ALLIANCE *for* CONSUMERS

CONSUMER PROTECTION REPORT

Public Nuisance Revealed: The Leftwing Plan To Reshape Our Society

A study into the public nuisance lawsuit and the left's scheme to reshape our society by taking their progressive agenda to the courts.

Introduction

In recent years, there has been a growing attempt from trial lawyers and politicians to exploit a long-standing tenet of common law known as "public nuisance."

Public nuisance is a longstanding aspect of our legal system intended to protect against the unreasonable violation of a public right. Historically, public nuisance claims were used to address land issues or remedy a harm committed against the general public, such as the blocking of a public road.

Over time, left-leaning officials at the state and local level have worked with trial lawyers and liberal advocacy groups to push the boundaries of public nuisance claims. State and local governments have turned to public nuisance claims to address an ever-expanding range of issues, including climate change, opioids, vaping, and more. Their goal has been to use public nuisance claims to implement public policy through the courts.

As the use of public nuisance litigation has expanded over time, so have the financial settlements and judgements associated with these cases. Targeting major companies with public nuisance lawsuits has generated massive settlements – reaching into the tens of billions of dollars in some instances.

Because trial lawyers often work off contingency fee arrangements, in which they receive a percentage of any financial award in the case, public nuisance suits have become a substantial financial windfall for the law firms pressing these cases, beyond the benefit they get from pushing their preferred public policy positions through the courts.

And trial lawyers have been generous with their winnings, pouring money back into left-wing political committees and campaigns at prodigious rates, boosting progressive politicians and helping line up future clients.

Public nuisance lawsuits have rightly attracted attention for being an avenue to shake down deep-pocketed companies. But that valid criticism falls short in terms of grappling with the bigger peril.

Public nuisance claims are about liberal control, not just money, and the list of targets is sweeping. The left-wing trial lawyers driving these cases were always going to turn their sights to other, more ideological nuisance targets as their earlier corporate campaigns wound down. And we are seeing that happen throughout the country, as the partnership between left-wing trial lawyers and left-leaning state and local governments continues to expand and grow.

Given the stakes involved, there are few more pressing public policy topics than public nuisance litigation. Much more needs to be said about the lawyers, the non-profits, the public officials, and the political money involved in these cases. And this fight calls for a new, different voice.

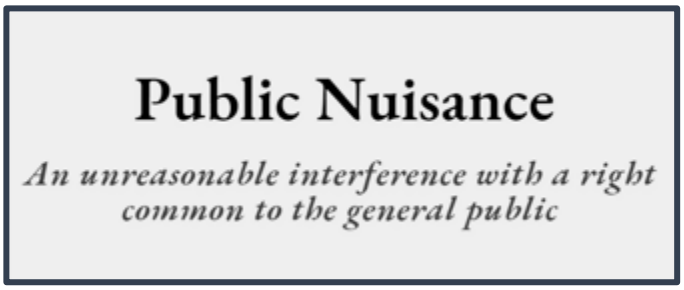
With that in mind, **Alliance For Consumers will spend this year giving special attention to public nuisance suits, starting with this report.**

Public Nuisance: An Overview

WHAT IS A PUBLIC NUISANCE?

Public nuisance is a longstanding common law tort, typically defined under the law as "an unreasonable interference with a right common to the general public."

Public nuisance, when applied as intended, addresses local concerns and harmful conduct that impacts all members of a community that is often identified by location (e.g. the discharge of harmful chemicals broadly into a locality or the blocking of a public road).



In contrast, a private nuisance is one that violates the rights of a specific individual or a select group of individuals (e.g., improper discharge of harmful chemicals into specific individual's house or blocking of a private driveway).

KEY ELEMENTS OF PUBLIC NUISANCE CLAIMS

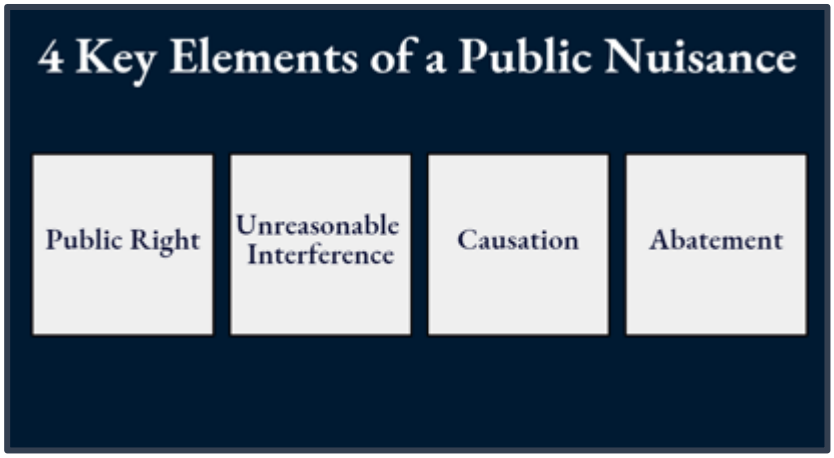
Public nuisance law varies from state to state. However, when evaluating a public nuisance claim, courts typically look for four key elements:

(1) A right of the public was infringed upon

(2) The defendant unreasonably interfered with that public right

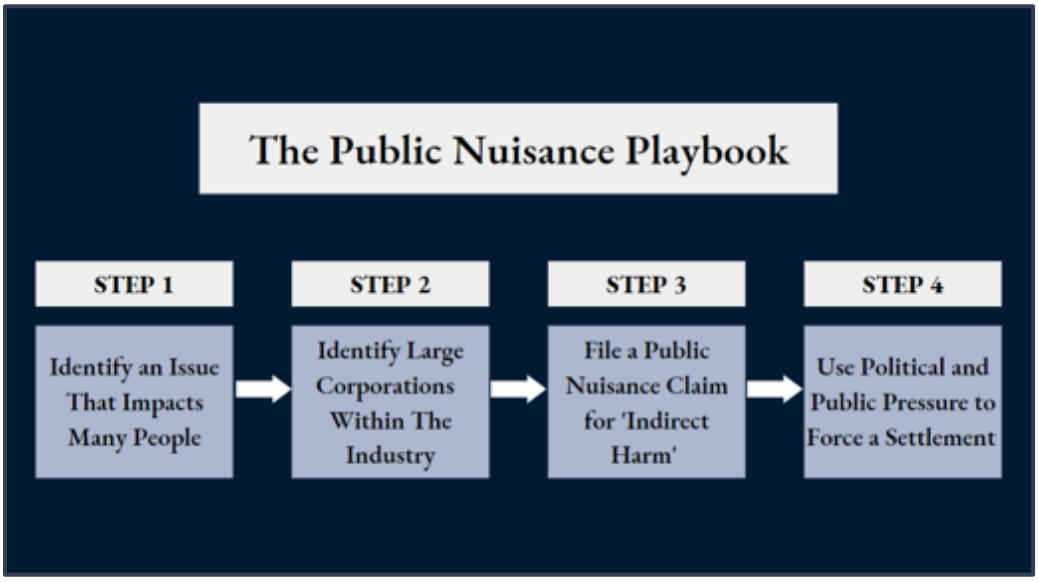
(3) The defendant's conduct was the proximate cause of the harm

(4) The defendant exercises control over the conduct that caused the harm (and the harm can be abated, or remedied)



PLAYBOOK FOR PUBLIC NUISANCE CLAIMS

As noted in a recent analysis, there is a clear playbook for trial lawyers and their allies in government when bringing public nuisance cases:



PUBLIC NUISANCE ORIGINS AND 20th CENTURY SHIFT

The origins of public nuisance in common law date back centuries. However, over the past 50 years, we have seen an ongoing shift in how public nuisance claims are used.

In the early-to-mid-20th century, public nuisance lawsuits were infrequent. That began to change in the 1970s and 1980s as environmentalists sought to use public nuisance to address pollution. As a part of this effort, activists sought to broaden the scope of public nuisance law to include any instance where the "public interest" was infringed upon, as opposed to just a "public right."

Throughout the 1990s, this new strategy of broadening public nuisance cases expanded beyond the issue of pollution. This shift most notably resulted in public nuisance cases brought against major tobacco companies. The settlements involved in the national tobacco cases provided an unprecedented windfall for trial lawyers and helped affirm the practice of using public nuisance claims to address larger societal issues.

OPIOIDS AND PUBLIC NUISANCE

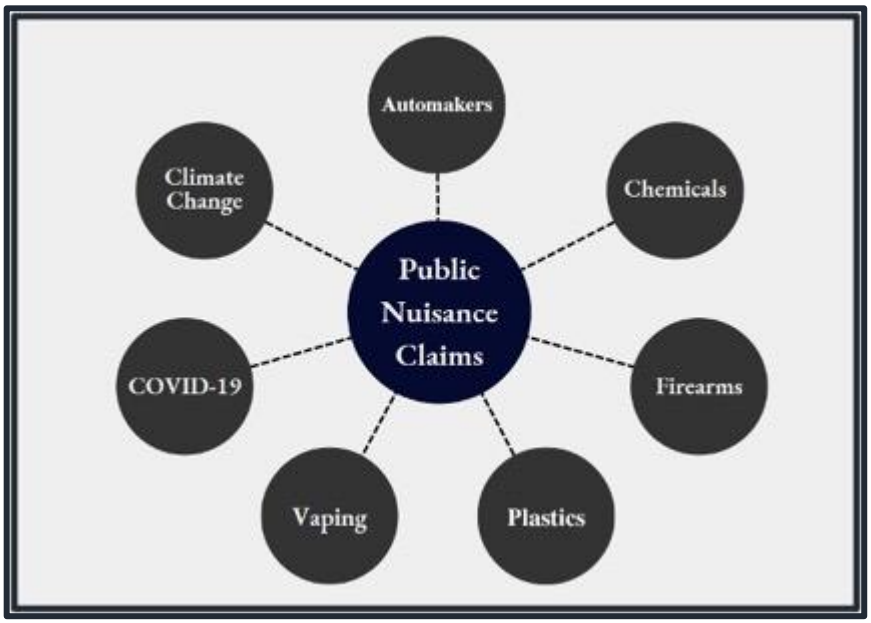
Following the tobacco litigation, trial lawyers, invigorated by success, worked to expand the use of public nuisance claims to a variety of societal issues. But no issue provided a better accelerant for the modern public nuisance movement than the opioid crisis. Litigation around opioids quickly became one of the largest areas of public nuisance claims, with cases targeting manufacturers, distributors, and dispensers. Trial lawyers helped state and local governments generate over 3,000 opioid-related lawsuits. Many opioid-related cases have reached settlements, with billions in payouts, even as additional cases are still ongoing.

THE MODERN PUBLIC NUISANCE MOVEMENT: MOVING BEYOND OPIOIDS

While there is almost no limit to the range of issues to which trial lawyers may aim to apply public nuisance claims, and there are still ongoing opioid cases, there are key areas that are representative of the modern nuisance landscape: **Chemicals, Climate Change, Firearms, COVID-19, Vaping, Automakers, and Plastics.**

And other industries are entering the crosshairs, like fast food restaurants, meat producers, sugar manufacturers, and more. The speed of expansion can be breathtaking when new areas first enter the maelstrom. Just a few initial public nuisance cases in an area can quickly produce an onslaught of litigation. For example, from 2005 to 2022, more than 6,400 PFAS chemical related cases were filed. This figure is expected to continue to grow as trial lawyers target new defendants. Total liabilities from PFAS suits could reach $30 billion, according to some estimates.

COMMON ISSUE AREAS FOR CURRENT PUBLIC NUISANCE CLAIMS



Climate Change

Left-leaning state and municipal governments have partnered with trial lawyers to file public nuisance claims around climate change. These lawsuits have targeted the energy industry, claiming they have created a public nuisance by contributing to climate change. These cases have been largely unsuccessful. For example, climate change lawsuits filed by the City of Oakland and the City of New York were both dismissed, with judges in these cases making clear that public nuisance was not a legitimate means to implement climate policy. But the cases keep coming, and many are steadily moving through the courts.

Firearms

While firearms public nuisance suits failed in the past, progressive officials have returned to this tactic in recent years. As the nuisance campaign over opioids reached peak fervor, left-wing officials began to call for new public nuisance campaigns against firearms manufacturers, including President Biden, Rep. Adam Schiff, and California Attorney General Rob Bonta. And a new litigation wave has now commenced in response to state laws specifically designed to expose gun makers to public nuisance claims. In 2021, New York Gov. Andrew Cuomo signed first-of-its-kind legislation to specifically open up gun makers to public nuisance claims. And California Gov. Gavin Newsom followed suit in 2022. New York's law survived an initial legal challenge in 2022, and New York cities have already teamed up with trial lawyers to bring suits under the new law.

Chemicals

A trend in public nuisance surrounds Polychlorinated Biphenyls (PCBs) or Polyfluoroalkyls (PFAS), which are commonly used in manufacturing products like non-stick cooking pans.

While initial PFAS cases largely targeted DuPont, litigation has been expanding to companies like 3M. There were reportedly over 6,400 PFAS-related lawsuits filed from 2005 to 2022.

One major settlement that helped drive this trend was in 2018 when Minnesota secured $850 million from 3M over the company's use of PFAS. Trial lawyers received a $125 million fee from the settlement.

Finding both monetary and ideological success, trial lawyers will likely keep replicating these cases.

Plastics

Plastics retailers, manufacturers, and distributors have been targeted with litigation alleging that their products create a public nuisance. These suits are often led by environmental advocacy groups. For example, Earth Island Institute filed a lawsuit in 2020 in California seeking damages from major companies like Coca-Cola and Nestlé to help fund the cleanup of plastics. That case is still moving through the judicial process after the San Mateo County Superior Court denied a motion to dismiss the case in June 2022, and ruled that California courts had jurisdiction.

Vaping

Following the success of the tobacco settlements, vaping companies have become a new target for public nuisance claims. Some have cited the rise of vaping claims as evidence that the opioid public nuisance case model is still being followed. Trial lawyers have partnered with municipalities and school districts to assert that vaping companies have created a health epidemic, and a public nuisance, by willfully targeting youth with their products. There were more than 4,000 vaping claims as of August 2022.

Automakers

While it has long been thought that automakers would become a target of climate-change-inspired public nuisance litigation, the first real wave of automaker lawsuits has seen municipal governments, in conjunction with trial lawyers, suing automakers under the theory that the automakers, by making cars that are too easy to steal, are contributing to rising crime rates and creating a public nuisance.

COVID-19

The COVID-19 pandemic has presented a new avenue for public nuisance suits, many of which have targeted companies over their workplace protocols aimed at combatting the spread of COVID-19. The outcomes of these cases have been mixed – some have been settled, others have been dismissed, and some are still moving through the judicial process.

For example, a case filed against McDonald's by its employees was settled outside of court with undisclosed terms. A suit over COVID-19 leave filed against Amazon is still pending in the 2nd Circuit Court of Appeals after being dismissed in Federal District Court. A suit filed by workers against Smithfield Foods over COVID-19 safeguards in the workplace was dismissed in 2020.

COMMON PUBLIC NUISANCE OUTCOMES

Dismissals

So far, attempts to push the bounds of public nuisance law have routinely been met with skepticism by the judiciary. In fact, many public nuisance claims filed by trial lawyers have been dismissed outright by the judge.

When a public nuisance case is dismissed, it is often because the conduct in question did not affect the public at large (i.e., it affected an individual right) or because the nuisance was not abatable. The plaintiff must not only prove that the defendant caused harm to the public, but they must also prove that harm is capable of being remedied.

One issue area where the question of abatement has frequently come into play is climate change. There have been numerous public nuisance lawsuits surrounding climate change that have sought to hold an individual company or select group of companies responsible for the global issue of climate change, despite it being true that: (1) an energy company is not responsible for global climate policy, (2) there are countless factors that are involved in the issue, and (3) defendants are usually not able to abate, or remedy, the global issue at hand.

In multiple climate change cases, the presiding judges have issued stern warnings about the misuse of public nuisance claims. In a case accusing B.P. of creating a public nuisance around climate change, Judge William Alsup of the Northern District of California called the scope of the plaintiffs' arguments "breathtaking," remarking that they would affect practically every supplier of fossil fuels.

In another case, Judge Keenan of the S.D.N.Y. criticized public nuisance claims used to address climate change, noting that "the immense and complicated problem of global warming requires a comprehensive solution that weighs the global benefits of fossil fuel use" with potential harms.

Judge John Keenan dismissing climate change public nuisance claims: *"The immense and complicated problem of global warming requires a comprehensive solution that weighs the global benefits of fossil fuel use…"*

Settlements

Despite many of the public nuisance cases brought against them lacking strong legal grounding, companies have often found that settling may be a less costly alternative to seeing litigation through in court. As a result, there are numerous instances of companies reaching settlements in public nuisance cases. These settlements can reach into the hundreds of millions of dollars, sometimes into the billions of dollars.

For example, there have been dozens of settlements reached between state and local governments and opioid manufacturers and distributors as part of larger Multi-District Litigation. Monsanto has also settled multiple cases when faced with public nuisance claims surrounding the use of certain chemicals (PCBs), which municipalities have alleged to be harmful to the environment.

Shady Public Nuisance Settlement Tactics

In many public nuisance cases, the trial lawyers and plaintiffs may have no intention of seeing the case through to trial or beyond. Following the public nuisance playbook, these cases fit the larger strategy of driving up legal costs and increasing public and political pressure to force targeted businesses into settling. The high costs of public nuisance cases can help trial lawyers secure a settlement, even when they would have little chance of success at trial.

VICTIMS AND CONSUMERS LEFT BEHIND

Settlements sought by the trial lawyer industry often provide little benefit to the actual "victims" for whom these lawyers claim to be advocating. For example, a study of class action settlements by Jones Day found that "typically greater than 90 percent of class members receive no benefit whatsoever." And the problem is equally pernicious when trial lawyers team up with governments, as Alliance for Consumers has detailed for some time. Indeed, the money flowing from the various public nuisance settlements over opioids goes to various government programs, but not those who have lost loved ones to the opioid crisis.

And that is before considering that the true goal of most nuisance suits over things like plastics, fossil fuels or firearms is seemingly to remove products and services from the market that do not align with the progressive agenda, therefore limiting what consumers can buy and forcing them to conform to progressive preferences.

TRIAL LAWYERS SCORE PAYDAYS

While the settlements sought by the trial lawyer industry often provide little benefit to the actual "victims" for whom these lawyers claim to be advocating with public nuisance lawsuits, the trial lawyers secure major paydays.

Trial Lawyer Fee Structure

Trial lawyers largely work under contingency fee arrangements, which is an agreement with the plaintiffs that they will be paid a percentage of any future settlement or judgement. The percentage involved varies widely by case.

The trial lawyers working with state attorneys general are often paid a percentage that is staggered based on the size of settlement, with the share decreasing as the settlement increases. For example, the trial lawyers working with states on climate change cases stand to earn up to one-third of the recovered funds. And in Minnesota's vaping litigation, the state agreed to pay up to 25 percent of the first $10 million received, and a lower percentage after that.

Trial Lawyers Can Earn Billions

Given the size of public nuisance settlements, and the way the fees are often structured, trial lawyers can earn tens or hundreds of millions from a single case, and billions across a suite of suits pushing the same types of claims in different cases and jurisdictions. For example, in Oklahoma's litigation against Purdue Pharma, trial lawyers were set to receive $55 million before the case was overturned on appeal.

The true goal of most nuisance suits … is seemingly to remove products and services from the market that do not align with the progressive agenda, therefore limiting what consumers can buy and forcing them to conform to progressive preferences.

One of the largest public nuisance settlements on record came in the 1998 Tobacco Master Settlement Agreement. In that settlement, seven tobacco companies agreed to pay around $206 billion to state and local governments across the country. The chief lawyers in the case continue to receive an estimated $120 million from the case every year.

In 2022, four drug manufacturers and wholesalers agreed to pay $26 billion over public nuisance claims involving the opioid crisis. More than $2 billion of that money is expected to go to the lawyers involved in the case.

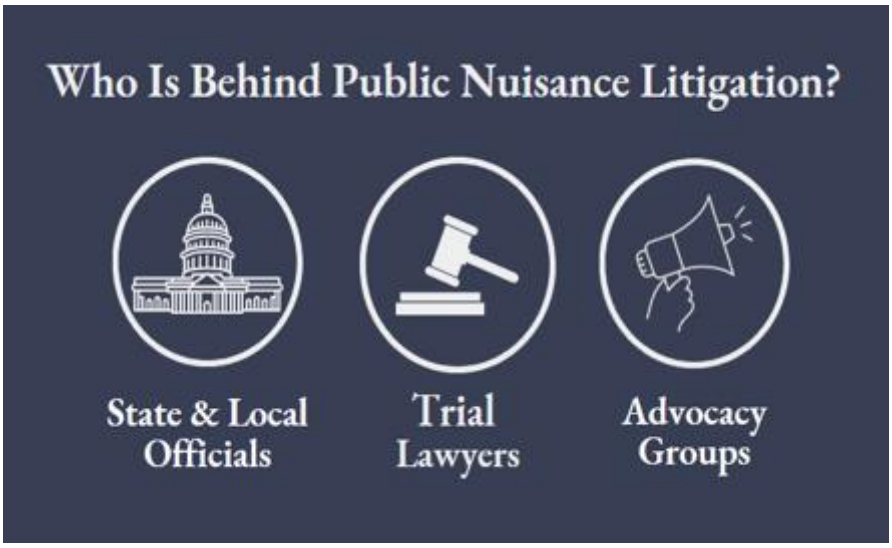
After raking in these massive paydays from settlements, some trial lawyers have sought to maximize their personal profits by dodging taxes. In recent years, trial lawyers have resorted to modifying their official residences on paper to state they reside in Puerto Rico in order to evade some income taxes.

Key Players In Public Nuisance Litigation

There are a few key groups that are helping fuel misuse of public nuisance claims: **Trial Lawyers, Left-Leaning State & Local Officials**, and **Liberal Advocacy Groups**.

Over the years, trial law firms have formed a mutually beneficial partnership with left-leaning state and local government officials to launch public nuisance lawsuits and push their policy priorities through the courts.

Trial lawyers have also at times joined with liberal advocacy groups to file, support, or finance public nuisance suits.



Together, this web of players has built a self-reinforcing operation that combines these governmental, nonprofit, and trial lawyer pieces into a cohesive operation working towards common goals.

THE TRIAL LAWYERS

There are numerous trial law firms across the country, varying widely in size and in the scope of their work. Public nuisance lawsuits represent a key part of trial lawyers' overall business. Some of the key firms that commonly lead public nuisance litigation include: Baron & Budd, Hagens Berman, Keller Rohrback, Lieff Cabraser, Motley Rice, Seeger Weiss, Weitz & Luxenberg, and Sher Edling.

Trial Law Firm	Key Litigation Areas
Baron & Budd	Chemical Lawsuits, Opioids
Hagens Berman	Climate Change, Opioids
Keller Rohrback	Opioids, Vaping
Lieff Cabraser	Opioids, Vaping
Motley Rice	Opioids
Seeger Weiss	Climate Change, Opioids
Weitz & Luxenberg	Chemical Lawsuits, Vaping, Opioids
Sher Edling	Climate Change

In addition to handling the legal work involved in these public nuisance cases, trial lawyers are usually involved in everything from recruiting plaintiffs, to identifying businesses to target, to exploring new issue areas for public nuisance claims, and more.

Trial Lawyer Political Grift

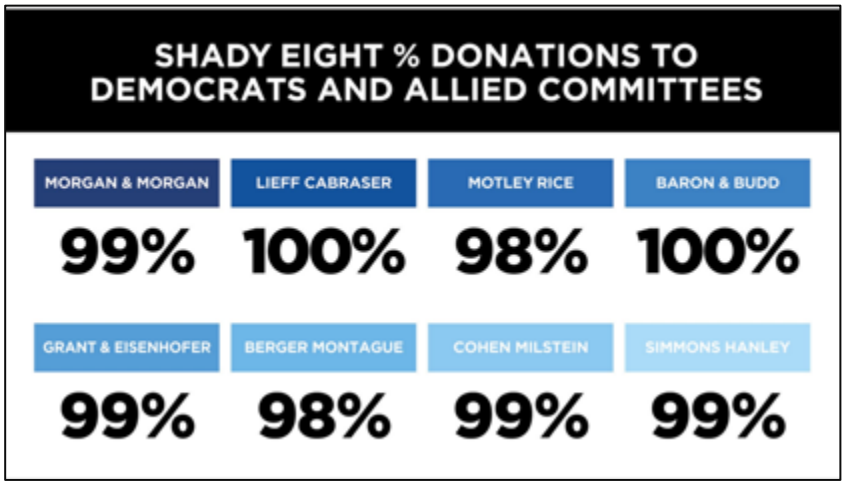
Trial lawyers have long had close political ties to Democrats. The trial lawyers that amass large fees from their work for Democratic public officials often turn around and donate millions to Democratic campaigns.

Alliance for Consumers' review of the so-called "Shady Eight"—eight leading trial law firms with close ties to state and local government litigation (including public nuisance litigation)—found that out of the $15 million donated by the firms from 2017-2020 at the federal level, around 99 percent went to Democrats, with around $4 million going to Joe Biden and the Democratic National Committee and around $6 million to the Super PACs and other groups that make up the Democrats' core campaign infrastructure.

The trial lawyer industry also utilizes a network of PACs to help funnel donations to left-wing campaign efforts. These PACs include the American Association for Justice PAC, the Truth and Justice Fund, and a series of Justice PACs (e.g. Justice 2020 PAC). According to another report from Alliance for Consumers, 99 percent of the money from these trial lawyer PACs have gone to Democrats and their allies.

The leading trial lawyer PACs spent $17.5 million to aid left-wing candidates and causes from 2017 through the beginning of 2022, with over $12 million going to support Democratic House and Senate candidates.

Notable beneficiaries of trial lawyer PAC donations include groups like Priorities USA Action and EMILY's List, as well as notable Democrats such as Vice President Kamala Harris, Energy Secretary Jennifer Granholm, and Sen. Sheldon Whitehouse.



Further, donation records from the Center for Responsive Politics for other trial law firms involved in public nuisance cases confirm the broader trend we found. The firms Hagens Berman, Keller Rohrback, Seeger Weiss, Sher Edling, and Weitz & Luxenberg each have been involved in public nuisance cases and their attorneys have overwhelmingly donated to Democrats and Democratic-aligned groups.

STATE AND LOCAL GOVERNMENTS

State and local governments, often those led by left-leaning elected officials, have become frequent plaintiffs in public nuisance lawsuits against businesses. State attorneys general regularly outsource litigation work to trial lawyers in public nuisance cases, and trial lawyers also actively recruit municipalities to serve as plaintiffs.

These states and municipalities have partnered with trial law firms to file public nuisance suits on a range of issues, either to push an ideological agenda, provide a boost to government budgets, or both. Left-leaning politicians have brought public nuisance suits over climate change, gun control, vaping, industrial chemicals, and more.

Because of the ideological and financial advantages offered by public nuisance suits, when one state or locality files a suit it often can lead to an onslaught of other governments doing the same. The snowballing number of lawsuits around vaping is just one example of this problem.

Political Ideology and Goals

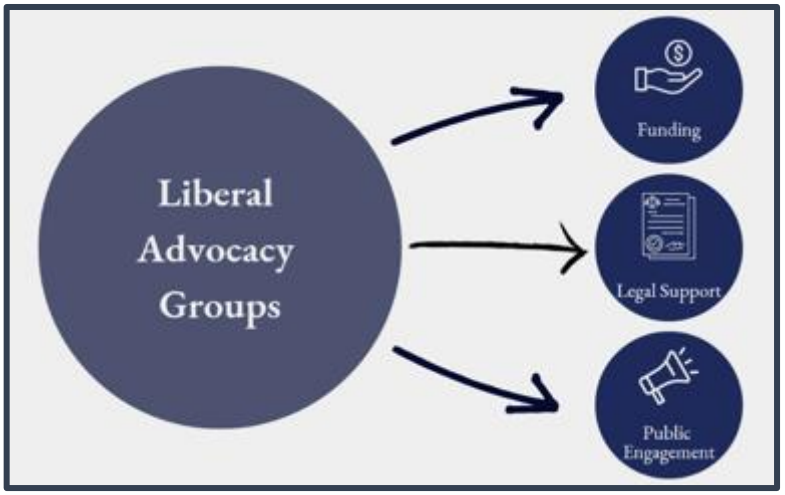
The state and local officials filing public nuisance suits are very often left-leaning. Some of the government plaintiffs involved in public nuisance suits include the State of California, the State of New York, the State of Minnesota, New York City, San Francisco, Oakland, Seattle, Chicago, Los Angeles, and others.

The partisan bent of the officials involved clearly aligns with the political goals behind some public nuisance suits. For example, left-leaning officials have tried to use public nuisance lawsuits to curb fossil fuel use and implement gun control measures.

Padding Their Budgets

While there is often a clear political motive behind the suits filed by state and local governments, it is no surprise that there is major financial gain to be had by these governments. The massive payments derived from public nuisance suits offer an opportunity for cities struggling financially to fill in budgetary gaps. State and local governments which have previously battled with budget issues (e.g. the State of New York and the City of San Francisco) have been very active in filing public nuisance litigation.

LIBERAL ADVOCACY GROUPS



Liberal advocacy groups have been instrumental in bringing forth public nuisance lawsuits.

In some instances, liberal groups act as the main plaintiff. For example, the nonprofit Earth Island Institute has been a major figure in bringing public nuisance claims against companies that use plastic packaging (Coca-Cola, Pepsi, Nestlé, etc.). These suits seek to blame the companies for bottles and other plastics that end up in the ocean and the costs associated with environmental cleanup efforts.

Legal-focused advocacy groups may also litigate cases themselves, either alone or alongside a trial law firm. This was the case when EarthRights International and the Niskanen Center filed public nuisance litigation against Exxon on behalf of Boulder (CO). Advocacy groups also may provide legal consulting services, without serving as the primary attorneys litigating the case.

Nonprofits have also turned to funding litigation, including public nuisance cases, to advance their policy objectives and political goals. This can be a powerful driver for forthcoming litigation. Nonprofit advocacy groups often provide financial backing to generate litigation. And groups like the Tides Foundation and New Venture Fund have large sums of dark money at their disposal to help fund climate litigation or other policy-driven lawsuits.

The partnership between the law firm Sher Edling and Resources Legacy Fund (RLF) is one example of nonprofit financing of public nuisance. RLF is funded by a vast array of liberal dark money groups like New Venture Fund and high-profile left-wing donors like Leonardo DiCaprio. Using this funding, RLF has provided Sher Edling with the resources needed to file an onslaught of climate-related public nuisance claims. Between 2017 and 2020, RLF provided Sher Edling with $5.3 million in funding to aid its operations.

Other nonprofits involved in funding public nuisance litigation include the Rockefeller Family Fund, and Michael Bloomberg's Special Assistant Attorneys General (SAAGs) Program.

CONCLUSION

With victories through the regular legislative processes becoming harder to achieve, the progressive left is increasingly looking to an alliance of activists, public officials, and trial lawyers to impose key policy priorities by way of public nuisance lawsuits. Under the guise of compensation for injuries to the overall public interest, public nuisance suits open the door to courts imposing sweeping policy solutions or reshaping the economy with massive money transfers. This is the new progressive playbook. Activists have found a way to use the court system as a weapon to force companies to comply with a progressive agenda without legislative oversight or public scrutiny.

Public nuisance lawsuits have rightly attracted attention for being an avenue to improperly shake down deep-pocketed companies. Leaders from the business community and business-oriented advocacy groups have played a major role in voicing opposition to the misuse of public nuisance claims by trial lawyers, with advocacy groups from the U.S. Chamber of Commerce to the National Association of Manufacturers, the National Federation of Independent Business, the American Tort Reform Association and others having all spoken out and raised concern.

But that valid criticism falls short in terms of grappling with the true peril. Public nuisance claims are about liberal control, not just money, and certainly not consumers. Legal experts such as John Malcolm of the Heritage Foundation and Jonathan Turley of George Washington Law School have spoken out about the issue with some recognition of this. But there must be more. The only way to properly take on this fight is to see public nuisance litigation as the ideological weapon that it is, before it is too late, and it changes our society in fundamental ways.

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APPENDIX

Definition

In Most States, A Public Nuisance Is Defined As An "Unreasonable Interference With A Right Common To The General Public." (Jeffrey Skinner, "Trending In Tort Law: Transforming Product Liability Claims Into Public Nuisance Actions," *The National Law Review*, 2/25/20)

- **The Term "Public Nuisance" Has Its Origins In 12th Century English Common Law And Was Later Integrated Into The U.S. Legal System.** "Public nuisance is an ancient tort, dating to 12th century England, originally created as a criminal writ to remedy actions or conditions that infringed on royal property or blocked public roads or waterways. As originally conceived, the king alone had the authority to bring a public nuisance claim pursuant to his police power. Injunction or abatement were the only available remedies." (Joshua Payne & Jess Nix, "Waking The Litigation Monster: The Misuse Of Public Nuisance," U.S. Chamber Of Commerce, 3/1/19)

- **Historically, Public Nuisance Was Primarily Utilized In Cases Relating To Land Use. The Tort Became Largely Obsolete In The Mid-20th Century As Regulations Expanded On Specific Issues That Had Been Addressed In The Past Through Public Nuisance.** "By the beginning of the 20th century, states enacted statutes specifying offenses constituting public nuisances. Statutorily proscribed conduct included the sale of intoxicating liquors, operating 'bawdy or assignation houses' or gambling houses, as well as erecting or using a place for trade that produces offensive smells or 'otherwise is offensive or dangerous to the health of individuals or the public.' … Regulations proliferated across various sectors of the economy as a result of legislative and executive action in the 20th century and largely supplanted public nuisance actions. Increasingly an unnecessary tool to stop conduct interfering with public rights, public nuisance was not even mentioned in the First Restatement of Torts in 1939." (Joshua Payne & Jess Nix, "Waking The Litigation Monster: The Misuse Of Public Nuisance," U.S. Chamber Of Commerce, 3/1/19)

***Black's Law Dictionary* Refers To Public Nuisance As A "Term That Is Given To A Violation Of A Public Right That Could Lead To Injury Or Harm.** ("Public Nuisance," *Black's Law Dictionary* Online)

There Are At Least Four Common Elements That Must Typically Be Met In A Public Nuisance Claim, Though The Specific Terminology For Each Of Those Elements Varies.

