

# Global Warming Public Nuisance Actions Will Stay in Federal Court

A U.S. District Court has rejected motions filed by the cities of Oakland and San Francisco to remand two global warming public nuisance lawsuits filed by the cities in state court against several large energy companies, reports [Anthony B. Cavender](#) in Pillsbury's [Gavel2Gavel blog](#).

The companies are BP P.L.C., Chevron Corporation, ConocoPhillips Company, Exxon Mobil Corporation and Royal Dutch Shell plc). The case is *The People of the State of California v. BP P.L.C., et al.*

“The complaints filed by the City of Oakland and the City of San Francisco are based on the premise that, despite knowing of the risks associated with climate change and global warming, these companies continued to produce and sell their products to the public that uses fossil fuels in their day to day operations,” Cavender writes. “The complaints seek an abatement fund to pay for seawalls and other infrastructure to address rising sea levels.”

[Read the article.](#)

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# Exxon's Response to Climate-Change Case: Sue the Lawyers

As climate-change lawsuits against the oil industry mount, Exxon Mobil Corp. is taking a bare-knuckle approach rarely seen in legal disputes: It's going after the lawyers who are suing it, according to a [Bloomberg report](#).

Exxon's targets include the attorneys general of New York and Massachusetts, hitting them with suits, threats of suits or demands for sworn depositions. The company claims the lawyers, public officials and environmental activists are "conspiring" against it in a coordinated legal and public relations campaign, writes [Bob Van Voris](#).

He quotes Howard Erichson, an expert in complex litigation and a professor at Fordham University School of Law in New York: "It's an aggressive move. Does Exxon really need these depositions or is Exxon seeking the depositions to harass mayors and city attorneys into dropping their lawsuits?"

[Read the Bloomberg report.](#)

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## Top 10 Environmental Lawyer Joins Boutique Law Firm

Jennifer Nijman and Susan Franzetti announce the addition of E. Lynn Grayson, to Nijman · Franzetti LLP of Chicago.

“Susan and I are thrilled to have Lynn practicing with us. Lynn is among the most experienced and respected lawyers in environmental law and is a perfect addition to our growing environmental law boutique,” said Jennifer Nijman.

“Lynn’s nationwide connections and experience are second to none and will only further assist our client’s nationwide interests,” said Susan Franzetti. “We could not have asked for a better addition to the firm.”

Grayson joins Nijman · Franzetti from the Chicago office of Jenner & Block where she practiced for 24 years and was Jenner’s Environmental Department Chairwoman. She has also served as the Chief Legal Counsel for the Illinois Emergency Services and Disaster Agency and the State Emergency Response Commission. Prior to this, she prosecuted federal and state environmental cases as an Assistant Attorney General for the State of Illinois.

Grayson also serves on the Board of Directors of the DC-based Environmental Law Institute. In 2017, she was elected Secretary of the Chicago Bar Association. She is a frequent author and speaker on environmental law and policy matters. She received the City of Chicago Recognition Award for Service to the Environmental Community and was recognized as Best Lawyers’ Chicago Environmental Lawyer of the Year.

“Jenner & Block is an exceptional firm, and I have many professional and personal friends there,” she said. “But it is a matter of timing and my growing envy for what Susan and Jennifer created. They each left great firms and in 10 years established what is really without equal in the country. The more I considered how beneficial their law firm model could be to my clients, the easier the decision became.”

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# Chevron Fights California Cities' Climate-Change Lawsuits With 'Creative Lawyering'

Lawyers for Chevron Corp., hoping to keep climate-change lawsuits by California cities out of state courts, have sued Oslo-based Statoil, calling it “one of many” oil producers that should help foot the bill if the industry is found liable, reports [The Los Angeles Times](#).

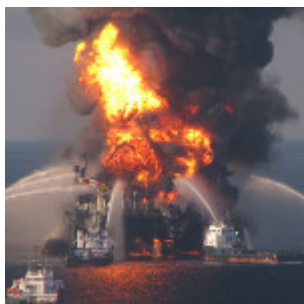
Kartikay Mehrotra writes that adding foreign companies to the litigation is a tactical maneuver to keep the dispute out of state court, where the cities have more favorable prospects, and force it into federal court.

She quotes Julia Olson, executive director and chief legal counsel for the environmental law group Our Children's Trust: “The industry is grasping at straws while looking for any way out of these cases and using creative lawyering to do so. By cherry-picking Statoil, a sovereign Norwegian entity, Chevron hopes to reinforce federal jurisdiction.”

[Read the LA Times article.](#)

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# Does the Insurance Policy Incorporate the Service Contract by Reference? An Examination of *In Re Deepwater Horizon*



*Image by U.S. Coast Guard*

A Steptoe & Johnson article takes a look at the way additional insured coverage under an insurance policy is analyzed when there is an underlying drilling contract limiting the additional insured coverage to the scope of the liability assumed in the service contract.

