



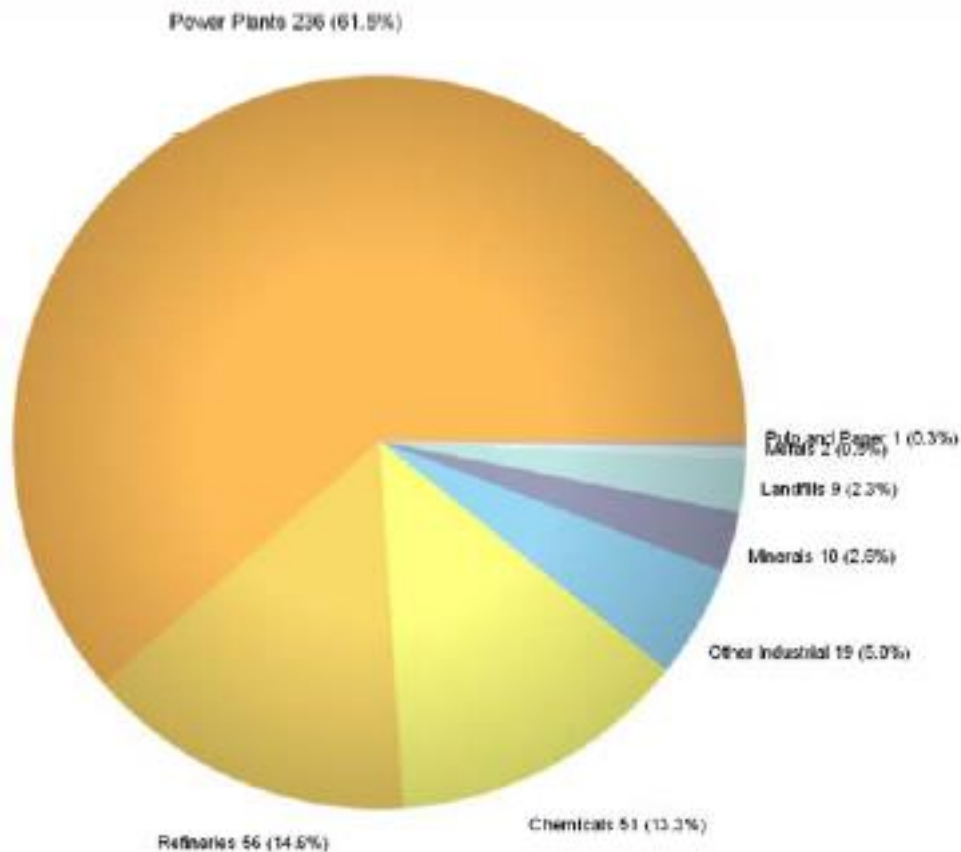
Climate Change Public Nuisance Tort Litigation

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University of Houston Law Center

Houston, Texas
Oct. 21, 2013

Texas - Direct GHG Emissions Reported by Sector in Million Metric Tons of CO₂e



Sector	<input type="checkbox"/> SELECT ALL <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>									
	Power Plants	Refineries	Chemicals	Other Industrial	Landfills	Metals	Minerals	Pulp and Paper	Government and Commercial	
2010 GHG Emissions (million metric tons CO ₂ e)	236	56	51	19	9.3	1.9	10	0.7	0.3	
# of Reporting Facilities	128	29	119	252	96	13	35	5	6	