- **Attorney Jeff Skinner Writing In *The National Law Review* Describes These Four Elements As: "(1) The Defendant's Affirmative Conduct Caused (2) An Unreasonable Interference (3) With A Right Common To The General Public (4) That Is Abatable."** (Jeffrey Skinner, "Trending In Tort Law: Transforming Product Liability Claims Into Public Nuisance Actions," *The National Law Review*, 2/25/20)

- **Another Report In *Oklahoma Law Review* Noted The Key Requirements As: (1) An Infringement Of A Public Right; (2) Unreasonable Conduct By The Defendant; (3) The Defendant Must Have Been In Control Of The Public Nuisance; And (4) The Defendant's Actions Had To Be The Proximate Cause Of The Public Nuisance Or Alleged Harm.** (Victor Schwartz, Phil Goldberg, Corey Schaecher, "Game Over? Why Recent State Supreme Court Decisions Should End The Attempted Expansion Of Public Nuisance Law," *Oklahoma Law Review*, Summer '10)

- **Another Definition By Brandon Winchester Of Schiffer Hicks Johnson Lays Out That There Must Be (1) An Infringement On A Public Right; (2) Unreasonable Conduct; (3) Control; And (4) Proximate Cause.** (Brandon Winchester & Ben Belfeld,"Are Public Nuisance Claims The Next Super Torts?" Schiffer Hicks Johnson PLLC, 8/16/21)

Even With These Common Requirements, Each Of The Elements Are Up For Interpretation:

- **For Example, Some Courts In States Like California And Rhode Island Have Disagreed About When A Public Nuisance Is Capable Of Being Abated.** "For example, courts in Rhode Island and California have disagreed about when a public nuisance is abatable: the Rhode Island Supreme Court held that this element is satisfied only if the defendant had control over what caused the nuisance when the injury occurred, while the California Court of Appeals held that the plaintiff need not prove this element at all." (Jeffrey Skinner, "Trending In Tort Law: Transforming Product Liability Claims Into Public Nuisance Actions," *The National Law Review*, 2/25/20)

- **Courts Have Also Disagreed Over What Constitutes A Public Right Versus A Private Right. "**And while the federal district court in Ohio handling the opioid multidistrict litigation (MDL) has held that the right to be free from unwarranted addiction is a public right, the Supreme Court of Illinois held that the right to be 'free from unreasonable jeopardy to health' is a private right and cannot be the basis of a public nuisance claim." (Jeffrey Skinner, "Trending In Tort Law: Transforming Product Liability Claims Into Public Nuisance Actions," *The National Law Review*, 2/25/20)

- **"Private Nuisance" Is Generally Understood To Mean "A Nuisance That Violates A Private Right Not Common To The Public Or Causes Damage To One Or A Limited Number Of Individuals."** "A private nuisance is a nuisance that violates a private right not common to the public or causes damage to one or a limited number of individuals. A private nuisance involves the use of one's property in a manner that causes significant harm to another individual's use or enjoyment of their private land." ("Private Nuisance," Cornell Legal Information Institute)

Misuse Of Public Nuisance Lawsuits

The Misuse Of Public Nuisance Lawsuits Has Followed A Common Playbook:

1. **"Identify An Issue That Affects Many Americans."** (Stacey Deere, Edd Gaus, & E.J. Odigwe, "Public Nuisance, COVID-19, And The Re-Emergence Of The 'Super Tort,'" *Mealy's Emerging Toxic Torts*, 3/15/22)

2. **"Identify Large Corporations And Businesses Within The Industry."** (Stacey Deere, Edd Gaus, & E.J. Odigwe, "Public Nuisance, COVID-19, And The Re-Emergence Of The 'Super Tort,'" *Mealy's Emerging Toxic Torts*, 3/15/22)

3. **"File A Public Nuisance Claim For The 'Indirect Harm' Caused By The Corporation."** (Stacey Deere, Edd Gaus, & E.J. Odigwe, "Public Nuisance, COVID-19, And The Re-Emergence Of The 'Super Tort,'" *Mealy's Emerging Toxic Torts*, 3/15/22)

4. **"Muster Sufficient Political And Public Pressure To Force A Settlement Or Encourage Judicial Activism."** (Deere, Gaus, & Odigwe, "Public Nuisance, COVID-19, And The Re-Emergence Of The 'Super Tort,'" *Mealy's Emerging Toxic Torts*, 3/15/22)

Trial Lawyers Have Attempted To Expand The Definition Of "Public Nuisance" To Include Both Conduct That Is Collective In Nature (I.e. 'Rights Of The Community') And Conduct That Is Private In Nature (I.e. Conduct That Harms A Large Number Of Private Individuals.) "The ambiguity surrounding the contours of what constitutes a public nuisance led esteemed scholars William Prosser and W. Page Keaton to refer to public nuisance law as an 'impenetrable jungle' that has grown over time. This is due in no small measure to the creativity of trial lawyers who have urged judges to expand the definition from conduct that interferes with a right common to all members of the public to conduct that ends up harming a large number of private individuals: in other words, from a tort that is collective in nature to one that is individual in nature." (John Malcom, "Using Public Nuisance Law To 'Solve' The Opioid Crisis Sets A Dangerous Precedent," Heritage Foundation, 12/20/21)

According To The Heritage Foundation's John Malcolm, This Change Is Significant, Because It Aims To Eliminate The Distinction Between A "Public Nuisance" And A "Private Nuisance." "This is significant because a product such as a prescription drug may be used by a lot of people, some (or even many) of whom may suffer harm, but any harm suffered through the use of that product does not interfere with a collective public right. In this manner, trial lawyers have managed to persuade a number of judges to effectively eliminate the distinction between a private nuisance and a public nuisance." (John Malcom, "Using Public Nuisance Law To 'Solve' The Opioid Crisis Sets A Dangerous Precedent," Heritage Foundation, 12/20/21)

Trial Lawyers Have Used Vague Expansions Of Public Nuisance To Sue Companies For Complex Or Even Societal Issues, Where The Companies Have Little Influence "That is today's public nuisance litigation in a nutshell. It is completely unprincipled and a far departure from any long-standing liability law. Under tort law, including under public nuisance theory, a person or company is supposed to be subject to liability only for wrongfully causing harm. In today's public nuisance lawsuits, though, plaintiffs' lawyers are attempting to convince judges to discard this basic principle. These lawsuits are attempts to subject businesses to liability over societal problems— regardless of fault, how the harm developed or was caused, whether the elements of the tort are met, or even if the liability will actually address the issue. Their mantra is, 'Let's make 'Big Business' pay.'" ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

This Practice Includes "Targeting Legitimate Companies That Have Not Violated The Law And Are Manufacturing A Non-Defective, Legal Product Merely Because That Product Has Some Association With The Crisis." "For elected, resource-constrained officials, giving trial lawyers free rein to file and conduct lawsuits in the name of the public can prove tempting, giving them the chance to mulct out-of-state companies for their community while earning the ability to tell their constituents that they are doing something to address a real or perceived crisis—which is far easier and less costly than having to enact legislation to deal with a societal problem. But trying to squeeze money out of legitimate companies that have not violated the law and are manufacturing a non-defective, legal product merely because that product has some association with the crisis is a Devil's bargain, as recent opioid case decisions have made clear." (John Malcom, "Using Public Nuisance Law To 'Solve' The Opioid Crisis Sets A Dangerous Precedent," Heritage Foundation, 12/20/21)

And The Lawsuits Come In Large Waves, Seemingly In A Push Toward Settlement:

- **According To A Columbia Law School Analysis, Over 1,300 Climate Change Lawsuits Had Been Filed In The U.S. As Of 2021, Compared To Around 425 In Other Countries.** "About 1,375 lawsuits seeking relief from climate change have been filed in U.S. courts, compared to about 425 in other various countries, according to the Sabin Center for Climate Change Law at Columbia Law School." ("Factbox: Eyes On U.S. Climate Lawsuits After Landmark Dutch Ruling," *Reuters*, 5/27/21)

- **More Than 3,000 Lawsuits Have Been Filed Against Companies Over The Opioid Crisis, Overwhelmingly On Public Nuisance Grounds.** "In all, more than 3,000 lawsuits have been filed by state and local governments, Native American tribes, unions, hospitals and other entities in state and federal courts over the toll of opioids. Most allege that either drug makers, distribution companies or pharmacies created a public nuisance in a crisis that's been linked to the deaths of 500,000 Americans over the past two decades." ("A Federal Judge Sides With 3 Major Drug Distributors In A Landmark Opioid Lawsuit," *The Associated Press*, 7/4/22)

Trial Lawyers Have Been Able To Secure Billions In Settlements, Despite Public Nuisance's Historical Failure In The Courtroom. "Public nuisance may be the most successful legal theory ever to have failed in court. States and municipalities this year negotiated $26 billion in settlements with the Big Three drug distributors and Johnson & Johnson – including $2 billion in fees for private plaintiff lawyers – based on the threat of winning even more if they convinced juries the companies created a 'public nuisance' by selling legal products through government-licensed channels. It's a novel theory that seemed preposterous to many legal experts just a few years ago, and it's still far from being accepted by courts. … Though courts haven't fully endorsed public nuisance, it can still be a powerful weapon for extracting settlements. Some courts are cautious about applying a legal theory with no limiting principle, Kochan said, but 'no doubt there's enough room for courts that wish to expand tort law to distinguish some of the cases.'" (Daniel Fisher, "Public Nuisance Theory Wins Billions Despite Courtroom Failures," Legal Newsline, 8/30/21)

Plaintiffs Often Claim That A Company's Conduct Has Caused Harm To The Public And The Company Has The Ability To Abate It (Often By Contributing Funds Towards Public Services).

- **For Instance, Lake County (OH), In Their Public Nuisance Suit Against Opioid Dispensers, Said Defendants "Created A Public Health Crisis And A Public Nuisance" That They Could Abate By Providing Additional Treatment And Making Naloxone Widely Available.** (*In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, C# 18-op-45032, Doc #19, Filed 6/5/20)

> 71. As alleged throughout this Complaint, Defendants' conduct created a public health crisis and a public nuisance.

> 72. The public nuisance—i.e., the opioid epidemic—created, perpetuated, and maintained by Defendants can be abated and further recurrence of such harm and inconvenience can be abated by, inter alia, (a) providing addiction treatment to patients who are already addicted to opioids; and (b) making naloxone widely available so that overdoses are less frequently fatal.
>
> 73. Defendants have the ability to act to abate the public nuisance, and the law recognizes that they are uniquely well positioned to do so. All companies in the supply chain of a

- **Likewise, The City Of Oakland Contended B.P. And Other Energy Companies Created A Public Nuisance By Producing Fossil Fuels – Which Contributed To Global Warming – And They Can Abate It By Funding The Building Of Sea Walls And Other Infrastructure.** (*People Of State Of California v. BP P.L.C.* (Oakland), Superior Court Of The State Of California, County Of Alameda, Filed 9/19/17)

> 10. Defendants are substantial contributors to the public nuisance of global warming that is causing injury to the People and thus are jointly and severally liable. Defendants' cumulative production of fossil fuels over many years places each of them among the top sources of global warming pollution in the world. Upon information and belief, Defendants are, respectively, the first (Chevron), second (Exxon), fourth (BP), sixth (Shell) and ninth (ConocoPhillips) largest cumulative producers of fossil fuels worldwide from the mid Nineteenth Century to present; most of Defendants' global warming pollution from the usage of their fuels has accumulated in the atmosphere since 1980. Defendants, moreover, are qualitatively different from

> 11. The People seek an order requiring Defendants to abate the global warming-induced sea level rise nuisance to which they have contributed by funding an abatement program to build sea walls and other infrastructure that are urgently needed to protect human safety and public and private property in Oakland. The People do not seek to impose liability on Defendants for their

- **In King County's (WA) Lawsuit Against JUUL Labs, The County Said JUUL's Actions Contributed To The Youth Vaping Epidemic, And Suggested The Company Can Help Abate The Nuisance By Funding A Variety Of Public Health Programs.** ("Complaint," *King County v. JUUL Labs Et Al.*, C# e 2:19-cv-01664, Filed 10/16/19)

> 166. Alternatively, Defendants' conduct was a substantial factor in bringing about the public nuisance even if a similar result would have occurred without it. By directly marketing to youth and continuing marketing practices after it was evidence that children were using JUUL products in large numbers and were specifically using these products in school, JUUL directly facilitated the spread of the youth vaping epidemic and the public nuisance effecting King County and members of the Washington Sub-Class. By investing billions of dollars in JUUL and

> 169. Plaintiff has taken steps to address the harm caused by Defendants' conduct, including the following:
>
> A. Spending time and resources assembling information about the dangers of youth vaping and the extent of youth vaping in the County;
>
> B. Creating and publishing videos and infographics about JUUL use and the youth vaping epidemic;
>
> C. Writing newsletters about JUUL, the dangers of youth vaping, and ways parents can help combat the epidemic;
>
> D. Responding to calls from concerned parents seeking help for their children who are addicted to nicotine through vaping;
>
> E. Training teachers and parents to recognize JUUL products;
>
> F. Educating teachers, parents, and youth about the risks of vaping; and
>
> G. Updating King County's website to address the dangers of JUUL use.
>
> 170. Fully abating the epidemic of youth vaping resulting from Defendants' conduct will require much more than these steps.
>
> 171. Pursuant to RCW 7.48.020, King County and the Washington Sub-Class request an order providing for abatement of the public nuisance that Defendants have created or assisted in the creation of, and enjoining Defendants from future violations of RCW 7.48.010.

Public Nuisance Claims Are Commonly Paired With Allegations Of Other Civil Violations:

- **Lake County (OH) Claimed That Opioid Dispensers Both Created An "Abatable Public Nuisance" And "Deliberately Disregarded Their Duties To Maintain Effective Controls Against Diversion" Of Drugs Into An Illegal Secondary Market, Among Other Allegations.** ("Supplemental And Amended Allegations To Be Added To 'Short Form For Supplementing Complaint And Amending Defendants And Jury Demand,' *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, C# 18-op-45032, Doc #19, Filed 6/5/20)

> **B. Defendants' Conduct Created an Abatable Public Nuisance**

> **C. Defendants Deliberately Disregarded Their Duties to Maintain Effective Controls Against Diversion.**
>
> **1. The Chain Pharmacies Were on Notice of and Contributed to Illegal Diversion of Prescription Opioids.**

> 9. This suit takes aim at a primary cause of the opioid crisis: a supply chain scheme, pursuant to which distributors and pharmacies failed to design and operate systems to identify suspicious orders of prescription opioids, maintain effective controls against diversion, and halt suspicious orders when they were identified, and instead actively contributed to the oversupply of such drugs and fueled an illegal secondary market.

- **In Addition To Public Nuisance Claims, King County (WA) Alleged JUUL Violated The *RICO Act.*** ("Complaint," *King County v. JUUL Labs Et Al*., C# e 2:19-cv-01664, Filed 10/16/19)

> **COUNT ONE — VIOLATIONS OF THE WASHINGTON PUBLIC NUSIANCE LAW, RCW 7.48.010 *ET SEQ.***

> **COUNT TWO — VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO"), 18 U.S.C. § 1961, *ET SEQ.***

- **In A PCB Cleanup Case Brought By The City Of Los Angeles Against Monsanto, The City Claimed Monsanto Had Created A Public Nuisance By Using PCBs In Products And Owed The City Damages Beyond Abatement.** ("Complaint," *Los Angeles v. Monsanto*, Filed 3/4/22)

> **FIRST CAUSE OF ACTION**
>
> **PUBLIC NUISANCE—ABATEMENT**

> **E. Defendants' PCB products have damaged the City's stormwater and wastewater systems, surface waters, and natural resources**

> 195. The People seek an order, pursuant to § 731, requiring Defendants to abate the public nuisance alleged herein, including funding future PCB abatement measures.

SECOND CAUSE OF ACTION

PUBLIC NUISANCE—DAMAGES

205. As a direct and proximate result of Defendants' creation of a public nuisance, the City has suffered, and continues to suffer, the significant injuries described above.

206. The City seeks recovery of all damages available under law.

Historical Trajectory Of Public Nuisance Claims

EARLY PUBLIC NUISANCE TESTS – 1960s – 1980s

The Issues Targeted By Trial Lawyers In Public Nuisance Lawsuits Have Evolved Over Time, Beginning With Environmental Pollution Cases In The 1970s And 1980s. "This chapter examines several major opinions construing public nuisance claims against certain product manufacturers and distributors after the Second Restatement's adoption. The examination proceeds in roughly chronological order, from environmental pollution suits that began to be filed in the 1970s, through emerging present-day litigation targeting opioids as public nuisances." ("Waking The Litigation Monster," U.S. Chamber Of Commerce)

- **In The 1971 Case *Diamond V. General Motors Corp.*, A Class Action On Behalf Of 7.1 Million California Residents Sought To Hold Corporations Responsible For Air Pollution.** "One of the first public nuisance cases brought following the Second Restatement's changes was Diamond v. General Motors Corp., a purported class action on behalf of 7,119,184 persons residing or owning property in Los Angeles County, California, against 293 named industrial corporations and municipalities alleged to have polluted the county's atmosphere, as well as 1,000 other defendants whose names were unknown." ("Waking The Litigation Monster," U.S. Chamber Of Commerce)

- **In The 1984 Case *State V. Schenectady Chemicals, Inc.,* The State Of New York Pursued Public Nuisance Action Against A Chemical Manufacturer For Dumping Waste 15 To 30 Years Prior To Filing The Lawsuit.** "This action was initiated by the State to abate a nuisance allegedly occasioned by the contamination of a presently inactive waste disposal site, owned by one Dewey Loeffel, on Mead Road in the Town of Nassau in Rensselaer County (hereinafter the Loeffel site). From the 1950's through the mid 1960's defendant, a manufacturer of various chemical products, contracted with Loeffel for disposal of a variety of chemical waste by-products." (*State Of New York V. Schenectady Chems.,* 117 Misc.2d 960, 961, CaseText)

One Of The Test Cases For Public Nuisance Arguments In The Courtroom Came In 1970, When Los Angeles Residents Sued Dozens Of Companies Whose Activities Allegedly Contributed To Smog. "This is an action brought by plaintiff 'on behalf of himself and all other possessors of real property in, and residents of, the County of Los Angeles,' as a class numbering 7,119,184 persons. The named defendants are 293 industrial corporations and municipalities who are alleged to have polluted the atmosphere of the county. Additional defendants, whose names are unknown to plaintiff, are also sued under the fictitious name of 'Doe 1 through Doe 1,000.' The complaint seeks billions of dollars in compensatory and punitive damages,1 and 'an injunction permanently restraining defendants from emitting and discharging pollutants into the atmosphere of the County of Los Angeles.'" (*Diamond v. Gen. Motors Corp.*, 97 Cal. Rptr. 639, 641 (Ct. App. 1971), FindLaw)

- **A California Court Dismissed the Lawsuit, Explaining That There Is A System Of Statutes And Administrative Rules That Govern Emissions.** "Plaintiff's brief makes it clear that his case is not based upon violation of any existing air pollution control law or regulation. His position is that the present system of statutes and administrative rules is inadequate, and that the enforcement machinery is ineffective. Plaintiff is simply asking the court to do what the elected representatives of the people have not done: adopt stricter standards over the discharge of air contaminants in this county, and enforce them with the contempt power of the court. It is indisputable that there exists, within the community, a substantial difference of opinion as to what changes in industrial processes should be required and how soon, what new technology is feasible,

what reduction in the volume of goods and services should result and what increase in production costs for the sake of cleaner air will be acceptable. These issues are debated in the political arena and are being resolved by the action of those elected to serve in the legislative and executive branches of government." (*Diamond v. Gen. Motors Corp.*, 97 Cal. Rptr. 639, 641 (Ct. App. 1971), FindLaw)

"Other Lawsuits In The 1970s And 1980s Sought To Get Rid Of The Public Right Requirement, Arguing Only A Public Interest Need Be Involved Or That Aggregating Private Rights Should Be Sufficient. Others Suggested That Because The Suits Are Broad Or Communal In Nature, They Should Not Require Causation Between Any Defendant's Conduct And The Nuisance." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Early Public Nuisance Lawsuits Also Targeted Asbestos Manufacturers, With The Plaintiffs Largely Consisting Of Schools And Municipalities. "Following their limited success in asserting public nuisance claims against product manufacturers in environmental pollution litigation, plaintiffs, consisting largely of schools and municipalities, brought public nuisance claims against asbestos manufacturers, alleging that asbestos itself constituted a public nuisance." ("Waking The Litigation Monster," U.S. Chamber Institute For Legal Reform)

- **In The 1984 Case *Tioga Public School District V. U.S. Gypsum*, A School District Attempted To Hold An Asbestos Manufacturer Liable For Harm Caused By The Product, Which Was Installed In Their Schools.** "During the 1950s and 1960s, USG manufactured an acoustical plaster known as Audicote that contained asbestos. Tioga constructed two of the three schools that it currently operates between 1957 and 1961. Tioga specified that plaster be used on the ceilings of the two schools, and the architect in charge of the construction selected Audicote from the various acoustical plasters available. Some of the acoustical plasters available at that time contained asbestos although others did not. Tioga does not appear to have known that the architect selected Audicote, or that Audicote contained asbestos. Tioga paid approximately $1,600.00 for the Audicote." (*County Of Johnson v. U.S. Gypsum Co.*, 580 F. Supp. 284, 294 (E.D. Tenn. 1984), CaseText)

- **A Similar Argument Was Made In The 1986 Case *Detroit Board Of Education V. Celotex Corporation*, Where Several Hundred Michigan School Districts Sued Manufacturers, Distributors, And Installers Of Asbestos.** "In this interlocutory appeal from the Wayne Circuit Court, the plaintiff class consists of several hundred public school districts and private schools in Michigan. Defendants are manufacturers, distributors, or installers of a variety of asbestos products that were used in plaintiffs' school buildings. Plaintiffs have brought this action against defendants, alleging numerous theories of liability." (*Detroit Board Of Education V. Celotex Corporation* 196 Mich. App. 694 (Mich. Ct. App. 1992) 493 N.W.2d 513, CaseText)

EXPANSION TO ADDRESS PUBLIC ILLS – 1990s – 2000s

The 1990s Saw The Rise Of Contingency-Fee Based Representation In Public Nuisance Lawsuits – A Major Source Of Income For Trial Law Firms. "The dynamics for these lawsuits fundamentally changed in the 1990s. Private lawyers realized that they can get lifechanging wealth through contingency fees if these types of cases succeed." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Following Major Tobacco-Related Public Nuisance Cases In The 1990s, Trial Law Firms Sought To Expand Their Strategy Into New Areas. "Given the sheer size and publicity of the MSA award, it is not surprising that state and local government lawyers have been looking for their 'next tobacco.' In the past decade, they have filed externalization-of-risk actions against numerous product manufacturers, including gun makers for harms caused by gun violence, former manufacturers of lead pigment and paint for harms caused by deteriorated lead paint, and automobile and gasoline manufacturers for costs associated with global warming." (Victor Schwartz, Phil Goldberg & Christopher Appel, "Can Governments Impose A New Tort Duty To Prevent External Risks? The "No-Fault" Theories Behind Today's High-Stakes Government Recoupment Suits," *Wake Forest Law Review*)

- **Lawsuits Against Tobacco Companies Served As An Impetus For Filing Lawsuits Against Product Manufacturers.** "While the asbestos litigation was essentially a rout against the assertion of public nuisance claims against asbestos manufacturers, the litigation governmental plaintiffs filed against tobacco companies in the 1990s proved to be an ironic impetus for the filing of public nuisance claims against product manufacturers." ("Waking The Litigation Monster," U.S. Chamber Institute For Legal Reform)

- **However, Public Nuisance Theory Went Largely Untested In The Tobacco Lawsuits. *Texas V. American Tobacco Co.,* Which Was Filed In 1997, Was The Sole Case Where A Court Reviewed The Viability Of Public Nuisance Claims And The Case Was Dismissed In That Instance** "The great irony in the tobacco litigation was that the only court to actually review the viability of a public nuisance claim against the tobacco companies dismissed it because the court was 'unwilling to accept the state's invitation to expand a claim for public nuisance beyond its ground in real property.'" ("Waking The Litigation Monster," U.S. Chamber Institute For Legal Reform)

The Cases Brought Forth In The 1990s Did Not Argue That The Products In Question Were Defective, But Instead That Manufacturers Were Responsible For Paying Damages To Abate Harm Caused By The Products. "All they would need is one crack in the dam to create huge contingency fees. These cases did not argue that products were defective, but that manufacturers should have to pay to remediate harms. Full stop. No wrongdoing, no fault, and no causation needed." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

In *Ganim V. Smith & Wesson Corporation*, Firearm Manufacturers Were Sued In Order To Recoup The "Costs Of Enforcing The Law, Arming The Police, Treating Victims Of Handgun Crimes, Implementing Social Service Programs, And Improving The Social And Economic Climate" Of Local Governments. "The plaintiffs alleged that the existence of the nuisance is a proximate cause of injuries and damages suffered by Bridgeport, namely, that the presence of illegal guns in the city causes costs of enforcing the law, arming the police force, treating the victims of handgun crimes, implementing social service programs, and improving the social and economic climate of Bridgeport." (*Ganim Et. Al., v. Smith And Wesson Corp. Et. Al.,* 258 Conn. 313 (Conn. 2001) 780 A.2d 98, CaseText)

- **The Supreme Court Of Connecticut Dismissed The Case, Finding That "A Chain Of Causation As Lengthy And Multifaceted" As The One Alleged By The Municipality Could Not Sustain A Public Nuisance Claim.** "Moreover, we have found no case, and the plaintiffs have suggested none, in which a plaintiff situated as remotely from the defendants' conduct as these plaintiffs are, or who presented a chain of causation as lengthy and multifaceted as these plaintiffs have, nonetheless has been held to have standing to assert a public nuisance claim." (*Joseph P. Ganim Et. Al., V. Smith And Wesson Corporation Et. Al.,* 258 Conn. 313 (Conn. 2001) 780 A.2d 98, CaseText)

Lead Paint-Based Public Nuisance Lawsuits Also Emerged In The Late 1990's, After Rhode Island's Attorney General Hired Motley Rice To Sue Lead Paint Manufacturers On A Contingency Fee Basis. "In 1999, personal injury lawyers from the law firm Motley Rice convinced the Attorney General of Rhode Island to partner with them in commencing a government public nuisance action against the former lead companies; the case would be brought on a contingency fee basis. The alleged public nuisance was the mere presence of lead paint in homes and buildings. Armed with the power of the sovereign, Mr. Motley sought the costs of removing lead paint from every building in Rhode Island that contained it. He even boasted that he would 'bring the entire lead paint industry to its knees.' Since filing that case in 1999, the plaintiffs' bar has partnered with public entities to bring public nuisance claims on behalf of several states, counties, and municipalities.112" (Victor Schwartz, Phil Goldberg & Christopher Appel, "Can Governments Impose A New Tort Duty To Prevent External Risks? The "No-Fault" Theories Behind Today's High-Stakes Government Recoupment Suits," *Wake Forest Law Review*)

- **Sen. Sheldon Whitehouse (D-RI) Was Attorney General Of Rhode Island At The Time.** "The law firm has a long history of litigation on behalf of Rhode Island government entities. In 1999, then-Attorney General Sheldon Whitehouse hired Jack McConnell and Motley Rice to file a lawsuit against the former makers of lead paint." ("Providence, RI, Motley Rice Team Up To File Slew Of Antitrust Lawsuits," U.S. Chamber Of Commers – ILR, 9/3/15)

In Opinions Around The Country, Judges Expressed Concerns That There Would Be No Limiting Principle When It Comes To The Filing Of Public Nuisance Litigation:

- **In *County Of Johnson V. U.S. Gypsum Co.*, A Judge Asserted That Any Number Of Product Liability Actions Could Be Converted Into Public Nuisance Suits.** "Moreover, allowing the plaintiff to bring this action under a nuisance theory would convert almost every products liability action into a nuisance claim. The undersigned can only conclude that as an elementary principle of tort law, a nuisance claim may only be alleged against one who is in control of the nuisance creating instrumentality." (*County of Johnson v. U.S. Gypsum Co.*, 580 F. Supp. 284, 294 (E.D. Tenn. 1984), CaseText)

- **In *People Ex. Rel. Spitzer V. Sturm, Ruger & Co.*, A Judge Warned How "A Creative Mind" Would Be Able To Construct Public Nuisance Claims With Little Backing.** "All a creative mind would need to do is construct a scenario describing a known or perceived harm of a sort that can somehow be said to relate back to the way a company or an industry makes, markets and/or sells its nondefective, lawful product or service, and a public nuisance claim would be conceived and a lawsuit born." (*People Ex Rel. Spitzer v. Sturm, Ruger & Co.*, 761 N.Y.S.2d 192, 196 (App. Div. 2003), CaseLaw Access Project)

One Of The Key Cases That Has Helped Drive The Rise In Public Nuisance Claims Was *People Of The State Of California V. ConAgra Grocery Products Company*. In This Case, California Residents Successfully Sued To Hold Paint Manufacturers Responsible For Promoting Lead Paint Dating Back Decades. "In 2000, the Office of the County Counsel for the County of Santa Clara filed this landmark case on behalf of the People of the State of California to hold former lead paint manufacturers responsible for promoting lead paint for use in homes despite their knowledge that the product was highly toxic." (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th 51.), County Of Santa Clara Office Of Counsel)

- **California Lower Courts Endorsed The Legal Claims Awarding California $1.15 Billion In Abatement Costs.** "In California, however, the lower courts endorsed the legal work-arounds widely rejected everywhere else, awarding $1.15 billion in abatement costs against three companies without any proof that these companies' paint was in any home. The trial court made clear that it was trying to solve a problem, not enforce the law, saying it did not want to 'turn a blind eye' to lead poisoning and that it was trying to 'protect thousands of lives.' In what can be described only as an act of judicial malpractice, the California Supreme Court refused to consider an appeal of that ruling." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

- **An Appeals Court Later Upheld That Judgement In Part, But Drastically Reduced The Amount ConAgra Would Have To Pay. Afterwards The Two Parties Settled For $305 Million.** The nation's major suppliers of lead paint have agreed to pay California's largest cities and counties $305 million to settle a nearly 20-year-old lawsuit, attorneys said Wednesday. The settlement comes after years of legal and legislative battling in California and other states. Lead paint suppliers tried to change California law last year with a ballot initiative that they later withdrew." (Don Thompson, "Lead Paint Suppliers To Pay $305 Million To Settle California Lawsuit," *The Associated Press*, 7/17/19)

- ***ConAgra* Has Been A Framework For Trial Lawyers Seeking To Circumvent Traditional Tenets Of Product Liability.** "The California lead paint case has been the clarion call plaintiffs' lawyers have been seeking for more than 50 years, as they try to make money off of environmental or social harms. The traditional tenets of product liability, including the lack of a manufacturer's wrongdoing, a product's utility, the overall public interest, and the lapse of time since the product was lawfully sold, take a back seat to this desire for a new revenue source." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" ATRA, 3/1/20)

OPIOID NUISANCE SUITS

Thousands Of State, Local, And Tribal Governments Have Filed Public Nuisance Lawsuits Seeking To Make The Pharmaceutical Industry Pay For Costs Related To Opioid Addiction. "In the opioid cases, thousands of state and local governments and tribes are arguing that companies in the pharmaceutical supply chain — manufacturers, distributors and retail pharmacies — created a 'public nuisance' by impeding the public's health." (Jan Hoffman, "The Core Legal Strategy Against Opioid Companies May Be Faltering," *The New York Times*, 11/11/21)

In 2014, Several California Counties Filed Suit Against Pharmaceutical Manufacturers Including Johnson & Johnson, TEVA, Allergan, And Endo Pharmaceuticals, Alleging Their Manufacturing Of Medication Created A Public Nuisance By Contributing To The Opioid Epidemic. "The manufacturers include Johnson & Johnson, which has a nationwide opioids settlement offer pending; Teva, a maker of generic opioids based in Israel; Allergan, a subsidiary of AbbVie; and Endo Pharmaceuticals. Brought by the counties of Santa Clara, Los Angeles and Orange and the city of Oakland, the case, filed in 2014, was one of the first to demand that drug manufacturers be held accountable for the ongoing epidemic. The legal issue before Judge Wilson was whether the companies were liable for creating 'a public nuisance,' an argument put forth by the local California governments as well as most plaintiffs pursuing cases against the industry in state and federal courts across the country." (Jan Hoffman, "Opioid Makers Win Major Victory In California Trial," *The New York Times*, 11/2/21)

- **In November 2021, An Orange County Superior Court Judge Ruled In The Companies' Favor, Asserting There Was No Evidence To Prove Responsibility For The Opioid Crisis.** "In a bench trial decision late Monday, a state judge flatly rejected a legal argument being employed in thousands of cases against the industry over its role in an epidemic of abuse that, according to federal data, has contributed to the deaths of some 500,000 people in the United States since the late 1990s and grown worse during the pandemic.' There is simply no evidence to show that the rise in prescriptions was not the result of the medically appropriate provision of pain medications to patients in need,' wrote Judge Peter Wilson of Orange County State Superior Court, who presided over a four-month bench trial." (Jan Hoffman, "Opioid Makers Win Major Victory In California Trial," *The New York Times*, 11/2/21)

In *City Of New Haven v. Purdue Pharma, L.P.* (2019), 37 Municipalities Brought A Public Nuisance Lawsuit In An Attempt To Show That Purdue Pharma And Other Manufacturers Owed Costs Related To Opioid Addiction. (*City Of New Haven v. Purdue Pharma, L.P.*, *Reuters*, 1/8/19)

- **A Connecticut Superior Court Judge Tossed The Lawsuit Out, Finding That They Failed To Provide Evidence To Reflect Their Claim. "**It might be tempting to wink at this whole thing and add pressure on parties who are presumed to have lots of money and moral responsibility. Maybe it would make them pay up and ease straining municipal fiscs across the state. But it's bad law. If the courts are to be governed by principles and not passion, *Ganim* must apply just as much in hard cases as in easy ones. Faced with lawsuits brought by parties without standing, this court can only declare that it has no subject matter jurisdiction to hear these claims. Therefore, all of the cities' claims in all of the subject lawsuits are dismissed." (*City Of New Haven v. Perdue Pharma, L.P.*, *Reuters*, 1/8/19)

A Similar Claim Was Made By North Dakota In *Ex Rel. Stenehjem v. Purdue Pharma L.P.* (2019). ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

- **A North Dakota District Court Judge Tossed The Lawsuit Out, Also Finding Plaintiff's Claims Were Not Viable, And Concluded That The Company Lacked Control Over The Opioids After They Entered The Market. "**A North Dakota court similarly found the claims not viable, concluding the companies' lack of control over the opioids after they entered the market doomed any public nuisance liability. Again, even if opioid addiction could be considered a public nuisance, which requires a violation of a public right, the liability is on the people who are actually causing the local disturbance—not the industry. As the court explained, manufacturers do not control how doctors prescribe opioids and individuals use them." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

In 2019, An Oklahoma Judge Approved An $85 Million Settlement Between TEVA Pharmaceutical Industries Ltd. And The State When It Alleged That The Company Had Helped Fuel The Opioid Crisis. "An Oklahoma judge on Monday approved a revised $85 million settlement with Teva Pharmaceutical Industries Ltd resolving claims by the state's attorney general that the drugmaker helped fuel the U.S. opioid epidemic. The decision by Cleveland County District Judge Thad Balkman in Norman, Oklahoma came after the state's attorney general, governor and top lawmakers resolved a dispute over how the money should be deposited and spent. Oklahoma Attorney General Mike Hunter struck an initial settlement with Teva on May 26, just days before the Israel-based drugmaker was set to face trial alongside Johnson & Johnson, which is continuing to fight the case." (Nate Raymond, "Oklahoma Judge Approves Teva's $85 Million Opioid Settlement, *Reuters*, 6/24/19).

In 2019, Perdue Pharma Settled A $270 Million Claim With The State Of Oklahoma, Which Tied The Company To The More Than 200,000 Americans Killed By Opioids In The Previous Two Decades. "Purdue Pharma, the maker of OxyContin, and its owners, the Sackler family, agreed to pay $270 million to avoid going to a state court trial over the company's role in the opioid addiction epidemic that has killed more than 200,000 Americans over the past two decades. The payment, negotiated to settle a case brought by the state of Oklahoma, was far larger than two previous settlements Purdue Pharma had reached with other states. It could jolt other settlement talks with the company, including those in a consolidated collection of 1600 cases overseen by a federal judge in Cleveland." (Jan Hoffman, "Purdue Pharma And Sacklers Reach $270 Million Settlement In Opioid Lawsuit," *The New York Times*, 3/26/19)

A Major Opioid Related Case Went To Trial In Oklahoma Where Public Nuisance Law Is Provided By Legislative Statute. "So far, the only opioid public nuisance case to go to trial has been in Oklahoma, a newly minted Judicial Hellhole. In Oklahoma, public nuisance law is provided by statute, not the common law. The statute is intentionally broad, defining a 'nuisance' as any 'unlawful' act that 'annoys, injures or endangers' the health or safety of others, and a 'public nuisance' as 'one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.'" ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20; *2020 Oklahoma Statutes, Title 50, Nuisances, §50-1.* Nuisance Defined, JUSTIA Law)

- **In *State Ex Rel. Hunter v. Johnson & Johnson* (2021), Johnson & Johnson Was Ordered To Pay $465 Million To The State, Which Was Later Reversed By The State Supreme Court.** "Oklahoma's highest court on Tuesday threw out a 2019 ruling that required Johnson & Johnson to pay the state $465 million for its role in the opioid epidemic. It was the second time this month that a court has invalidated a key legal strategy used by plaintiffs in thousands of cases attempting to hold the pharmaceutical industry responsible for the crisis. The Oklahoma Supreme Court, 5-1, rejected the state's argument that the company violated 'public nuisance' laws by aggressively overstating the benefits of its prescription opioid painkillers and downplaying the dangers." (Jan Hoffman, "Oklahoma Supreme Court Throws Out $465 Million Opioid Ruling Against," *The New York Times*, 11/9/21)

By 2019, More Than 2,700 Opioid Cases Were Consolidated In Multidistrict Litigation Before An Ohio Federal Judge. The Cases Involved Several National Pharmacy Chains, Including CVS, Rite Aid, And Others. (*In Re: National Prescription Opiate Litigation*, No. 20-3075 (6th Cir. 2020), JUSTIA Law)

- **According To The Court, Plaintiffs In The Consolidated Cases Allege That The Actions Of Prescription Opioid Manufacturers And Distributors "Contributed To The Current Opioid Epidemic."** "Plaintiffs allege that the manufacturers of prescription opioids grossly misrepresented the risks of long-term use of those drugs for persons with chronic pain, and distributors failed to properly monitor suspicious orders of those prescription drugs – all of which contributed to the current opioid epidemic." ("MDL 2804," U.S. District Court For The Northern District Of Ohio)

- **On The Eve Of The First Trial, Three Distributors And TEVA Agreed To Pay $260 Million To Two Ohio Municipalities.** "Two Ohio counties and four drug companies settled a landmark lawsuit over responsibility for the opioid epidemic Monday in a deal that could help push the parties toward a wide-ranging agreement on more than 2,400 similar claims filed across the country. The $260 million settlement, reached just hours before opening arguments were scheduled to begin in the first federal lawsuit of the opioid era, will give Cuyahoga and Summit counties badly needed cash and anti-addiction medication. Those will be provided by mammoth opioid distributors McKesson Corp., AmerisourceBergen and Cardinal Health, and drug manufacturer Teva Pharmaceuticals, four of the defendants in the first case." (Lenny Bernstein, "Last-Ditch Opioid Settlement In Ohio Could Open Door For Much Larger Deal," *The Washington Post*, 10/21/19)

- **There Are Now More Than 3,000 Individual Cases Involved In This Multidistrict Litigation.** ("MDL Statistics Report – Distribution Of Pending MDL Dockets By Actions Pending," U.S. Judicial Panel On Multidistrict Litigation, 8/15/22; Note: These Statistics Are Frequently Updated. New Pending MDL Reports Can Be Found HERE)

In 2021, A Federal Jury In Ohio Found National Pharmacy Chains CVS, Walgreens, And Walmart Liable For "Helping To Fuel The U.S. Opioid Crisis" By Arguing That They Contributed To The Public Nuisance. "A federal jury on Tuesday found three of the nation's biggest pharmacy chains, CVS, Walgreens, and Walmart, liable for helping to fuel the U.S. opioid crisis — a decision that's expected to have legal repercussions as thousands of similar lawsuits move forward in courts across the country. Jurors concluded that the pharmacies contributed to a so-called public nuisance in Lake and Trumbull counties in Ohio by selling and dispensing huge quantities of prescription pain pills." (Brian Mann, "3 Of America's Biggest Pharmacy Chains Have Been Found Liable For The Opioid Crisis," NPR, 11/23/21)

- **The Judge Ultimately Found That The Retailers Failed To "Adequately Safeguard Against Diversion Of Prescription Opioids As Required By Law," Leaving The Counties Involved Open To Seeking Over $1 Billion From The Retailers.** "The judge reasoned that evidence of specific instances was not necessary, because the counties presented evidence sufficient for a finding of liability, including

aggregate evidence regarding the retailers' opioid dispensing and evidence regarding their failure to adequately safeguard against diversion of prescription opioids as required by law. The counties are expected to seek over $1 billion each from the retailers in proceedings in the coming months." (*In Re National Prescription Opiate Litigation*, No. 20-3075 (6th Cir. 2020), The Network For Public Health Law)

- **In August 2022, Walmart, CVS, And Walgreens Were Ordered To Pay $650.6 Million Over 15 Years To The Two Ohio Counties On The Basis That Their Activity Had Created A Public Nuisance.** "Combining the conclusions above leads to the results that the Pharmacy Defendants will be jointly and severally responsible for 20.67% of the costs of Alexander's original abatement plan in Lake County, or approximately $306.2 Million over 15 years; and 18.63% of the costs of Alexander's original abatement plan in Trumbull County, or approximately $344.4 Million over 15 years (for a total of approximately $650.6 Million). The Court concludes it is appropriate to order the Pharmacy Defendants to pay immediately into an Abatement Fund two-years' worth of these amounts, or a total of $86.7 Million." ("Abatement Order," *In Re: National Prescription Opiate Litigation*, C#: 1:17-md-2804, Filed 8/17/22, Doc # 4611)

Walgreens, CVS, Rite Aid, And Walmart Agreed To Pay A Combined $26 Million To Settle Claims By Two New York Counties That They Fueled The Opioid Epidemic. "Pharmacy operators Walgreens Boots Alliance Inc., CVS Health Corp, Rite Aid Corp and Walmart Inc have agreed to pay a combined $26 million to settle claims by two New York counties that they fueled an opioid addiction epidemic. The settlements are the first reached by pharmacies in the ongoing nationwide litigation over opioids. The pharmacies did not admit wrongdoing. Suffolk County's legislature approved the deals on Monday, while Nassau County's legislature is expected to vote on final approval next month." (Brendan Pierson, "U.S. Pharmacies Strike First Deals With Counties Over Opioids," *Reuters*, 7/14/21)