[The article](#) in *The National Law Review* discusses *In re Deepwater Horizon*, a Texas Supreme Court case that governs allocation of risk, assumed liabilities, and the granting of additional insured status in underlying service contracts, and the precedent the case established.

The article also considers some other cases that were litigated after the *Deepwater Horizon* case.

[Read the article.](#)

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# Sidley Adds Environmental Partner in Houston

Heather Palmer has joined Sidley Austin LLP in its Houston office as a partner in its Environmental practice. She joins Sidley from Bracewell LLP.

In a release, the firm said Palmer advises clients in the energy, petrochemical, power and utility sectors. She handles a variety of regulatory counseling and enforcement matters, including onshore and offshore oil and gas regulation, solid and hazardous waste, oil and gas waste, wastewater and stormwater permitting, wetlands, water rights, Superfund litigation and compliance with the National Environmental Policy Act.

She also advises clients on environmental issues relating to shale play development, hydraulic fracturing and the permitting, construction and operation of liquefied natural gas import and export facilities in the U.S. On the transactional side, Palmer has experience identifying and managing sources of environmental risks, the firm said. This includes coordinating due diligence and advising clients on energy-related deals, M&A transactions, public offerings, financings, real estate transactions, bankruptcy and other matters where environmental issues become an important component.

“In the current regulatory environment, we are seeing an

uptick in the number of challenges presented to our clients in energy-related transactions, particularly disputes over areas such as hydraulic fracturing and offshore oil and gas drilling,” said David Buente, co-leader of Sidley’s Environmental practice. “Heather’s substantial knowledge of the energy regulatory landscape, in addition to her experience working with federal and state energy and environmental agencies, will be beneficial in addressing various environmental concerns that may arise from transactions in the energy space.”

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## **Environmental Attorney Dorothy Watson Returns to Foley in Orlando**

[Foley & Lardner LLP](#) announced that Dorothy Watson has rejoined the firm’s Environmental Regulation practice as of counsel in the Orlando office.

Watson has 10 years of experience as an environmental lawyer from both an outside and in-house counsel perspective. For the last four years, Watson has been environmental counsel for multiple business lines within Schlumberger, the world’s leading provider of technology for the oil and gas industry. While there, she advised management teams on environmental risks and provided legal compliance counsel for matters

arising under various state, federal and international environmental laws and regulations, including the Resource Conservation and Recovery Act, Toxic Substances Control Act and REACH, as well as regulations under the authority of OSHA, MSHA and the FAA.

Watson began her environmental law practice at Foley & Lardner in 2007 as an associate where she advised clients on state and federal waste, air, water and OSHA compliance issues, including site remediation and permitting strategies.

“We are excited to have Dottie return to our team,” said Gary Rovner, chair of Foley’s Environmental Regulation practice. “The business-oriented practicality she gained working as in-house counsel for an industry leader will complement the firm’s expertise to position us to successfully address the most pressing environmental issues facing businesses today. We look forward to helping her grow her practice with us.”

Mike Okaty, managing partner of Foley’s Orlando office said, “Dottie brings with her an ideal skill set for our clients. Her knowledge of the U.S. EPA and the Florida Department of Environmental Protection will help serve the needs of our clients in our burgeoning Florida market and throughout the country.”

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# Oil Majors Face Lawsuits on Climate Change Issues



Two major Californian cities – San Francisco and Oakland – have filed lawsuits against five oil and energy super majors September, according to [Zacks Equity Research](#).

The cities have taken legal action against Chevron Corp., ConocoPhillips, Royal Dutch Shell plc, ExxonMobil Corp. and BP p.l.c.

“The companies have been accused of causing an adverse impact on the climate, resulting in global warming. The plaintiffs hold these fossil fuel companies accountable for rising sea levels, changing landscapes, higher global temperatures and increased risk of storms and droughts,” Zacks reports.

The plaintiffs allege that the defendants continue to produce and market products that contribute to climate change and rising sea levels.

[Read the article.](#)

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# Alabama Lawyers, Coal Executive Indicted On Bribery Charges

The Associated Press [is reporting](#) that two attorneys with a prominent Alabama law firm and a coal company executive have been indicted on charges of bribing a state legislator to oppose an environmental cleanup plan, federal court documents showed Thursday.

Two partners in prominent Alabama law firm Balch & Bingham have been placed on indefinite leave after named on charges including conspiracy and bribery. They are Joel Gilbert and Steven McKinney, both of whom handled environmental litigation for the firm.

AP reporter Jay Reeves writes that Drummond Co. vice president David Roberson, 66, was charged with the same crimes.

“The three are accused of bribing former state Rep. Oliver Robinson, who pleaded guilty earlier this month to accepting \$360,000 in payments,” according to the AP report.