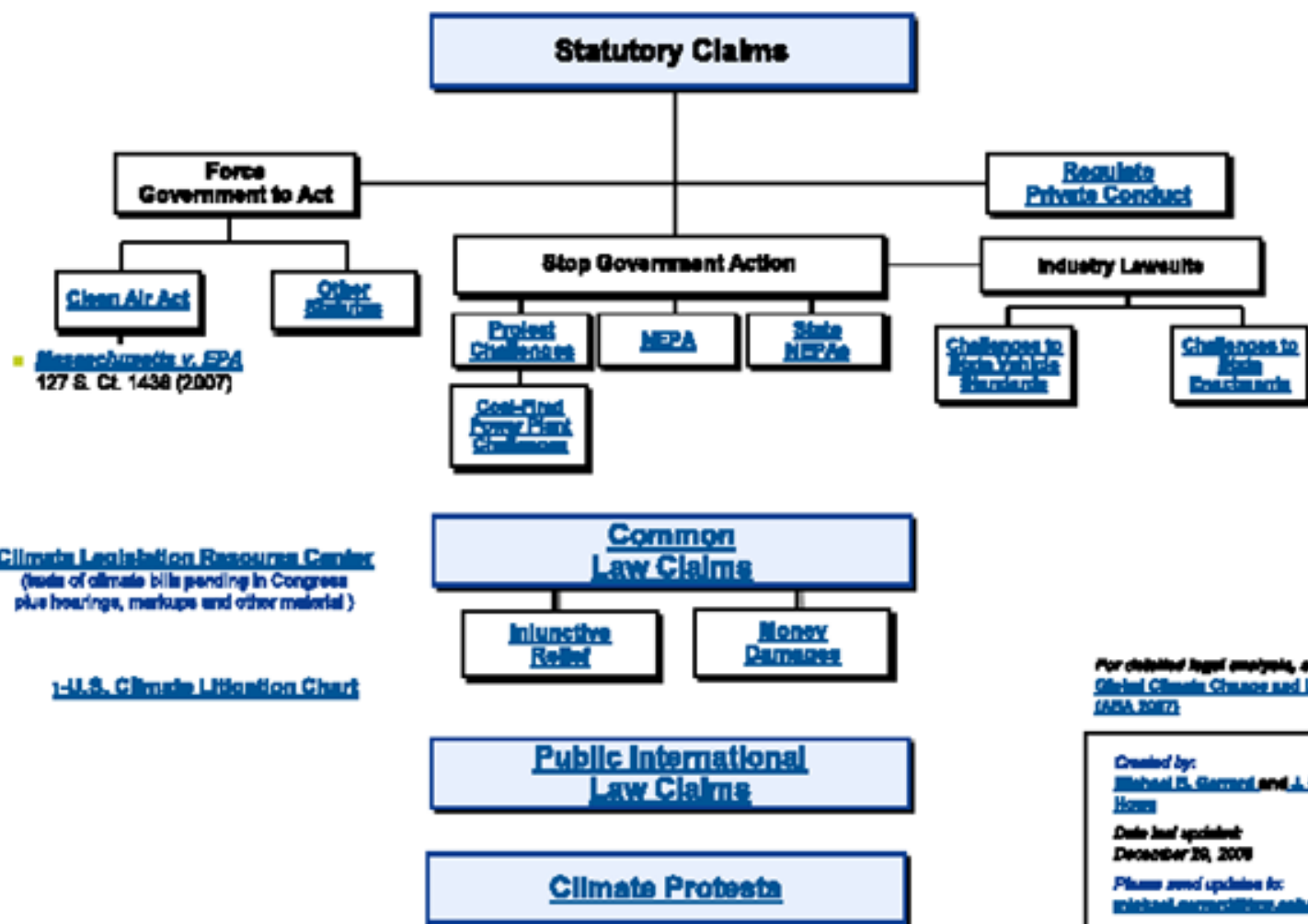
This data set does not reflect total U.S. GHG emissions. Learn more about related EPA GHG [data sources](#). Data reported to EPA as of 08/15/2012.

RL: www.climatecasechart.com

receive email updates to this chart,
and a request to

leo.hovav@arnold.com

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:
[Michael D. German](#) and [J. Colleen Howe](#)
Date last updated:
December 20, 2008
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Climate Change Nuisance Lawsuits: Many Causes, Many Claims