MODERN PUBLIC NUISANCE LAWSUITS

A String Of Cases Related To Climate Change Have Been Filed, In Which Plaintiffs Have Attempted To Circumvent Regulatory Authorities And Seek Action From The Courts. "In climate change litigation, public nuisance lawsuits are used as a political or regulatory shortcut. More than a dozen local and state governments are suing energy producers for the costs they say they will have to spend to deal with the impacts of climate change, such as building sea walls to protect shorelines." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

- **In *AEP V. Connecticut*, Eight States, New York City, And Three Land Conservation Groups Filed Suit Against Electric Companies And The TVA.** "Eight states, New York City and three land conservation groups filed suit against four electric power companies and the Tennessee Valley Authority, five entities that they claimed were the largest sources of greenhouse gases. The lawsuit alleged that the utility companies, which operate facilities in 21 states, are a public nuisance because their carbon-dioxide emissions contribute to global warming. American Electric Power Co. and the other utilities argued that the courts should not get involved in the issue. The companies contended that only the Environmental Protection Agency can set emissions standards. A federal judge on the U.S. District Court for the Southern District of New York initially threw out the case, but the U.S. Court of Appeals for the Second Circuit said it could continue." (*American Electric Power Company Incorporation V. Connecticut*, 564 U.S. 410 (2011), Oyez)

Vaping Litigation Attempts To Follow The Legal Strategy Used In Opioid Litigation. "One of the newest public nuisance litigations that is trying to follow the opioid model is over vaping. Over the past year, the news has been flooded with stories about vaping, the increased use of e-cigarettes by minors, and the harm caused by illicit vaping products. Trial lawyers have been quick to try to capitalize on this emerging public health crisis. They trying to recruit school districts, local governments and states to file public nuisance lawsuits against Juul Labs and other e-Cigarette companies." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

The COVID-19 Pandemic Also Ushered In A Wave Of Public Nuisance Cases, Which Have Sought To Capitalize On Employees' Dissatisfaction With Their Employer's Response To The Pandemic, Arguing That Their Working Conditions Are Unsafe. "Amidst the unprecedented disruption caused by COVID-19, workplace lawsuits around the country began to apply a longstanding common law theory in a novel way: employee plaintiffs argued that their employers' noncompliance with state and federal public health guidance designed to curb the spread of the virus should be enjoined as a public nuisance." (Kyra Ziesk-Socolov, "The Pandemic And The Public Nuisance: Judicial Intervention In The Era Of COVID-19 And the Collective Right To Public Health," Washington And Lee University School Of Law)

- **The McDonald's Corporation Was Sued In Illinois Over Claims That Their Inadequate COVID-19 Safeguards Constitute A Public Nuisance That Would Further Spread The Disease.** "Workers at McDonald's locations in Chicago are arguing that the fast food chain's inadequate Covid-19 safeguards constitute a public nuisance that will further spread the disease. The workers, joined in the lawsuit by their family members, seek a court order requiring McDonald's to comply with an Illinois executive order and federal guidance on safety protocols, such as supplying hand sanitizer and requiring face coverings inside restaurants." (Robert Iafolla, "McDonald's Case Tests Nuisance Theory For Job Virus Safety," Bloomberg Law, 6/4/20)

- **A Lawsuit Was Filed Against Smithfield Foods Incorporated, Alleging That They Were Failing To Adequately Protect Employees From COVID-19 At A Missouri Plant.** "A U.S. federal judge has dismissed a worker advocacy group's lawsuit accusing Smithfield Foods Inc, the world's largest pork processor, of failing to adequately protect employees from the novel coronavirus at a plant in Missouri. … In the lawsuit filed last month, the RCWA accused Smithfield of creating a 'public nuisance' by failing to protect workers at the Milan, Missouri plant and endangering the surrounding community." (Daniel Wiessner, "U.S. Judge Dismisses Lawsuit Over Worker Safety At Smithfield Pork Plant," *Reuters*, 5/6/20)

- **Amazon Was Also Sued In A New York Federal Court For "Fostering The Spread Of Coronavirus By Mandating Unsafe Working Conditions."** "Amazon.com Inc has been sued for allegedly fostering the spread of the coronavirus by mandating unsafe working conditions, causing at least one employee to contract COVID-19, bring it home, and see her cousin die. The complaint was filed on Wednesday in the federal court in Brooklyn, New York, by three employees of the JFK8 fulfillment center in Staten Island, and by family members." (Jonathan Stempel, "Amazon Sued Over Warehouses After New York Worker Brings Coronavirus Home," Insurance Journal, 6/4/20)

The Future Of Public Nuisance Cases May Address Issues Related To Chemicals Like Polyfluoroalkyl (PFAS), Which Are Common In Many Consumer Products, And Have Been Utilized Since The 1950s. "Contingency-fee lawyers are also teaming with local governments to bring public nuisance cases against companies in the per- and polyfluoroalkyl (PFAS) business. These chemicals have been used since the 1950s and are valued for their ability to resist heat, repel water, protect surfaces, and reduce friction. They have been incorporated into an array of consumer products, such as nonstick cookware, stain-resistant carpet, and electronics. PFAS have also been used in the aerospace, automotive, and building and construction industries. They also have been used in firefighting foams to extinguish aircraft and oilfield fires faster and better than the alternatives." ("The Plaintiffs' Lawyer Quest For The Holy Grail," American Tort Reform Association)

- **Public Nuisance Cases Related To PFAS Are Already Beginning To Move Through The Courts.** "2010 suit alleged cancers, colitis linked to Scotchgard toxin. … 3M Co. has settled a lawsuit with Minnesota's Attorney General Lori Swanson for $850 million, putting an end to eight years of litigation over a former Scotchgard ingredient that got into the state's drinking water. The agreement materialized just as jury selection got underway Tuesday, and after Judge Kevin S. Burke urged the parties to compromise, saying that it wasn't in the best interests of the state's citizens or 3M's shareholders for the case to drag on." (Tiffany Kary, "3M Settles Minnesota Lawsuit For $850 Million," Bloomberg, 2/20/18).

- **Between July 2005 And March 2022, More Than 6,400 PFAS Related Lawsuits Were Filed In Federal Courts.** "For years, plaintiffs' lawyers suing over health and environmental damage from so called forever chemicals, known collectively as PFAS, focused on one set of deep pockets—E. I. du Pont de Nemours and Co. But over the past two years, there's been a seismic shift in the legal landscape as awareness of PFAS has expanded. Corporations including 3M Co., Chemguard Inc., Kidde-Fenwal Inc., National Foam Inc., and Dynax Corp. are now being sued at roughly the same rate as DuPont, according to a Bloomberg Law analysis of more than 6,400 PFAS-related lawsuits filed in federal courts between July 2005 and March 2022." (Andrew Wallender, "Companies Face Billions In Damages As PFAS Lawsuits Flood Courts," Bloomberg Law, 5/23/22)

- **Originally, Lawsuits Focused On DuPont, But Have Since Expanded To Include 3M, Chemguard, Kidde-Fenwal, National Foam Inc., And Dynax Corp.** "For years, plaintiffs' lawyers suing over health and environmental damage from so called forever chemicals, known collectively as PFAS, focused on one set of deep pockets—E. I. du Pont de Nemours and Co. But over the past two years, there's been a seismic shift in the legal landscape as awareness of PFAS has expanded. Corporations including 3M Co.,

Chemguard Inc., Kidde-Fenwal Inc., National Foam Inc., and Dynax Corp. are now being sued at roughly the same rate as DuPont, according to a Bloomberg Law analysis of more than 6,400 PFAS-related lawsuits filed in federal courts between July 2005 and March 2022. … E.I. du Pont de Nemours was named as a defendant in more than 6,100 PFAS lawsuits since 2005, the Bloomberg Law analysis found. But no company's degree of legal jeopardy may be rising faster than 3M's." (Andrew Wallender, "Companies Face Billions In Damages As PFAS Lawsuits Flood Courts," Bloomberg Law, 5/23/22)

- **Ultimately, Some Estimates Suggest Liabilities Due To PFAS Contamination Could Reach $30 Billion In A "Worst-Case Scenario."** "Total PFAS liabilities could reach $30 billion in a 'worst-case scenario' for the company, according to some estimates. 'It's looking like 3M is going to bear the most liability, if there is any,' Bloomberg Intelligence analyst Holly Froum said. It becomes more apparent as the court splits defendants into the different roles they had in manufacturing PFAS-containing products, she said. 'Some of them only made surfactant and some were the finished product manufacturers. 3M did everything.'" (Andrew Wallender, "Companies Face Billions In Damages As PFAS Lawsuits Flood Courts," Bloomberg Law, 5/23/22)

Cases Related To Plastics And Environmental Cleanup Will Also Continue To Be Litigated In The Future, With Some Cases Still Moving Through The Courts In 2022. "A decade ago, it began with a dispute over plastic bags at grocery store check-out lines. That contest tailed off with the growth of re-useable bags and plastic bag bans in many local communities. Then it was a debate over microbeads in cosmetics, which subsided after passage of the Microbead-Free Waters Act of 2015 and similar state bans. Now, litigation against plastics appears to be ramping up again. But is plastics the fuel for the next mass tort? … Do these cases signal the beginning of full-on war on plastics? No doubt the number of plastics lawsuits filed just this year alone signals a discernible litigation trend." (Douglas A. Henderson, "Insight: Is Plastics Litigation The Next Public Nuisance," Bloomberg Law, 4/23/20)

There Is Concern That Continued Expansion Of Public Nuisance Litigation Could Lead To Claims Against Automakers, Fast Food Companies, Beverage Companies, And More. "Now local governments are increasingly teaming up with contingency fee lawyers to influence public policy issues through litigation, and businesses are paying the price whether claims are valid or not, said Lauren Sheets Jarrell, counsel for the non-profit American Tort Reform Association (ATRA). … This is a real concern to the business community that is faced with a trial bar association eager to expand a centuries-old public nuisance law into new arenas, she said. 'Automakers could be held liable for accidents caused by drunk drivers, fast food companies could be liable for the cost of obesity, beverage companies could be sued for the cost of cleaning up plastic in oceans.'" (Victoria Harker, "Expanding Nuisance Law Unfairly Targets Businesses," U.S. Chamber Of Commerce, 1/21/20)

Banks Could Become A Prime Target Of Public Nuisance Lawsuits In The Future. In 2008, The City Of Cleveland Sued 21 Banks, Claiming Their Subprime Lending Practices Created A Public Nuisance. "The city of Cleveland, an epicenter of the nation's home foreclosure crisis, has sued 21 banks and claimed their subprime lending practices created a public nuisance that hurt property values and city tax collections. The lawsuit was filed Thursday in Cuyahoga County Common Pleas Court, and seeks to recover hundreds of millions of dollars in damages, including lost taxes from devalued property and money spent demolishing and boarding up thousands of abandoned houses. Cleveland Mayor Frank Jackson said Friday that the buying and selling of high-interest mortgages by some of the nation's biggest banks had devastated city neighborhoods struggling to recover after the loss of manufacturing jobs." ("Cleveland Sues 21 Banks Over Foreclosure Crisis," *St. Paul Pioneer Press*, 1/11/08)

In 2021, The Oklahoma Supreme Court Suggested Public Nuisance Expansion Could Lead To Further Lawsuits Against The Sugar, Fast Food, Alcohol, And Automobile Industries. "Tuesday's ruling by Oklahoma's High Court is especially notable because it repudiates the abuse of 'public nuisance' liability, which plaintiffs attorneys are employing around the country to shake down gun makers, oil and gas producers and other businesses progressives hate. As the opinion for the 5-1 majority explains, public nuisance law originated in the 12th century as a criminal remedy to protect and preserve the rights and property shared by the public. … Under the trial court's expansion of public-nuisance liability, businesses would 'have no way to know whether they might face nuisance liability for manufacturing, marketing, or selling products, i.e., will a sugar manufacturer or the fast food industry be liable for obesity, will an alcohol manufacturer be liable for psychological harms, or will a car manufacturer be liable for health hazards from lung disease to dementia or for air pollution.'" (Editorial, "An Opioid Lawsuit Smackdown," *The Wall Street Journal*, 11/10/21)

- **Car Makers Have Already Been Mentioned As A Potential Next Target For Trial Lawyers Looking To Further Expand Public Nuisance Lawsuits.** "This is a real concern to the business community that is faced with a trial bar association eager to expand a centuries-old public nuisance law into new arenas, she said. 'Automakers could be held liable for accidents caused by drunk drivers, fast food companies could be liable for the cost of obesity, beverage companies could be sued for the cost of cleaning up plastic in oceans.'" (Victoria Harker, "Expanding Nuisance Law Unfairly Targets Businesses," U.S. Chamber Business News, 1/21/20)

- **Bars And Restaurant Could Become Frequent Targets Of Public Nuisance Lawsuits.** "Harris County District Attorney Kim Ogg, in what may be the first case of its kind across the country, has filed a civil lawsuit to shut down a Houston bar she called a 'crime factory' because of repeated criminal behavior linked to over serving alcohol to customers. Bombshells, a Houston restaurant along the Gulf Freeway, is prohibited from serving any alcohol for the next 14 days and could be barred from serving any until the public nuisance lawsuit is complete, a Houston judge ruled Wednesday. 'We're trying to stop the carnage that results from many intoxicated people leaving Bombshells and hurting someone else,' Ogg said. 'Bombshells on I-45 has been a magnet and a source for a lot of crime in the restaurant-bar, the parking lot, and this is classically what we call a nuisance.' In the past month, she said, police have arrested four people for driving while intoxicated coming from the bar and arrested a driver for intoxication assault of a police officer who allegedly struck a Houston officer while leaving the bar." (Brian Rogers, "Houston Bombshells Bar Banned From Selling Booze, Dubbed 'Crime Factory'," *Houston Chronicle*, 6/6/18)

- **The Fast Food Industry Is A Prime Target For Future Obesity-Related Public Nuisance Litigation.** "Legal solutions are immediately available to the government to address obesity and should be considered at the federal, state, and local levels. New and innovative legal solutions represent opportunities to take the law in creative directions and to link legal, nutrition, and public health communities in constructive ways. … The sale and vigorous promotion of calorie-dense, nutrient-poor foods, especially if the promotion is geared toward a vulnerable group such as children, when combined with the emerging knowledge of the massive harms associated with obesity, can arguably be deemed a nuisance that can and should be controlled by the courts. Food is a necessity of life, and in modern society, most of the population is dependent on others to produce and distribute food. For companies to process and promote foods that are unhealthy owing to additives and ingredients that make the foods obesogenic is not so different from a company's pollution of the air or water, which is the traditional form of nuisance." (Jennifer L Pomeranz, Et Al., "Innovative Legal Approaches To Address Obesity," *The Milbank Quarterly*, 3/1/09)

- **In 2005, The House Of Representatives Passed A Bill That Would Ban Obesity Lawsuits Against The Fast Food Industry, But It Failed In The Senate And Has Not Been Reintroduced Since.** "Overweight Americans who blame fast food restaurants for causing their obesity won't get their day in court if the U.S. House of Representatives gets its way. House lawmakers on Wednesday passed a bill banning obesity-related lawsuits against restaurants and food manufacturers. More than 20 states already have such laws on the books." ("House Voted To Ban 'Obesity Lawsuits' Against Fast Food Industry," Fox News, 1/13/15; See Also: "H.R. 554 – Personal Responsibility In Food Consumption Act Of 2005," Congress.gov)

    - **At The Time, The Food Products Association Called The Bill "Timely And Needed."** "The Food Products Association, an industry group headed by former Republican Congressman Cal Dooley, praised the vote in a statement that called the bill 'timely and needed.'" ("House Voted To Ban 'Obesity Lawsuits' Against Fast Food Industry," Fox News, 1/13/15; See Also: "H.R. 554 – Personal Responsibility In Food Consumption Act Of 2005," Congress.gov)

        - ***FPA Has Since Been Rebranded As The Consumer Brands Association.*** (Timeline)

In 2021, The ABA Published An Article Suggesting The "Future Of Plastic Pollution Litigation" Would Involve Public Nuisance Lawsuits. "With no plastic-specific legislation on which to rely, aggrieved parties have brought claims under existing environmental laws as a way to hold agencies like the Corps and EPA and plastic manufacturers and transporters, such as Formosa and Frontier, responsible for their actions. This type of litigation has produced some favorable outcomes: Settlements have been reached, claims have been allowed, permits have been suspended, and waters have been reclassified. The most recent litigation, however, sounds in public nuisance,

and commentaries from industry professionals suggest that the future of plastic pollution litigation will extend beyond environmental statutory law." (Morath, Hamilton, & Thompson, "Plastic Pollution Litigation," American Bar Association, 9/17/21)

Energy Companies Continue To Be In The Crosshairs Of Trial Lawyers And States. "Energy producers face legal attacks from multiple angles, according to a new report. The report, released today by the American Tort Reform Foundation (ATRF), revealed that state attorneys general and local municipalities have coordinated with energy activists to embark on a litigation campaign against oil companies, hiring plaintiffs' attorneys to bring various state tort claims." (Press Release, "Baseless Legal Attacks Could Worsen US Energy Woes," American Tort Reform Association, 6/15/22)

The Meat Industry Could Be Targeted In Climate-Related Public Nuisance Lawsuits "The animal agricultural industry is responsible for a surprising amount of greenhouse gas emissions — around 18 percent of global emissions and by some estimates even more than all transportation sources combined. Unlike with emissions of greenhouse gases from tailpipes or smokestacks, there is no plausible argument that Congress has ever developed a statutory framework that speaks directly to the problem of animal agriculture's contributions to climate change. While this means regulators lack authority to address the problem, it also means that courts should be able to maneuver around the displacement barriers to hear a properly pled federal common law of nuisance action against offending meat producers." (Daniel Walters, "Animal Agriculture Liability For Climatic Nuisance: A Path Forward For Climate Change Litigation?" *Columbia Journal Of Environmental Law*, 5/15/19)

New York Legislation Would Hold Social Media Companies Accountable For Disinformation Shared On Their Platforms Through A New Public Nuisance Section In The State's Penal Code. "New York would be able to hold social media companies accountable for promoting disinformation, eating disorders and 'other unlawful content that could harm others' under a new proposal designed as a workaround to federal law. …The legislation adds a section to the state's penal code, adding a new cause of action for public nuisance allowing the state Attorney General, city corporation counsels or private citizens to bring lawsuits after companies or individuals for 'knowingly or recklessly' contributing to things like promoting self-harm or vaccine disinformation." (Bernadette Hogan & Theo Wayt, "New NY Bill Aims To Hold Social Media Companies Accountable For Disinformation," *New York Post*, 12/26/21)

Common Targets Of Public Nuisance Suits

Companies – Especially Large Ones – Are By And Large The Main Target Of Public Nuisance Lawsuits. ("The Alarming Evolution Of Public Nuisance Law," American Tort Reform Association)

- **In Multidistrict Opioid Litigation, Targeted Companies Include Purdue Pharmaceuticals, Teva, Endo, Johnson & Johnson, McKesson, AmerisourceBergen, Cardinal Health, CVS, Walgreens, And Walmart.** ("Global Settlement Tracker," Opioid Settlement Tracker)
- **In Climate Change Litigation, Actions Have Been Brought Against Utilities (Like American Electric Power) And Energy Producers (Like ExxonMobil, Chevron, And BP).** ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)
- **Monsanto Has Been Front And Center In Lawsuits Over PCBs.** ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)
- **Actions Have Been Brought Against Plastic Packaging Users Like Coca-Cola, Pepsi, Nestlé, Etc.** ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)
- **Major Gun Manufacturers Have Been Targets Of Public Nuisance Litigation, Including Smith & Wesson, Beretta, And Ruger.** ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Large Companies Are Seen As Attractive Targets, Due To Both Their Revenue (Which Drives Large Settlements And Judgements) As Well As Their Public Profile. ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Trial Lawyers May Target Businesses They Believe Can Be Blamed And Vilified In The Media. "Then, the government-deputized contingency-fee lawyers target businesses—often large, faceless, out-of-state companies—that they can vilify in the media and blame for the problem because their products are associated with the crisis." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Some State Professional Groups And Business Alliances Have Been Swept Into Litigation, As Well.

- **West Virginia Board Of Pharmacy, American Chronic Pain Association, And Pharmacy Buying Association Are Defendants In National Opioid Litigation.** (#1:17md2804, Accessed Via CourtLink)

Key Areas Of Litigation

- There are a number of major recurring areas for public nuisance litigation: climate change, opioids, vaping, chemicals, plastics pollution, firearms manufacturing, and COVID-19.
    - Climate change lawsuits allege energy companies created a public nuisance by producing the energy used by Americans that has contributed to climate change.
    - Opioid lawsuits have targeted manufacturers, distributors, and others in an attempt to make them pay for the costs of treating and fighting opioid abuse, a public nuisance.
    - On vaping, trial lawyers, school districts, and local officials have alleged that companies have created a health epidemic – a public nuisance – by targeting youth with their products and advertisements.
    - Chemicals cases contend that companies who have manufactured or created products containing substances that have later been found to be hazardous (such as PCBs and PFAS) should be liable for the cost of abating them, despite no knowledge that they could be harmful at the time of their production and use.
    - Similarly, cases involving plastics – plastic bottles – contend that companies who manufacture the products, should be financially responsible for cleaning up pollution caused by them.
    - Firearms litigation attempts to tie manufacturers to the costs of gun violence.
    - In COVID-19 – a relatively new area of litigation – retailers and other businesses who remained open during lockdowns are being sued for their supposed responsibility in spreading the virus.
- Cases involving firearms manufacturing, vaping, and climate change show the extent that politically motivated government officials, with the help of trial lawyers, are willing to use public nuisance lawsuits to further policy objectives.
    - These cases also show the impact that filing these claims can have in pressuring politicians to enact policy change (i.e. the FDA's ban on JUUL products and New York's legislative efforts to make firearms manufacturers subject to public nuisance claims.)
- Cases involving chemicals, plastics pollution, and opioids show the willingness of jurisdictions to use these claims to go after companies for legal economic activity.
    - Jurisdictions engaged in these lawsuits are often encouraged by outside actors with partisan agendas.

Climate Change

Public Nuisance Lawsuits Are Often Filed In Matters Involving Climate Change. They Are Utilized As Both A Political And Regulatory Shortcut For Those Looking To Achieve Climate Goals. "In climate change litigation, public nuisance lawsuits are used as a political or regulatory shortcut. More than a dozen local and state governments are suing energy producers for the costs they say they will have to spend to deal with the impacts of climate change, such as building sea walls to protect shorelines." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

These Climate Change Lawsuits Allege That Energy Companies Created A Public Nuisance By Producing The Energy Needed And Used By Americans. "The lawsuits allege energy companies created a public nuisance by producing energy needed and used by Americans in our everyday lives and in business. More than one dozen governmental entities are suing energy producers on this basis, seeking compensation to address the impacts of climate change. Various courts have found climate change is not a matter for courts to resolve, but instead is a complex global problem requiring a global, public-policy-based solution." ("The Alarming Evolution Of Public Nuisance Law," American Tort Reform Association)

One Of The Most Significant Climate Change Public Nuisance Claims Was In *AEP v. Connecticut* (2011). "Eight states, New York City and three land conservation groups filed suit against four electric power companies

and the Tennessee Valley Authority, five entities that they claimed were the largest sources of greenhouse gases. The lawsuit alleged that the utility companies, which operate facilities in 21 states, are a public nuisance because their carbon-dioxide emissions contribute to global warming. American Electric Power Co. and the other utilities argued that the courts should not get involved in the issue. The companies contended that only the Environmental Protection Agency can set emissions standards. A federal judge on the U.S. District Court for the Southern District of New York initially threw out the case, but the U.S. Court of Appeals for the Second Circuit said it could continue." (*American Electric Power Company Incorporation v. Connecticut*, 564 U.S. 410 (2011), Oyez)

- **Plaintiffs Asked "For A Decree Setting Carbon-Dioxide Emissions For Each Defendant At An Initial Cap, To Be Further Reduced Annually."** "According to the complaint, defendants are the largest emitters of carbon dioxide in the Nation. By contributing to global warming, plaintiffs asserted, the defendants' emissions substantially and unreasonably interfered with public rights, in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law. All plaintiffs ask for a decree setting carbon-dioxide emissions for each defendant at an initial cap, to be further reduced annually." (*American Electric Power Company Incorporation v. Connecticut*, 564 U.S. 410 (2011), JUSTIA Law)

- **The U.S. Supreme Court Rejected The Case In A Unanimous Opinion Authored By Justice Ruth Bader Ginsburg, Which Found That The Public Nuisance Claims Had Been "Displaced" By The Clean Air Act And Regulatory Action By The EPA.** "The Supreme Court reversed and remanded the lower court order in a unanimous opinion by Justice Ruth Bader Ginsburg. 'The Clean Air Act and the EPA action the Act authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants.' Justice Samuel Alito concurred in part and in the judgment, writing: 'I agree with the Court's displacement analysis on the assumption (which I make for the sake of argument because no party contends otherwise) that the interpretation of the Clean Air Act adopted by the majority in Massachusetts v. EPA is correct.' Meanwhile, Justice Sonia Sotomayor did not take part in consideration of the case." (*American Electric Power Company Incorporation v. Connecticut*, 564 U.S. 410 (2011), Oyez)

Following The Supreme Court's Dismissal Of *American Electric Power v. Connecticut* (2011), The Ninth Circuit Dismissed *Native Village Of Kivalina v. ExxonMobil Corporation* (2012), A Similar Public Nuisance Case Against ExxonMobil Alleging Their Emissions Caused Climate Injuries To An Alaskan Village. "Native Village of Kivalina and the City of Kivalina (collectively, 'appellants') filed an action against multiple oil, energy, and utility companies (collectively 'Energy Producers'), alleging that the massive greenhouse gas emissions emitted by the Energy Producers have resulted in global warming, which, in turn, has severely eroded the land where the City of Kivalina sat and threatened it with imminent destruction. Kivalina sought damages under a federal common law claim of public nuisance. The district court dismissed appellants' action for damages. Appellants challenged the decision." (*Native Village Of Kivalina v. ExxonMobil Corp.* - 696 F.3d 849 (9th Cir. 2012), LexisNexis)

- **The Court Noted That "The Right To Assert A Federal Common Law Public Nuisance Claim Has Limits."** "The court noted that the right to assert a federal common law public nuisance claim has limits. Claims can be brought under federal common law for public nuisance only when the courts were compelled to consider federal questions which cannot be answered from federal statutes alone. On the other hand, when federal statutes directly answer the federal question, federal common law did not provide a remedy because legislative action has displaced the common law." (*Native Village Of Kivalina v. ExxonMobil Corp.* - 696 F.3d 849 (9th Cir. 2012), LexisNexis)

In 2018, In *City Of Oakland v. B.P. P.L.C* (2018), A District Court Judge In California Dismissed Claims Filed Against B.P., Explaining That Oil, Gas, And Energy Products Are Not Public Nuisances. "While the present actions were brought against the five largest investor-owned producers of fossil fuels in the world, anyone who supplied fossil fuels with knowledge of the problem would be liable. The court further held that in order to be held liable for a public nuisance, a defendant's interference with a public right can either be intentional, or unintentional and otherwise actionable under principles controlling liability for negligence, recklessness, or abnormally dangerous activities. Where, as alleged here, the interference was intentional, it must also be unreasonable. The court noted that the challenged conduct was, as far as the complaints allege, lawful in every nation." (*City Of Oakland v. BP P.L.C. - 325 F. Supp. 3d 1017* (N.D. Cal. 2018), LexisNexis).

In 2018, In *City Of New York v. B.P. P.L.C.* (2018), A U.S. District Court Judge In New York Echoed The Previous Ruling Made In California, Asserting It Is "Inappropriate" To Use State Public Nuisance Laws And Courts To Address Costs Associated With Global Emissions. "Where 'the interstate or international nature of the controversy makes it inappropriate for state law to control ... our federal system does not permit the controversy to be resolved under state law.' … The Supreme Court has held that 'the control of interstate pollution is primarily a matter of federal law.'" (*City Of New York v. BP P. L.C., 325 F. Supp. 3d 466* (S.D.N.Y. 2018), CaseText)

In 2019, In *Rhode Island v. Chevron Corporation* (2019), The State Of Rhode Island Brought A Public Nuisance Lawsuit Against Energy Companies Like ExxonMobil, Chevron, Marathon, Citgo, And Others, Alleging That They Were Responsible For The Current And Future Climate Crisis. "The State of Rhode Island brought this suit against energy companies it says are partly responsible for the once and future climate crisis. The State alleged that Defendants have together extracted, advertised, and sold a substantial percentage of the fossil fuels burned globally since the 1960s. This activity has released an immense amount of greenhouse gas into the Earth's atmosphere, changing its climate and leading to all kinds of displacement, death (extinctions, even), and destruction." (*Rhode Island v. Chevron Corp.* - 393 F. Supp. 3d 142 (D.R.I. 2019), LexisNexis)

- **This Case Is Still Moving Through The Judicial Process.** (*Rhode Island v. Chevron Corp.* - 393 F. Supp. 3d 142 (D.R.I. 2019), Climate Case Chart)

Firearms

In *Ganim v. Smith Wesson Corporation* (1999), A Connecticut Municipality Brought A Public Nuisance Claim Against Several Major Gun Manufacturers Alleging Responsibility For The Criminal Misuse Of Firearms And The Increased Costs Associated With Police Intervention. "The plaintiffs' allegations of harm as outlined above from the preface of the first amended complaint characterize their damages as including expenditures of large amounts of money on police, prisons, medical care, fire department services, emergency services, public health services, social services, pension benefits, court resources and other services and facilities. The complaint also alleges substantial losses of tax revenue, investment, economic development and productivity as a result of the defendants' actions. … The complaint alleges that the defendants have the ability to make guns safer by incorporating locks and other safety features that would prevent children from shooting guns and killing themselves or others, but they have chosen not to do so. (First Amended Complaint, Preface, ¶¶ 1, 2 and 57-64.) According to the amended complaint, the defendants are aware that a substantial portion of their products flow into a large illegal market supplying weapons to criminals, but they have chosen not to take reasonable steps to control distribution of their products so as to keep them out of criminals' hands." (*Mayor Ganim v. Smith Wesson Corporation* 1999 Ct. Sup. 15908 (Conn. Super. Ct. 1999), CaseText,).

- **In 2001, The Supreme Court Of Connecticut Dismissed The Case, Finding That "A Chain Of Causation As Lengthy And Multifaceted" As The One Alleged By The Municipality Could Not Sustain A Public Nuisance Claim.** "Moreover, we have found no case, and the plaintiffs have suggested none, in which a plaintiff situated as remotely from the defendants' conduct as these plaintiffs are, or who presented a chain of causation as lengthy and multifaceted as these plaintiffs have, nonetheless has been held to have standing to assert a public nuisance claim." (*Joseph P. Ganim Et. Al., v. Smith And Wesson Corporation Et. Al.,* 258 Conn. 313 (Conn. 2001) 780 A.2d 98, CaseText,)

In *Camden County Board Of Chosen Freeholders v. Beretta U.S.A. Corporation* (2000), Camden County, New Jersey Alleged That A Gun Manufacturer's Distribution Plan Imposed "Substantial Financial Costs" On The County. "The County's Second Amended Complaint states three causes of action. The first is public nuisance. Under this theory, the County asserts that defendants have knowingly, recklessly or negligently interfered with public safety, health, and peace, and that defendants are liable to the County for the substantial financial costs necessary to abate the nuisance." (*Camden County Board Of Chosen Freeholders v. Beretta U.S.A. Corporation*, 123 F. Supp. 2d 245 (D.N.J. 2000), JUSTIA Law)

- **The Third Circuit Federal Court Dismissed The Case, Holding That Even If The Public Nuisance Claim Could Be Substantiated, The Manufacturer Lacked "Sufficient Control" To Abate The Nuisance.** "The Camden County Board of Chosen Freeholders (hereinafter "Camden County") contends that handgun manufacturers, because of their marketing and distribution policies and practices, are liable

under a public nuisance theory for the governmental costs associated with the criminal use of handguns in Camden County. The District Court, in a 53-page opinion, dismissed the complaint. See Camden County Board of Chosen Freeholders v. Beretta U.S.A., Corp., 123 F.Supp.2d. 245 (D.N.J.2000). We affirm the order of the District Court. … Even if public nuisance law could be stretched far enough to encompass the lawful distribution of lawful products, the County has failed to allege that the manufacturers exercise sufficient control over the source of the interference with the public right. … A public-nuisance defendant can bring its own conduct or activities at a particular physical site under control. But the limited ability of a defendant to exercise control beyond its sphere of immediate activity may explain why public nuisance law has traditionally been confined to real property and violations of human rights."(*Camden County Board Of Chosen Freeholders v. Beretta, U.S.A. Corporation*, 273 F.3d 536 (2001), Caselaw Access Project).

In *City Of Chicago v. Beretta U.S.A. Corporation* (2004), The City Of Chicago Sued A Host Of Gun Manufacturers And Distributors Under The Guise Of Public Nuisance Liability, Stating That "The Burdens Imposed Upon Society As A Whole In The Costs Of Law Enforcement And Medical Services Are Immense." "The tragic personal consequences of gun violence are inestimable. The burdens imposed upon society as a whole in the costs of law enforcement and medical services are immense. In the present case, the City of Chicago and Cook County, in an effort to stem the rising tide of gun violence and to recoup some of the expenses that flow from gun crimes, have sued 18 manufacturers, 4 distributors, and 11 dealers of handguns that have been illegally possessed and used in the city." (*City Of Chicago Et. Al. v. Beretta U.S.A. Corporation Et. Al.,* 821 N.E.2d 1088, 1116 (Ill. 2004), FindLaw)

- **The Illinois Supreme Court Ultimately Held That Such Claims Do Not Implicate "A Public Right."** "We have found no Illinois case recognizing a public right to be free from the threat that members of the public may commit crimes against individuals. Plaintiffs cite Cecola in support of their assertion that 'a violation of laws that protect public health, welfare, or safety infringes a public right and hence may be remedied through a nuisance action.'" (*City Of Chicago Et. Al. v. Beretta U.S.A. Corporation Et. Al.,* 821 N.E.2d 1088, 1116 (Ill. 2004), FindLaw)

In 2005, Congress Passed The *Protection Of Lawful Commerce In Arms Act (PLCAA)* To "Prohibit Civil Liability Actions" Against Firearms Manufacturer, Dealers, And Ammo Importers. "To prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others." (*S.397 – Protection Of Lawful Commerce In Arms Act*, Congress.gov)

- **This Act, However, Did Not Deter All Lawsuits. Appellate Courts In Connecticut, Indiana, And New York All Allowed Specific Public Nuisance Cases Against Gun Manufacturers To Be Brought Forward.** "As described below, the only two federal appellate courts to consider the issue—the Second and Ninth Circuits—have both found in split decisions that the PLCAA barred claims brought under generally applicable public nuisance statutes. The same result has been reached by state courts in Alaska and Illinois and a federal district court in Washington, DC. State appellate courts in Connecticut, Indiana, and New York, however, have allowed such suits to proceed. Unlike the other cases, these two cases involved allegations that gun manufacturers and distributors knowingly sold firearms to straw purchasers who, in turn, were selling the firearms to criminals." ("Gun Industry Immunity," Giffords Law Center To Prevent Gun Violence)

- **In *Soto v. Bushmaster Firearms*, The Connecticut Supreme Court Found Defendants Open To Public Nuisance Lawsuits, Citing Their Advertising As Outside Of PLCAA Protections.** "The plaintiffs in this case, parents of victims killed at Sandy Hook, sued Remington Arms, the manufacturer of the weapon used in the mass shooting. The plaintiffs alleged that Remington's marketing of the Bushmaster rifle used at Sandy Hook contributed to their loved one's deaths and violated the Connecticut Unfair Trade Practices Act (CUTPA) by promoting unlawful military use of the rifle by civilians…The plaintiffs further alleged that their CUTPA claim fell within the 'predicate' exception set forth in PLCAA. This exception denies PLCAA immunity to those gun manufacturers who knowingly violate a state or federal statute involving the sale or marketing of a firearm, and 'the violation was a proximate cause of the harm for which relief was sought.'" ("Gun Industry Immunity," Giffords Law Center To Prevent Gun Violence)

In A First-Of-Its-Kind Measure, Former New York Governor Andrew Cuomo Signed Legislation In 2021 That Would Allow Sellers, Manufacturers, Importers, Or Marketers Of Guns To Be Held Liable For A "Public Nuisance." "New York Gov. Andrew Cuomo (D) on Tuesday signed legislation that makes it easier to bring civil lawsuits against gun manufacturers and dealers by bypassing the blanket immunity provided to the industry under federal law. The measure (A.6762B/S.7196) is the first-of-its-kind in the nation and would allow sellers, manufacturers, importers, or marketers of guns to be held liable for a 'public nuisance,' defined as actions that harm the public, according to the new state law's language. The use of public nuisance law is thought to be a sort of legal loophole to work around federal protections, bill sponsor Assemblywoman Patricia Fahy (D) has said." (Keshia Clukey, "New York Enacts First-In-U.S. Law To Limit Gun-Liability Shield," Bloomberg Law, 7/6/21)

In August 2021, The Mexican Government Filed An Ongoing Lawsuit Against Smith & Wesson, Barrett Firearms, Beretta U.S.A., And Other Firearms Manufacturers In A Massachusetts District Court. (*Estados Unidos Mexicanos V. Smith & Wesson Brands, Incorporated Et. Al.*, 1:2021cv11269, JUSTIA Law)

Chemicals

Monsanto, Which Is Now Owned By The Bayer Corporation, Has Been The Subject Of Public Nuisance Lawsuits Regarding Polychlorinated Biphenyl (PCBs) Dating Back To 2017. "A private law firm in line to earn millions representing the state of Washington has been active in recent years donating to candidates for state attorney general. Texas-based Baron & Budd has been hired by Washington Attorney General Bob Ferguson on a contingency fee basis to sue Monsanto over alleged polychlorinated biphenyl (PCB) contamination." (John Breslin, "West Coast 'Super Tort' Against Monsanto Could Spread To Other States," *Forbes*, 1/11/17)

- **Monsanto Stopped Producing PCBs Back In The Late 1970s, Two Years Before They Were Banned Due To Their Potential Environmental Impact.** "More than 15 companies around the world, including Monsanto, manufactured polychlorinated biphenyls (PCBs) during the 20th century, and thousands of companies used PCBs in their products. PCBs were a safety material that were used in a wide array of products to reduce fire risk. PCBs were also required by many electrical and building codes, as well as by insurance companies, to protect against serious fire risk. Monsanto voluntarily ceased manufacturing PCBs in 1977, two years before the EPA banned their production." ("Resolving The U.S. PCB Litigation," Bayer)

