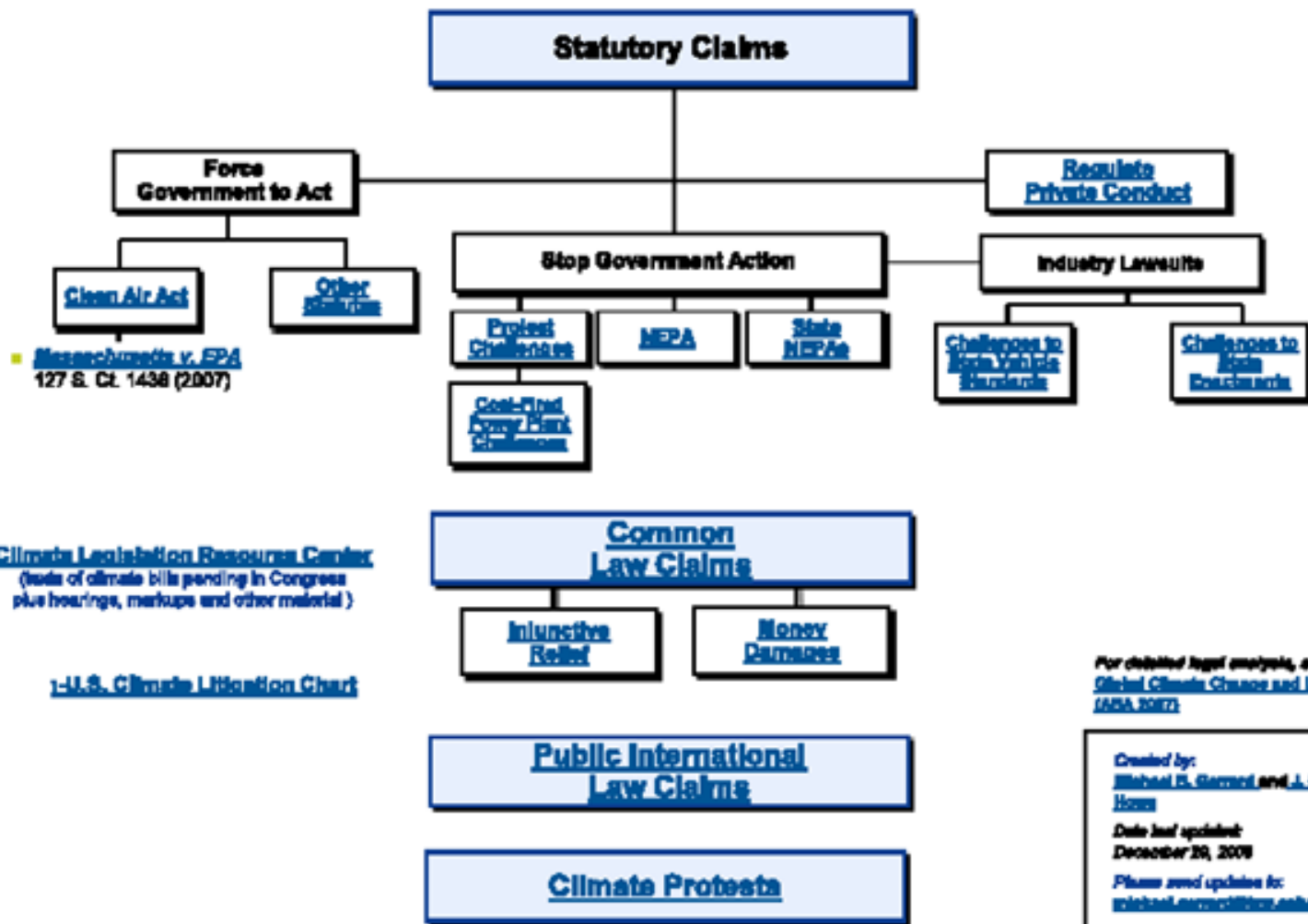
ALBUQUERQUE, N.M. (AP) — New Mexico's largest utility, three state lawmakers and other industry groups filed a lawsuit Wednesday to stop New Mexico regulators from adopting a cap on greenhouse gas emissions. ...

RL: [www.climatecasechart.com](http://www.climatecasechart.com)

receive email updates to this chart,  
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# CLIMATE CHANGE LITIGATION IN THE U.S.