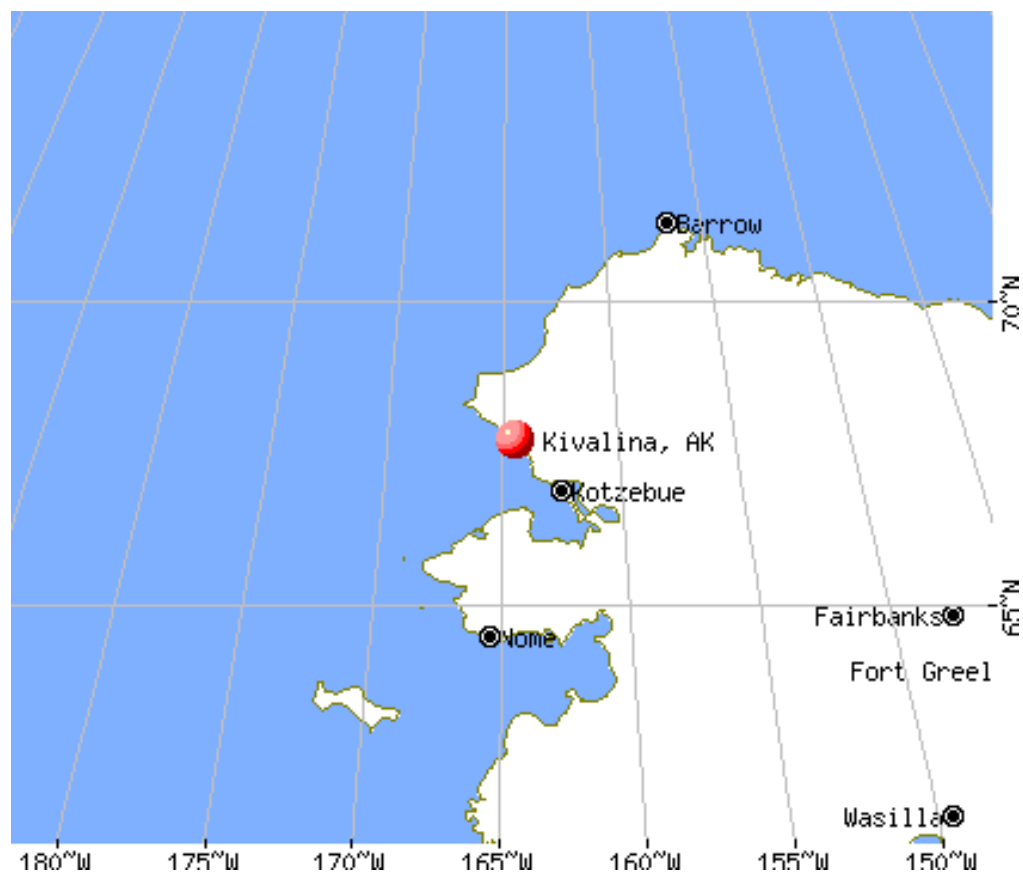
Courts as Battlefields in Climate Fights



Erosion of the shoreline in Kivalina, Alaska, has led to a closely watched climate-change lawsuit.

By [JOHN SCHWARTZ](#)

Published: January 26, 2010





The Big Three



- **Connecticut v. AEP (2d Cir.)**
 - Eight AGs sued five power companies
 - U.S. Supreme Court ruled that federal common law nuisance claims were displaced by Clean Air Act
- **Comer v. Murphy Oil Co. (5th Cir.)**
 - Class action suit for Katrina property damages
 - Targets oil, coal, chemical and insurance companies
 - Fifth Circuit dismissed in very odd fashion; district court dismissed re-filed complaint and Fifth Circuit has upheld the second dismissal
- **Native Village of Kivalina v. Exxon Mobil (9th Cir.)**
 - District court in California dismissed as political question
 - Ninth Circuit dismissed on displacement grounds as well



