

Climate Litigation
Professor Parenteau
Preliminary Syllabus
Summer 2009

Course Description: Despite a new, more climate-friendly administration in power, and hopes for comprehensive new laws at the domestic and international levels capping greenhouse gas emissions, advocates are still turning to the courts for relief to speed efforts to reduce GHG and mitigate the worst consequences of the impending crisis. These actions seek injunctions to halt the development of coal-fired power-plants and other carbon sources as well damage actions against the fossil fuel and automobile industries for harm allegedly caused by their emissions. Climate litigation has brought together an intriguing coalition of states, environmentalists and “green” economic interests. Emboldened by the landmark decision of the U.S. Supreme Court in *Massachusetts v EPA*, federal courts across the country have handed down a number of important decisions, and state courts have begun to address these issues in some areas. This course will review the various statutory and common law claims being tried, the kinds of remedies being sought, and the jurisdictional and evidentiary obstacles.

Course Materials: All the materials are posted on the course website on TWEN.

Grading: The class will be divided into teams of opposing counsel to brief and argue a motion to dismiss in *Kivalina v Exxon Mobil*. Details to follow.

Class One: Climate Change: The State of the Science

Readings:

IPCC Fourth Assessment *Summary for Policy Makers*

IPCC FAQs

Climate Change Impacts in US

Holdren ppt

Hansen ppt

Class Two: Climate Litigation Overview & Standing

Gerrard Climate Litigation Chart

Mass v EPA, 127 S. Ct. 1438 (2006)(**Parts I, II, III & IV**)

Dowling, *Mass v EPA* Aftermath

City of Los Angeles v NHTSA, 912 F.2d 478 (D.C. Cir. 1990)

FOE v Watson, 2005 WL 2035596 (N.D. Calif.2005)

NEDC v Owens Corning, 434 F.Supp.2d 957 (D. Or. 2006)

Summers v Earth Island Institute

Class Three: NEPA and ESA

Border Working Group v DOE, 260 F. Supp.2d. 997 (S.D. Calif. 2003)

FOE v Mossbacher, 488 F.Supp.2d 889 (N.D. Calif. 2007)

Mid States Coalition for Progress v. Surface Transp. Bd., 345 F.3d 520 (8th Cir. 2003)

CBD v NHTSA, 508 F.3d 508 (9th Cir. 2007) (Parts I B and II B)

NRDC v Kempthorne, 506 F.Supp.2d 322 (E.D. Calif. 2007)

Center for Biological Diversity v. Kempthorne, No. 07-CV-00141 (D.

Alaska)

Class Four: Public Nuisance

Murphy v Comer Oil, No. 1:05-CV-436-LG-RHW (S.D. Miss. August 30, 2007)

Connecticut v AEP, 406 F. Supp.2d 265 (S.D. N.Y. 2005)

North Carolina v TVA, 439 F.Supp.2d 486 (W.D.N.C.2006)

California v General Motors, No. C06-05755 MJJ (N.D. Calif. 2007) (unreported)

Kivalina v Exxon Mobil (complaint)

Kivalina Briefs

Parenteau ppt

Class Five: Coal Wars

Okeson v. City of Seattle, 150 P.3d 556 (Wash. 2007)

Sunflower Electric Power Corp. v. Kansas Dept. of Health and Environment

In re Otter Tail Power Co., 744 N.W.2d 594 (S.D. 2008)

Sierra Club v EPA, 499 F.3d 653 (7th Cir. 2007)

Sierra Club v Administrator, 496 F.3d 1182 (11th Cir. 2007)

Longleaf decision

Bonanza decision

Class Six: Clean Cars

Green Mtn Chrysler v Crombie, 2007 WL 2669444 (D.Vt 2007.)

EPA California Waiver Denial

Calif. Petition for Review

CBD v NHTSA (Part I)

Class Seven: Land Use

CBD v City of Desert Hot Springs

San Bernardino Settlement

General Motors Corp. v. California AirResources Bd., No. 05-02787

Class Eight: Mock Hearing on Motion to Dismiss

Class divided into two teams of counsel for plaintiffs and defendants and assigned task of arguing a Rule 12 (b) motion to dismiss the *Kivalina* complaint. Further details will be provided.