[Climate Legislation Resources Center](#)  
(lists of climate bills pending in Congress plus hearings, markups and other material)

[U.S. Climate Litigation Chart](#)

For detailed legal analysis, see [Global Climate Change and U.S. Law \(ADA 2007\)](#)

Created by:  
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Date last updated:  
December 20, 2008  
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# CLIMATE CHANGE LITIGATION IN THE U.S.



[\*Am. Elec. Ind. Conf. v. Johnson\*](#)  
 – Fed. Cir. 2007)

[\*v. Dep. of Env. Protection\*](#)  
 (9th Cir. April 2007)

[\*Kerr v. Fed. Reserve Bank\*](#)  
 of San Francisco (9th Cir. 2007)

[\*Alto v. EPA\*](#)  
 (10th Cir. 2007)

[\*Chab v. EPA\*](#)  
 – Fed. Cir. 2007 (Reversed Sept. ’07;  
 re-certified Oct. ’07)

[\*Near v. NLRB\*](#)  
 (11th Cir. 2007)

[\*Wash. v. EPA\*](#)  
 (EPA Env. App. Bd.,  
 filed June 2006)

[\*Alto v. EPA\*](#)  
 (10th Cir. 2007)

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 (10th Cir. 2007)

[\*Alto v. EPA\*](#)  
 (10th Cir. 2007)

[\*W. Elec. Ind. Conf. v. U.S. Dep. of Energy\*](#)  
 (U.S. Dist. Ct. of Ariz., filed March 2006)

[\*U.S. Steel v. EPA\*](#)  
 (9th Cir. 2006)

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For detailed legal analysis, see  
[Global Climate Change and U.S. Law \(ABA 2007\)](#)

Created by:  
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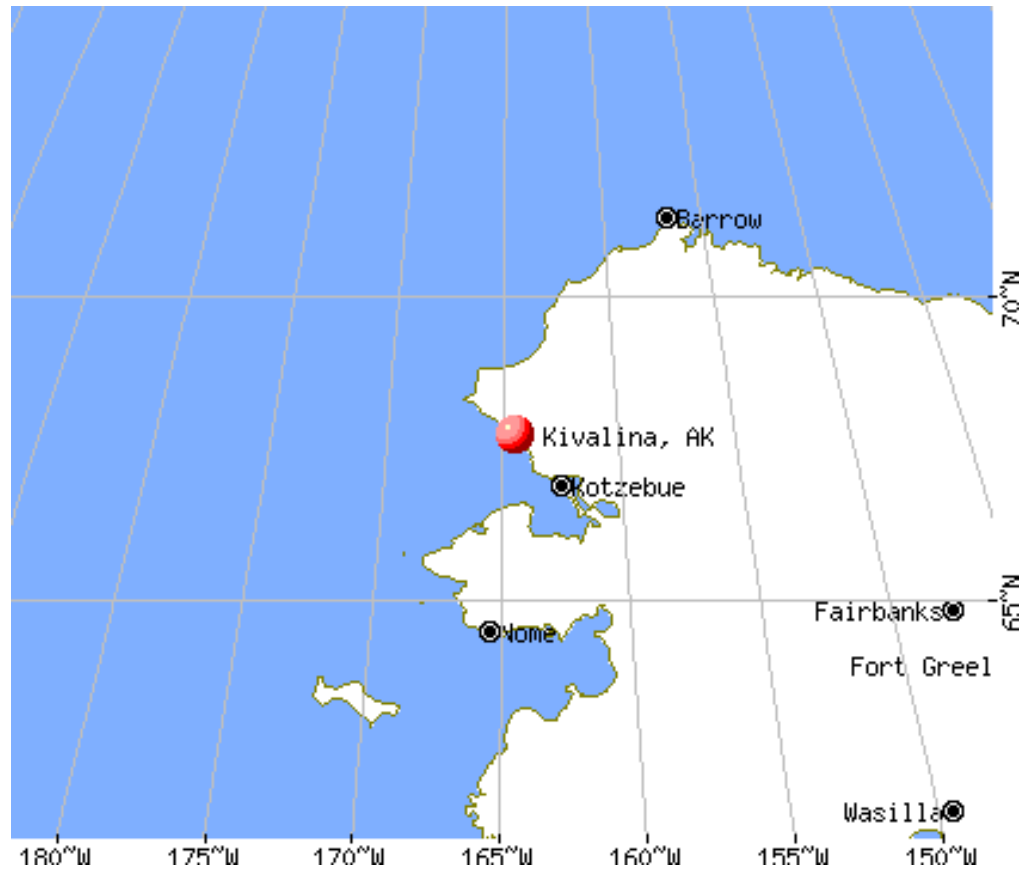
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# The Big Three