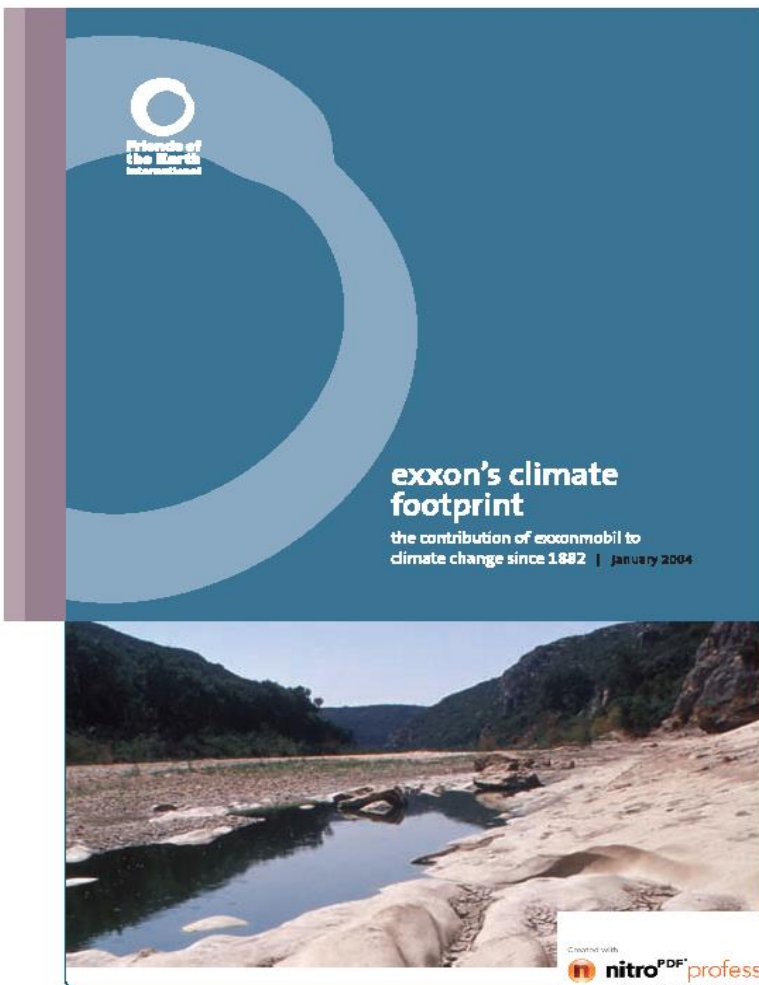
Climate Change Liability -- Key Thoughts and Themes

- Should fate of nuisance suits 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

Future Directions in Climate Change Litigation



- State law claims and lawsuits?
- Adaptation of tactics and strategy from tobacco and asbestos litigation
 - Collateral effects of certain claims (conspiracy)