- **Trial Lawyers Teamed Up With Local And State Governments In California And Washington To Bring Public Nuisance Lawsuits Against Monsanto Regarding PCBs That Ended Up In Bodies Of Water After Being Disposed Of In Landfills And Other Places.** "Baron & Budd, and Gomez Trial Attorneys of San Diego are involved in similar actions on behalf of several cities in Washington, California and Oregon. … Washington's suit, filed in King County, alleges that that Monsanto 'knew PCBs were toxic to humans and wildlife and had spread throughout the ecosystem' 10 years before they were banned in 1979. PCBs, manufactured solely by Monsanto, present a public nuisance 'that is harmful to health and obstructs the free use of public resources and state waters,' the lawsuit alleges. The suit further claims this was due to Monsanto's negligence and its efforts to conceal the dangers of its product." (John Breslin, "West Coast 'Super Tort' Against Monsanto Could Spread To Other States," *Forbes*, 1/11/17)

- **In *Town Of Westport v. Monsanto Company* (2015), A Federal Judge Dismissed The Public Nuisance Claims, Indicating That Monsanto Did Not Control PCBs After They Were Sold, And Could Not Be Held Responsible For Downstream Use Or Disposal.** "Westport was in control of the instrumentality, the PCB-containing products, following purchase and the Court thus agrees with Defendants that because they 'did not have the power or authority to maintain or abate these PCB-containing building materials, they cannot be liable for a public nuisance.'" (*Town Of Westport v. Monsanto Company, Civil Action No. 14-12041-DJC* (D. Mass. Mar. 24, 2015), CaseText)

- **In *San Jose v. Monsanto Company Et. Al.*, A Trial Court Dismissed Claims Filed Against Monsanto By Several California Cities For Lack Of Standing After The Cities Attempted To Make Public Nuisance Claims Regarding Bodies Of Water They Did Not Control.** "A public entity can bring a non-representative nuisance action for damages only if 'it has a property interest injuriously affected by the nuisance.' Cty. of Santa Clara v. Atl. Richfield Co., 137 Cal. App. 4th 292, 314 (quoting Selma Pressure Treating Co. v. Osmose Wood Preserving Co., 221 Cal. App. 3d 1601, 1616 (1990)). This Court granted Monsanto's earlier motion to dismiss because the Cities failed to show that they have a property

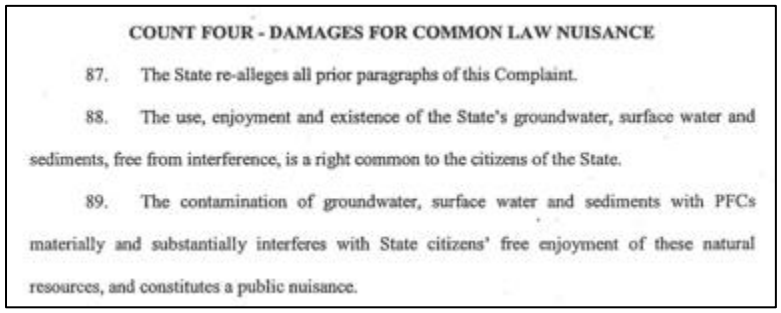
interest in stormwater that flows through municipal pipes to the Bay. Dkt. No. 85 at 6–8. Under the California Water Code, public water belongs to the State of California, not to the Cities. Id.; see also Cal. Water Code §§ 1201 ('All water flowing in any natural channel,' unless used or appropriated, 'is hereby declared to be public water of the State and subject to appropriation in accordance with the provisions of this code.'), 10574 (exempting rainwater from the permitting requirements, which implies that rainwater falls within § 1201 and thus belongs to the State); California v. United States, 438 U.S. 645, 652 n.7 (1978) ('Under California law, any person who wishes to appropriate water must apply for a permit from the State Water Resources Control Board.')" (*City Of San Jose v. Monsanto Company Et. Al., No. 5:2015cv03178* - Document 121 (N.D. Cal. 2017), JUSTIA Law)

Trial Lawyers Are Collaborating With Local Governments To Bring Public Nuisance Lawsuits Against Companies That Work With Chemicals Like Polyfluoroalkyl Substances (PFAS). "Contingency-fee lawyers are also teaming with local governments to bring public nuisance cases against companies in the per- and polyfluoroalkyl (PFAS) business." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

- **PFAS Have Been Around Since The 1950s And Are Used To Resist Heat, Repel Water, Protect Surfaces, And Reduce Friction In Household Items Like Non-Stick Cookware, Stain-Resistant Carpet, And Electronics.** "The per-and polyfluoroalkyl substances (PFAS) are a group of chemicals used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. Fluoropolymer coatings can be in a variety of products. These include clothing, furniture, adhesives, food packaging, heat-resistant non-stick cooking surfaces, and the insulation of electrical wire." ("Per-And Polyfluorinated Substances (PFAS) Factsheet," Centers For Disease Control And Prevention)

In February 2018, Multinational Conglomerate 3M Settled An 8-Year Case With The State Of Minnesota For $850 Million Regarding Health Conditions Linked To Chemicals Used In Scotchgard. "3M Co. has settled a lawsuit with Minnesota's Attorney General Lori Swanson for $850 million, putting an end to eight years of litigation over a former Scotchgard ingredient that got into the state's drinking water. The agreement materialized just as jury selection got underway Tuesday, and after Judge Kevin S. Burke urged the parties to compromise, saying that it wasn't in the best interests of the state's citizens or 3M's shareholders for the case to drag on. … In 2012, the results of a massive study of 80,000 people who sought to sue DuPont over PFOA were released, establishing links to cancers, ulcerative colitis and other health issues. New reports on the health of Minnesota-area residents were expected to be a centerpiece of the trial. Minnesota said its expert report shows higher rates of cancers, leukemia, premature births and lower fertility in the suburbs east of St. Paul prior to 2006, when there were particularly high amounts of the chemicals in municipal water." (Tiffany Kary, "3M Settles Minnesota Lawsuit For $850 Million," Bloomberg, 2/20/18)

- **Among A Number Of Charges, Minnesota Accused 3M Of Creating A Public Nuisance.** ("Amended Complaint," *Minnesota v. 3M*, C# 27-CV-10-28862, Filed 1/18/11)



COUNT FOUR - DAMAGES FOR COMMON LAW NUISANCE

87. The State re-alleges all prior paragraphs of this Complaint.

88. The use, enjoyment and existence of the State's groundwater, surface water and sediments, free from interference, is a right common to the citizens of the State.

89. The contamination of groundwater, surface water and sediments with PFCs materially and substantially interferes with State citizens' free enjoyment of these natural resources, and constitutes a public nuisance.

- **The Funds Collected From This Settlement Were To Be Used To Finance Projects Involving Water Sustainability.** "The funds will be used to finance projects that involve drinking water and water sustainability, according to statements from 3M and the state, after Minnesota alleged that chemicals known as PFCs could cause harm to citizens." (Tiffany Kary, "3M Settles Minnesota Lawsuit For $850 Million," Bloomberg, 2/20/18).

- **A Report From Bloomberg Later Revealed That $125 Million Of The Settlement Was Slated To Be Paid To Private Contingency Fee Lawyers.** "Covington & Burling LLP came under fire March 5 for a $125 million fee it received to represent the state of Minnesota in its $5 billion environmental lawsuit against 3M Co., which settled Feb. 20 for $850 million." (Stephen Joyce, "Covington's $125M Fee For 3M Case 'A Little Step': Lawmaker," Bloomberg Law, 3/5/18)

Over 2,950 Lawsuits Related To PFAS Used In Firefighting Foam Have Been Filed In Federal Courts (The MDL Is Titled: *In Re: Aqueous Film-Forming Foams Products Liability Litigation*.) ("MDL Statistics Report – Distribution Of Pending MDL Dockets By Actions Pending," U.S. Judicial Panel On Multidistrict Litigation, 8/15/22; Note: These Statistics Are Frequently Updated. New Pending MDL Reports Can Be Found HERE)

- **Some Claims In This MDL Include Private Nuisance Allegations.** "A South Carolina federal judge ruled that a Florida city can pursue its lawsuit against DuPont and Corteva, which the city claimed were created as spinoffs to help its predecessor dodge liability for poisoning its groundwater with chemicals in a fire suppressant foam. In a 15-page order Thursday, U.S. District Judge Richard M. Gergel, who is overseeing the multidistrict litigation, denied Corteva Inc. and DuPont de Nemours Inc.'s motion to dismiss the suit for lack of personal jurisdiction. … The city of Stuart was one of several thousand plaintiff entities suing the companies over PFAS water contamination. The city alleged strict liability for failure to warn, negligent failure to warn, defective design, negligence, private nuisance and a violation of the Florida Uniform Fraudulent Transfer Act." (Gina Kim, "DuPont Can't Shake Fla. Town's Foam Contamination Suit," Law360, 3/11/22)

- **Some Of The Claims In The MDL Allege Public Nuisance Violations.** "Attorney General Josh Stein filed four lawsuits against 14 manufacturers of Aqueous Film Forming Foam (AFFF), a fire suppressant used widely by firefighters, members of the military, and other first responders. AFFF contains PFAS, or forever chemical compounds that are manmade, are toxic, persist in the environment, accumulate in people, and have serious health risks. Attorney General Stein is alleging that the manufacturers of AFFF and the PFAS used in its production – including 3M, Corteva, and DuPont – caused a public nuisance, created a design defect, failed to warn their customers, and fraudulently transferred corporate assets to shield their profits." (Press Release, "Attorney General Josh Stein Files Four Lawsuits Against 14 Companies Over Toxic Firefighting Foam," Office Of North Carolina Attorney General, 11/4/21)

Plastics

In Recent Years, Public Nuisance Cases Have Been Aimed At Plastics Retailers, Manufacturers, And Distributors. "A decade ago, it began with a dispute over plastic bags at grocery store check-out lines. That contest tailed off with the growth of re-useable bags and plastic bag bans in many local communities. Then it was a debate over microbeads in cosmetics, which subsided after passage of the Microbead-Free Waters Act of 2015 and similar state bans. Now, litigation against plastics appears to be ramping up again. But is plastics the fuel for the next mass tort?" (Douglas A. Henderson, "Insight: Is Plastics Litigation The Next Public Nuisance," Bloomberg Law, 4/23/20)

In 2020, Environmental Advocacy Group Earth Island Institute Filed A Lawsuit Against Ten Major Companies, Including Coca-Cola, Pepsi, And Nestlé, That Sought Monetary Damages To Be Used To Clean Up Plastic Pollution. "By suing major corporations that made money from the sale of single use plastics, Earth Island hopes to recoup some of the costs of cleaning this plastic out of oceans and waterways, and mitigating harm to humans and wildlife alike in California." (Zoe Loftus-Farren, "Earth Island Sues 10 Companies, Including Coke, Pepsi, And Nestlé, Over Plastic Use," Earth Island Institute, 2/26/20).

- **In May 2022, A California Superior Court Judge Granted An Order Allowing The Lawsuit To Proceed And Stated That California Courts Had Jurisdiction Over The Case.** "Late last week, after over two years of litigation, Earth Island Institute, represented by Cotchett, Pitre & McCarthy, received an order from the San Mateo County Superior Court allowing its landmark lawsuit to proceed against 10 major plastic consumer goods companies for the nuisance allegedly created by their plastic packaging, including polluting California waterways with plastic trash and touting products as recyclable when they're not." ("Major Plastic Consumer Goods Companies Must Face Pollution Lawsuit Impacting California Waterways," Business Wire, 6/6/22; See Also: "Taking On Big Plastic," Earth Island Institute.

Vaping

Public Nuisance Lawsuits Related To Vaping Are A New Trend Which Capitalizes On The Increased Use Of Vaping Products, Including Among Minors. "One of the newest public nuisance litigations that is trying to follow the opioid model is over vaping. Over the past year, the news has been flooded with stories about vaping, the increased use of e-cigarettes by minors, and the harm caused by illicit vaping products. Trial lawyers have been quick to try to capitalize on this emerging public health crisis. They trying to recruit school districts, local governments and states to file public nuisance lawsuits against Juul Labs and other e-Cigarette companies." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Vaping Has Been Identified As The "Next Wave Of Lawsuits." "Vaping – The Next Wave of Lawsuits … Vaping has become quite popular, particularly among young people who may be unaware of the dangers of nicotine addiction associated with this unsafe product. … Evidence is being established that e-cigarette manufacturers deliberately marketed their products to children and teens, a vulnerable population in an effort to get them adducted at an early age." (Clifford Law, "Vaping – The Next Wave Of Lawsuits," *The National Law Review*, 9/22/20)

Similar To The Public Nuisance Cases Filed Against Opioid Manufacturers, School Districts Have Filed Mass Tort Litigation Against Companies Like JUUL. "The nationwide lawsuit includes a dozen Indiana school districts, along with Chicago Public Schools and other Illinois suburban districts, filed against e-cigarette maker JUUL, based on the same public nuisance law used to combat opioid manufacturers. 'We're talking about found money here involving the same bad player in every community — JUUL,' said a local attorney who receives referral fees for every school district he signs up for this lawsuit. 'This litigation is a contingency case, meaning if we win, the schools win. If we lose, the schools don't owe a dime.'" (Jerry Davich, "School Districts File Mass Tort Litigation Against E-Cigarette Maker JUUL, But Many Local School Want Nothing To Do With It," *Chicago Tribune*, 11/16/21)

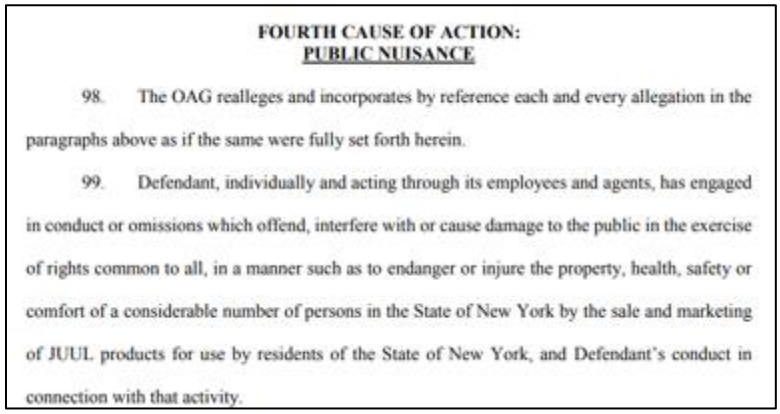
- **These Lawsuits Rely On The Argument That Companies Like JUUL Have Created A Public Nuisance By Creating "A Condition Dangerous To The Public's Health," And That School Districts And Governments Are Spending "Significant Resources Combating This Public Nuisance Of [JUUL's] Creation."** "Juul's conduct 'has given rise to an epidemic of vaping across America and within plaintiff's school district,' administrators of the Three Village Central School District in Long Island, New York, said in their complaint. The district said it's been forced to pay out 'significant resources combating this public nuisance of defendant's creation' and will continue to do so. … Lawyers for the school districts claim Juul and other e-cigarette makers created a public nuisance by flavoring their products and aggressively marketing them to teens. Juul created 'a condition dangerous to the public's health' through its actions, the district in Johnson County, Kansas, said in its suit." (Tiffany Kary, "Juul Accused By School District Of Creating Vaping Nuisance," Bloomberg, 10/8/19)

In October 2019, King County (WA) Schools Filed A Class Action Suit Against JUUL And Altria Group That Attempted To Tie Their Marketing, Advertising, And Government Relations Related To E-Cigarettes To Proof Of Wrongdoing. "In Washington State, officials with King County, Skagit County and the La Conner School District – which serves 576 students – each filed separate class action lawsuits against Juul Labs and Altria Group, a major Juul shareholder. Altria Group spokesman Steve Callahan told CNN his company is declining comment on the Washington State lawsuits. The company was not named in the suit filed by the state of California. … The King county lawsuit accuses Juul of using 'marketing tactics specifically designed to mislead children … to ensnare minors into nicotine addiction, including by explicitly adopting tactics prohibited from Big Tobacco.'" (Hollie Silverman, "At Least Five Lawsuits Have Been Filed Against E-Cigarette Company Juul This Week For Allegedly Targeting Minors," CNN, 11/19/19)

- **This Case Relied On A Washington Statute Which States That Public Nuisance Applies To "Whatever Is Injurious To Health," And Consists Of "Unlawfully Doing An Act, Or Omitting To Perform A Duty, Which Act Or Omission Either Annoys, Injures, Or Endangers The Comfort, Repose, Health, Or Safety Of Others."** "It states that Washington's statutory public nuisance law applies to 'whatever is injurious to health' and consists of 'unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injuries, or endangers the comfort repose, health or safety of others.' It then argues that because the social harms of vaping were "reasonably foreseeable," Juul and others should be liable for all of the costs associated with illegal vaping use." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

In 2019, The New York State Attorney General Filed A Lawsuit Against JUUL, Accusing The Company Of "Engaging In Deceptive And Misleading Marketing That Has Contributed To An Epidemic Of Youth Vaping And Teen Nicotine Addiction In The State." "New York's attorney general on Tuesday sued Juul Labs Inc and accused the e-cigarette manufacturer of engaging in deceptive and misleading marketing that has contributed to an epidemic of youth vaping and teen nicotine addiction in the state. The lawsuit that New York Attorney General Letitia James filed in Manhattan Supreme Court marked the third to date by a state against the San Francisco-based company and came just a day after California launched a similar case." (Nate Raymond, "Juul Turned Teens Into Nicotine Addicts, New York Claims In Lawsuit," *Reuters*, 11/19/19)

- **In Doing So, New York Also Alleged That JUUL Created A Public Nuisance.** ("Complaint," *New York v. JUUL Labs Inc.*, Filed 11/19/19)



FOURTH CAUSE OF ACTION:
PUBLIC NUISANCE

98. The OAG realleges and incorporates by reference each and every allegation in the paragraphs above as if the same were fully set forth herein.

99. Defendant, individually and acting through its employees and agents, has engaged in conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all, in a manner such as to endanger or injure the property, health, safety or comfort of a considerable number of persons in the State of New York by the sale and marketing of JUUL products for use by residents of the State of New York, and Defendant's conduct in connection with that activity.

- **In July 2022, The Manhattan Supreme Court Of New York Denied A Motion By JUUL To Dismiss The Case, Which Is Ongoing.** "Beleaguered e-cigarette maker Juul Labs Inc must face a lawsuit by New York's attorney general accusing it of fueling teen nicotine addiction in the state through deceptive and misleading marketing. Manhattan Supreme Court Justice Margaret Chan on Wednesday denied the company's motion to dismiss most of New York's 2019 lawsuit. The order comes as the U.S. Food and Drug Administration reconsiders a proposed ban on Juul's products, and the company reportedly considers bankruptcy as it faces thousands of lawsuits." (Brendan Pierson, "Juul Must Face New York AG's Lawsuit Over Teen Addiction," *Reuters*, 7/7/22)

In 2019, California A.G. Xavier Becerra Announced A Suit Against JUUL For Allegedly Promoting Its Products To Young Smokers By Marketing Flavors Like Mango, Cool Mint, Crème Brulée, And Cucumber. "California and Los Angeles County officials announced a lawsuit against Juul Labs Inc. on Monday, alleging the vaping brand targeted young people through advertising and failed to give warnings about health risks posed by using e-cigarettes with nicotine. Although the state bars sales of the devices to people younger than 21, the lawsuit alleges electronic cigarette firms made products with nicotine that appealed to young smokers by marketing flavors such as mango, cool mint, crème brûlée and cucumber." (Patrick McGreevy, "California Is Taking Vaping Giant Juul To Court," *Los Angeles Times*, 11/18/19)

In 2019, Minnesota Filed A Nuisance Case Against JUUL On Similar Grounds To Other Vaping-Focused Cases. (Steve Karnowski, "Minnesota Sues E-Cigarette Maker Juul Over Youth Vaping Rise," *The Associated Press*, 12/4/19)

- **The State Sought For The Company To Cease Marketing To Young People And "Fund A Corrective Public Education Campaign … On The Dangers Of Vaping."** "Minnesota Attorney General Keith Ellison sued Juul Labs on Wednesday, accusing the e-cigarette maker of unlawfully targeting young people with its products to get a new generation addicted to nicotine. The lawsuit filed in Hennepin County District Court in Minneapolis seeks to force Juul to stop marketing to young people; fund a corrective public education campaign in Minnesota on the dangers of youth vaping; fund vaping cessation programs; disclose all its research on vaping and health; and surrender all profits from its allegedly unlawful conduct." (Steve Karnowski, "Minnesota Sues E-Cigarette Maker Juul Over Youth Vaping Rise," *The Associated Press*, 12/4/19)

COVID-19 Protocols

Since The Beginning Of The COVID-19 Pandemic, Employees And Employee-Rights Groups Have Filed Lawsuits Alleging That Major Corporations Are Liable For Public Nuisances Surrounding Health And Safety. "'I do think that ... we're going to see public nuisance be added to any complaints that are filed either on behalf of employees or customers of businesses open to the public,' Ward-Reichard said. 'But also, I think it essentially opens the floodgates to really any complaint about a business or its premises.' 'We're really sort of at an interesting precipice here in that as these cases are litigated in the COVID-19 context,' she added. 'It's going to be a very important defense by the defendants in these cases that if you open the doors to saying 'something having to do with COVID-19 or our COVID-19 preparations are inadequate and thus a public nuisance,' you really open the door for all kinds of litigation.'" (Vin Guerrieri, "COVID Suits Test 'Public Nuisance' Claim In Workplace Cases," Law360, 6/9/20)

In 2020, Employees Filed A Lawsuit Against The McDonald's Corporation In Illinois State Court, Arguing That The Fast Food Chain's Inadequate COVID-19 Safeguards Constitute A Public Nuisance That Will Further Spread The Disease. "Workers at McDonald's locations in Chicago are arguing that the fast food chain's inadequate Covid-19 safeguards constitute a public nuisance that will further spread the disease. The workers, joined in the lawsuit by their family members, seek a court order requiring McDonald's to comply with an Illinois executive order and federal guidance on safety protocols, such as supplying hand sanitizer and requiring face coverings inside restaurants." (Robert Iafolla, "McDonald's Case Tests Nuisance Theory For Job Virus Safety," Bloomberg Law, 6/4/20)

- **In March 2022, McDonald's And The Plaintiffs Told An Illinois Federal Court That They Had Reached A Settlement Outside Of Court, Although The Amount Of The Settlement Has Not Been Disclosed.** "McDonald's Corp., two Illinois franchisees and their insurer told an Illinois federal court Thursday that they have resolved their coverage dispute over an underlying putative class action in which employees alleged unsafe working conditions during the COVID-19 pandemic. Though the terms of the settlement agreement are not yet known, the parties anticipate dismissal of the action, McDonald's, franchise owners Lexi Management LLC and DAK4 LLC and Austin Mutual Insurance Co. said in a joint notice of settlement." (Hope Patti, "McDonald's And Insurer End Illinois Virus Suit Coverage Fight," Law360, 3/10/22)

Amazon Was Sued In A New York Federal Court For "Fostering The Spread Of COVID-19 By Mandating Unsafe Working Conditions." "Amazon.com Inc has been sued for allegedly fostering the spread of the coronavirus by mandating unsafe working conditions, causing at least one employee to contract COVID-19, bring it home, and see her cousin die. The complaint was filed on Wednesday in the federal court in Brooklyn, New York, by three employees of the JFK8 fulfillment center in Staten Island, and by family members." (Jonathan Stempel, "Amazon Sued Over Warehouses After New York Worker Brings Coronavirus Home," Insurance Journal, 6/4/20)

- **The Lawsuit Alleges Amazon Created A Public Nuisance By Failing To Adequately Protect Workers As The Virus Spread.** "Amazon workers told a federal appeals court Wednesday that the online retailer should be forced to impose warehouse safety standards to prevent the spread of Covid-19, pursuing a novel ruling prompted by the pandemic. Seven warehouse workers in New York asked the U.S. Court of Appeals for the Second Circuit panel to overturn the dismissal of their lawsuit accusing Amazon.com Inc. of creating a 'public nuisance' by failing to adequately protect them as the coronavirus spread." (*Palmer v. Amazon.com*, 2d Cir., No. 20-03989), Bloomberg Law)

- **The Case Was Initially Dismissed By A Federal Judge In New York.** ("Memorandum Decision And Order," *Palmer v. Amazon.com*, C# 20-cv-2468, Filed 11/2/20)

I understand plaintiffs' position that the purpose of New York's COVID-19 leave law is to provide quarantined workers with guaranteed sick leave pay in a timely fashion. The New York Legislature can fix this if it wants to. But it passed the COVID-19 leave law presumably well aware that sick leave is not covered by a private right of action under § 191, making the choice to defer to the State Department of Labor. I have to enforce the law as its plain language compels, not as the Legislature might have worded it.

CONCLUSION

Defendant's motion to dismiss is granted. Plaintiffs' public nuisance and NYLL § 200 claims are dismissed without prejudice pursuant to the doctrine of primary jurisdiction. Plaintiffs' NYLL § 191 claims are dismissed with prejudice.

- **This Case Is Still Moving Through The Appeals Process.** (*Palmer v. Amazon.com*, 2d Cir., No. 20-03989), Bloomberg Law)

In 2020, The Rural Community Workers Alliance Filed A Lawsuit Against Smithfield Foods Incorporated, Alleging That They Were Failing To Adequately Protect Employees From COVID-19 At A Missouri Plant. "A U.S. federal judge has dismissed a worker advocacy group's lawsuit accusing Smithfield Foods Inc, the world's largest pork processor, of failing to adequately protect employees from the novel coronavirus at a plant in Missouri. … In the lawsuit filed last month, the RCWA accused Smithfield of creating a 'public nuisance' by failing to protect workers at the Milan, Missouri plant and endangering the surrounding community." (Daniel Wiessner, "U.S. Judge Dismisses Lawsuit Over Worker Safety At Smithfield Pork Plant," *Reuters*, 5/6/20)

- **A Missouri U.S. District Court Judge Dismissed The Lawsuit In May 2020, Asserting That Smithfield Was Already Taking Precautions To Care For Their Workers, And That The Federal Government Was Responsible For Overseeing Working Conditions, Not The Courts.** "Smithfield is already taking many of the steps called for by the Rural Community Workers Alliance, including screening production-line workers for symptoms and installing barriers between them, U.S. District Judge Greg Kays in Kansas City, Missouri said in his ruling on Tuesday. Kays also said that under President Donald Trump's executive order in April requiring meatpacking plants to remain open during the pandemic, the federal government, and not the courts, were responsible for overseeing working conditions." (Daniel Wiessner, "U.S. Judge Dismisses Lawsuit Over Worker Safety At Smithfield Pork Plant," *Reuters*, 5/6/20)

Views Of The Courts & Companies

Courts Often Reject Broad Claims Of Public Nuisance, As Demonstrated By The Skepticism Of Many Judges To The Efforts To Claims Against Energy Producers For Causing Climate Change:

- **Judge William Alsup Threw Out The City Of Oakland's Lawsuit Against B.P., Calling The Scope "Breathtaking," Adding That "Anyone Who Supplied Fossil Fuels With Knowledge Of The Problem Would Be Liable."** ("Order Granting Motion To Dismiss Amended Complaints," *People Of State Of California v. BP Et Al*, Northern District Of California, Filed 6/25/18)

> The sole claim for relief is for "public nuisance," a claim governed by federal common law. The specific nuisance is global-warming induced sea level rise. Plaintiffs' theory, to repeat, is that defendants' sale of fossil fuels leads to their eventual combustion, which leads to more carbon dioxide in the atmosphere, which leads to more global warming and consequent ocean rise.
>
> The scope of plaintiffs' theory is breathtaking. It would reach the sale of fossil fuels anywhere in the world, including all past and otherwise lawful sales, where the seller knew that the combustion of fossil fuels contributed to the phenomenon of global warming. While these actions are brought against the first, second, fourth, sixth and ninth largest producers of fossil fuels, anyone who supplied fossil fuels with knowledge of the problem would be liable. At one

- **A District Judge Hearing A Lawsuit Brought By New York City Adopted Similar Language In Dismissing The Complaint. The Judge Noted That "The Immense And Complicated Problem Of Global Warming Requires A Comprehensive Solution" And "To Litigate Such An Action For Injuries … Would Severely Infringe Upon The Foreign Policy Discussions" Of The Federal Government.** ("Opinion," *City Of New York v. Chevron Et Al*, C# 18 Civ. 182, Filed 7/19/18)

> Climate Accords. The Court recognizes that the City, and many other governmental entities around the United States and in other nations, will be forced to grapple with the harmful impacts of climate change in the coming decades. However, the immense and complicated problem of global warming requires a comprehensive solution that weighs the global benefits of fossil fuel use with the gravity *476 of the impending harms. To litigate such an action for injuries from foreign greenhouse gas emissions in federal court would severely infringe upon the foreign-policy decisions that are squarely within the purview of the political branches of the U.S. Government. Accordingly, the Court will exercise appropriate caution and decline to recognize such a cause of action.

Some Judges Have Taken Issue With The Abatement Requests Made In Public Nuisance Claims, Asserting That Companies Did Not Have The Ability To Remedy The Issues At Hand. One Such Example Of This Can Be Found In Oklahoma's Opioid Lawsuit Against Johnson & Johnson. "Finally, the abatement element of public nuisance theory also presents some difficulties. Because the defendant does not control the product at the time the harm takes place, the defendant cannot 'abate' the nuisance. In the Oklahoma opioid litigation, for example, damages sought from the defendants were earmarked for such things as government-run addiction treatment and prevention programs. Unlike an injunction that orders a noise polluter to stop, however, there is no certainty that these programs will actually remedy the alleged nuisance, and they have very little connection to the damage a particular defendant allegedly caused. This again highlights the difficulty of applying public nuisance theory to what are, in essence, product liability claims." (James Cromley & Elizabeth Geise, "Trending In Tort Law Part II: Courts Address The Growing Use Of Public Nuisance Mass Torts," *The National Law Review*, 1/11/22)

- **The Oklahoma Supreme Court, In That Case, Also Had Issues With The Scope Of The Public Nuisance Claim.** "The common law criminal and property-based limitations have shaped Oklahoma's public nuisance statute. Without these limitations, businesses have no way to know whether they might face nuisance liability for manufacturing, marketing, or selling products. … [I].e., will a sugar manufacturer or the fast food industry be liable for obesity, will an alcohol manufacturer be liable for psychological harms, or will a car manufacturer be liable for health hazards from lung disease to dementia or for air pollution." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

Some States – Like California – Have Laws In Place That Lower The Abatement Requirements For Public Nuisance Claims. "With its roots in the common law, states interpret public nuisance claims differently. For example, most states require the interference to be abatable — that is, capable of being remedied — but California does not." (James Cromley & Elizabeth Geise, "Trending In Tort Law Part II: Courts Address The Growing Use Of Public Nuisance Mass Torts," *The National Law Review*, 1/11/22)

In States With Higher Causation Thresholds Judges Have Rejected Public Nuisance Claims Because They Lack A Direct Connection Between The Defendants And The Alleged Nuisance. "With respect to causation, California law (the Pain Patient's Bill of Rights) approves the use of opioids in appropriate circumstances (i.e., 'medically appropriate' prescriptions). Thus, without evidence linking the manufacturers' marketing of the product to a rise in the 'medically inappropriate' prescriptions that had led to the addiction crisis, the court could not conclude that the manufacturers had caused the alleged nuisance. Correlation alone—without some evidence of causation—was inadequate." (James Cromley & Elizabeth Geise, "Trending In Tort Law Part II: Courts Address The Growing Use Of Public Nuisance Mass Torts," *The National Law Review*, 1/11/22)

Some Companies Have Chosen To Settle Versus Proceeding Further In The Judicial Process:

- **Dozens Of Settlements Between Opioid Manufacturers And Distributors Have Been Made With States And Municipalities.** ("Global Settlement Tracker," Opioid Settlement Tracker)

- **Despite Multiple Judges Dismissing Public Nuisance Claims Made Against Monsanto, The Company Has Chosen To Settle A Number Of Cases.** ("Complaint," *State of Washington v. Monsanto*, Filed 12/8/16; "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20; "Complaint," *District Of Columbia v. Monsanto Et Al.*, Filed 5/7/20; Press Release, "AG Racine Announces Monsanto Will Pay $52 Million To district Over Toxic PCB Contamination," Office Of The Attorney General For The District Of Columbia, 7/17/20; "Complaint," *State Of New Hampshire v. Monsanto Et Al.*, Filed 12/27/20; Press Release, "New Hampshire Reaches $25 Million Settlement With Monsanto For PCB Contamination Of State Waters," New Hampshire Department Of Justice, 2/22/22; "Complaint," *State Of Ohio v. Monsanto Et Al.*, 3/5/18; "Ohio Reaches $80 Million Settlement With Monsanto Over PCB," Ohio Country Journal, 3/24/22)

EXAMPLES OF ARGUMENTS AND OUTCOMES IN MAJOR PUBLIC NUISANCE CASES

The Cases Examined Below Include The Following:

- *In Re: National Prescription Opiate (1:17md2804)*
- *State Of Oklahoma Ex Rel. Hunter v. Johnson & Johnson (OK 54, 499 P.3d 719)*
- *People v. ConAgra Grocery Products Company, Et Al. (CV788657)*
- *City Of Oakland, Et Al., v. BP, PLC, Et Al. (18-16663)*
- *People Of The State of California v. BP P.L.C. (RG17875889)*
- *People Of State Of California v. BP Et Al. (3:2018-cv-06011)*
- *American Electric Power Company, Inc. Et Al. v. Connecticut Et Al. (10-174)*
- *King County v. JUUL Labs Et Al. (2:19-cv-01664)*
- *In Re: Juul Labs, Inc. Marketing, Sales Practices & Product Liability Litigation (3:19md2913)*
- *San Francisco Unified School District v. JUUL Labs, Inc. (3:19-cv-08177)*
- *Estados Unidos Mexicanos v. Smith & Wesson Brands, Inc. Et Al. (1:21-cv-11269)*
- *The People Of The State Of California Et Al. (Los Angeles) v. Monsanto Co. Et Al. (2:2022-cv-02399)*
- *Town Of Westport Et Al., v. Monsanto Company Et Al. (1:14-cv-12041)*
- *City Of San Jose v. Monsanto Company Et Al. (5:15-cv-03178)*

Opioids – Drug Dispenser Lawsuits

In 2018, Lake And Trumbull Counties (OH) Filed A Lawsuit Accusing Walmart, CVS, Walgreens, And Others Of Fostering A "Black Market For Prescription Opioids." "Walmart, CVS, and Walgreens must pay a combined $650.6 million to two Ohio counties for damages related to the opioid crisis, a federal judge ruled Wednesday … The lawsuit, which was initially filed in 2018, was part of the federal multi-district litigation created that year to address the manifold claims against opioid manufacturers and distributors. The counties alleged that the pharmacies 'abused their position of special trust and responsibility' as registered dispensers of controlled drugs, and in so doing 'fostered a black market for prescription opioids,' the complaint reads." (Laura Ly, "Ohio Judge Rules Walmart, CVS, And Walgreens Must Pay A Combined $650.6 Million For Damages Related To Opioid Crisis," CNN, 8/17/22)

The Counties Asserted Public Nuisance Claims Against The Companies For Dispensing Prescription Opioids To Customers. ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 8/6/20)

> Plaintiffs each assert a claim of common law absolute public nuisance against the Pharmacy Defendants.[4] This Opinion addresses the viability of the public nuisance claims as they arise out of Pharmacy Defendants' activity of *dispensing* prescription opioids to customers. The

According To The Counties, The Companies' Conduct Ultimately "Flooded Plaintiff's Community With Opioids And Facilitated And Encouraged The Flow And Diversion Of Opioids Into An Illegal Secondary Market." ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 8/6/20)

> With respect to dispensing practices, Plaintiffs contend the Pharmacy Defendants violated the Federal Controlled Substances Act and also Ohio controlled substance laws by, among other things, "dispensing and selling [opioids] without maintaining effective controls against the diversion of opioids." *Amended Complaint*, Doc. #: 3327 at ¶630(b).[6] In particular, Plaintiffs

> black market." *Id.* at ¶81. Plaintiffs allege the result of all this conduct is that the Pharmacy Defendants distributed and dispensed opioids "in a manner which caused prescriptions and sales of opioids to skyrocket in Plaintiff's community, flooded Plaintiff's community with opioids, and facilitated and encouraged the flow and diversion of opioids into an illegal, secondary market." *Id.* at ¶621.

In 2020, The Court Denied A Motion To Dismiss The Counties' Public Nuisance Complaints. ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 8/6/20)

> Before the Court is the Pharmacy Defendants'[1] Motion to Dismiss Second Amended Complaints. Doc. #: 3340.[2] Plaintiffs (Ohio's Lake and Trumbull Counties) filed an opposition brief. Doc. #: 3366. Pharmacy Defendants filed a reply brief. Doc. #: 3379. For the reasons stated below, the Motion to Dismiss is **DENIED**.

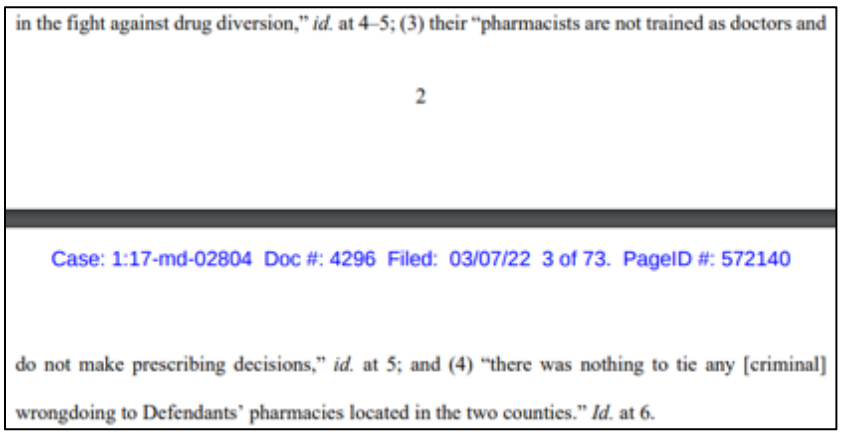
> The Pharmacy Defendants argue there are four reasons why federal and Ohio law require dismissal of Plaintiffs' public nuisance claims based on dispensing activity. The Court considers each argument in turn.

