



Another Federal Court in California Grants Remand of Climate Change Litigation

IN SHORT

The Situation: In what may have further muddied the waters of the viability of the recent U.S.-filed state law climate change litigation against industry, a second federal court in San Francisco has granted remand of three of those cases in direct contradiction to an earlier court's decision in the same district.

The Development: The complaints alleged that some of the top producers and marketers of fossil fuels in the world knew that emissions from the fuels they produced and marketed created greenhouse gas pollution that caused and will cause serious environmental impacts. Plaintiffs claimed these actions created a public nuisance and sought both injunctive relief and damages.

Looking Ahead: There is now a lack of consensus as to whether these global warming cases should be in federal or state court.

In direct contradiction to the court's opinion in *The People of the State of California v. BP P.L.C.* a month earlier, a different court in the Northern District of California remanded three "global warming" actions back to California state court. *County of San Mateo v. Chevron Corp.*, *City of Imperial Beach v. Chevron Corp.*, *County of Marin v. Chevron Corp.*

The County of San Mateo, the County of Marin, and the City of Imperial Beach filed suits in California state court against many of the top producers and sellers of fossil fuels worldwide claiming that the defendants knew that emissions from the fuels they produced and marketed created greenhouse gas pollution that has caused and will cause serious environmental impacts on the people of California, including flooding events and severe storms. Plaintiffs in these suits brought causes of action for public nuisance and strict liability. The defendants removed the cases to federal court.

In its remand opinion, the court granted the plaintiffs' motions to return the proceedings back to state court because it found that removal based on the application of federal common law was not warranted. This court disagreed with the court in *The People of the State of California v. BP P.L.C.* and found that the Ninth Circuit decision in *Native Village of Kivalina v. ExxonMobil Corp.* was directly applicable to the case. The court noted significant similarities between *Kivalina* and the instant matter, including the types of claims brought, types of damages sought, and the defendants named.

Based on these similarities, the court interpreted *Kivalina* to stand for the proposition that the federal common law is displaced by the federal Clean Air Act for both global warming related claims against direct emitters and energy producers. As a result, the court held that the plaintiffs' claims were not governed by federal common law and that federal common law did not preclude plaintiffs from asserting their state law claims.

The court then held that removal was also not warranted because: (i) the state claims were not completely preempted by any federal law; (ii) there was no actual, disputed, substantial federal issue requiring *Grable* jurisdiction; and (iii) no specialized statutory removal provision was applicable.

After determining that removal was not appropriate, the court stayed the matter for 42 days to allow the parties to consider whether the matter should be certified for interlocutory appeal or whether the remand order should be stayed pending appeal of the earlier remand order. The court requested a briefing schedule from the parties within seven days of the ruling.

The result of this ruling is that there is now no consensus, at least within the U.S. District Court for the Northern District of California, as to whether these suits brought by cities and counties in California against fossil fuel producers for global warming impacts should be in federal or state court. There are now rulings on each side of the issue that could be used by defendants and plaintiffs in other similar suits.



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KEY TAKEAWAY

1. There is no consensus, at least within the U.S. District Court for the Northern District of California, as to whether suits brought by cities and counties in California against fossil fuel producers for global warming impacts should be in federal or state court.



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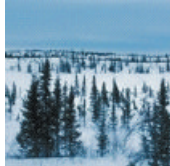


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