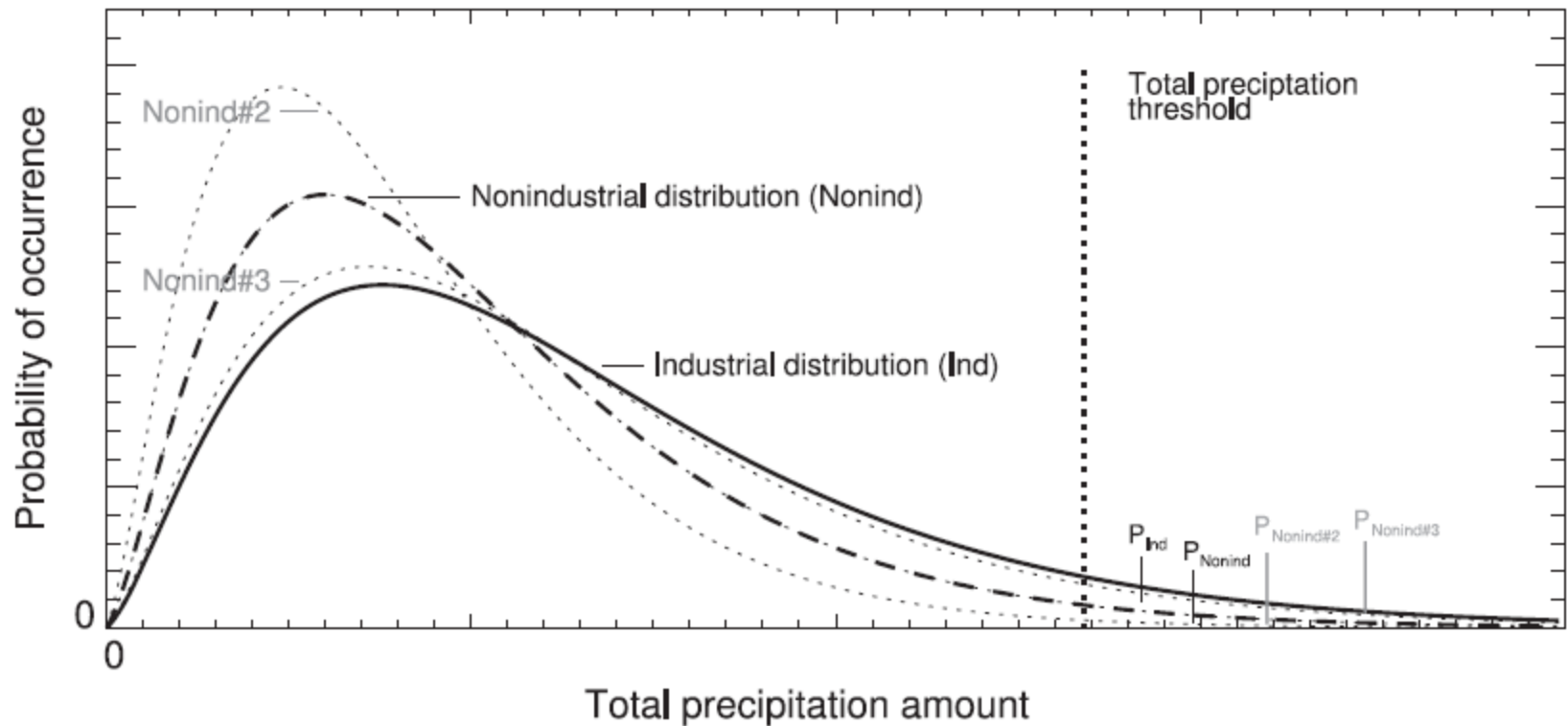


- Tallies emissions back to 1882
- Claims about 5 percent of historical global carbon emissions from Exxon
- Alleges most releases occurred after climate concerns first raised

Public Trust Litigation

- Public trust doctrine
 - Limits on state's ability to alienate resources
 - Analogous to fiduciary duty
 - Used in water, submerged property cases
- Is the atmosphere a public trust?
- *Bonser-Lain v. TCEQ*, 201st Dist. Ct., Travis Co., filed July 22, 2011

Climate Attribution Science and Litigation?



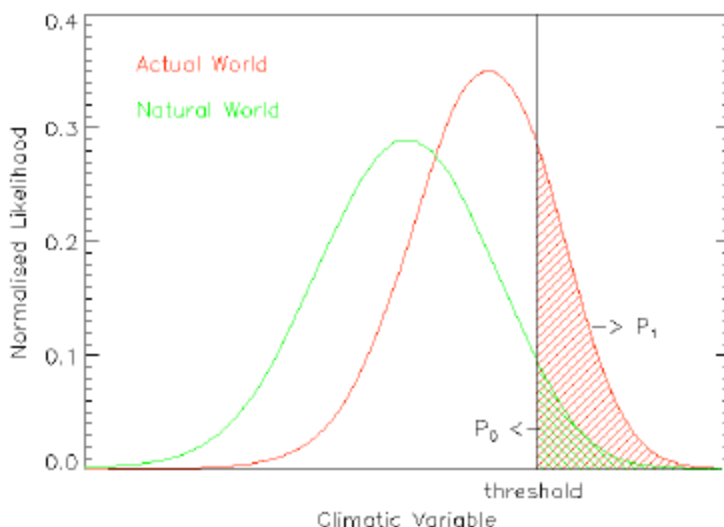


Met Office
Hadley Centre

Fraction of Attributable Risk

Fractional change in the likelihood of exceeding a temperature threshold attributable to a particular causal factor

(Allen, Nature, 2003)



P_0 : Probability of exceeding a threshold in the “world that might have been” (without that causal factor).

P_1 : Probability of exceeding a threshold in the actual world.

$$FAR = 1 - (P_0 / P_1)$$

Extreme weather events that arose partially from anthropogenic climate change:

- European heat wave of 2003
- The cold US of 2008
- Moscow heatwave of 2010
- Cold European winter 2009/2010
- UK flooding in 2000



Questions?

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