Ultimately, A Jury Found The Dispensers Guilty Of Contributing To A Public Nuisance. "The landmark verdict in Cleveland federal court came after a week of deliberations following a six week trial. The jury found that sales of prescription narcotics by the pharmacy chains contributed to a 'public nuisance' in the form of the opioid

crisis, validating the core legal theory undergirding thousands of lawsuits across the country. … The jury was only tasked with determining whether the pharmacies are legally liable. In doing so, it concluded that each of the pharmacies 'engaged in intentional and/or illegal conduct [that] was a substantial factor in producing the public nuisance,' according to a verdict form. The form indicated that the jury agreed early in its deliberations that opioids are a nuisance in the counties, but didn't decide until this week that the pharmacies are liable." (Jeff Overley & Cara Salvatore, "Pharmacy Giants Fueled Opioid Criss, Ohio Jury Finds," Law360, 11/23/21)

In March 2022, The Court Denied A Motion For A New Trial. ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 3/7/22)

- **The Companies Claimed The Trial Showed That Their Pharmacists Do Not Make Prescribing Decisions And There Was Nothing To Tie Criminal Wrongdoing To Pharmacies In The Counties.** ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 3/7/22)



in the fight against drug diversion," *id.* at 4–5; (3) their "pharmacists are not trained as doctors and

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Case: 1:17-md-02804 Doc #: 4296 Filed: 03/07/22 3 of 73. PageID #: 572140

do not make prescribing decisions," *id.* at 5; and (4) "there was nothing to tie any [criminal] wrongdoing to Defendants' pharmacies located in the two counties." *Id.* at 6.

- **The Companies Also Identified Thirteen Categories Of Alleged Errors That Led To An Unfair Trial.** ("Opinion And Order," *In Re: National Prescription Opiate Litigation*, Northern District Of Ohio, Filed 3/7/22)

In August 2022, The Court Ruled That The Three Companies Must Pay A Combined $650.6 Million To The Counties Over 15 Years. "Walmart, CVS, and Walgreens must pay a combined $650.6 million to two Ohio counties for damages related to the opioid crisis, a federal judge ruled Wednesday. US District Judge Dan Aaron Polster ruled that over the next 15 years, approximately $306.2 million must be paid to Lake County and approximately $344.4 million must be paid to Trumbull County. All three companies were found liable for their role in the opioid epidemic in both Lake and Trumbull counties last November. Polster presided over separate proceedings in May to determine how much money should be awarded." (Laura Ly, "Ohio Judge Rules Walmart, CVS, And Walgreens Must Pay A Combined $650.6 Million For Damages Related To Opioid Crisis," CNN, 8/17/22)

- **The Companies Said They Planned To Appeal The Ruling, And Pointed To The Range Of Other Factors Involved In Creating The Opioid Crisis Such As "Pill Mill" Doctors.** "Spokespersons for Walmart (WMT), CVS (CVS), and Walgreens all said they plan to appeal the ruling. 'The facts and the law did not support the jury verdict last fall, and they do not support the court's decision now,' Fraser Engerman, senior director of external relations for Walgreens, said in a statement. 'As we have said throughout this process, we never manufactured or marketed opioids nor did we distribute them to the 'pill mills' and internet pharmacies that fueled this crisis.' Walmart released a statement saying the plaintiffs in the case 'sued Walmart in search of deep pockets' and claimed the trial 'was engineered to favor the plaintiffs' attorneys and was riddled with remarkable legal and factual mistakes.' 'Instead of addressing the real causes of the opioid crisis, like pill mill doctors, illegal drugs and regulators asleep at the switch, plaintiffs' lawyers wrongly claimed that pharmacists must second-guess doctors in a way the law never intended and many federal and state health regulators say interferes with the doctor-patient relationship,' the statement reads." (Laura Ly, "Ohio Judge Rules Walmart, CVS, And Walgreens Must Pay A Combined $650.6 Million For Damages Related To Opioid Crisis," CNN, 8/17/22)

Opioids – Oklahoma v. Manufacturers

In June 2017, The State Of Oklahoma Sued Three Opioid Manufacturers Including Johnson & Johnson, Alleging The Companies Deceptively Marketed Opioids In The State. "On June 30, 2017, the State sued three opioid manufacturers – J&J (and its related entities8), Purdue Pharma L.P. (and its related entities), and Teva Pharmaceuticals USA, Inc. (and its related entities) alleging the companies deceptively marketed opioids in Oklahoma." ("State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson," Oklahoma State Courts Network, 11/9/21)

- **The State Sued Johnson & Johnson For Violating Oklahoma's Public Nuisance Statute.** "To address this problem, the State of Oklahoma ex rel. Mike Hunter, Attorney General of Oklahoma ('State'), sued three prescription opioid manufacturers and requested that the district court hold opioid manufacturers liable for violating Oklahoma's public nuisance statute. The question before the Court is whether the conduct of an opioid manufacturer in marketing and selling its products constituted a public nuisance under 50 O.S.2011, §§ 1 & 2." ("State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson," Oklahoma State Courts Network, 11/9/21)

- **The State Argued J&J's "Misrepresentations And Omissions Regarding Opioids" Created A Public Nuisance.** ("Original Petition," *State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*, C# CJ-2017-816, , Filed 6/30/17)

> **D. Public Nuisance, 50 Okl. St. § 2**
>
> 116. The allegations set forth above are incorporated by reference herein.
>
> 117. The State, on behalf of itself, brings this claim against Defendants to abate the public nuisance they created.
>
> 118. Defendants' misrepresentations and omissions regarding opioids, as set forth above, have created an opioid epidemic in Oklahoma that constitutes a public nuisance. Defendants have created a condition that affects entire communities, neighborhoods, and considerable numbers of persons.

- **The State Argued Johnson & Johnson's Actions Annoyed, Injured, Or Endangered The Comfort, Repose, Health, And/Or Safety Of Others – Pointing To An Increase In Overdose Deaths Among Other Factors.** ("Original Petition," *State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*, C# CJ-2017-816, , Filed 6/30/17)

119. Defendants' misrepresentations and omissions regarding opioids constitute unlawful acts and/or omissions of duties, that annoy, injure, or endanger the comfort, repose, health, and/or safety of others. The annoyance, injury and danger to the comfort, repose, health, and safety of Oklahoma citizens includes, but is not limited to:

- Drug overdose deaths in Oklahoma increased eightfold from 1999 to 2012, surpassing car crash deaths in 2009;
- In 2012, Oklahoma had the fifth-highest unintentional poisoning death rate and prescription opioids contributed to the majority of those deaths;
- In 2014, Oklahoma's unintentional poisoning rate was 107% higher than the national rate;
- Oklahoma leads the nation in non-medical use of painkillers, with nearly 5% of the population aged 12 and older abusing or misusing painkillers;
- Prescription opioid addiction often leads to illicit opioid use and addiction;
- According to the CDC, past misuse of prescription opioids is the strongest risk factor for heroin initiation and use;
- From 2007 to 2012, the number of heroin deaths in Oklahoma increased tenfold;
- Oklahoma hospitals are reporting an increasing number of newborns testing positive for prescription medications; and
- Defendants' deceptive marketing campaign and the resulting opioid abuse and addiction epidemic caused the State of Oklahoma, its businesses, communities and citizens to bear enormous social and economic costs including increased health care, criminal justice, and lost work productivity expenses, among others.

A District Court Ultimately Held Johnson & Johnson Liable For Conducting "False, Misleading, And Dangerous Marketing Campaigns" Creating A Public Nuisance, And Ordered J&J To Pay $465 Million To Fund Drug Treatment Programs. "The district court conducted a 33-day bench trial with the single issue being whether J&J was responsible for creating a public nuisance in the marketing and selling of its opioid products. The district court held J&J liable under Oklahoma's public nuisance statute for conducting 'false, misleading, and dangerous marketing campaigns' about prescription opioids. The district court ordered that J&J pay $465 million to fund one year of the State's Abatement Plan, which consisted of the district court appropriating money to 21 government programs for services to combat opioid abuse." (*"State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson,"* Oklahoma State Courts Network, 11/9/21)

In 2021, The Oklahoma Supreme Court Reversed The District Court's Judgement Against Johnson & Johnson On Appeal. "ON APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY The Honorable Thad Balkman, Trial Judge An opioid manufacturer appealed a $465 million verdict following a bench trial in a public nuisance lawsuit. The district court held the opioid manufacturer liable under Oklahoma's public nuisance statute for its prescription opioid marketing campaign. The State of Oklahoma counter-appealed, and this Court retained the appeal. We hold the opioid manufacturer's actions did not create a public nuisance. The district court erred in extending the public nuisance statute to the manufacturing, marketing, and selling of prescription opioids. DISTRICT COURT'S JUDGMENT REVERSED." (*"State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson,"* Oklahoma State Courts Network, 11/9/21)

- **The Oklahoma Supreme Court Stated The District Court's "Expansion Of Public Nuisance Law Went Too Far."** "We hold that the district court's expansion of public nuisance law went too far. Oklahoma public nuisance law does not extend to the manufacturing, marketing, and selling of prescription opioids. … The issue before this Court is whether the district court correctly determined that J&J's actions in marketing and selling prescription opioids created a public nuisance. We hold it did not. The nature of the nuisance claim pled by the State is the marketing, selling, and overprescribing of opioids manufactured by J&J. This Court has not extended the public nuisance statute to the manufacturing, marketing, and selling of products, and we reject the State's invitation to expand Oklahoma's public nuisance law." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

- **The Court Held That "As The Manufacture And Distribution Of Products Rarely Cause A Violation Of A Public Right, We Refuse To Expand Public Nuisance To Claims Against A Product Manufacturer."** "The manufacture and distribution of products rarely cause a violation of a public right. … Similarly, a public right to be free from the threat that others may misuse or abuse prescription opioids – a lawful product – would hold manufacturers, distributors, and prescribers potentially liable for all types of use and misuse of prescription medications. Just as in Beretta, the State has failed to show a violation of a public right in this case. Id. at 1116 (holding 'there is no authority for the unprecedented expansion of the concept of public rights to encompass the right asserted by plaintiffs'). And as the manufacture and distribution of products rarely cause a violation of a public right, we refuse to expand public nuisance to claims against a product manufacturer." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

- **The Court Also Held That A Manufacturer Does Not Have Control Of Its Product Once It Is Sold.** "A manufacturer does not have control of its product once it is sold. Another factor in rejecting the imposition of liability for public nuisance in this case is that J&J, as a manufacturer, did not control the instrumentality alleged to constitute the nuisance at the time it occurred. … The State asks this Court to broadly extend the application of the nuisance statute, namely to a situation where a manufacturer sold a product (for over 20 years) that was later alleged to constitute a nuisance. See Tioga, 984 F.2d at 920. A product manufacturer's responsibility is to put a lawful, non-defective product into the market. There is no common law tort duty to monitor how a consumer uses or misuses a product after it is sold. Without control, a manufacturer also cannot remove or abate the nuisance—which is the remedy the State seeks from J&J in this case." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

- **The Court Compared J&J's Case To A Claim Against A Gun Manufacturer, In Which The Alleged Nuisance Is "Several Times Removed."** "A public nuisance claim against a gun manufacturer parallels the State's claims against J&J and its opioid production and distribution. We again find Beretta persuasive as it discussed a manufacturer's control of its product in determining public nuisance liability. Federal and state laws regulate the manufacture, distribution, and use of both firearms and opioids. As in Beretta, the alleged nuisance in this case is several times removed from the initial manufacture and distribution of opioids by J&J." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

- **The Court Further Held That A Manufacturer Cannot Be Held "Perpetually Liable For Its Products.** "A manufacturer cannot be held perpetually liable for its products. The final factor in rejecting the imposition of liability for public nuisance in this case is the possibility that J&J could be held continuously liable for its products. Nuisance claims against products manufacturers sidestep any statute of limitations. … In this case, the district court held J&J responsible for products that entered the stream of commerce more than 20 years ago, shifting the wrong from the manufacturing, marketing, or selling of a product to its continuing presence in the marketplace. The State's public nuisance claims could hold manufacturers perpetually liable for their products; Oklahoma law has rejected such endless liability in all other traditional tort law theories." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

The Oklahoma Supreme Court Warned That If They Accepted The Public Nuisance Claims, Businesses Would Have "No Way To Know Whether They Might Face Nuisance Liability For Manufacturing, Marketing, Or Selling Products." "The common law criminal and property-based limitations have shaped Oklahoma's public nuisance statute. Without these limitations, businesses have no way to know whether they might face nuisance liability for manufacturing, marketing, or selling products." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

- **"[I].e., Will A Sugar Manufacturer Or The Fast Food Industry Be Liable For Obesity, Will An Alcohol Manufacturer Be Liable For Psychological Harms, Or Will A Car Manufacturer Be Liable For Health Hazards From Lung Disease To Dementia Or For Air Pollution."** ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

The Oklahoma Supreme Court Stressed That Policy Problems Should Be Solved By The Legislative And Executive Branches Of Government. "The Court has allowed public nuisance claims to address discrete, localized problems, not policy problems. Erasing the traditional limits on nuisance liability leaves Oklahoma's nuisance statute impermissibly vague. The district court's expansion of public nuisance law allows courts to manage public policy matters that should be dealt with by the legislative and executive branches; the branches that are more capable than courts to balance the competing interests at play in societal problems. Further, the district court stepping into the shoes of the Legislature by creating and funding government programs designed to address social and health issues goes too far." ("*State Ex Rel. Attorney General Of Oklahoma v. Johnson & Johnson*," Oklahoma State Courts Network, 11/9/21)

Lead Paint

In 2017, The California Sixth District Court Of Appeals Upheld The Most Significant Portions Of The Public Nuisance Claim Filed By The State Of California In *People v. ConAgra Grocery Products Company, Et Al.* The Ruling Affirmed That ConAgra, Sherwin-Williams, And Others Had Created A Public Nuisance In Their Promotion Of Lead Paint Decades Prior, Before 1950. "In a unanimous 138-page decision issued on November 14, 2017, which departed from appellate courts in every other jurisdiction that have considered the issue, the California Sixth District Court of Appeal in People v. ConAgra Grocery Products Company, et al., Case No. H040880, upheld the most significant portions of a representative public nuisance action filed by residents of several California cities and counties against The Sherwin Williams Company, ConAgra Grocery Products Company, LLC, and NL Industries, Inc. (the Defendants), upon findings that the Defendants or their predecessors created a public nuisance in the subject jurisdictions by affirmatively promoting white lead pigment for use in interior residential paint in the decades prior to 1950 while possessed of actual knowledge that its high toxicity." (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

- **The Court Rejected The Idea That Promotion Of Lead Paint Was Protected By The First Amendment.** "Rejected the Defendants' argument that its promotions were protected by the First Amendment, based on the court's determination that the communications constituted knowing concealment and deception concerning the safety of lead paint for interior home use." (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

- **The Court "Rejected The Defendants' Argument That To Constitute A Public Nuisance, Interior Lead Paint Must Have Violated Regulatory Standards At The Time The Promotions Were Made."** (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

The Court Disagreed With The Defense's Argument That The Previous Lower Court Decision To Accept The Public Nuisance Claims Violated The Separation Of Powers By Creating Public Policy Relating To Lead Paint That Should Be Dictated By The Legislature. "Rejected Defendants' argument that the decision violates constitutional separation of powers, i.e., that the Legislature and not the courts should be creating public policy on lead paint and remediation, which it already does." (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

The Court Rejected Claims By The Companies That Their Constitutional Rights Were Denied By Not Allowing A Jury Trial. "Rejected the Defendants' argument that they were unfairly denied their constitutional right to a jury trial, once again based on the court's determination that a public nuisance case is one in equity, where damages are not awarded; the right to a jury trial is limited to cases determining damages." (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

The Court Rejected Claims From The Defense That The Requested Abatement Fund Was Really A Disguised Damages Award. "Rejected the Defendants' argument that the abatement fund order is merely a disguised damages award." (Jules Zeman, "CA Appellate Court Upholds Most Significant Portions Of $1.15B Abatement Judgment Against Lead Paint Manufacturers," JD Supra)

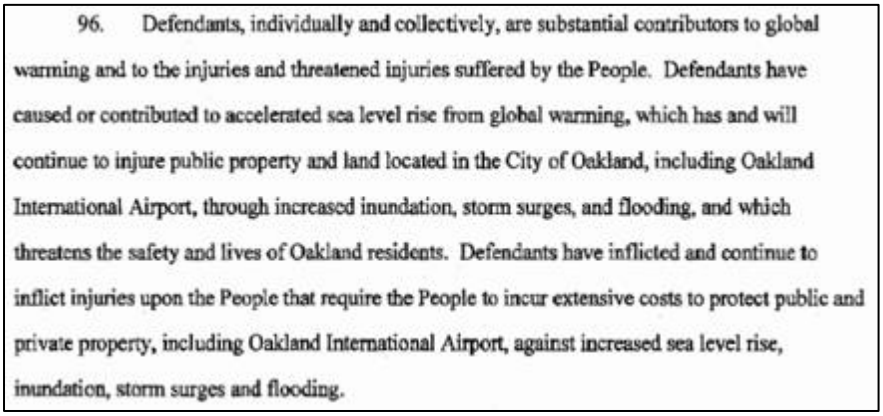
Climate Change – San Francisco, Oakland v. Energy Producers

In September 2017, The Cities Of Oakland And San Francisco Filed Climate Change Related Lawsuits Against Chevron, ConocoPhillips, Exxon Mobil, B.P., And Royal Dutch Shell. "San Francisco City Attorney Dennis Herrera and Oakland City Attorney Barbara J. Parker announced today that they had filed separate lawsuits on behalf of their respective cities against the five largest investor-owned producers of fossil fuels in the world. … The defendant companies — Chevron, ConocoPhillips, Exxon Mobil, BP and Royal Dutch Shell — have known for decades that fossil fuel-driven global warming and accelerated sea level rise posed a catastrophic risk to human beings and to public and private property, especially in coastal cities like San Francisco and Oakland, who have the largest shoreline investments on San Francisco Bay." (Press Release, "San Francisco And Oakland Sue Top Five Oil And Gas Companies Over Costs Of Climate Change," City Attorney Of San Francisco, 9/19/17)

- **The Cities Sought Funding For The Cost Of Sea Walls And Other Infrastructure To Protect Against The "Consequences Of Climate Change."** "The lawsuits ask the courts to hold these companies responsible for the costs of sea walls and other infrastructure necessary to protect San Francisco and Oakland from ongoing and future consequences of climate change and sea level rise caused by the companies' production of massive amounts of fossil fuels." (Press Release, "San Francisco And Oakland Sue Top Five Oil And Gas Companies Over Costs Of Climate Change," City Attorney Of San Francisco, 9/19/17)

- **The Cities Argued That The Defendants "Knowingly And Recklessly Created An Ongoing Public Nuisance" By Producing Fossil Fuels And Deceiving Customers About Their Dangers.** "Despite that knowledge, the defendant companies continued to aggressively produce, market and sell vast quantities of fossil fuels for a global market, while at the same time engaging in an organized campaign to deceive consumers about the dangers of massive fossil fuel production. … Like the tobacco companies who were sued in the 1980s, these defendants knowingly and recklessly created an ongoing public nuisance that is causing harm now, and in the future risks catastrophic harm to human life and property, including billions of dollars of public and private property in Oakland and San Francisco." (Press Release, "San Francisco And Oakland Sue Top Five Oil And Gas Companies Over Costs Of Climate Change," City Attorney Of San Francisco, 9/19/17)

Oakland Argued That Sea Level Rise Constituted A Risk To The Safety And Welfare Of Its Residents, In The Form Of Storm Surge Flooding And Infrastructure Damage. ("Complaint," *People Of State Of California v. BP P.L.C.* (Oakland), Superior Court Of The State Of California, County Of Alameda, Filed 9/19/17)



96. Defendants, individually and collectively, are substantial contributors to global warming and to the injuries and threatened injuries suffered by the People. Defendants have caused or contributed to accelerated sea level rise from global warming, which has and will continue to injure public property and land located in the City of Oakland, including Oakland International Airport, through increased inundation, storm surges, and flooding, and which threatens the safety and lives of Oakland residents. Defendants have inflicted and continue to inflict injuries upon the People that require the People to incur extensive costs to protect public and private property, including Oakland International Airport, against increased sea level rise, inundation, storm surges and flooding.

Oakland Argued The Companies "Have Known For Many Years" That Promoting Fossil Fuel Use Would Lead To "Catastrophic Harm To Coastal Cities." ("Complaint," *People Of State Of California v. BP P.L.C.* (Oakland), Superior Court of the State of California, County Of Alameda, Filed 9/19/17)

> 97. Defendants have promoted the use of fossil fuels at unsafe levels even though they should have known and in fact have known for many years that global warming threatened severe and even catastrophic harms to coastal cities like Oakland. Defendants promoted fossil fuels and fossil fuel products for unlimited use in massive quantities with knowledge of the hazard that such use would create.

The Cities Requested The Companies Pay "Billions Of Dollars" Toward Climate Change Abatement Funds. "The lawsuits ask the courts to hold the defendants jointly and severally liable for creating, contributing to and/or maintaining a public nuisance, and to create an abatement fund for each city to be paid for by defendants to fund infrastructure projects necessary for San Francisco and Oakland to adapt to global warming and sea level rise. The total amount needed for the abatement funds is not known at this time but is expected to be in the billions of dollars." (Press Release, "San Francisco And Oakland Sue Top Five Oil And Gas Companies Over Costs Of Climate Change," City Attorney Of San Francisco, 9/19/17)

In October 2017, The Cases Were Moved To A U.S. District Court Under Judge William Alsup. "Two more ambitious lawsuits would be hard to image: in 2017 the cities of Oakland and San Francisco filed separate public nuisance lawsuits against five of the world's biggest energy companies, seeking to hold them responsible for the local effects of sea level rise. … In October 2017, the energy companies 'removed' both of the cases from state court to U.S. District Court for the Northern District of California, where they were assigned to District Judge William Alsup. Removal is a legal procedure made available to a defendant who is sued in state court when the basis of the claim is one that would support the jurisdiction of the federal courts, most importantly when the underlying claim is based on federal law." ("Supreme Court Allows San Francisco, Oakland Lawsuits Against Big Oil Companies To Proceed," CBS Bay Area, 6/15/21)

- **These Climate Change Cases Have Regularly Been Caught Up In Jurisdiction Disputes Between The Plaintiffs And Defendants Over Which Courts Should Handle The Litigation.** "There are at least 20 pending lawsuits filed by cities and states across the U.S., alleging major players in the fossil fuel industry misled the public on climate change to devastating effect. … Nearly all of the cases remain embroiled in battles over jurisdiction, with the typical trajectory looking something like this: A lawsuit is filed in state court, claiming common law or consumer-protection laws have been breached. Defense requests the suit be moved to federal court, citing the federal regulation of both greenhouse-gas emissions and the international sale of oil and gas. Industry critics call the move to federal court a delay tactic. While consumer-protection laws exist at the federal level, they're generally seen as less favorable to plaintiffs. Plaintiffs then appeal, seeking to return to state court." (Bruce Gil, "U.S. Cities And States Are Suing Big Oil Over Climate Change. Here's What The Claims Say And Where They Stand." PBS, 8/1/22)

In June 2018, Judge Alsup Threw Out The Cities' Cases, Saying The Courts Were Not The Proper Place To Deal With Such Global Issues. "A federal judge on Monday threw out a closely watched lawsuit brought by two California cities against fossil fuel companies over the costs of dealing with climate change. The decision is a stinging defeat for the plaintiffs, San Francisco and Oakland, and raises warning flags for other local governments around the United States that have filed similar suits, including New York City. The judge, William Alsup of Federal District Court in San Francisco, acknowledged the science of global warming and the great risks to the planet, as did the oil and gas companies being sued. But in his ruling, Judge Alsup said the courts were not the proper place to deal with such global issues, and he rejected the legal theory put forth by the cities." (John Schwartz, "Judge Dismisses Suit Against Oil Companies Over Climate Change Costs," *The New York Times*, 6/25/18)

- **Alsup Called The Scope Of The Lawsuit "Breathtaking," Adding That "Anyone Who Supplied Fossil Fuels With Knowledge Of The Problem Would Be Liable."** ("Order Granting Motion To Dismiss Amended Complaints," *People Of State Of California v. BP Et Al*, Northern District Of California, Filed 6/25/18)

> The sole claim for relief is for "public nuisance," a claim governed by federal common law. The specific nuisance is global-warming induced sea level rise. Plaintiffs' theory, to repeat, is that defendants' sale of fossil fuels leads to their eventual combustion, which leads to more carbon dioxide in the atmosphere, which leads to more global warming and consequent ocean rise.
>
> The scope of plaintiffs' theory is breathtaking. It would reach the sale of fossil fuels anywhere in the world, including all past and otherwise lawful sales, where the seller knew that the combustion of fossil fuels contributed to the phenomenon of global warming. While these actions are brought against the first, second, fourth, sixth and ninth largest producers of fossil fuels, anyone who supplied fossil fuels with knowledge of the problem would be liable. At one

Alsup Noted The Benefits Of Fossil Fuels And Questioned If It Would Be Fair To "Place The Blame [On] Those Who Supplied What We Demanded." ("Order Granting Motion To Dismiss Amended Complaints," *People Of State Of California v. BP Et Al*, Northern District Of California, Filed 6/25/18)

> warming. But against that negative, we must weigh this positive: our industrial revolution and the development of our modern world has literally been fueled by oil and coal. Without those fuels, virtually all of our monumental progress would have been impossible. All of us have benefitted. Having reaped the benefit of that historic progress, would it really be fair to now ignore our own responsibility in the use of fossil fuels and place the blame for global warming on those who supplied what we demanded? Is it really fair, in light of those benefits, to say that the sale of fossil fuels was unreasonable?

- **Alsup Claimed The Lawsuit Would "Effectively Allow Plaintiffs To Govern Conduct And Control Energy Policy On Foreign Soil."** ("Order Granting Motion To Dismiss Amended Complaints," *People Of State Of California v. BP Et Al*, Northern District Of California, Filed 6/25/18)

> interests of countless governments, both foreign and domestic. The challenged conduct is, as far as the complaints allege, lawful in every nation. And, as the United States aptly notes, many foreign governments actively support the very activities targeted by plaintiffs' claims (USA Amicus Br. at 18). Nevertheless, plaintiffs would have a single judge or jury in California impose an abatement fund as a result of such overseas behavior. Because this relief would effectively allow plaintiffs to govern conduct and control energy policy on foreign soil, we must exercise great caution.

- **Alsup Wrote That The Problem "Deserves A Solution On A More Vast Scale," Referring To The Legislative And Executive Branches Of Government.** ("Order Granting Motion To Dismiss Amended Complaints," *People Of State Of California v. BP Et Al*, Northern District Of California, Filed 6/25/18)

> In sum, this order accepts the science behind global warming. So do both sides. The dangers raised in the complaints are very real. But those dangers are worldwide. Their causes are worldwide. The benefits of fossil fuels are worldwide. The problem deserves a solution on a more vast scale than can be supplied by a district judge or jury in a public nuisance case. While it

> remains true that our federal courts have authority to fashion common law remedies for claims based on global warming, courts must also respect and defer to the other co-equal branches of government when the problem at hand clearly deserves a solution best addressed by those branches. The Court will stay its hand in favor of solutions by the legislative and executive branches. For the reasons stated, defendants' motion to dismiss is **GRANTED**.

The Lawsuit Was Brought Up To The U.S. Supreme Court, Which Declined Review. "Two more ambitious lawsuits would be hard to image: in 2017 the cities of Oakland and San Francisco filed separate public nuisance lawsuits against five of the world's biggest energy companies, seeking to hold them responsible for the local effects of sea level rise. On Monday, the U.S. Supreme Court declined to throw the suits out of court, although the cases still face many daunting obstacles ahead. … Accordingly, in June 2018, Alsup dismissed the cases. The cities appealed to the U.S. Court of Appeals for the 9th Circuit, which in August 2020 reversed the ruling. The court ruled that Alsup had been mistaken in concluding that federal law was of substantial importance to the claims. … That effort was blocked, however, when the energy companies filed a petition asking the U.S. Supreme Court to reverse the 9th Circuit decision. While that petition was pending, Alsup required the parties to brief the additional jurisdictional points, but he did not set a hearing and he did not rule. On Monday, the Supreme Court declined to review the case, in effect freeing Alsup to schedule a hearing to consider the alternative jurisdictional arguments." ("Supreme Court Allows San Francisco, Oakland Lawsuits Against Big Oil Companies To Proceed," CBS Bay Area, 6/15/21)

Climate Change – American Electric Power v. Connecticut

In 2004, Several States Filed A Complaint Against Power Companies, Claiming The Companies' Contributions To Global Warming Created A Public Nuisance. "In July 2004, the States of Connecticut, New York, California, Iowa, New Jersey, Rhode Island, Vermont, and Wisconsin, and the City of New York (collectively 'Connecticut') filed a complaint against American Electric Power Company, Southern Company, the Tennessee Valley Authority, Xcel Energy, and Cinergy (collectively 'American Electric'). Connecticut sought to curb the amount of carbon dioxide emitted by American Electric, arguing that it was a public nuisance that harmed citizens by contributing to global warming, which in turn has led to serious environmental consequences." ("*American Electric Power Co. v. Connecticut*," Legal Information Institute)

Connecticut Sought "Judicially-Fashioned" Emissions Caps On American Electric. "Questions as Framed for the Court by the Parties 1. Whether States and private parties have standing to seek judicially-fashioned emissions caps on five utilities for their alleged contribution to harms claimed to arise from global climate change caused by more than a century of emissions by billions of independent sources." ("*American Electric Power Co. v. Connecticut*," Legal Information Institute)

The Southern District Of New York Dismissed Connecticut's Complaint As "Non-Justiciable" Under The "Political Question Doctrine," Which Says Courts Should Avoid Decisions Which Threaten The Separation Of Powers. "The United States District Court for the Southern District of New York dismissed the complaint on the grounds that Connecticut's claim raised a non-justiciable political question. Under the political question doctrine, courts should avoid decisions which threaten the U.S. Constitution's separation of powers. The district court found that Connecticut's suit was 'impossible to decide without an initial policy determination of a kind clearly for nonjudicial discretion.'" ("*American Electric Power Co. v. Connecticut,*" Legal Information Institute)

The Second Circuit Court Of Appeals Disagreed, Holding That Courts Are Allowed To Hear Such Cases. "The district court dismissed the claim before trial, holding that disputes concerning global warming are 'political questions' that should be resolved by the legislature, not the courts. However, the Second Circuit Court of Appeals held that courts are allowed to hear such cases, and that such disputes are not restricted to resolution in the political arena. Furthermore, the Second Circuit held that allowing such cases does not alleviate a plaintiff's heavy burden of proving its side of the dispute in court. The decision will depend on whether the Supreme Court feels that the judiciary can properly handle such claims, or whether the complexity, controversy, and volume of such cases counsel in favor of dismissing this initial suit." ("*American Electric Power Co. v. Connecticut*," Legal Information Institute)

- **"The Second Circuit Allowed Connecticut's Suit To Proceed, Ruling That Connecticut's Suit (1) Met The Standing Requirements, (2) Was Properly Pled Under The Federal Common Law Of Nuisance, (3) Was Not Displaced By Federal Regulation On The Issue, And (4) Did Not Raise A Political Question Because The Nuisance Question Can Be Answered By The Courts And Need Not Be Left To The Political Branches."** ("*American Electric Power Co. v. Connecticut*," Legal Information Institute)

In 2011, The Supreme Court Unanimously Ruled Against Connecticut, Arguing That *The Clean Air Act* Displaced Any Common Law Right To Seek Abatement Of Carbon Emissions. "UNANIMOUS DECISION FOR AMERICAN ELECTRIC POWER COMPANY INC., ET AL … (1) Can states and private parties seek to curb emissions on utilities for their alleged contribution to global climate change? (2) Can a cause of action to reduce carbon dioxide emissions be implied under federal common law? No. The Supreme Court reversed and remanded the lower court order in a unanimous opinion by Justice Ruth Bader Ginsburg. 'The Clean Air Act and the EPA action the Act authorizes displace any federal common-law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants.'" ("*American Electric Power Co., Inc. v. Connecticut*," Oyez, Decided 6/20/11)

- **Justice Ginsburg Wrote That The EPA Was "Better Equipped To Do The Job Than Individual District Judges Issuing Ad Hoc, Case-By-Case Injunctions."** "It is altogether fitting that Congress designated an expert agency, here, EPA, as best suited to serve as primary regulator of greenhouse gas emissions. The expert agency is surely better equipped to do the job than individual district judges issuing ad hoc, case-by-case injunctions. Federal judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order." ("Opinion," *American Electric Power Company, Inc., Et Al., Petitioners, v. Connecticut Et Al.*, U.S. Supreme Court, 6/20/11)

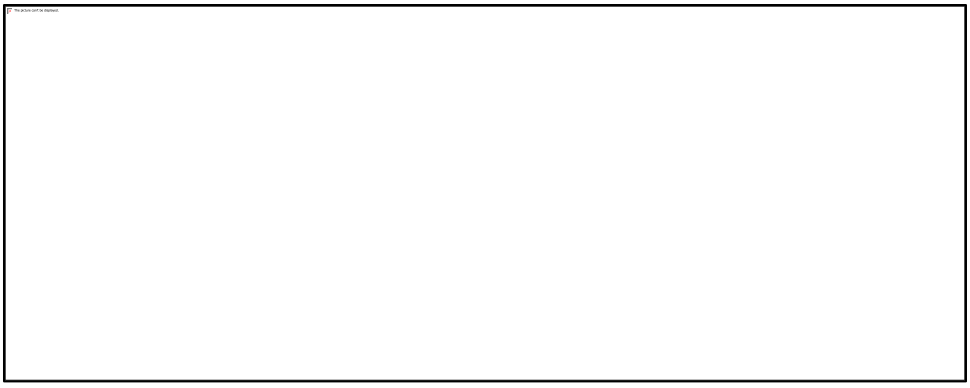
Vaping – JUUL Labs Multidistrict Litigation

In 2019, King County (WA) Was Among The First Municipalities To File A Lawsuit Against JUUL Labs Alleging The Company Illegally Marketed Vaping Products To Children, Which Led To The Creation Of A Public Nuisance. ("Complaint," *King County v. JUUL Labs Et Al.*, C# e 2:19-cv-01664, Filed 10/16/19)

> 10. King County brings this action against Defendants JUUL Labs, Inc. ("JUUL"), Altria Group, Inc., Altria Client Services, Altria Group Distribution Company, and Nu Mark, LLC (collectively "Altria Defendants") for damages and injunctive relief, including abatement of the public health crisis caused by Defendants' wrongful conduct.

> 166. Alternatively, Defendants' conduct was a substantial factor in bringing about the public nuisance even if a similar result would have occurred without it. By directly marketing to youth and continuing marketing practices after it was evidence that children were using JUUL products in large numbers and were specifically using these products in school, JUUL directly facilitated the spread of the youth vaping epidemic and the public nuisance effecting King County and members of the Washington Sub-Class. By investing billions of dollars in JUUL and

- **Specifically, King County Argued That Its Residents Have A "Right To Be Free From Conduct That Endangers Their Health And Safety" – A Right Which Was Violated By The "Production, Promotion, Distribution, And Marketing Of JUUL Products For Use By Minors In King County."** ("Complaint," *King County v. JUUL Labs Et Al.*, C# e 2:19-cv-01664, Filed 10/16/19)



In Identifying The Abatement Steps It Wanted JUUL To Take, King County Pointed To A Variety Of Proposed Programs Including: "Spending Time And Resources Assembling Information About The Dangers Of Youth Vaping," "Responding To Calls From Concerned Parents," "Training Teachers," And More. ("Complaint," *King County v. JUUL Labs Et Al.*, C# e 2:19-cv-01664, Filed 10/16/19)

169. Plaintiff has taken steps to address the harm caused by Defendants' conduct, including the following:

A. Spending time and resources assembling information about the dangers of youth vaping and the extent of youth vaping in the County;

B. Creating and publishing videos and infographics about JUUL use and the youth vaping epidemic;

C. Writing newsletters about JUUL, the dangers of youth vaping, and ways parents can help combat the epidemic;

D. Responding to calls from concerned parents seeking help for their children who are addicted to nicotine through vaping;

E. Training teachers and parents to recognize JUUL products;

F. Educating teachers, parents, and youth about the risks of vaping; and

G. Updating King County's website to address the dangers of JUUL use.

170. Fully abating the epidemic of youth vaping resulting from Defendants' conduct will require much more than these steps.

171. Pursuant to RCW 7.48.020, King County and the Washington Sub-Class request an order providing for abatement of the public nuisance that Defendants have created or assisted in the creation of, and enjoining Defendants from future violations of RCW 7.48.010.

The King County Case Was Later Consolidated Into Multidistrict Litigation (MDL) Administered By Judge William Orrick In California. The King County Lawsuit Is One Of Six Bellwether Cases, All Making Similar Claims Against JUUL. "A California federal judge has tapped six lawsuits to serve as bellwethers in a sprawling multidistrict litigation over Juul Labs Inc. and Altria Group Inc.'s marketing and sale of e-cigarettes, with school districts across the country bringing the first wave of cases against the companies. U.S. District Judge William H. Orrick signed the order Monday, teeing up cases led by the San Francisco Unified School District, Tucson Unified School District, The School Board of Palm Beach County, Florida, and Unified School District 265 Goddard in Kansas, as well as the City of Rochester, New Hampshire, and King County, Washington. The six cases were selected to serve as the first wave of government entity bellwethers, which have blamed the companies for pushing e-cigarettes while hiding the associated health hazards, leaving the entities to deal with the consequences of youth nicotine addiction. A second wave of six more cases will follow." (Mike Curley, "SF And 5 Other Schools Tapped For JUUL Bellwethers," Law360, 2/2/21)

- **As Of August 2022, The MDL – Now Called *In Re: Juul Labs, Inc., Marketing, Sales Practices, And Products Liability Litigation* – Includes More Than 4,000 Pending Actions.** ("MDL Statistics Report – Distribution Of Pending MDL Dockets By Actions Pending," U.S. Judicial Panel On Multidistrict Litigation, 8/15/22; Note: These Statistics Are Frequently Updated. New Pending MDL Reports Can Be Found HERE)

Firearms – Mexico v. Smith & Wesson

In 2021, The Mexican Government Issued A Sweeping Lawsuit To Hold Top U.S. Firearms Companies Liable For Facilitating Unlawful Trafficking And Marketing Of Guns. "Their policy is to sell to any distributor or dealer that has a U.S. license to buy and sell the product, regardless of the buyer's record of flouting the law and despite blazing red flags indicating that a gun dealer is conspiring with straw purchasers or others to traffic defendants' guns into Mexico … Defendants use this head-in-the-sand approach to deny responsibility while knowingly profiting from the criminal trade." ("Complaint," *Mexico V. Smith & Wesson et.al*, Law360, 8/4/21)

I. INTRODUCTION

1. Plaintiff Estados Unidos Mexicanos (the "Government"), a sovereign nation, brings this action to put an end to the massive damage that the Defendants cause by actively facilitating the unlawful trafficking of their guns to drug cartels and other criminals in Mexico. Almost all guns recovered at crime scenes in Mexico—70% to 90% of them—were trafficked from the U.S. The Defendants include the six U.S.-based manufacturers whose guns are most often recovered in Mexico—Smith & Wesson, Beretta, Century Arms, Colt, Glock, and Ruger. Another manufacturer defendant is Barrett, whose .50 caliber sniper rifle is a weapon of war prized by the drug cartels. The remaining defendant—Interstate Arms—is a Boston-area wholesaler through which all but one of the defendant manufacturers sell their guns for re-sale to gun dealers throughout the U.S.