[Read the AP article.](#)

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# Trump Administration Working Toward Renewed Drilling in Arctic National Wildlife Refuge



The Trump administration is quietly moving to allow energy exploration in the Arctic National Wildlife Refuge for the first time in more than 30 years, according to documents obtained by [The Washington Post](#), with a draft rule that would lay the groundwork for drilling.

“Congress has sole authority to determine whether oil and gas drilling can take place within the refuge’s 19.6 million acres,” reports [Juliet Eilperin](#) for *The Post*. “But seismic studies represent a necessary first step, and Interior Department officials are modifying a 1980s regulation to permit them.”

Environmentalists and some of Alaska’s native tribes have fought against exploration in the ANWR for years, but state politicians and many Republicans in Washington have pressed to extract the billions of barrels of oil lying beneath the refuge’s coastal plain, Eilperin writes.

[Read the Post article.](#)

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# BLM Proposes Rescission of 2015 Hydraulic Fracturing Rule

The Bureau of Land Management has announced its recommendation that the hydraulic fracturing rule from 2015 entitled, “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,” be rescinded, reports Fox Rothschild in its [Energy Law Today](#) blog.

[Melissa J. Lyon](#) explains that in 2015 the BLM had issued regulations that attempted to regulate oil and gas development on federal and tribal lands by focusing on wellbore construction, chemical disclosures and water management.

But litigation kept the final rule from going into effect. Then U.S. District Court Judge Skavdahl ruled that the BLM does not have the authority to enforce the 2015 hydraulic fracturing rule.

[Read the article.](#)

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# Suit for Bad Frac Job Requires a Certificate of Merit

Gray Reed & McGraw's [Energy & the Law Blog](#) discusses *Perdenal Energy LLC v. Bruington Engineering, Ltd.*, which asked whether a court must dismiss an engineering defect lawsuit filed without a certificate of merit with prejudice or may dismiss without prejudice.

“Texas law requires a plaintiff to file a ‘certificate of merit’ with its original petition for claims arising out of work by licensed or registered engineers,” explain authors [Charles Sartain](#) and [Chance Decker](#). “The certificate must be from a qualified engineer and must detail the manner in which the professional services were faulty.”

They outline approaches for handling this situation, both from the standpoint of the defendant and the plaintiff.

[Read the article.](#)

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## A New Start for U.S. Offshore Oil, Gas Drilling?



Courtesy of BP Public Affairs Staff, via BOEM.gov

A recent podcast from Columbia Energy Exchange features host Bill Loveless speaking with Tommy Beaudreau, a non-resident Fellow at the Center on Global Energy Policy and partner in the Environment, Land & Resources Department of Latham & Watkins in Washington, D.C.

The podcast series is presented by Columbia University's Center on Global Energy Policy.

In [the podcast](#), the two discuss details of the latest executive order on offshore oil and gas drilling; what political and legal challenges the order will face; how the U.S. government have improved drilling and safety standards since the Deepwater Horizon oil spill; and next steps in the offshore review process.

[Listen to the podcast.](#)

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# Sidley Expands Environmental Practice in Washington, D.C.

Sidley Austin LLP announced that Richard Alonso has joined the firm as a partner in its Washington, D.C. office. He will be a member of the firm's Environmental practice.

Alonso has dealt with the United States Environmental Protection Agency's (EPA) regulatory process and has experience with environmental compliance and enforcement issues, including federal and state enforcement defense strategies, the firm said in a news release.

The release continues:

Prior to building a private practice, Alonso served as chief of the Stationary Source Enforcement Branch at the EPA's Office of Enforcement and Compliance Assurance. He had earlier served at the EPA in the Water Enforcement Division. During his tenure with the EPA, he had responsibility for enforcing the Clean Air Act (CAA), Clean Water Act and Safe Drinking Water Act. He managed and negotiated CAA enforcement cases, including New Source Review (NSR) cases, with power plants and manufacturing facilities and was instrumental in developing CAA policies and regulations. Alonso also held key roles in cases relating to defeat devices and engine certification requirements under the CAA's Title II mobile source program. He is known as a national authority on EPA automotive and fuel regulatory programs, including the Renewable Fuels Standard program.

"Rich's firsthand experience in both private practice and the public sector will make him a valuable asset for our clients looking for advice in addressing their complex environmental challenges at both the federal and state levels," said David Buente, co-leader of Sidley's



Environmental practice. “We are delighted to welcome Rich to our outstanding team of lawyers dedicated to assisting clients with every aspect of environmental law.”