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- **Connecticut v. AEP (2d Cir.)**
  - Eight AGs sued five power companies
  - After six year wait, Second Circuit recently allowed suit to proceed
- **Comer v. Murphy Oil Co.**
  - Class action suit for Katrina property damages
  - Targets oil, coal, chemical and insurance companies
  - Fifth Circuit last month allowed suit to proceed
- **Native Village of Kivalina v. Exxon Mobil**
  - District court in California dismissed as political question
  - On appeal to Ninth Circuit

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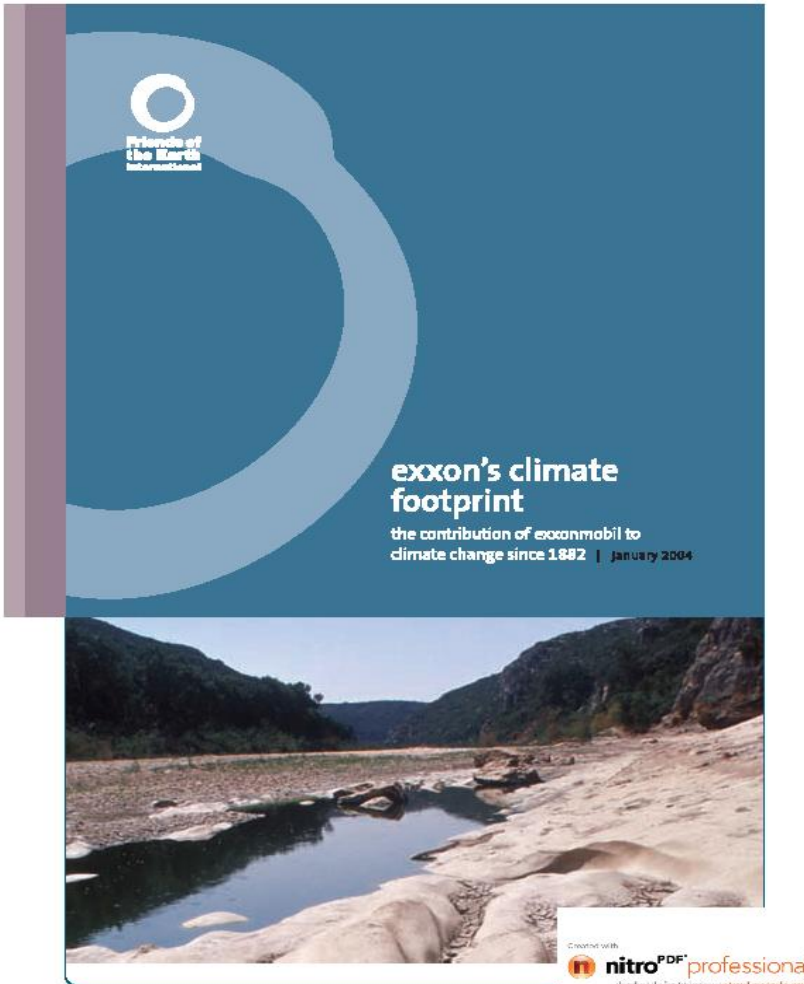




# Key Thoughts and Themes

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- Massachusetts v. EPA will continue to bear fruit
- Fate of nuisance suits may differ
  - Relief sought (injunctions vs. damages)
  - Claims and harms alleged
  - Types of plaintiffs bringing claims
- The battle to get into court is different than the battle within the court
  - Causation
  - Effectiveness of remedy



Tallies emissions  
back to 1882

Claims about 5  
percent of  
historical global  
carbon emissions  
from Exxon

Alleges most  
releases occurred  
after climate con-  
cerns first raised

## Future directions

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- Likely to see petitions for U.S. Supreme Court review in near future
- State lawsuits only just beginning
- Adaptation of tactics and strategy from tobacco and asbestos litigation
  - Collateral effects of certain claims (conspiracy)
  - Focus on legislative solution

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**Questions?**

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