- **Mexico Claimed Smith & Wesson's Conduct Created A Public Nuisance By Unreasonably Interfering With Public Safety And Health, And Undermining Mexican Gun Laws.** ("Complaint," *Mexico V. Smith & Wesson et.al*, Law360, 8/4/21)

513. Defendants' conduct arms criminals, constituting a dangerous threat to the public.

514. Defendants design, market, distribute, promote, and sell guns with reckless disregard for human life and for the peace, tranquility, and economic well-being of the Mexican public. They have knowingly refused to monitor and discipline their distribution systems, making their guns easily available to anyone intent on crime. Defendants knew or chose to be willfully blind to the fact that they facilitate and encourage easy access by persons intent on murder, mayhem, or other crimes, including illegal purchasers who foreseeably traffic the guns into Mexico. Defendants' conduct has thereby created and contributed to a public nuisance by unreasonably interfering with public safety and health and undermining Mexico's gun laws, resulting in the specific and particularized injuries suffered by the Government.

A U.S. District Judge Involved Has Suggested That, If Granted, The Lawsuit Could Prompt Similar Claims By Other Nations, Including A Hypothetical Russian Lawsuit Over The War In Ukraine. "As he questioned a lawyer for Mexico, Judge Saylor asked whether the nation's argument that gun companies are knowingly making weapons that can be easily converted to the automatic firearms favored by cartels would open the door to a wide range of suits by foreign governments. 'I want to understand the implications of your argument, whether there is any logical stopping point,' Judge Saylor said during the morning video conference hearing. 'If the concern is military-type weapons, if Ukrainians are using U.S. manufactured weapons — or Smith & Wesson revolvers — can the government of Russia come in and say: 'You have caused us harm, U.S. arms manufacturers, by manufacturing these guns and killing Russian soldiers, and we are suing for damages," the judge said. 'Why not? If your theory is right.'" (Chris Villani, "Mexico Suit Could Broaden Gun Co. Liability, Judge Hints," Law360, 4/12/22)

- **Judge Saylor Imagined A Number Of Hypothetical Lawsuits That Could Be Granted Standing If Mexico Can Get Around The Protections Of The *Lawful Commerce In Arms Act*.** "'U.S. District Judge F. Dennis Saylor IV considered arguments by Barrett Firearms Manufacturing Inc., Beretta USA Corp., Colt's Manufacturing Co. LLC, Glock Inc., Smith & Wesson Brands Inc. and others to toss the suit on the grounds that it is barred by a federal liability shield known as the Protection of Lawful Commerce in Arms Act. …The government of El Salvador could sue for MS-13 related costs, the government of Italy could sue to recover Mafia-related costs,' he said. 'What about terror organizations? Could the governments of Israel or Ireland sue over Hamas or the IRA if American firearms were used?'" (Chris Villani, "Mexico Suit Could Broaden Gun Co. Liability, Judge Hints," Law360, 4/12/22)

Lawyers Defending The Gun Manufacturers Argue That The Trafficking Of Guns Occurred Abroad And That The Majority Of Weapons Used For Violence In Mexico Are Not Trafficked American Arms. "Arguing for Smith & Wesson, Andrew Lelling of Jones Day said that responsibility for this type of conduct, which occurred abroad, cannot be imposed on the gunmakers. 'Under Mexico's theory, they would have to argue that Congress intended this robust statutory immunity to apply if an independent criminal actor shot somebody in San Diego, but not if he zips over the border and shoots somebody in Tijuana,' Lelling said. 'We would submit that is an absurd result.' The gun companies have also argued that the majority of weapons used for violent purposes in Mexico are not trafficked American arms." (Chris Villani, "Mexico Suit Could Broaden Gun Co. Liability, Judge Hints," Law360, 4/12/22)

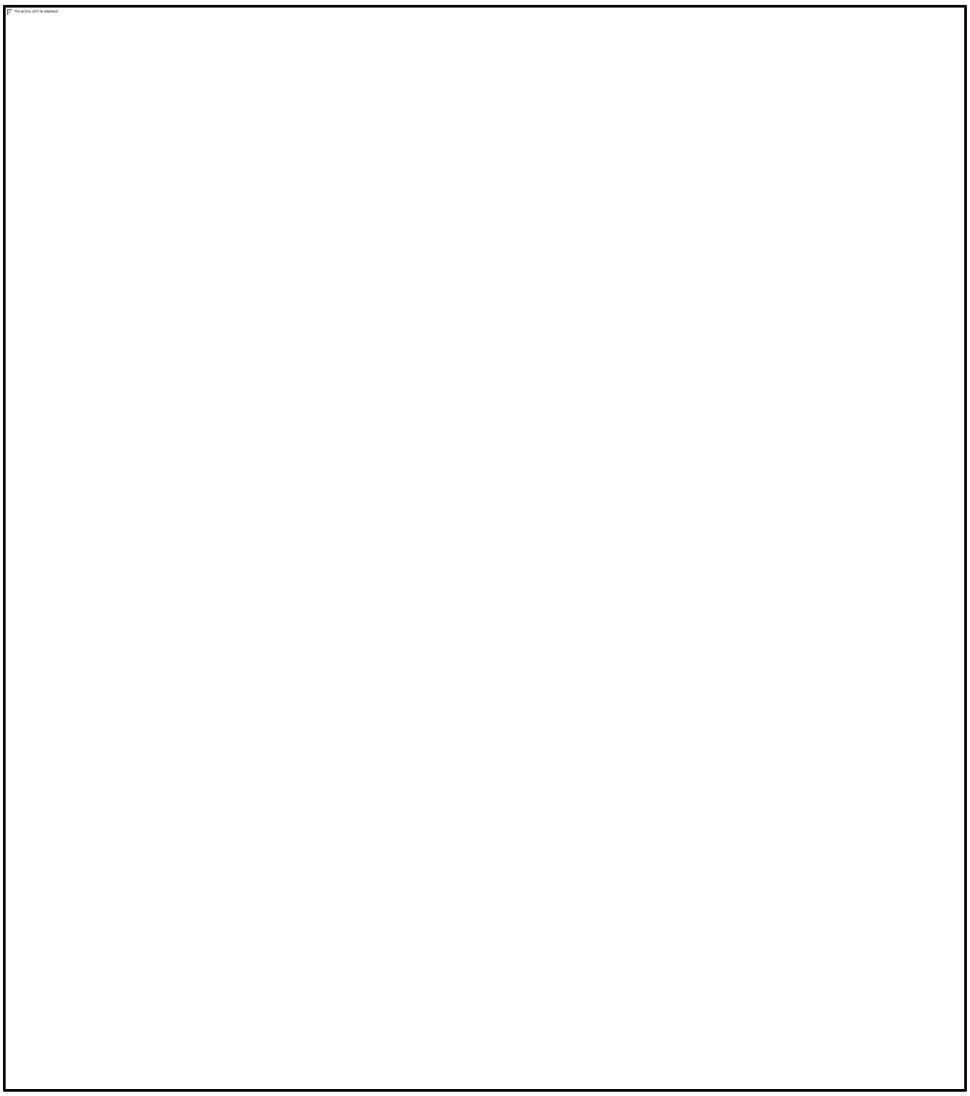
Chemicals – Monsanto PCB Cases

In March 2022, Los Angeles Sued Monsanto And Two Other Companies Alleging That They Knew For Decades That Chemicals They Used, PCBs, Were Toxic. "The city of Los Angeles has filed a lawsuit against agrochemical giant Monsanto and two other companies over PCB contamination in city waterways. In a statement on Friday, Los Angeles City Attorney Mike Feuer (D) said the lawsuit, filed on Friday in the L.A. County Superior Court, seeks to force Monsanto to abate its PCB pollution and reimburse the city for costs it has already incurred to address the pollution. 'It's time for Monsanto to clean up and pay up,' Feuer said in a statement. 'The health and environmental impacts of PCBs — impacts the City has been working hard to reduce in waters throughout L.A. — are just jaw dropping. We allege Monsanto knew decades ago that PCBs are toxic and inevitably would cause

widespread contamination. It's infuriating that Monsanto continued to manufacture and sell them — and, we allege, deceive the public about them.'"(Olafimihan Oshin, "Los Angeles Suing Monsanto Over PCB Contamination Of Waterways," *The Hill*, 3/8/22)

- **The Lawsuit Further Alleged That Monsanto Failed To Inform The Public Or The City About The Dangers Of PCBs.** "The lawsuit also alleges that Monsanto never told the city or the public of the environmental hazards of PCBs, which contaminated the city's stormwater and wastewater systems, surface waters, and other resources." (Olafimihan Oshin, "Los Angeles Suing Monsanto Over PCB Contamination Of Waterways," *The Hill*, 3/8/22)

Monsanto Was Accused Of Creating A "Vast Public Nuisance In Los Angeles That The City Has Been Addressing And Will Continue To Address And Clean Up For Years To Come." ("Complaint," *Los Angeles v. Monsanto*, Filed 3/4/22)



Judges Have Dismissed Claims Against Monsanto Over These Issues In The Past:

- **In *Town Of Westport v. Monsanto* A Judge Explained That Because Monsanto Did Not Have Control Of Chemicals Containing PCBs After They Were Sold, They Cannot Be Responsible For Any Downstream Use Of The Product.** "That same year, a federal judge hearing a case filed by the Town of Westport, Connecticut, dismissed the public nuisance claims. It explained that because Monsanto did not have control of the PCBs after it was sold, it cannot be responsible for any public nuisance caused by the downstream use or disposal of PCBs: 'Westport was in control of the instrumentality, the PCB-containing products, following purchase,' and 'because [Monsanto] did not have the power or authority to maintain or abate these PCB-containing building materials, they cannot be liable for a public nuisance.'" ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

- **In August 2016, Another Judge Threw Out Lawsuits Brought By San Jose, Oakland, And Berkeley For Lack Of Standing.** "In August 2016, a trial court dismissed lawsuits filed by San Jose, Oakland, and Berkeley for lack of standing. The judge there held the cities did not own the bodies of water at issue and, therefore, had no authority to bring the claims. As discussed above, the purpose of public nuisance law is to give governments the right to protect the public's right to use the land and water they control. The water here was not the cities' to protect. Within weeks, however, the California Legislature enacted laws aimed at laying the foundation for these suits, essentially giving cities the authority to sue over public nuisances on properties entrusted to them by the state." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/22)

Monsanto Has Also Settled A Variety Of Lawsuits Stemming From Its PCB Products In Recent Years. ("Complaint," *State Of Washington . Monsanto*, Filed 12/8/16; "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20; "Complaint," *District Of Columbia . Monsanto Et Al.*, Filed 5/7/20; Press Release, "AG Racine Announces Monsanto Will Pay $52 Million To district Over Toxic PCB Contamination," Office Of The Attorney General For The District Of Columbia, 7/17/20; "Complaint," *State Of New Hampshire v. Monsanto Et Al.*, Filed 12/27/20; Press Release, "New Hampshire Reaches $25 Million Settlement With Monsanto For PCB Contamination Of State Waters," New Hampshire Department Of Justice, 2/22/22; "Complaint," *State Of Ohio v. Monsanto Et Al.*, 3/5/18; "Ohio Reaches $80 Million Settlement With Monsanto Over PCB," Ohio Country Journal, 3/24/22)

Media Reports Have Noted That, Despite Monsanto's Successful Legal Tactics Up To This Point, The Evolving Legal Landscape May Lead To A Wave Of Lawsuits. "In a move that might give corporate America chills, a San Diego-led legal team is testing a strategy aimed at expanding companies' liability for cleaning up pollutants — even if those companies didn't directly spill or release the toxins. The attorneys' target is the St. Louis-based corporation Monsanto, which makes everything from pesticides to genetically modified seeds. In lawsuits filed on behalf of San Diego and a growing number of cities, they're seeking untold millions from Monsanto for remediation projects, including dredging of tainted sediment in San Diego Bay and efforts to address stormwater contamination in the city. Trial lawyers and corporate defense attorneys agree that if the litigation against Monsanto succeeds, it could embolden groups across the country to sue other chemical makers in a bid to recoup cleanup and public-health costs. … While Monsanto has achieved legal success by arguing it's not responsible for how others handled its PCB compounds, that strategy might not be enough to fend off the most recent lawsuits. Under California's evolving standards for public nuisance law, companies may be held liable for chemical contamination if they manufactured and marketed a product despite knowing its dangers." (Joshua Emerson Smith, "Monsanto Lawsuits Unnerve Corporate America," *Chicago Tribune*, 12/11/15)

Financial Awards Failing To Help Victims

Tobacco

According To A Report From The Campaign For Tobacco-Free Kids, In Fiscal Year 2022, States Will Spend Just 2.7% Of The $27 Billion They Get From The Tobacco Settlement And Taxes On Tobacco On Programs To Prevent Kids From Smoking And Helping Addicted Smokers Quit. "In the current budget year, Fiscal Year 2022, the states will collect $27 billion from the settlement and taxes. But they will spend just 2.7% of it – $718.5 million – on programs to prevent kids from smoking and help smokers quit." ("A State-By-State Look At The 1998 Tobacco Settlement 23 Years Later," Campaign For Tobacco-Free Kids)

In 2007, The CDC Recommended States Spend Just 14% Of The Money From Tobacco Settlements On Anti-Smoking Programs. Despite The Low Recommendations, Numerous States Still Failed To Meet The CDC's Low Spending Goals On Anti-Smoking Efforts. "To help guide state governments, in 2007 the Centers for Disease Control and Prevention recommended that states reinvest 14 percent of the money from the settlement and tobacco taxes in anti-smoking programs. But most state governments have decided to prioritize other things: Colorado has spent tens of millions of its share to support a literacy program, while Kentucky has invested half of its money in agricultural programs." ("15 Years Later, Where Did All The Cigarette Money Go?" NPR, 10/13/13)

- **Not A Single State Currently Funds Tobacco Prevention And Cessation Programs At Levels Recommended By The CDC, Despite Receiving Huge Sums Of Money From The Tobacco Settlement Deal.** "Not a single state currently funds tobacco prevention programs at the level recommended by the CDC." ("A State-By-State Look At The 1998 Tobacco Settlement 23 Years Later," Campaign For Tobacco-Free Kids)

- **A 2016 Report From The American Lung Association Found 40 States And The District Of Columbia Failed To Spend Even 50% Of The CDC-Recommended Levels On Tobacco Prevention Programs.** "According to the 'State of Tobacco Control 2016' report, 40 states and the District of Columbia got a failing grade for spending less than 50 percent of what the CDC recommends should be spent on tobacco prevention programs in its Best Practices. That's over 80 percent of states that failed the test!" ("Who Is Really Benefiting From The Tobacco Settlement Money?" American Lung Association, 2/3/16)

- **In The 2015-2016 Fiscal Year, States Spent Close To $470 Million On Tobacco Prevention And Cessation Programs, Amounting To Less Than 2 Cents Of Every Dollar That States Receive Every Year From Tobacco Settlement Payments And Tobacco Taxes.** "In total, states are spending close to $470 million on tobacco prevention and cessation programs in the 2015-2016 fiscal year. However, this is less than 2 cents of every dollar or close to $26 billion total that states receive from tobacco settlement payments and tobacco taxes each and every year." ("Who Is Really Benefiting From The Tobacco Settlement Money?" American Lung Association, 2/3/16)

In 2000, 16.7% Of The Tobacco Settlement Money Spent By States Went To "Other Uses," Representing The Second Largest Use Category For Spending After Health Care Services. More Money Went To "Other Uses" Than Went To Tobacco Prevention Programs. "In 2000, legislators introduced more than 558 bills and enacted 91 relating to the allocation of the funds. 41 states have earmarked $3.5 billion, or 43.2 percent of the total, on health care services, the top recipient for settlement money. The second-leading category is 'other uses,' with $1.4 billion, or 16.7 percent. Tobacco prevention programs are third, with 35 states planning to spend $754 million, or 9.2 percent, in that category. Tobacco growers are slated to receive the fourth highest amount. Farmers in seven states will share $537 million, or 6.6 percent of the total." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **The City Of Los Angeles Attempted To Use The Settlement Money To Pay For Lawsuits Related To The City's Police Corruption Scandal.** "In Los Angeles, for example, a city in the midst of its worst police corruption scandal, Mayor Richard Riordan unsuccessfully lobbied to set aside the citys share to pay for lawsuits." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **Illinois Dedicated $280 Million Of The Settlement Funds For Property-Tax Relief.** "In Illinois, $280 million is being directed to property-tax relief." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **Connecticut Used A Majority Of Its Share Of The Settlement In 2000 To Freeze Tuition Costs At The University Of Connecticut And To Provide Local Property Tax Relief.** "Connecticut dedicated the majority of its share to fund a freeze on tuition at the University of Connecticut and to local property tax relief." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **New York State Spent $250 Million Of Its Tobacco Settlement Money For Debt Reduction.** "New York is spending $250 million for debt reduction." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **In 2000, North Dakota Ranked Third In The Nation In Youth Smoking, But Dedicated 45% Of Their Funds To A Water Resources Trust Fund, 45% For Education, And 10% For Public Health Programs.** "In North Dakota, a state that ranks third in the nation in youth smoking, 45 percent is being spent on a Water Resources Trust Fund, 45 percent for education and 10 percent for public health programs." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **In 2000, Kentucky Led The Nation In Youth Smoking Rates And In Smoking-Related Deaths, But The State Funded Tobacco Prevention Programs At Less Than 25% Of CDC Recommendations.** "Kentucky leads the nation in youth smoking rates, is second in adult smoking rates and leads in smoking-related deaths. Thirty percent of adults and 47 percent of children in grades 9 through 12 are smokers, according to the Centers for Disease Control and Prevention. Despite those alarming numbers, the state is funding tobacco prevention programs at less than 25 percent of what the CDC recommends." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **The Article Noted That Iowa Spent Nearly $55 Million Of The Settlement To Pay Off Bonds That Financed Projects Including Renovations To The State Capitol.** "Iowa spent almost $55 million to pay off bonds that finance projects including state capitol renovation and prison construction." ("Was 1998 Tobacco Pact A Bad Deal For Some U.S. States?" The Center For Public Integrity, 4/11/11)

The Tobacco Settlement Did Nothing To Stop Manufactures From Raising Prices To Pay For The Settlement, Which Manufacturers Quickly Did. "Nothing in the settlement precludes manufacturers from raising prices to pay for the settlement costs. The settlement was signed Nov. 23, 1998. A day later, Philip Morris, the nations biggest cigarette maker, launched the largest cigarette price increase in history, an average of 45 cents per pack wholesale. The No. 2 manufacturer, R.J. Reynolds Tobacco Co., quickly followed. Nine months later, prices rose another 18 cents a pack. Over the past two years, the price of a pack of cigarettes has gone up 44 percent." (John Dunbar, "Tobacco Settlement Helps Everyone But Smokers," The Center For Public Integrity, 12/8/00)

- **A 2011 Article From The Center For Public Integrity Found That In Many States, Smokers Were Paying More, Due To Higher Prices, Than The Settlement Returned To Their State.** "Under the settlement's complicated distribution system, smokers in many states, including Georgia, Kentucky, North Carolina, and Virginia, are paying $100 million more for tobacco due to higher prices than the settlement returns to their state coffers. Many states would be better off if they had simply levied a new tax on the cigarette companies, Bulow said." ("Was 1998 Tobacco Pact A Bad Deal For Some U.S. States?" The Center For Public Integrity, 4/11/11)

- **Some States Like New York And California Got More Settlement Money Than Their Smokers Paid For Cigarettes.** "Other states get more than their smokers put in. In 2004, for example, California raked in $793 million from the settlement, but its smokers paid $509 million for their cigarettes. New York state also received $793 million that year, while its citizens paid $281 million." ("Was 1998 Tobacco Pact A Bad Deal For Some U.S. States?" The Center For Public Integrity, 4/11/11)

In 1998, *The New York Times* Noted That Dozens Of Trial Lawyers Would Become Multimillionaires As A Result Of The Tobacco Lawsuits. "In coming years, dozens of plaintiffs' lawyers nationwide – all hired to represent states in claims to recover health care costs from cigarette makers – will become multimillionaires. And by all accounts, Mr. Rice and his firm, Ness, Motley, Loadholt, Richardson & Poole, will be the biggest winners of all. Out of a total pie estimated at anywhere from $10 billion to $30 billion, the firm is guaranteed $1 billion – just for starters. Mr. Rice's cut will easily be in the tens of millions of dollars." (Barry Meier, "The Spoils Of Tobacco Wars; Big Settlement Puts Many Lawyers In The Path Of A Windfall," *The New York Times*, 12/22/98)

- **Joe Rice And His Law Firm Were Set To Collect About $1 Billion From Settlements In Florida, Texas, And Mississippi Alone.** "The firm is already set to get a share of the money paid to lawyers for 9 of the 12 states that recently resolved fee claims through either arbitration or negotiation, including the $8.2 billion that went on Dec. 11 to lawyers who represented Florida, Texas and Mississippi. From those three states alone, Mr. Rice and his firm will collect about $1 billion in coming years." (Barry Meier, "The Spoils Of Tobacco Wars; Big Settlement Puts Many Lawyers In The Path Of A Windfall," *The New York Times*, 12/22/98)

North Carolina And South Carolina Both Used Settlement Money From The Tobacco Case To Actually Aid The Tobacco Industry. "A couple of states have even in the past used it to benefit the tobacco industry. For instance, South Carolina gave 15 percent of settlement funds to tobacco farmers affected by the drop in prices for their crop**, while North Carolina used 75 percent of its settlement funds for tobacco production. Some of those North Carolina funds went to private tobacco producers, covering tobacco-curing equipment, a tobacco auction hall, video production for a tobacco museum and plumbing for a tobacco processing plant." ("Who Is Really Benefiting From The Tobacco Settlement Money?" American Lung Association, 2/3/16)

Opioids

As Part Of The Settlement With Johnson & Johnson, AmerisourceBergen, Cardinal Health, And McKesson, Nearly $2 Billion Was Set Aside For Private Lawyers. "The deal calls for the drugmaker Johnson & Johnson to pay up to $5 billion, in addition to billions more from the major national drug distribution companies. AmerisourceBergen and Cardinal Health are each to contribute $6.4 billion. McKesson is to pay $7.9 billion. Nearly $2 billion of the funds would be reserved for private lawyers who were hired by governments to work on their suits against the industry. State attorney general offices could also keep some of the money." (Ben Finley & Geoff Mulvihill, "Experts: Spend Opioid Settlement Funds On Fighting Opioids," *The Associated Press*, 7/21/21)

- **At $960 Million, The Common Benefit Fees Represent The Largest Share Of Attorney Compensation In The Settlement, Most Of Which Goes Towards The Plaintiff's Executive Committee.** "At $960 million, the common benefit fees represent the largest share of attorney compensation in the opioid deal, most of which is anticipated to go toward the plaintiffs' executive committee and other lawyers appointed in the multidistrict litigation. Those lawyers also spent $100 million on the opioid lawsuits." (Amanda Bronstad, "Who Gets The $2.3 Billion In Legal Fees In The Global Opioid Deal?" Law.com, 3/11/22)

- **Another $50 Million In Costs Were Incurred By The Plaintiffs' Executive Committee, Including Expenses Such As Retaining Special Masters And Maintaining Documents.** "Another $50 million in costs incurred by the plaintiffs' executive committee includes expenses such as retaining special masters and maintaining documents and the ARCOS database, which detailed the distribution of opiates to each city and county." (Amanda Bronstad, "Who Gets The $2.3 Billion In Legal Fees In The Global Opioid Deal?" Law.com, 3/11/22)

- **Some Parties Expressed Outrage That The Executive Committee Was Seeking Financial Benefit For A Service They Say The Committee Promised Would Be Free Of Charge.** "The plaintiffs' executive committee paid millions of dollars to obtain the ARCOS database from the U.S. Department of Justice, then provided it to other governments to use in their cases. In challenging the assessment imposed against it, the city of Baltimore argued that the plaintiffs' executive committee had assured its lawyers that the ARCOS database would be 'free of charge.' 'It was not complicated work,' Ard wrote, 'and if the city had known that the PEC might charge tens of millions of dollars for it, the city would have done its own work during the two years it has had the data.'" (Amanda Bronstad, "Who Gets The $2.3 Billion In Legal Fees In The Global Opioid Deal?" Law.com, 3/11/22)

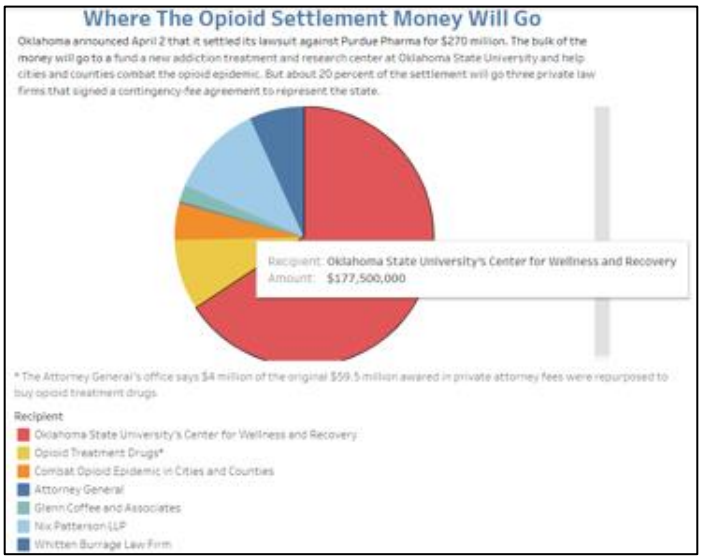
In Massachusetts, Money From A Settlement With The Sackler Family Will Go To A Trust Fund And Be Used, As Required By State Law, For The Prevention And Treatment Of Opioid Disorders. The Fund Must Supplement Existing Funding, Not Replace It. "Massachusetts is set to receive about $90 million as a result of a federal settlement finalized this week with the Sackler family over the role of their company — Purdue Pharma — in the national opioid abuse epidemic. The state legislature passed a law in 2020 setting up a trust fund for settlements like this. The law also requires those funds to be used for prevention and treatment of opioid disorders and says they must supplement existing funding for those purposes, rather than replace it. The law also established an advisory council to help determine how the money should be spent." (Craig Lemoult, "How Will $90 Million Of Sackler Family Opioid Settlement Money Be Spent In Mass?" WGBH, 9/3/21)

In Johnson & Johnson's $297 Million Opioid Settlement With Texas, 70% Will Go To An Opioid Abatement Fund Managed By The Texas Opioid Council. "As part of the settlement agreement and upon its execution, the parties will form the Texas Opioid Council (Council) to establish the framework that ensures the funds recovered by Texas (through the joint actions of the Attorney General and the state's political subdivisions) are allocated fairly and spent to remediate the opioid crisis in Texas, using efficient and cost-effective methods that are directed to the hardest hit regions in Texas while also ensuring that all Texans benefit from prevention and recovery efforts. The Council will be responsible for the processes and procedures governing the spending of the funds held in the Texas Abatement Fund, which will be approximately 70% of all funds obtained through settlement and/or litigation of the claims asserted by the State and its subdivisions in the investigations and litigation related to the manufacturing, marketing, distribution, and sale of opioids and related pharmaceuticals." (Press Release, "Janssen Texas State-Wide Opioid Settlement Agreement And Settlement Term Sheet," Texas Attorney General); Note: See A Breakdown Of The Money Owed To Texas By Janson In Section III HERE)

Ohio's Nonprofit Tasked With Distributing And Overseeing $440 Million From The Multidistrict Opioid Settlement Money- Called "OneOhio" – Is Being Sued Over Transparency Concerns. "The nonprofit tasked with distributing $440 million in opioid settlement money isn't following public records and meeting laws, according to lawsuits filed Monday. Lawsuits filed against the group, the OneOhio Recovery Foundation, accuse the nonprofit of "shady maneuvering" by classifying itself as a private nonprofit organization to avoid following open records law." (Titus Wu, "OneOhio, Nonprofit In Charge Of State Opioid Money, Sued Over Transparency," *The Columbus Dispatch*, 8/9/22)

- **OneOhio Was Set Up As A Private Foundation With The Hope Of Protecting The Settlement Money From Other State Budgetary Interests Which Has Happened With Other Settlements.** "The settlement calls for OneOhio to be a private foundation, with the idea that its money could not be taken away from the state government for other purposes. That had happened with the state's tobacco settlement money." (Titus Wu, "OneOhio, Nonprofit In Charge Of State Opioid Money, Sued Over Transparency," *The Columbus Dispatch*, 8/9/22)

In Oklahoma's Settlement With Purdue Pharma, The $270 Million Award Was Broken Up Seven Ways With $177.5 Million To Oklahoma State University's Center For Wellness And Recovery, $24 Million For Opioid Treatment Drugs, $12.5 Million To Combat Opioid Epidemic In Cities And Counties, $500,000 To The Attorney General Of Oklahoma, And $55.5 Million To Law Firms Of Glenn Coffee, Nick Patterson And Whitten Burrage. (Paul Monies & Trevor Brown, "Working In Background, Lawyer Reaps Fees In Opioid Case," Oklahoma Watch, 10/28/19)



- **Attorneys Will Receive $55.5 Million, Or 20% Of The Total Settlement, In Contingency Fees.** "About 20 percent of the settlement will go to three private law firms that signed a contingency-fee agreement to represent the state…Those firms will collect 90 percent of the $55.5 million in contingency fees (after a $4 million reduction to help pay for opioid addiction treatment)." (Paul Monies & Trevor Brown, "Working In Background, Lawyer Reaps Fees In Opioid Case," Oklahoma Watch, 10/28/19)

Polychlorinated Biphenyls (PCBs)

The Majority Of Funds From Washington State's $95 Million Settlement With Monsanto Went To The State's General Fund, And The Legislature Will Determine How The Funds Are Spent. "After three years of intense litigation — including defeating multiple efforts by Monsanto to have the case dismissed and moved to federal court — Monsanto will pay $95 million as compensation for damages PCBs have inflicted on the state's natural resources, including the economic impact to the state and its residents. The majority of the payment will go to the state General Fund. Ferguson is urging the Legislature to use these funds as the lawsuit intended: to help clean our water and protect orcas and salmon in the wake of decades of pervasive PCB contamination across the state." (Press Release, "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20)

- **$60 Million Will Go To The State's General Fund.** "At least $60 million will go to the state General Fund." (Press Release, "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20)

- **Rather Than Use The Settlement Money To Remedy The Harm That Resulted In The Lawsuit, At Least $10 Million Will Go To The Attorney General's Office Through The Environmental Protection Division.** "Ferguson will reinvest $10 million to support the office's environmental work on behalf of Washingtonians through the Environmental Protection Division." (Press Release, "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20)

- **Another $2 Million Will Be Spent Covering The AG's Legal Costs In Bringing The Case.** "About $2 million will cover the Office of the Attorney General's legal costs related to bringing the case." (Press Release, "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20)

- **The AG's Office Worked With The Law Firms Baron & Budd And Harrigan, Leyh, Farmer, & Thomsen, And Their Lawyers Would Receive About $21.25 Million Of The Settlement.** "In order to pursue this complex case, the office partnered with outside law firms Baron & Budd and Harrigan Leyh Farmer & Thomsen. … The outside firms shouldered significant costs in bringing the case, and will receive approximately $21.25 million of the settlement." (Press Release, "Monsanto To Pay Record $95 Million To End Ferguson's Lawsuit Over PCBs," Washington State Office Of The Attorney General, 6/24/20)

Overview Of Trial Lawyer Fee Structure

The Primary Way Trial Attorneys Profit From Litigation Is Through Contingency Fees – A Fee Given To The Firm Or Attorney If The Lawsuit Results In A Financial Award. "A client pays a contingent fee to a lawyer only if the lawyer handles a case successfully. Lawyers and clients use this arrangement only in cases where money is being claimed—most often in cases involving personal injury or workers' compensation." ("Fees And Expenses," American Bar Association, 12/3/20)

According To The American Bar Association, A Client Can Expect To Pay As Much As 33% To 40% Of A Recovery To Their Attorney In Litigation. "In a contingent fee arrangement, the lawyer agrees to accept a fixed percentage (often one-third to 40 percent) of the recovery, which is the amount finally paid to the client. If you win the case, the lawyer's fee comes out of the money awarded to you. If you lose, neither you nor the lawyer will get any money, but you will not be required to pay your attorney for the work done on the case." ("Fees And Expenses," American Bar Association, 12/3/20)

- **While Contingency Fees Are A Commonly Accepted Form Of Legal Payment, They Became Widely Used In Trial Law In The 1990s.** "The dynamics for these lawsuits fundamentally changed in the 1990s. Private lawyers realized that they can get lifechanging wealth through contingency fees if these types of cases succeed. They signed up local governments to sue for a variety of environmental and social issues associated with the use, misuse, or disposal of products, from lead poisoning to gun violence. They also leveraged their ability to bring the same cases in multiple jurisdictions in hopes of finding at least one judge to let a case go forward. All they would need is one crack in the dam to create huge contingency fees. These cases did not argue that products were defective, but that manufacturers should have to pay to remediate harms. Full stop. No wrongdoing, no fault, and no causation needed." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort'," American Tort Reform Association, 3/1/20)

- **Some Municipalities Negotiate A Declining Structure Of Fees, Where The Contingency Fee Received By The Firm Is Reduced As The Award Increases.** (See For Instance: "Agreement For Professional Legal Services," City And County Of San Francisco, 11/20/18)

Climate Change Cases

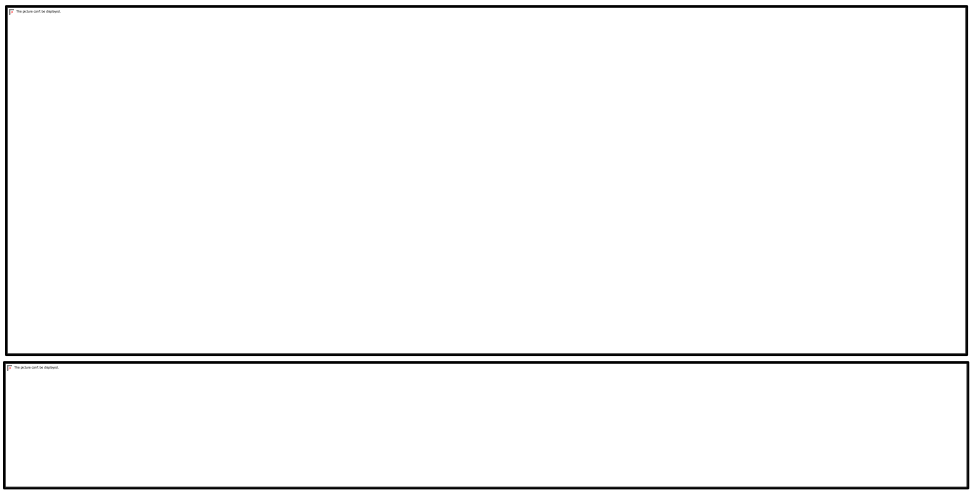
Certain Government Contingency Fee Agreements In Climate Change Cases Have Been Made Public. "In the climate change cases, only some governments have publicly disclosed their contingency fee agreements with the plaintiffs' firms. It's become clear that, as with tobacco litigation, the opportunity for the lawyers to translate this litigation into personal wealth far outpaces any risk or reasonable fee that would normally be associated with traditional contingency fee litigation. … Many of the other governments have refused to disclose their fee arrangements, the process used to select counsel or determine an appropriate fee. This raises serious transparency concerns because these firms are ostensibly representing the public. For example, New York City hired Hagens Berman to wage its climate litigation, but that fee arrangement remains undisclosed. The same issue exists with Seattle." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **According To The American Tort Reform Association, Contingency Fee Arrangements On Climate Lawsuits Can Go "All The Way Up To 25% - 33%" On Certain Amounts Of Recovery.** "To date, seven state AGs and more than a dozen municipalities from Hoboken to Honolulu have collectively filed more than 20 climate change lawsuits against oil companies… Most of the lawsuits brought by state AGs and municipalities have been filed by contingent fee plaintiffs' firms alleging state-based torts such as public nuisance violations, plus consumer protection claims, and failure to warn. The use of contingent fee counsel to litigate these cases is but one reason to be skeptical of the motives behind the litigation… Contingent fee counsel will undoubtedly be the big winner in any potential recovery in these lawsuits, with contingent fee arrangements in some of these cases going all the way up to 25%-33% on certain amounts of recovery." (Lauren Sheets Jarrell, "Attorneys General For Hire: A Disturbing Usurpation Of Traditional State Policies By Private Political Activists," American Tort Reform Association, 6/15/22)

In 2017, Sher Edling LLP Filed A Climate Lawsuit With The City And County Of San Francisco, Asserting Public Nuisance Claims Against BP. ("Climate Change Litigation Experience," Sher Edling LLP, 9/1/20)

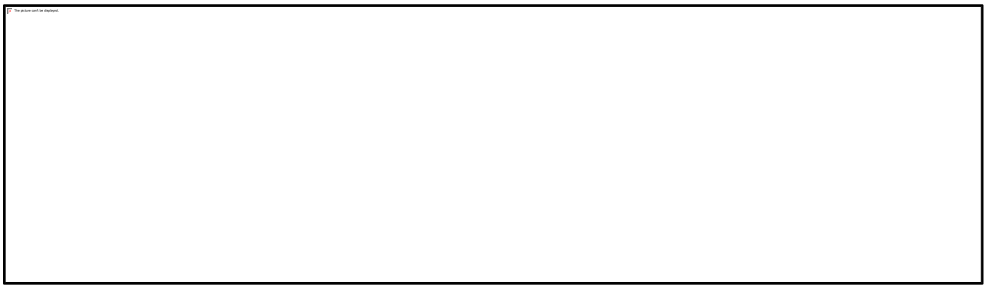
> *City and County of San Francisco v. BP, P.L.C., et al.*, No. 3:17-cv-6012, (N.D. Cal.) (filed Sept. 19, 2017), *appeal docketed*, No. 18-16663 (9th Cir. Sept. 4, 2018); and *The People of the State of California, acting by and through the Oakland City Attorney v. BP, P.L.C., et al.*, No. 3:17-cv-6011 (N.D. Cal.) (filed Sept. 19, 2017), *appeal docketed*, No. 18-16663 (9th Cir. Sept. 4, 2018). These cases assert a claim for public nuisance against members of the fossil fuel industry for injuries arising out of global warming and sea level rise. The cases seek abatement.