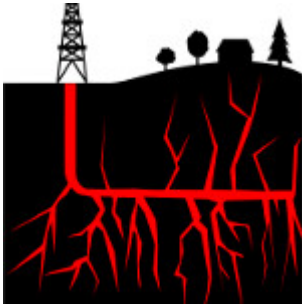
Alonso represents clients including large trade associations, manufacturers and energy companies in environmental compliance and enforcement matters before both state and federal agencies. He focuses his practice on CAA issues, including NSR applicability and permitting, EPA rulemaking efforts, legal challenges to EPA actions, and CAA enforcement defense and compliance counseling. Mr. Alonso’s CAA experience includes the development of State and Federal Implementation Plans, permitting programs, and policies applicable to stationary sources, fuel regulations, automotive engine certifications and regulation of ozone depleting substances. He has tackled cutting-edge environmental issues for a variety of industrial sectors, including the implementation of climate change regulations, permitting of greenhouse gas emissions, and regulation of methane emissions from oil and gas operations.

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**The Nation’s First  
Legislative Fracking Ban Is**

# on the Books



In an episode of Kane Russell Coleman Logan's [energy law podcast](#), director [Tom Ciarlone](#) discusses the nation's first legislative fracking ban.

That action came in Maryland when the legislature passed a bill that prohibits petroleum fracking across the state, Ciarlone says. The Maryland governor signed the bill that supplants a two-year moratorium that was set to expire later this year.

The podcast also discusses a lower bar for class certification in royalty underpayment actions, as well as multiple decisions out of the Texas Supreme Court that could spawn a wave of widespread mineral title disputes.

[Listen to the podcast.](#)

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## EPA Announces Methane Rule

# Reconsideration, Adding to List of Obama-Era Rules Under Review

On April 18, 2017, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt announced that the EPA will convene a proceeding for reconsideration of certain elements of the 2016 rule establishing methane emissions standards for the oil and gas industry, reports Bracewell's [Energy Legal Blog](#).

Authors [Whit Swift](#) and [Brittany Pemberton](#) write that the Methane Rule applies to oil and gas facilities for which construction, modification, or reconstruction started after September 18, 2015.

"In particular, EPA will reconsider elements of the fugitive emissions monitoring and repair requirements of 40 C.F.R. § 60.5397a, including the inclusion of low-production wells, and the NSPS Subpart 0000a provisions relating to approvals for an alternative means of compliance," they explain.

[Read the article.](#)

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**\$87 Million Each for Lead**

# Firms in 2010 Oil Spill Litigation



*Image by U.S. Coast Guard*

A committee of attorneys involved in litigation arising from the 2010 Gulf of Mexico oil spill has made its recommendation for dividing \$700 million in fees among 122 law firms involved in years of complex legal work, reports the [Associated Press](#).

Two Louisiana law firms that steered the litigation will get the biggest payouts. Domengeaux Wright Roy & Edwards of Lafayette and Herman, Herman & Katz in New Orleans will get about \$87.8 million if a federal judge approves the recommendation filed this week in U.S. District Court in New Orleans.

“Millions of barrels of oil spewed into the Gulf of Mexico for 87 days after an explosion on the Deepwater Horizon offshore rig at BP’s Macondo well in the Gulf of Mexico,” writes Kevin McGill. “Eleven workers were killed and the pollution affected Gulf fisheries, delicate wetlands and recreational beaches.”

[Read the AP article.](#)

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# Removal of Energy ‘Burdens’ Could Have Huge Impacts



A provision of the “energy independence” executive order signed by President Trump is so broad in scope that legal experts say it could affect numerous government responsibilities far beyond those that deal directly with energy and climate change, according to a post by [Climate Central](#).

Under the order, federal agencies must review all of their actions that have the potential to “burden” both the development and use of domestic fossil fuels and nuclear energy in the U.S., writes [Bobby Magill](#).

“For example, it could affect the speed with which the government permits oil and gas drilling, how much information about energy development the government provides to the public, and other decisions federal employees make on a daily basis,” Magill explains. “It may also affect the willingness of the government to allow wind and solar development to go forward because more use of renewable energy could lead to less use of fossil fuels.”

[Read the article.](#)

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# Ruling Against Acting NLRB GC Offers Opportunity for Employers



Employers who want to challenge their unfair labor practice complaints may want to delay their cases from being heard, if possible, until after November, recommends a labor lawyer, in light of a recent U.S. Supreme Court ruling that limits powers of acting presidential appointees.

[Allen Smith](#), writing for the [Society for Human Resource Management](#), explains implications of the ruling, which found that the acting National Labor Relations Board general counsel did not have the authority to continue in that role once the president nominated him to be confirmed by the Senate to be general counsel.

That means that companies that have objected to the authority of Acting GC Lafe Solomon after he was nominated can challenge any unfair labor practice charge issued against them following his nomination January 2011, according to Phil Wilson, president and general counsel with the Labor Relations Institute in Broken Arrow, Okla.

[Read the SHRM article.](#)

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