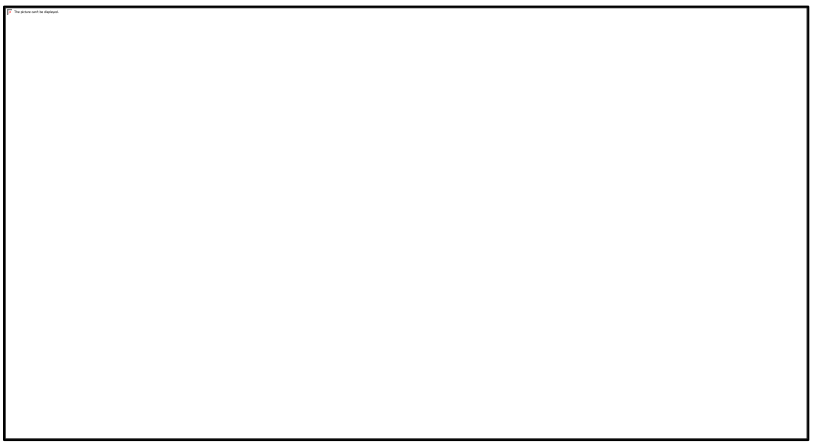
- **Under The Agreement With San Francisco, Sher Edling Would Receive 25% Of Net Recovery Less Than $100 Million, And Up To 7.5% Of Net Recovery Greater Than $150 Million.** ("Agreement For Professional Legal Services," City And County Of San Francisco, 11/20/18)



In 2020, The City Of Hoboken (NJ) Filed A Climate Lawsuit Against Various Oil Companies, Asserting Public Nuisance Claims. "Hoboken, which sits across the Hudson River from lower Manhattan, is asserting nuisance, negligence and trespass claims against the Big Oil quintet of ExxonMobil Corp., BP PLC, Royal Dutch Shell PLC, Chevron Corp. and ConocoPhillips Co., as well as Phillips 66 Corp. … Hoboken's lawsuit contains both sets of legal claims that have been alleged by dozens of states and municipalities against fossil fuel companies in state court: violations of state nuisance laws and violations of state consumer protection laws." (Keith Goldberg, "NJ City Latest To Launch Climate Suit Against Big Oil," Law360, 9/2/20)

- **Under The Agreement, The Firm Would Receive Up To 33.33% On The First $750,000 Recovered, With The Percentage Declining As The Award Amount Increases.** (William Allison, "Key Documents Raise Troubling Questions About Money Behind Hoboken Climate Lawsuit," Energy InDepth, 9/3/20)

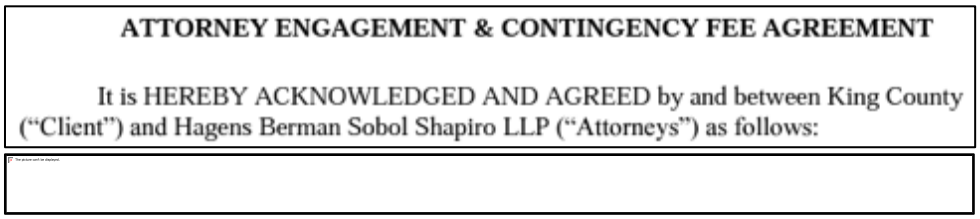




In 2021, Sher Edling Stood To Gain 16% To 25% Of Recovery In A Public Nuisance Climate Lawsuit With The City Of Annapolis (MD). "The City of Annapolis is suing 26 oil and gas companies for what it calls the costs and consequences of climate change. The city filed the lawsuit Monday in Anne Arundel County Circuit Court. It names some of the biggest fossil fuel companies, including ExxonMobil, Chevron, BP and Shell. Similar lawsuits have begun to pop up across the country. Annapolis is the 25th state or local government to file such a lawsuit, the city said. The city will argue the companies violated the Maryland Consumer Protection Act and five other actions, including public and private nuisance, negligence, failure to warn and trespass, according to a statement released by Mayor Gavin Buckley's office Tuesday morning. … The city has retained Sher Edling LLP as outside counsel on a sliding contingency fee that ranges from 16% to 25% based on how much the city is awarded if they are successful. The percentage drops the larger the payout is, said City Attorney Mike Lyles." (Brooks DuBose, "Annapolis Sues 26 Oil And Gas Companies For Their Role In Contributing To Climate Change," *The Baltimore Sun*, 2/23/21)

Climate Change Lawsuits In San Francisco And Oakland Entitled Lawyers To 23.5% Of Winnings. "Class action firm Hagens Berman Sobol Shapiro LLP is handling lawsuits for San Francisco, Oakland and New York City, on a contingency fee basis. Cities pay law firms no upfront cost in exchange for a percentage of any winnings or settlement. … Hagens Berman stands to earn millions, possibly billions, of dollars in contingency fees depending on the total winnings, should San Francisco, Oakland or New York City win their global warming suits against oil companies. All told, these three cities are asking oil companies to hand over many billions of dollars. … The firm is entitled to 23.5 percent of any winnings from its cases with San Francisco and Oakland, according to previous reports. NYC Law Department spokesman Nicholas Paolucci also confirmed Hagens Berman was working on a contingency fee basis."(Michael Bastasch, "Trial Lawyers Handling Cities' Global Warming Lawsuits Stand To Make Billions," The Daily Caller, 3/11/18)

In 2018, King County (WA) Agreed To A 17% Contingency Fee With Hagens Berman Regarding Their Public Nuisance Climate Lawsuit. "The law firm pushing cities and counties to sue fossil fuel companies over climate change has apparently offered a discount to snag a client in its own backyard. Hagens Berman is representing King County, WA, in the latest case that accuses major energy companies of creating a 'public nuisance' by causing climate change-related changes to the environment like rising sea levels. … The firm's agreement with King County, though, stipulates only a 17% contingency fee." (John O'Brien, "Hagens Berman Reduces Fee For Latest Government Client To Sue Over Climate Change," *Forbes*, 5/11/18)



ATTORNEY ENGAGEMENT & CONTINGENCY FEE AGREEMENT

It is HEREBY ACKNOWLEDGED AND AGREED by and between King County ("Client") and Hagens Berman Sobol Shapiro LLP ("Attorneys") as follows:

("Attorney Engagement & Contingency Fee Agreement," King County, WA, 2018)

In 2018, The City Of Boulder (CO) Agreed To A Contingency Fee Of Up To 20% For The Hannon Law Firm In Its Climate Lawsuit Against Suncor And ExxonMobil. "On April 17, 2018, the Colorado communities of Boulder County, San Miguel County, and the City of Boulder — with legal support from EarthRights International, the Hannon Law Firm, and Niskanen Center — filed a lawsuit against Suncor and ExxonMobil, two oil companies with significant responsibility for climate change. The communities are demanding that the companies pay their fair share of the costs associated with climate change impacts so that the costs do not fall disproportionately on taxpayers… These attorneys will be assisted by private law firms who will need to put in a substantial amount of work in order to win the case. The private firms have agreed to be paid only if they win the case, in which case they would receive up to 20 percent of the award." ("Communities File Lawsuit Against Oil Giants For Climate Change Costs," Boulder County))

Opioid Cases

In 2021, Private Lawyers Stood To Gain Over $2 Billion In A $26 Billion Opioids Settlement With AmerisourceBergen, Cardinal Health, McKesson, And Johnson & Johnson. "After nearly two years of wrangling, the country's three major drug distributors and a pharmaceutical giant have reached a $26 billion deal with states that would release some of the biggest companies in the industry from all civil liability in the opioid epidemic, a decades-long public health crisis that has killed hundreds of thousands of Americans. … The four companies that would be bound by the settlement — Johnson & Johnson and the drug distributors Cardinal Health, AmerisourceBergen and McKesson — are widely seen as having some of the deepest pockets among the corporate opioid defendants and this agreement was eagerly anticipated as a major pillar in the national litigation. … More than $2 billion of the $26 billion agreement would not go to states and localities at all. It would be used to pay fees and costs for the private lawyers representing thousands of counties and municipalities, as well as some states, in the opioid litigation. Although many states are represented by their own salaried lawyers, others needed to rely on outside counsel to mount such a costly, all-consuming litigation, as did most cities and counties." (Jan Hoffman, "Drug Distributors And J.&J. Reach $26 Billion Deal To End Opioid Lawsuits," *The New York Times*, 7/21/21)

- **Out Of The $26 Billion Settlement, $2.3 Billion, Or Around 8.8%, Was Reserved For Attorney Fees. "**The Settlement Agreements provide for total payments of $26.0 Billion, assuming full participation by all States and political subdivisions (payments may be reduced if States and political subdivisions opt out of the Agreements). Of this amount, $2.3 Billion, or about 8.8%, is reserved for payment of attorney fees." (*In Re: National Prescription Opiate Litigation* (1:17md2804), Indiana Attorney General)

- **$1.6 Billion Is Slated To Be Placed Into An Attorney Fee Fund For Privately-Retained Counsel. Of This Amount, $960 Million, Or 60%, Pays For Common Benefit Fees, And $640 Million, Or 40%, Would Pay Contingency Fees. "**The $1.6 Billion is divided into a sub-fund of 60% ($960 Million) to pay for common benefit fees and 40% ($640 Million) to pay for contingent fees otherwise owed to IRPAs by participating subdivisions." (*In Re: National Prescription Opiate Litigation* (1:17md2804), Indiana Attorney General)

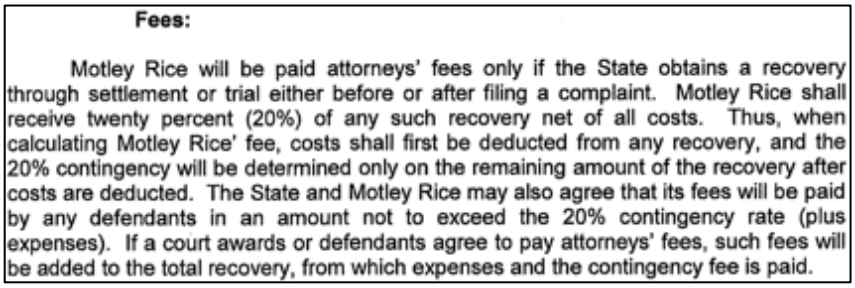
- **$350 Million Was Reserved For Reimbursement And Payment Of Attorney Fees Incurred By State Attorneys General For Outside Counsel.** "Another $350 Million is reserved for reimbursement and payment of attorney fees incurred by State Attorneys General for outside-counsel…" (*In Re: National Prescription Opiate Litigation* (1:17md2804), Indiana Attorney General)

- **Another $350 Million Was Set Aside For The Reimbursement Of Costs Incurred By State Attorneys General For In-House Counsel.** "$350 Million is also reserved for reimbursement of attorney fees and costs incurred by State Attorneys General for in-house-counsel. Various other amounts are designated for payment of litigation costs, administrative costs, and so on." (*In Re: National Prescription Opiate Litigation* (1:17md2804), Indiana Attorney General)

In Oklahoma's Lawsuit Against Purdue Pharma, Trial Lawyers Were Set To Collect $55.5 Million In Contingency Fees Before The State's Supreme Court Overturned The Decision. "Most of the courtroom appearances, briefs and motions were made by assistant attorney generals or lawyers for the other two outside law firms, Texas-based Nix Patterson LLP and Oklahoma City-based Whitten Burrage. Those firms will collect 90 percent of the $55.5 million in contingency fees (after a $4 million reduction to help pay for opioid addiction treatment)." (Paul Monies & Trevor Brown, "Working In Background, Lawyer Reaps Fees In Opioid Case," Oklahoma Watch, 10/28/19)

In A Settlement With The State Of Texas Regarding Opioids, Janssen Pharmaceuticals Agreed To Pay $19.3 Million, Or 6.3% Of Their Maximum Payment, Into A Contingency Fee Fund And Common Benefit Fund. "Janssen shall pay $19,363,740.68, representing 6.2932157196% of Janssen's maximum payment into the Contingency Fee Fund and Common Benefit Fund under the Global Settlement ($307,692,307.73), into the attorney's fee sub-fund within the Texas Qualified Settlement Fund, to be available to reimburse Participating Subdivision attorney fees, upon application by eligible counsel who waive their contingency fees. If the Global Settlement takes effect, counsel for Participating Subdivisions shall make best efforts to apply for and recover maximum awardable attorney fees from Janssen's maximum payment into the Global Settlement Contingency Fee Fund and Global Settlement Common Benefit Fund, and shall direct the administrators of such Funds to rebate any and all payments such counsel would have received (the 'Global Settlement Subdivision Fee Award') to Janssen until Janssen has been repaid the full $19,363,740.68. If the Global Settlement Subdivision Fee Award is less than $14,522,805.51, Participating Subdivisions shall repay Janssen from the attorney fee funds allocated by the Texas Intrastate Term Sheet, annexed hereto as Exhibit B, until Janssen has been repaid $14,522,805.51 under this paragraph. For the avoidance of doubt, in no event shall Janssen recoup less than $14,522,805.51." ("Janssen Texas State-Wide Opioid Settlement Agreement And Settlement Term Sheet," Texas Attorney General))

The State Of Alaska Agreed To Pay Motley Rice A Contingency Fee Of 20% For Any Recovery The State Received In Its Opioid Litigation. ("Contingency Fee Agreement State Of Alaska Opioid Investigation," State of Alaska, 7/6/2017)



Fees:

Motley Rice will be paid attorneys' fees only if the State obtains a recovery through settlement or trial either before or after filing a complaint. Motley Rice shall receive twenty percent (20%) of any such recovery net of all costs. Thus, when calculating Motley Rice' fee, costs shall first be deducted from any recovery, and the 20% contingency will be determined only on the remaining amount of the recovery after costs are deducted. The State and Motley Rice may also agree that its fees will be paid by any defendants in an amount not to exceed the 20% contingency rate (plus expenses). If a court awards or defendants agree to pay attorneys' fees, such fees will be added to the total recovery, from which expenses and the contingency fee is paid.

The State Of Nevada Agreed To Pay Eglet Prince A Contingency Fee In An Opioid Case Anywhere From 19% To 21.5%, With Some Limits, Meaning The Firm Could Potentially Pocket Up To $350 Million. (Riley Snyder, "AG's Former Employer Could Earn Up To $350 Million From Opioid Lawsuit," *The Nevada Independent*, 5/6/19)

Tobacco Cases

As Of 2016, The "Big Five" Lawyers Who Settled The State Of Texas' Case Against Big Tobacco Companies In 1998 Continue To Receive About $120 Million Annually. "Twenty years ago, then-Texas Attorney General Dan Morales filed a federal lawsuit accusing the tobacco industry of racketeering and fraud. He said the case would make Big Tobacco change how it did business, force the cigarette companies to make less dangerous products and stop the industry from marketing to teenagers… In January 1998, the Texas lawsuit settled on the eve of trial for a record $15.3 billion. It's the largest settlement of a single case in U.S. history. … The private lawyers representing Texas - John Eddie Williams, Walter Umphrey, Harold Nix, Wayne Reaud and John O'Quinn - had a contract with Morales that required they pay all the state's costs in the litigation and they would be paid 15 percent of any money they won for the state in the litigation. If the state lost, the lawyers would receive nothing. The panel awarded $3.3 billion to the Big Five, as they were known in legal circles. So far, Big Tobacco has paid the Texas lawyers nearly $2 billion. The cigarette companies continue to send Umphrey and the group about $120 million annually." (Mark Curriden, "20 Years Later, Debate Continues Over The Texas Tobacco Verdict," *Houston Chronicle*, 4/22/16)

- **Lawyers Representing Florida, Mississippi, And Texas Received $8.2 Billion For Their Work In The Tobacco Lawsuits.** "Last year, lawyers representing the first three states that settled -- Florida, Mississippi and Texas -- were awarded $8.2 billion. The staggering fees prompted public uproar, particularly in Texas, where one lawyer, Marc D. Murr of Houston, who appeared to play little role in the litigation, sought $260 million in fees." (Barry Meier & Richard A. Oppel Jr., "States' Big Suits Against Industry Bring Battle On Contingency Fees," *The New York Times, 10/15/99)*

In Oklahoma, Private Attorneys Received $250 Million Dollars As Part Of The State's Lawsuit Against The Tobacco Industry In The 2000s. "A national arbitration panel announced Wednesday its unanimous award of $250 million to the private attorneys who waged Oklahoma's war against the tobacco industry." (Paul English, "State's Tobacco Warriors To Get $250 Million," *The Oklahoman*, 5/18/00)

In Maryland, Peter G. Angelos, Owner Of The Baltimore Orioles, Agreed To A 12.5% Contingency Fee, As Much As $375 Million, For His Work As The Chief Lawyer In Maryland's Lawsuit Against Cigarette Makers. "Peter G. Angelos, millionaire owner of the Baltimore Orioles and chief lawyer in Maryland's lawsuit seeking billions of dollars from cigarette makers, agreed yesterday to cut his fee in half in exchange for legislation intended to improve the state's chances of winning the suit. Angelos's concession could cost him many millions of dollars if Maryland prevails in the case, which seeks compensation for the billions the state has paid over the decades for Medicaid recipients with smoking-related diseases. But by dropping his contingency fee to 12.5 percent of whatever the state may collect -- down from the original 25 percent -- Angelos still stands to collect as much as $375 million from the $3 billion judgment that several observers say is possible. That huge sum still troubles some lawmakers. But the 12.5 percent solution satisfied many others who had said a 25 percent cut was politically unacceptable." (Charles Babington, "Angelos To Cut Fee In Tobacco Suit," *The Washington Post*, 4/2/98)

In Massachusetts, Brown Rudnick Berlack Israels Were Promised A 25% Contingency Fee In A 1995 Contract Surrounding Tobacco Litigation. "Led by the Boston firm Brown Rudnick Berlack Israels, the lawyers had sought to enforce a 1995 contract with the state that they said guaranteed a 25 percent contingency fee from the case that led to a multibillion dollar settlement with the tobacco industry." (Frank Phillips, "Jury Caps Fees Owed Tobacco Law Firms," *The Boston Globe*, 12/20/03)

- **A Jury Later Awarded The Firm 10.5%.** "Yesterday, the jurors awarded the law firms 10.5 percent of the money that the state will receive from tobacco companies, up from the 9.33 percent they are currently getting." (Frank Phillips, "Jury Caps Fees Owed Tobacco Law Firms," *The Boston Globe*, 12/20/03)

Vaping Cases

In Greenbriar County (WV), Webb Law Centre Sought A 30% Contingency Fee For A Public Nuisance Lawsuit Against JUUL Labs. "JUUL's e-cigarettes have been declared a public nuisance in Greenbrier County. Attorney Rusty Webb of the Webb Law Centre in Charleston approached the Greenbrier County Commission with a request the declaration be made and for the county to join in a lawsuit against the manufactures of the nicotine-based vape pens. … The commission does not need to pay the Webb Law Centre upfront – Webb explained 'It's a contingency fee – if we get your money we get paid [and] if we don't, we don't. … If you recover [funds], we recover a 30 percent contingency fee, which will probably be lowered by a court in California. This has been consolidated in the Northern District of California. In these mass tort cases, the courts have a tendency to dial down their contingency fees around the country. That's what they're going to do in the opioid case too, probably.'" (Lyra Bordelon, "JUUL's Nicotine-Based E-cigarettes Declared A Public Nuisance In Greenbrier," *The West Virginia Daily News*, 11/26/21)

In Minnesota's Public Nuisance Lawsuit Against JUUL Labs, Private Attorneys Could Receive A 25% Contingency Fee On The First $10 Million And Lower Percentages On Awards Beyond That. "Minnesota Attorney General Keith Ellison filed a lawsuit Wednesday in Hennepin County District Court against Juul Labs, the nation's leading maker of electronic cigarettes. … The lawsuit seeks to declare that Juul created a public health nuisance with its vaping products. … Contracts signed by the firms in October with Robins Kaplan LLP and Zimmerman Reed LLP make clear that final authority rests with the attorney general. Much of the financial risk is on the firms. While they will be eligible for some travel and document expense reimbursements, they won't get other fees unless money is recovered from Juul and co-defendants in a final judgment or a settlement. If the case lasts more than six months, which is likely, the firms would get 25 percent of the first $10 million and lower percentages on awards beyond that." (Tim Pugmire, "Minnesota Suing Juul For 'Targeting Youth' In E-Cig Marketing," MPR News, 12/4/19)

In A Mass Tort Lawsuit Against JUUL Labs, More Than 100 School Districts Across 20 States Have Agreed To A 20-25% Contingency Fee With The Frantz Law Group. "It is recommended that Township High School District 211 join more than 100 school districts across 20 states in a 'Mass Tort' lawsuit against Juul Labs, Inc. … The Frantz Law Group, APLC located in California is the lead law firm pursuing this litigation. This firm is a prominent personal injury and negligence law firm with significant experience in large-scale litigation. Franczek P.C. is partnering with Frantz Law Group, APLC to provide some Illinois school districts the opportunity to recover damages from Juul Labs, Inc. related to the vaping epidemic. It is recommended that the Board utilize the legal services of both law firms in their defense against Juul Labs, Inc. … Any compensation to firms for fees and costs would come from a percentage of the monetary recovery our District is awarded. If there is no monetary recovery for the District, there is no cost to the District. Should litigation be successful for the District, the fee structure would range from 20-25% of the awarded funds." ("Lawsuit Against Juul Labs," Township High School District 211, 2/18/21)

The Stevens Clay Law Firm, Based In Washington State, Has Advertised For School Districts To Join In An Anti-Vaping Lawsuit With A 20% Contingency Fee For The Firm. "Over 600 school districts in about 30 states, including districts in Washington, are seeking to hold e-cigarette/vaping company Juul (and its major investor, Altria) liable for the unprecedented rise in nicotine use among teens. … To date, the school districts have prevailed against several motions by Juul to dismiss the claims. The first trial is set for late 2022. At trial, the school districts who participate in the case will seek monetary damages to offset costs related to teen vaping. … There is no cost to join this lawsuit. The trial lawyers work on a contingency fee basis. That means the trial lawyers only get paid if districts prevail or obtain a settlement. The contingency fee for the trial lawyers is 20% of an award, which is far less than the typical 40%. Moreover, the Stevens Clay law firm, which represents numerous Washington school districts, has agreed to represent districts that want to join on a pro bono basis (i.e., free). That means there's no additional cost over the 20% contingency fee paid to the trial lawyers." ("Anti-Vaping Lawsuit," Stevens Clay))

Chemicals Cases

Washington Attorney General Bob Ferguson Hired Baron & Budd On A Scaled Contingency Fee Basis To Sue Monsanto Over Alleged PCB Contamination. "Texas-based Baron & Budd has been hired by Washington Attorney General Bob Ferguson on a contingency fee basis to sue Monsanto over alleged polychlorinated biphenyl (PCB) contamination. …The firms will receive 25 percent of any gross recovered up to $75 million, 20 percent of recovery between $75 million and $150 million, 15 percent of between $150 million and $200 million, and 10 percent of more than $200 million. The firms will receive nothing if no money is recovered." (John Breslin, "West Coast 'Super Tort' Against Monsanto Could Spread To Other States," *Forbes*, 1/11/17)

In A 2009 PCB Pollution Case, A Partial Settlement Was Reached Between Hudson River Towns In New York And General Electric, With Attorneys Receiving A 30% Contingency Fee. "General Electric Co. will pay $7.95 million to settle part of a federal lawsuit filed in 2009 by several Saratoga County municipal agencies that shut down or moved their water supplies when the company began dredging PCBs from the Hudson River that year. …The settlement amount will be reduced by hundreds of thousands of dollars in legal costs and an approximately 30 percent contingency fee that will be paid to Dreyer Boyajian, the Albany law firm that represented the agencies who settled. After the attorneys are paid, the settlement will result in roughly $4 million to be divided by the town and village of Stillwater, although most of that money will go to the village, which runs the water system that helps supply the town and saw its well fields contaminated with PCBs. The remaining $1.45 million from the settlement, minus legal costs, will go to Waterford." (Brendan Lyons, "GE Agrees To Pay $7.9M," *Times Union*, 7/2/14)

In 2020, Michigan Filed A Lawsuit Against 17 Chemical Manufacturers For Their Role In Environmental Contamination From PFAS Chemical Compounds. "Michigan Attorney General Dana Nessel filed suit against 17 chemical manufacturers Tuesday, Jan. 14, in Washtenaw County Circuit Court in Ann Arbor. The complaint alleges under a number of theories that the defendants are responsible for environmental contamination and personal injuries that Michigan attributes to PFAS compounds the defendants manufactured or are otherwise allegedly responsible for." (Charles M. Denton, "Michigan Private Attorney General Sues PFAS Manufacturers," Barnes & Thornburg LLP, 1/16/20)

- **The Lawsuit Asserted Various Claims, Including Public Nuisance.** "The complaint alleges fraudulent corporate restructuring and unjust enrichment, tort (negligence, trespass, and nuisance), and state environmental statutory claims. The complaint seeks compensatory damages that the state has incurred and will incur to address PFAS contamination (including at approximately 3 dozen sites identified in the complaint); natural resources damages; injunctive relief to abate the alleged nuisance and trespass; punitive damages; civil penalties; and further relief including attorneys' fees." (Charles M. Denton, "Michigan Private Attorney General Sues PFAS Manufacturers," Barnes & Thornburg LLP, 1/16/20)

- **Michigan's Attorney General Agreed To A Contingency Fee Arrangement Of 20% Of The First $100 Million, Scaling Down To 10% For Recovery Over $500 Million.** "The filing of this lawsuit follows a private attorney general process that began in May 2019 with a request for proposals from law firms to undertake this PFAS litigation solely on a contingency fee basis. Fifteen law firms submitted proposals, including some law firms traditionally considered corporate business lawyers. The lawyers selected through this process to become 'special assistant attorneys general' are a combination of lawyers from Washington, D.C., Cincinnati, Ohio, and Chicago, Illinois, called 'The Fields Team.' The fee arrangement is a contingency with payment from the recovery of damages paid by the defendants, as well as out-of-pocket court costs and expenses. The contingency fee percentages are roughly 20 percent of the first $100 million, declining incrementally to 10 percent for recovery over $500 million." (Charles M. Denton, "Michigan Private Attorney General Sues PFAS Manufacturers," Barnes & Thornburg LLP, 1/16/20)

In New Jersey, Ridgewood Water Hired Sher Edling On A Maximum 25% Contingency Fee Scale Basis To Sue Chemical Companies Over PFAS Contamination. "Companies named as defendants in Ridgewood Water's complaint are 3M Co., E.I. du Pont de Nemours and Co., The Chemours Co., Honeywell International Inc. (successor-in-interest to Allied Chemical Corp.), Tyco Fire Products LP (successor-in-interest to Ansul Co.), Chemguard Inc., Buckeye Fire Equipment Co., and National Foam Inc., in addition to other corporations to be named. …Identified in the suit as Ridgewood Water's trial counsel, Sher Edling has gained attention for taking corporations like Procter & Gamble, Dow Chemical and Shell Chemicals to court on behalf of municipal utilities, alleging that the companies caused harm by polluting drinking water. Sher Edling will be paid a contingency fee if

the suit results in a financial award. The fee is on a graduated scale, with a maximum of close to 25 percent. Rogers said the arrangement will not cost the utility or ratepayers anything outside of the time of staffers to help prepare the documentation." (Meghan Grant, "Ridgewood Water Sues DuPont And Others Over PFAS Contamination," NorthJersey.com, 3/11/19)

An Agreement With Six Law Firms To Represent The Island Territory Of Guam In A PFAS Contamination Lawsuit Included A 15% Contingency Fee. "The Office of the Attorney General secured a litigation team to represent Guam in a water-quality lawsuit. Gov. Lou Leon Guerrero signed the contract Wednesday. Senators earlier this month passed the Prutehi I Hanom Act, requested by Leon Guerrero, to address the issue of perfluoroalkyl and polyfluoroalkyl substances, or PFAS, in Guam's water. …Guam's PFAS legal team consists of six law firms that will collectively represent Guam in. The retainer agreement outlines the litigation team will only receive payment if it is successful, and that the team will pay upfront for expert witnesses. The agreement set a contingency fee of 15%, half of the 30% authorized by the Prutehi I Hanom Act, if the case settles before trial. If trial takes places, the contingency fees will increase by 2.5%." (Anumita Kaur, "Lawsuit: Guam Secures Water Contamination Litigation Team," *Pacific Daily News*, 7/25/19)

Lead Paint Cases

In 1999, Rhode Island Agreed To Pay A Contingency Fee Of 17% To Ness, Motley, Loadholt, Richardson & Poole In The State's Lead Paint Lawsuit Against Eight Companies. "The latest challenge came on Tuesday when Rhode Island's Attorney General, Sheldon Whitehouse, sued eight paint companies and a lead industry group to seek payment for the treatment of children poisoned by lead paint and for its removal. The case will be handled by the firm of Ness, Motley, Loadholt, Richardson & Poole of Charleston, S.C., which represented some two dozen states in tobacco cases, earning hundreds of millions in fees in the process. Rhode Island will pay 17 percent of any award or settlement to the firm, which is financing the lawsuit and is in talks with other states about similar actions." (Barry Meier & Richard A. Oppel Jr., "States' Big Suits Against Industry Bring Battle On Contingency Fees," *The New York Times*, *10/15/99)*

Maximizing Profit

A Method Some Trial Lawyers Have Employed To Enhance Their Settlement Winnings Has Been To Move Their Residency To Puerto Rico – Which Allows Them To Shelter Themselves From State And Federal Taxes. "Why Puerto Rico? The U.S. territory offers sun, sand and pleasant temperatures year-round. But it has much, much more, including a tax regime that allows newcomers who live there at least 183 days a year to shelter nearly all their income from state and federal taxes, even if that income is generated by providing services in the U.S." (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

- **The Strategy Has Been Used By Paul Farrell – A Prominent Trial Lawyer Working On Opioid Cases.** "On the verge of collecting an outsized share of $2 billion in fees from the $26 billion opioid settlement, attorney Paul T. Farrell did what a growing number of fellow trial lawyers have done: He moved to Puerto Rico. … Farrell moved in January, opening a new practice with his longtime partner Michael J. Fuller in San Juan. When asked if he had permanently moved to Puerto Rico, and if taxes were a factor, Farrell answered 'yes and yes.' 'We've kind of transitioned to this new world,' said Farrell, a self-described West Virginia hillbilly who serves as co-lead counsel in federal multidistrict litigation against the opioid industry, along with Joe Rice of Motley Rice and Jayne Conroy of Simmons Hanly Conroy." (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

- **Paul Napoli – Another Prominent Opioid Attorney – Also Lists His Residence As Puerto Rico.** "Farrell is only the latest trial lawyer expat to set up shop in San Juan. Paul Napoli, also a lead plaintiff attorney in opioid litigation, moved there in 2018, according to Puerto Rico tax records. (He didn't respond to a request for comment.)" (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

If A Lawyer Moves To Puerto Rico And Establishes A Firm On The Island That Performs Services For Its U.S.-Based Operations, That Firm's Income Would Be Taxed At Just 4% And The Lawyer Would Avoid State And Local Income Taxes. "A lawyer who moves to Puerto Rico, for example, can establish a firm on the island that performs services for its U.S. operations. The firm's income from stateside activities would be taxed at 4% and the lawyer would avoid state and federal income taxes on his income from providing services to its U.S. affiliates. The only thing the lawyer needs to avoid IRS penalties is a transfer-pricing analysis verifying he is billing out his services at the equivalent of an arms-length negotiated price, Palsen said." (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

- **To Receive This Treatment, Farrell Says He And Any Other Puerto Rico-Based Employees Only Have To Perform 60% Of Their Work On The Island.** "Farrell is currently suing Google for antitrust on behalf of some 300 newspapers. 'If I perform 60% of the work on my next project while sitting in Puerto Rico with Puerto Rican staff, working out of a Puerto Rico office,' he said, it will likely benefit Act 60 treatment. As with any highly paid professional, whether a jet-setting chief executive or professional basketball player, Farrell said, he will probably have to pay U.S. taxes on income derived from activities in the U.S., such as attending hearings or conducting depositions." (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

An IRS Report To Congress In 2020 Showed That Of The 4,300 Individuals And Businesses Receiving Preferential Tax Treatment In Puerto Rico That Year, About 80% Had No Previous IRS Filing History – Meaning They Were Potentially Set Up Specifically To Take Advantage Of The Tax Scheme. "The IRS and Congress are watching Act 60 expats closely. An IRS report to Congress in 2020 found that Puerto Rico had granted benefits to some 4,300 individuals and businesses between 2012 and 2019, including a record 583 entities in 2019. About 80% of the entities had no prior IRS filing history, indicating they were set up specifically to take advantage of the Puerto Rico tax scheme." (Daniel Fisher, "Trial Lawyers Haul Their Mass Tort Winnings To Tax-Haven Puerto Rico," Legal Newsline, 8/24/21)

Key Firms Involved In Public Nuisance Cases

Trial Law Firm	Key Litigation Areas
Baron & Budd	Chemical Lawsuits, Opioids
Hagens Berman	Climate Change, Opioids
Keller Rohrback	Opioids, Vaping
Lieff Cabraser	Opioids, Vaping
Motley Rice	Opioids
Seeger Weiss	Climate Change, Opioids
Weitz & Luxenberg	Chemical Lawsuits, Vaping, Opioids
Sher Edling	Climate Change

Baron & Budd

Baron & Budd Is Involved In Multiple Lawsuits Against Monsanto (Representing The Cities Of San Jose, Westport, & Spokane) And In The National Opioid Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Baron & Budd, PC	Plaintiff	*City of San Jose v. Monsanto Company et. al. (5:15-cv-03178)*	PCBs	2015
Baron & Budd, PC	Plaintiff	*City of Spokane v. Monsanto Company, et. al. (2:15-cv-201)*	PCBs	2015
Baron & Budd, PC	Plaintiff	*In Re: National Prescription Opiate (1:17md2804)*	Opioids	2017
Baron & Budd, PC	Plaintiff	*Town Of Westport et. al. v. Monsanto Company et. al. (1:14-cv-12041)*	PCBs	2014

(CourtLink)

- **Baron & Budd Has Been Criticized For Being Part Of An Investigation Into Law Firms Who Heavily Donate To Left-Wing Political Campaigns.** "Baron & Budd – 100% of the FEC-recorded donations from the firm and its employees went to Democrats and their allies from 2017 through 2020. The firm generated more than $1.2 million in FEC donations from 2017 through 2020—over $15,000 per lawyer on average—with over $350,000 going to Democratic Senate candidates and related political committees and over $35,000 to the Nancy Pelosi Victory Fund." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 1/1/22)

Hagens Berman

Another Prominent Plaintiff Firm Is Hagens Berman, Which Is Involved In Multiple Climate Change Cases And National Opioid Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Hagens, Berman, Sobolo, Shapiro, LLP	Plaintiff	*Native Village Of Kivalina v. ExxonMobil Corporation (4:08cv1138)*	Climate Change	2009
Hagens, Berman, Sobolo, Shapiro, LLP	Plaintiff	*The City Of New York v. BP P.L.C (18-2188)*	Climate Change	2018
Hagens, Berman, Sobolo, Shapiro, LLP	Plaintiff	*The People of the State of California v. Purdue Pharma, LP et. al. (8:14-cv-1080)*	Opioids	2014

(CourtLink)

Keller Rohrback

Keller Rohrback Has Been Involved In Vaping And Opioid Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Keller Rohrback, LLP	Plaintiff	*In Re: Juul Labs, Inc. Marketing, Sales Practices & Product Liability Litigation (3:19md2913)*	Vaping	2019
Keller Rohrback, LLP	Plaintiff	*In Re: Juul Labs, Inc. Marketing, Sales Practices & Product Liability Litigation (3:19md2913)*	Vaping	2019
Keller Rohrback, LLP	Plaintiff	*In Re: National Prescription Opiate (1:17md2804)*	Opioids	2017

Lieff Cabraser

Similarly, Lieff Cabraser Is Involved In Both Vaping And Opioid Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Lieff, Cabraser, Heimann & Bernstein	Plaintiff	*In Re: Juul Labs, Inc. Marketing, Sales Practices & Product Liability Litigation (3:19md2913)*	Vaping	2019
Lieff, Cabraser, Heimann & Bernstein	Plaintiff	*In Re: National Prescription Opiate (1:17md2804)*	Opioids	2017

(CourtLink)

- **Lieff Cabraser Is Another Firm Identified As Donating Heavily To Left Wing Campaigns.** "Lieff Cabraser – 100% of the FEC-recorded donations from the firm and its employees went to Democrats and their allies from 2017 through 2020. The firm generated over $2.8 million in FEC donations from 2017 through 2020, with $250,000 going to the DSCC and $70,000 going to the Nancy Pelosi Victory Fund." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 1/1/22)

Motley Rice

Motley Rice Is A Major Player In The National Opioid Litigation, With The Firm's Co-Founder Serving As Co-Lead Counsel And As A Member Of The Plaintiffs' Executive Committee. "Motley Rice co-founder Joe Rice serves as co-lead counsel and a member of the Plaintiffs' Executive Committee for the National Prescription Opiate Multidistrict Litigation, coordinated in the Northern District of Ohio. Also holding leadership positions in the MDL are Motley Rice attorneys Linda Singer, co-chair of the Manufacturer/Marketing Committee and Lou Bograd, co-chair of the Law & Briefing Committee. Led by member attorney Linda Singer, a former Attorney General for the District of Columbia, Motley Rice is lead counsel for the first jurisdictions to file complaints in the most recent wave of litigation against pharmaceutical companies regarding the opioid crisis – the City of Chicago and Santa Clara County. Both jurisdictions filed litigation in 2014 against five pharmaceutical companies, alleging deceptive marketing that misled the public about the drugs' highly addictive properties." ("Opioid Litigation," Motley Rice LLC))

- **Motley Rice Represents Dozens Of Jurisdictions In The Case.** "Motley Rice represents dozens of jurisdictions, including states, cities, towns, counties and townships in suits against opioid manufacturers and/or distributors." ("Opioid Litigation," Motley Rice LLC))

- **Motley Rice Is Another Firm That Almost Uniformly Donates To Left-Wing Political Campaigns.** "Motley Rice – 98% of the FEC-recorded donations from the firm and its employees went to Democrats and their allies from 2017 through 2020. The firm generated more than $1.75 million in FEC donations from 2017 through 2020—over $16,000 per lawyer on average—and sent over $900,000 to Democratic Senate candidates and related political committees." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 1/1/22)

Seeger Weiss

Seeger Weiss Has Represented Multiple Clients In Climate Change-Related Public Nuisance Cases And Has A Hand In National Opioid Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Seeger Weiss, LLP	Plaintiff	*In Re: National Prescription Opiate (1:17md2804)*	Opioids	2017
Seeger Weiss, LLP	Plaintiff	*Native Village Of Kivalina v. ExxonMobil Corporation (4:08cv1138)*	Climate Change	2009
Seeger Weiss, LLP	Plaintiff	*The City Of New York v. BP P.L.C (18-2188)*	Climate Change	2018

(CourtLink)

Weitz & Luxenberg

Weitz & Luxenberg Are Involved In Vaping Litigation Against JUUL, National Opioid Litigation, And Represents The Town Of Westport (CT) Against Monsanto In A Public Nuisance Case Over PCBs.

Firm	Representation	Case Name	Case Type	Filing Year
Weitz & Luxenberg	Plaintiff	*In Re: Juul Labs, Inc. Marketing, Sales Practices & Product Liability Litigation (3:19md2913)*	Vaping	2019
Weitz & Luxenberg	Plaintiff	*In Re: National Prescription Opiate (1:17md2804)*	Opioids	2017
Weitz & Luxenberg	Plaintiff	*Town Of Westport et. al. v. Monsanto Company et. al. (1:14-cv-12041)*	PCBs	2014

(CourtLink)

Sher Edling

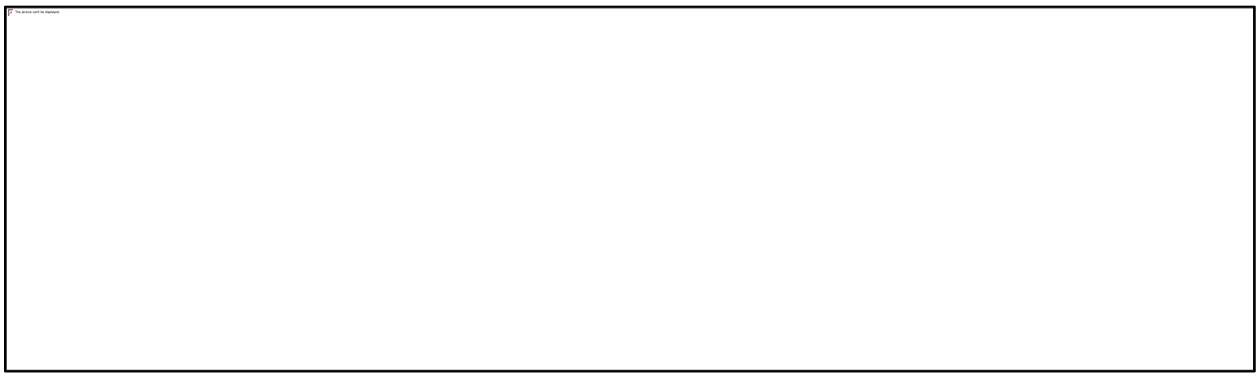
Sher Edling Is Another Firm Deeply Involved In Climate Change Litigation. (CourtLink)

Firm	Representation	Case Name	Case Type	Filing Year
Sher Edling, LLP	Plaintiff	*City of Oakland, et. al., v. BP, PLC, et. al. (18-16663)*	Climate Change	2018
Sher Edling, LLP	Plaintiff	*State of Rhode Island v. Shell Oil Products Co., LLC et. al. (19-1818)*	Climate Change	2019

(CourtLink)

Alliance For Consumers Analysis Of "Shady 8" Trial Lawyer Donations

According To An Analysis Of FEC Filings By Alliance For Consumers, Eight Leading Trial Law Firms (Dubbed The "Shady Eight") Gave $15 Million In Combined Political Donations From 2017 To 2020. "These law firms are archetypal participants in the Shady Trial Lawyer Pipeline. Each is ranked by the National Law Journal or Legal500 as a leader amongst plaintiff-side trial firms. And each is powered in part by public contracts with States or local governments on prominent litigation. … These 'Shady Eight' firms generated at least $15 million in combined political donations from 2017-2020 to committees and candidates in the Federal Election Commission (FEC) tracking system. That is the total given by the firms directly, their 1,300 or so combined lawyers, and other employees and staff." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)



Of The Combined $15 Million Given By These Eight Firms, 99% Of It Went To Democratic Campaigns And Their Allied Political Organizations. "The partisan bent to the $15 million coming out of the Shady Eight is likewise in a class of its own. The Shady Eight sent 99% of their combined federal donations from 2017-2020 to Democratic campaigns and allied political committees. That means that of the $15 million of combined donations, over $14.85 million went to Democrats and their allies." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

- **About $6 Million, Or 40%, Went To "Professionalized Superstructure" Of The Democratic Party.** "About 40% of the money (approximately $6 million) went to the political committees that form the professionalized superstructure of the Democratic Party—party committees, funds linked to House Speaker Nancy Pelosi or Senate Majority Leader Chuck Schumer, groups within the American Bridge ecosystem, and

other similar organizations." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

- **Over $4 Million Went To The Biden Presidential Campaign Effort And The Democratic National Committee (DNC).** "Over $4 million of the money generated by the Shady Eight went to the Biden Presidential campaign effort and the Democratic National Committee (DNC)." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

- **Over $4 Million Went To The Democratic Senatorial Campaign Committee (DSCC) And Democratic Candidates For The U.S. Senate.** "Over $4 million flowed into Democratic candidates for U.S. Senate and the Democratic Senatorial Campaign Committee (DSCC) that supports them." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

- **Over $2 Million Went To The Democratic Congressional Campaign Committee (DCCC) And Democratic Candidates For The U.S. House Of Representatives.** "And over $2 million went to Democratic candidates for the U.S. House of Representatives and the Democratic Congressional Campaign Committee (DCCC) that bolsters those candidates." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

The Eight Firms Examined—Morgan & Morgan, Lieff Cabraser, Motley Rice, Baron & Budd, Grant & Eisenhofer, Berger Montague, Cohen Milstein, And Simmons Hanly—Are Powered, In Part, By Partnering With State And Local Government On Prominent Litigation. "And each is powered in part by public contracts with States or local governments on prominent litigation. Simmons Hanly represents local governments in major litigation, Motley Rice won the 2021 Elite Trial Lawyers Award for government representation from American Lawyer Magazine, and Morgan & Morgan, Lieff Cabraser, Baron & Budd, Grant & Eisenhofer, Berger Montague, and Cohen Milstein have state contracts in places like Indiana, Kentucky, Mississippi, New Mexico, and New Jersey." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

- **The Political Donations From These Law Firms Dwarf The Donations From Some Of The Largest Corporations, Despite Having Significantly Fewer Employees—The $15 Million Is Nearly Double The Amount Given By Nike, Twitter, And Blackrock Combined.** "This $15 million in combined donations out of the Shady Eight dwarfs the federal donations generated by massive American corporations. The donations over the same period generated by Blackrock, the world's largest asset manager, combined with Nike, the world's most iconic sports brand, topped off with Twitter, a social-media powerhouse, would total only about half of what the Shady Eight fed to federal committees and candidates from 2017-2020. These three corporate giants have nearly 100,000 employees combined and are nonetheless far behind the FEC-tracked political giving from by the Shady Eight, which have fewer than 1,500 lawyers between them." (O.H. Skinner, "Shady Trial Lawyer Pipeline Update: How A 'Shady Eight' Group Of Law Firms Generated $15 Million For Left-Wing Campaigns With The Help Of Government Contracts," Alliance For Consumers, 1/25/22)

Additional Data & Political Activity For AFC's "Shady Eight"

Note: Data From OpenSecrets Is Collected Differently Than Core Alliance For Consumers Analysis.

Morgan & Morgan

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Jon Ossoff (D-GA)	$7,430
Jeanne Shaheen (D-NH)	$5,600
Maggie Hassan (D-NH)	$5,600
Raphael Warnock (D-GA)	$5,286
Bernie Sanders (I-VT)	$3,153

("Morgan & Morgan," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Charlie Crist (D-FL)	$22,405
Val Demings (D-FL)	$6,850
Donna Shalala (D-FL)	$5,400
Lucy McBath (D-GA)	$3,203
Susan Wild (D-PA)	$2,665

("Morgan & Morgan," OpenSecrets)

John Morgan—Firm Co-Founder—Is Close With President Joe Biden's Brother Frank Biden. (Natasha Korecki, Theodoric Meyer, & Tyler Pager, "'For Christ's Sake, Watch Yourself': Biden Warns Family Over Business Dealings," *Politico*, 1/28/21)

- **Frank Biden Attended The Presidential Inauguration Via John Morgan's Private Jet. The Two Have Also Discussed Pursuing Potential Business Opportunities Together.** "Florida super attorney and Democratic donor John Morgan said business sensitivities were coursing through Bidenworld this week after the report about Frank Biden's law firm. … One person interested in working with Frank Biden was Morgan himself, a fellow Floridian who is close to the younger Biden. 'Great guy,' Morgan said of Frank Biden. 'I had my jet take him to the inauguration.' Morgan said he'd started talking with Frank Biden about business opportunities last year but that nothing had come together yet. 'We are talking about him doing some things inside the law firm,' Morgan said, referring to his firm, Morgan & Morgan, which bills itself as 'America's Largest Injury Law Firm.' Any partnership would have a '100 percent legal focus' and wouldn't involve any lobbying, Morgan added. There is no evidence of wrongdoing tied to their discussions or violations of ethics rules. Frank Biden is a private citizen. Morgan does not lobby the federal government." (Natasha Korecki, Theodoric Meyer, & Tyler Pager, "'For Christ's Sake, Watch Yourself': Biden Warns Family Over Business Dealings," *Politico*, 1/28/21)

During The 2014 Election Cycle, The *Tampa Bay Times* Said John Morgan "Is Poised To Be The Most Important Man In Florida Politics," Apart From The Two Candidates For Governor. "Insecurity runs deep, even for a bombastic multimillionaire who leads the country's largest personal injury law firm, has hosted President Barack Obama at his 18,000-square-foot mansion and is poised to be the most important man in Florida politics this election cycle other than Charlie Crist and Rick Scott." (Adam C. Smith, "John Morgan: The Bombastic, Omnipresent Lawyer Fueling Florida's 2014 Election," *Tampa Bay Times*, 11/30/13)

- **John Morgan Has Maintained Close Connections To Longtime Florida Politician Charlie Crist Throughout His Career. Crist Even Worked At Morgan & Morgan After Losing To Marco Rubio In 2010.** "Morgan, 57, is leading a high-profile ballot initiative to legalize marijuana in Florida for medical use, and he's a key adviser to former Republican Gov. Crist's unprecedented campaign to win back the Governor's Mansion as a Democrat. Some wealthy middle-aged businessmen bag trophy wives; Morgan goes for trophy lawyers, and Crist is the biggest trophy and best rainmaker at Morgan & Morgan. Former Gov. Crist joined the firm in 2011, soon after his crushing loss to Marco Rubio in the U.S. Senate race. Morgan has known Crist for nearly two decades and supported several Crist campaigns. Crist calls Morgan an 'absolutely terrific' boss with a 'great hear' and a passion for helping everyday people. His salary has never been disclosed, but Crist says he's earning significant money for the first time in his life. The managing director who prides himself on long-term thinking says he never expected back in late 2010 that Crist would return to elected office, but instead saw him as a lucrative addition to the firm without ever needing to set foot in a courtroom." (Adam C. Smith, "John Morgan: The Bombastic, Omnipresent Lawyer Fueling Florida's 2014 Election," *Tampa Bay Times*, 11/30/13)
    - **Charlie Crist Has Served In Various Elected Positions Over The Course Of His Political Career, Including As State Attorney General, Governor, And U.S. Congressman.** ("Charlie Crist," Ballotpedia)
    - **Charlie Crist Is The Current Democratic Nominee For Governor In Florida.** ("Charlie Crist," Ballotpedia)

John Morgan Has Hosted President Barack Obama At His Mansion. (Adam C. Smith, "John Morgan: The Bombastic, Omnipresent Lawyer Fueling Florida's 2014 Election," *Tampa Bay Times*, 11/30/13)

Morgan & Morgan Has Been Involved In Public Nuisance Opioid Litigation. ("OKLAHOMA WINS HISTORIC OPIOID DRUGMAKER CASE," Morgan & Morgan, 8/28/19)

Lieff Cabraser

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Raphael Warnock (D-GA)	$57,358
Jon Ossoff (D-GA)	$39,421
Kamala Harris (D-CA)	$32,797
Gary Peters (D-MI)	$28,752
Mark Kelly (D-AZ)	$25,453

("Lieff, Cabraser Et Al.," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Nancy Pelosi (D-CA)	$11,599
Katie Porter (D-CA)	$8,000
Jahana Hayes (D-CT)	$6,278
James Clyburn (D-SC)	$5,600
Jerry McNerney (D-CA)	$3,550

("Lieff, Cabraser Et Al.," OpenSecrets)

Lieff Cabraser Has Filed Public Nuisance Lawsuits. (Press Release, "Lieff Cabraser Files RICO, Negligence, Nuisance Lawsuit Against JUUL & Altria On Behalf Of Boulder Valley (Colorado) School District For Deceptive And Misleading Youth Targeting And Devastating Injuries From JUUL E-Cigarettes," Lieff Cabraser Heimann & Bernstein, 9/18/20)

Motley Rice

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Mark Kelly (D-AZ)	$40,335
John Hickenlooper (D-CO)	$35,394
Gary Peters (D-MI)	$30,592
Tina Smith (D-MN)	$26,500
Jeanne Shaheen (D-NH)	$15,310

("Motley Rice, LLC," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
James Clyburn (D-SC)	$34,229
Carolyn Bourdeaux (D-GA)	$28,250
Ron Kind (D-WI)	$19,300
Anna Eshoo (D-CA)	$18,600
Richard Neal (D-MA)	$16,050

("Motley Rice, LLC," OpenSecrets)

Motley Rice Has Contributed To Some Of The Largest Left-Wing Groups In Recent Years Through The Main Trial Lawyers' Political Arm, American Association For Justice PAC. "Part of Motley Rice's immense political generosity goes to the main trial lawyers' political arm, American Association for Justice PAC, which in the last four-year cycle sent quarter-million-dollar-plus donations to some of the largest left-wing groups, including pro-abortion super PAC Emily's List, Eric Holder's Democratic Redistricting Committee, and Priorities USA Action Fund, a leading Super PAC that was recently flagged by Bloomberg as being one of the hubs through which a record amount of liberal dark money flowed to support Biden during the last election." (Carrie Campbell Severino, "State AG Monitor: What Happened To Patrick Morrisey?" *National Review*, 5/14/21)

- **Motley Rice Also Puts Money Into A Web Of Trial Lawyer Committees Focused Squarely On Boosting The Prospects Of Senate Majority Leader Chuck Schumer And His Candidates Across The Country.** "For starters, Senate Majority PAC, a Schumer-aligned super PAC, received at least $2 million from American Association for Justice PAC during the last four-year election cycle. And then there is Truth and Justice Fund Company, a trial lawyer outfit that spent $1.5 million backing Steve Bullock in Montana and the now-infamous Cal Cunningham in North Carolina during the 2020 election. And we shouldn't forget Justice 2018 and Justice 2020 — two other trial lawyer-funded political committees — that separately sent seven figures of support to Democratic Senate candidates across the country, backing Democrats and hitting Republicans in Georgia, Iowa, Missouri, Montana, North Carolina, and beyond." (Carrie Campbell Severino, "State AG Monitor: What Happened To Patrick Morrisey?" *National Review*, 5/14/21)

Baron & Budd

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Dick Durbin (D-IL)	$12,532
Gary Peters (D-MI)	$11,438
Jon Ossoff (D-GA)	$11,288
John Hickenlooper (D-CO)	$6,217
Raphael Warnock (D-GA)	$5,932

("Baron & Budd," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Colin Allred (D-TX)	$7,916
Nancy Pelosi (D-CA)	$5,669
Marc Veasey (D-TX)	$5,600
Eddie Bernice Johnson (D-TX)	$5,550
Lizzie Fletcher (D-TX)	$4,166

("Baron & Budd," OpenSecrets)

Shortly Before Co-Founder Fred Baron Passed Away, He Put Millions Into His PAC, Known As "The Texas Democratic Trust," Which Was The Top Spender During The 2007-2008 Election Cycle In Texas. **"**The Texas Democratic Trust spent $6 million, more than any other political committee. The group was founded by Fred Baron, a Dallas trial lawyer who poured millions into it before he died in October. The trust, along with the House Democratic Campaign Committee and other groups, helped Democrats pick up five seats in the state House over the past two years." (Jason Embry, "PACs Flex Muscle In 2008 Elections," *Austin American-Statesman*, 11/12/09)

Baron & Budd Has Filed Public Nuisance Lawsuits. (Press Release, "Baron & Budd Files Class Action Lawsuit On Behalf Of Los Angeles Unified School District Against JUUL For Targeting Youth; Creating Public Nuisance," Baron & Budd, 10/30/19)

Grant & Eisenhofer

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Chris Coons (D-DE)	$23,500
Lindsey Graham (D-SC)	$5,600
Kamala Harris (D-CA)	$5,600
Cory Booker (D-NJ)	$5,525
Gary Peters (D-MI)	$3,367

("Grant & Eisenhofer," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Matt Cartwright (D-PA)	$7,600

Tom Malinowski (D-NJ)	$2,800
Susie Lee (D-NV)	$2,000
Sean Casten (D-IL)	$1,000
Josh Gottheimer (D-NJ)	$1,000

("Grant & Eisenhofer," OpenSecrets)

Berger Montague

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Cory Booker (D-NJ)	$19,695
Kamala Harris (D-CA)	$8,995
Chris Coons (D-DE)	$8,433
John Hickenlooper (D-CO)	$6,628
Raphael Warnock (D-GA)	$4,328

("Berger & Montague," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Susan Wild (D-PA)	$7,665
Matt Cartwright (D-PA)	$5,400
Pramila Jayapal (D-WA)	$2,800
Andy Kim (D-NJ)	$2,800
Mary Gay Scanlon (D-PA)	$2,525

("Berger & Montague," OpenSecrets)

Berger Montague Has Been Involved In Public Nuisance Lawsuits. (*Camden County Bd. v. Beretta, U.S.A*, Casetext, Filed 11/16/01)

Cohen Milstein

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Raphael Warnock (D-GA)	$15,640
Jon Ossoff (D-GA)	$14,512
Mark Warner (D-VA)	$8,500
Gary Peters (D-MI)	$7,756
Tim Kaine (D-VA)	$5,600

("Cohen, Milstein Et Al.," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Mondaire Jones (D-NY)	$2,360
Abigail Spanberger (D-VA)	$2,080
Jennifer Wexton (D-VA)	$2,080
Cindy Axne (D-IA)	$1,500
Alexandria Ocasio-Cortez (D-NY)	$1,370

("Cohen, Milstein Et Al.," OpenSecrets)

Cohen Milstein Has Been Involved In Public Nuisance Lawsuits. (Press Release, "Cohen Milstein Files Lawsuit Against Oregon Dealer That Transferred Gun Used In Murder Through Straw Purchase," Cohen Milstein, 1/8/16)

Simmons Hanly

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Dick Durbin (D-IL)	$42,750
Raphael Warnock (D-GA)	$7,401

Jon Ossoff (D-GA)	$7,020
Gary Peters (D-MI)	$6,350
Cory Booker (D-NJ)	$5,411

("Simmons Hanly Conroy," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Mikie Sherrill (D-NJ)	$16,000
Cheri Bustos (D-IL)	$15,950
Brad Schneider (D-IL)	$8,000
John Lewis (D-GA)	$8,000
Raja Krishnamoorthi (D-IL)	$7,700

("Simmons Hanly Conroy," OpenSecrets)

Simmons Hanly Has Represented Plaintiffs In Public Nuisance Lawsuits. ("Landmark Jury Verdict Finds Walgreens Liable In San Francisco Opioid Epidemic Case," Simmons Hanly Conroy, 8/11/22)

Donations & Political Activity From Additional Trial Law Firms Involved In Public Nuisance Cases

Donations From Key Firms (2020)		
Firm	**2020 Total**	**Percentage To Democrats**
Hagens Berman et al	$176,037	91.21%
Keller Rohrback	$183,122	100%
Seeger Weiss LLP	$203,522	99.97%
Weitz & Luxenberg	$216,957	96.64%

("Hagens, Berman Et Al.," OpenSecrets; "Keller Rohrback," OpenSecrets; "Seeger Weiss Llp," OpenSecrets; "Weitz & Luxenberg," OpenSecrets)

Hagens Berman

According To OpenSecrets, Individuals Affiliated With Hagens Berman Contributed $176,037 During The 2020 Election, With 91% Of All Donations Going To Democratic Candidates And Groups. ("Hagens, Berman Et Al.," OpenSecrets)

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Mark Kelly (D-AZ)	$7,435
Jon Ossoff (D-GA)	$7,061
Elizabeth Warren (D-MA)	$5,458
Bernie Sanders (I-VT)	$4,123
Raphael Warnock (D-GA)	$2,647

("Hagens, Berman Et Al.," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Steve Scalise (R-LA)	$1,845
Katie Porter (D-CA)	$1,061
Mondaire Jones (D-NY)	$408
Alexandria Ocasio-Cortez (D-NY)	$368
Marilyn Strickland (D-WA)	$325

("Hagens, Berman Et Al.," OpenSecrets)

Hagens Berman Is Involved In Various Global Warming Lawsuits. Matt Pawa, A Partner As Of 2018, Is Considered An "Architect Of The Public Nuisance Theory" In These Lawsuits. "The same private lawyers who won the lead paint case are representing cities in the latest round of global warming cases, including Cohen Milstein and Hagens Berman. Hagens Berman partner Matthew Pawa is considered an architect of the public

nuisance theory, having argued the Kivalina case and promoted judicial solutions to global warming for years. He didn't respond to a request for comment." (Daniel Fisher, "Climate Lawyers Hope 'Public Nuisance' Strategy Reverses Years Of Failure," *Forbes*, 2/12/18)

- **Since 2003, Matthew Pawa Has Donated $27,763 To Various Democratic Candidates And Committees, Including Bernie Sanders, Joe Biden, Hillary Clinton, Barrack Obama, And Others.** (Federal Election Commission)

Keller Rohrback

According To OpenSecrets, Individuals Affiliated With Keller Rohrback Contributed $183,122 During The 2020 Election, With 100% Of Those Donations Going To Democratic Candidates And Groups. ("Keller Rohrback," OpenSecrets)

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Mark Kelly (D-AZ)	$12,561
Gary Peters (D-MI)	$9,677
Elizabeth Warren (D-MA)	$4,052
Patty Murray (D-WA)	$3,500
Kyrsten Sinema (D-AZ)	$3,500

("Keller Rohrback," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Pramila Jayapal (D-WA)	$6,350
Matt Cartwright (D-PA)	$3,600
Kim Schrier (D-WA)	$3,250
James Clyburn (D-SC)	$1,500
Greg Stanton (D-AZ)	$1,300

("Keller Rohrback," OpenSecrets)

Keller Rohrback Has Represented Plaintiffs In Public Nuisances Cases. (Jack Queen, "Juul, Altria Can't Slip Bulk Of Claims In Vaping MDL," Law360, 10/26/20)

Seeger Weiss LLP

According To OpenSecrets, Individuals Affiliated With Seeger Weiss Contributed $203,522 During The 2020 Election, With 99.97% Of All Donations Going To Democratic Candidates And Parties. ("Seeger Weiss LLP," OpenSecrets)

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Cory Booker (D-NJ)	$17,188
Chris Coons (D-DE)	$5,600
Bernie Sanders (I-VT)	$890
Jon Ossoff (D-GA)	$430
Elizabeth Warren (D-MA)	$275

("Seeger Weiss LLP," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Hakeem Jeffries (D-NY)	$18,900
Nancy Pelosi (D-CA)	$5,610
Tom Suozzi (D-NY)	$5,600
Josh Gottheimer (D-NJ)	$2,810
Alexandria Ocasio-Cortez (D-NY)	$163

("Seeger Weiss LLP," OpenSecrets)

Seeger Weiss Has Represented Plaintiffs In Public Nuisance Lawsuits. (Gina Kim, "Monsanto Can't Keep LA's Pollution Suit In Federal Court," Law360, 6/30/22)

Sher Edling

Note: Sher Edling Has No Donation Profile Available From OpenSecrets, Likely Due To The Small Firm Size

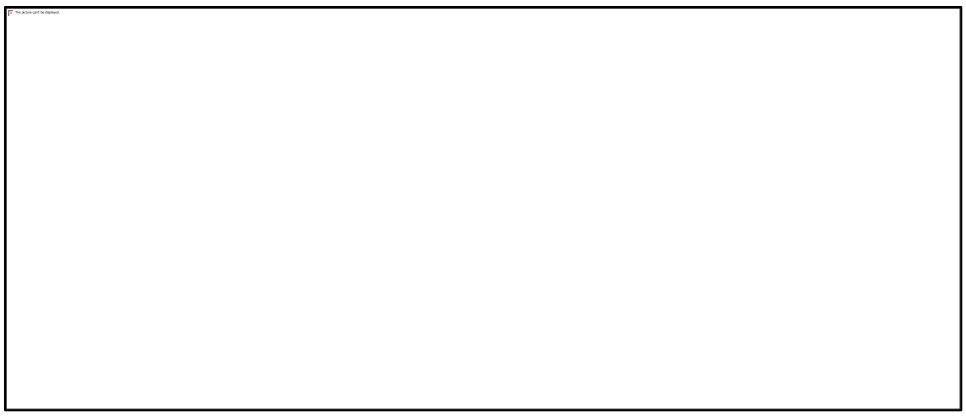
In 2020, Sher Edling Listed 22 Total Staff Members On A Proposal Submitted To The Minnesota Attorney General Outlining The Firm's Qualifications Ahead Of Potential Climate Litigation. (Sher Edling LLP, "Response To Minnesota Attorney General's Request For Qualifications For Potential Litigation Related to Fossil Fuel Companies' Misrepresentations," The Office Of Minnesota Attorney General Keith Ellison, 4/27/20)

Sher Edling Has Extensive Experience Working With State And Local Municipalities To Bring Environmental Public Nuisance Lawsuits Against Large Businesses. "Sher Edling LLP represents states, cities, counties and other public agencies as plaintiffs in high-impact, high-value environmental cases. We combine decades of top-level litigation and trial experience with an unwavering dedication to holding corporations accountable for the damage they cause. The firm has assembled a unique team with legal and technical expertise that, coupled with its detailed and extensive experience in climate and high impact litigation, helps assure clients of the strongest case and highest possible recovery." (Sher Edling LLP, "Response To Minnesota Attorney General's Request For Qualifications For Potential Litigation Related To Fossil Fuel Companies' Misrepresentations," The Office Of Minnesota Attorney General Keith Ellison, 4/27/20; Note: See Section 5 For Specific Actions Sher Edling Has Brought Against Large Corporations)

- **In 2020, Sher Edling Noted It Had 10 Cases Related To Climate Damages And Approximately 40 Cases Pertaining To Water Contamination And Natural Resource Damage Actions.** "Sher Edling represents States, counties, cities, and other public entities in complex climate damages and statutory litigation, water contamination, and natural resources litigation. Currently, the firm has filed 10 cases related to climate damages, and approximately 40 water contamination and natural resource damage actions." (Sher Edling LLP, "Response To Minnesota Attorney General's Request For Qualifications For Potential Litigation Related To Fossil Fuel Companies' Misrepresentations," The Office Of Minnesota Attorney General Keith Ellison, 4/27/20,)

Sher Edling's Partners Include Vic Sher And Matt Edling. ("Meet Our Team," Sher Edling)

- **Since 2016, Matt Edling Has Donated $4,701 To Various Democratic Candidates Including Sheldon Whitehouse, Joe Biden, Jon Ossoff, And Raphael Warnock.** ("Individual Contributions," Federal Election Commission)
- **Since 2016, Vic Sher Has Donated Over $8,000 To Senator Sheldon Whitehouse's Campaign Committee.** (Whitehouse For Senate, "Receipts," Federal Election Commission)



In 2019, Sheldon Whitehouse Filed An Amicus Brief In Support Of Climate Litigation By Sher Edling, Without Disclosing His Donations From The Firm's Partners. "Rhode Island senator Sheldon Whitehouse (D.) filed an amicus brief in court cases where cities and counties in California are suing major energy production companies for damages related to climate change, but did not disclose he had taken political donations from the attorneys who are conducting that litigation… Victor Sher and Matt Edling are the two named partners of the law firm Sher Edling, which is bringing suits on behalf of the cities of San Francisco and Oakland and other governments such as Marin and Santa Cruz counties against oil producers such as Exxon, BP, and Shell. Federal Election Commission records show Sher and Edling have given $6,400 and $1,000 to Whitehouse's political campaign committee, respectively, since 2016." (Todd Shepherd, "Sen. Whitehouse Fails To Disclose Donor Relationship In Court Filing," *The Washington Free Beacon*, 2/25/19)

- **Whitehouse Also Gave Remarks At An Event Promoting Sher Edling's Climate Lawsuit In Rhode Island.** "Sher Edling is also the firm representing Whitehouse's home of Rhode Island, which became the first state to go after energy producers when the 'Ocean State' announced its suit in July of last year at a press event at which Whitehouse was in attendance and contributed remarks. … The lawsuits, whether municipal or state, all seek to have the courts force the energy companies pay for abatement funds to pay for past and future damages the governments believe they have suffered or will suffer due to climate change." (Todd Shepherd, "Sen. Whitehouse Fails To Disclose Donor Relationship In Court Filing," *The Washington Free Beacon*, 2/25/19)

Weitz & Luxenberg

According To OpenSecrets, Individuals Affiliated With Weitz & Luxenberg Contributed $216,957 During The 2020 Election, With 96.64% Of All Donations Going To Democrat Candidates And Parties. ("Weitz & Luxenberg," OpenSecrets)

Top Five Senate Recipients (2020)	
Recipient Name (Party-State)	**Amount**
Bernie Sanders (I-VT)	$5,347
Cory Booker (D-NJ)	$3,320
Jon Ossoff (D-GA)	$1,775
Raphael Warnock (D-GA)	$1,157
Elizabeth Warren (D-MA)	$850

("Weitz & Luxenberg," OpenSecrets)

Top Five House Recipients (2020)	
Recipient Name (Party-State)	**Amount**
James Clyburn (D-SC)	$3,800
Bill Pascrell Jr. (D-NJ)	$2,800
Tom Suozzi (D-NY)	$2,800
Adriano Espaillat (D-NY)	$1,500
Mikie Sherrill (D-NJ)	$1,250

("Weitz & Luxenberg," OpenSecrets)

In 2015, Democratic New York Assembly Speaker Sheldon Silver – An Employee Of Weitz & Luxenberg – Took A Leave Of Absence After Being Accused Of Taking Millions In Payoffs And Kickbacks. "Assembly Speaker Sheldon Silver is taking a leave of absence from his law firm as he fights federal corruption charges, the firm said Wednesday. Weitz & Luxenberg president Perry Weitz said the firm was 'shocked' to learn about the accusations against Silver. 'We have asked Mr. Silver to take a leave of absence until these allegations are resolved,' he wrote in a statement emailed to reporters. Silver, a Manhattan Democrat, faces charges that he took nearly $4 million in payoffs and kickbacks in payments from law firms over a decade. Some of the charges relate to allegations that Silver collected money for securing state grants for a doctor who then referred cases to the firm. Weitz said the firm had no knowledge of the alleged arrangement. Silver, who in a state financial disclosure reported making between $650,000 and $750,000 from his outside legal work in 2013, has said he expects to be exonerated." ("Silver Takes Law Firm Leave Of Absence," *Adirondack Daily Enterprise*, 1/29/15)

- **Silver Was Later Convicted Of Corruption Charges In 2015.** "Sheldon Silver, who held a seemingly intractable grip on power for decades as one of the most feared politicians in New York State, was found guilty on Monday of federal corruption charges, ending a trial that was the capstone of the government's efforts to expose the seamy culture of influence-peddling in Albany." (Benjamin Weiser & Susanne Craig, "Sheldon Silver, Ex-New York Assembly Speaker, Is Found Guilty on All Counts," *The New York Times*, 11/30/15)

Trial Lawyer PAC Network Overview

Trial Lawyers Fund A Web Of Political Organizations That Work To Shape The Political Environment To Their Interests.

- **The "Centerpiece" Of This Web Is The American Association For Justice (AAJ), The Lead Advocacy Group For Trial Lawyers.** "This second Shady Trial Lawyer Pipeline Update looks at the web of federal political action committees (PACs) that are affiliated with trial lawyers and bolstered by the Shady Trial Lawyer Pipeline. The centerpiece of this web—referred to as the Shady Trial Lawyer PACs—is AAJ PAC, which is affiliated with the American Association for Justice, the trade group formerly known as the Association of Trial Lawyers of America." ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

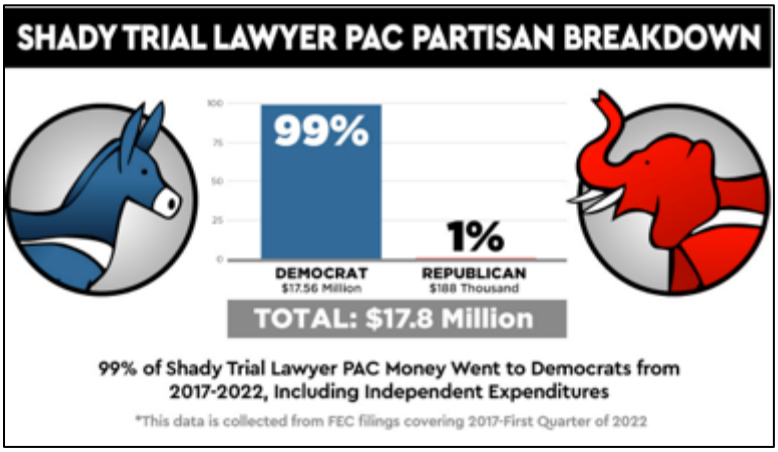
- **Other Trial Lawyer Political Groups Include A Series Of Justice PACs Set Up Each Election Cycle And The Truth & Justice Fund Company, Which Is An Independent Expenditure Vehicle.** "The rest of the web consists of Truth And Justice Fund Company and a series of Justice PACs that are set up for each two-year election cycle (Justice 2018, Justice 2020, etc.) … Truth And Justice Fund Company is an independent expenditure vehicle that received almost $400,000 from AAJ PAC and put seven-figures of combined independent expenditure support behind Cal Cunningham's 2020 campaign for U.S. Senate in North Carolina against Senator Thom Tillis and Steve Bullock's 2020 campaign for U.S. Senate in Montana against Senator Steve Daines" ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

- **Each Of These Groups Are Closely Tied To Trial Law Firms And Powered By The Money Flowing From Contracts With State And Local Governments.** "Each is closely tied to plaintiff-side trial firms and powered by money flowing out of firms that have contracts with States or local governments, including substantial money out of the Shady Eight firms that were covered in the last Shady Trial Lawyer Pipeline Update." ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

This Network Of Groups Spent Over $17.5 Million To Support Candidates And Political Groups Between 2017 And 2022, With 99% Of That Money Going To Democrats. "Altogether, the Shady Trial Lawyer PACs put 99% of their money to work for Democrats from 2017 through the beginning of 2022, with 100% of their disclosed independent expenditures in federal races helping Democratic candidates. Combined, they put over $17.5 million to work supporting Democratic candidates and committees, including over $2 million just in the last 15 months." ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

- **More Than $12 Million In Funding From These Groups Went Towards Races For The U.S. House And Senate.** "A major focus of the Shady Trial Lawyer PACs is Capitol Hill. Combined, the Shady Trial Lawyer. PACs put over $12 million toward races for the U.S. House and Senate. They put nearly $7 million toward supporting Democratic candidates for U.S. Senate, including money spent on independent

expenditures and money sent to outside committees like the Democratic Senatorial Campaign Committee and Senate Majority PAC that focus on electing Democrats to the U.S. Senate. The Shady Trial Lawyer PACs put similar money to work supporting Democratic candidates for the U.S. House, with more than $5 million going to candidates and outside committees targeting those races." ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)



The Web Also Helped Support An Array Of Left-Wing Political Organizations And Dark Money Operations. "Beyond the money that the Shady Trial Lawyer PACs put to work in support of Democratic candidates in races for U.S. House and Senate, the Shady Trial Lawyer PACs also sent substantial money to various organizations that serve as progressive political hubs or push particularly strident left-wing agendas." ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

Major Donations Were Made To Dark Money Groups Like America Votes, The National Democratic Redistricting Committee, Priorities USA Action, and EMILY's List. ("Shady Trial Lawyer Pipeline Update," Alliance For Consumers, 4/1/22)

Vice President Kamala Harris

Before Kamala Harris Was Elected To The Senate, She Served As California State Attorney General From 2011 To 2016 And San Francisco District Attorney From 2004 To 2011. ("Kamala Harris," Ballotpedia)

As Attorney General, Harris Emerged As A Leader For Climate Change Litigation In The United States. "That case emphasizes how California is increasingly rivaling, if not surpassing, Washington as the center for climate litigation in the United States, reflecting the fact that the Golden State is acting on climate change in a way that neither the Obama administration nor Congress is at the moment in the aftermath of the dramatic failure to enact a national cap-and-trade program." (Lawrence Hurley, "Lawyers Go West As Climate Litigation Warms Up," E&E News, 9//20/12)

- **In Congress, Kamala Harris Filed An Amicus Brief In Support Of Using Public Nuisance Lawsuits Against Oil Companies.** "As a senator, Harris also filed an amicus brief in support of litigation charging several oil companies with creating a public nuisance (climate change) with their emissions. This strategy from her former DA office and its colleagues in Oakland mirrors the equipment crackdown in that it seeks to hold specific companies responsible for an environmental impact. But in the case of climate change, where attribution is murkier than an oil spill, this strategy hasn't yet proven successful with other prosecutors." (Tim McDonnell & Michael Coren, "Kamala Harris's Persistent Decade Of Duking It Out With Oil Companies," Quartz, 8/14/20)

Federal Campaign Donations from Trial Lawyers

Donations From Key Firms			
Source	**2016 Cycle**	**2018 Cycle**	**2020 Cycle**
American Association for Justice PAC	$5,000	$0	$0
Morgan & Morgan	$500	$50	$668
Lieff, Cabraser et al	$19,995	$1,850	$32,797
Motley Rice	$0	$0	$1,178

Baron & Budd	$0	$5	$605
Grant & Eisenhofer	$2,700	$5	$5,600
Berger & Montague	$8,100	$0	$8,995
Hagens, Berman et al	$7,600	$0	$0
Keller Rohrback	$0	$0	$500

Top Donations From Other Trial Law/Personal Injury Firms			
Source	**2016 Cycle**	**2018 Cycle**	**2020 Cycle**
Cotchett, Pitre & McCarthy	$52,800	$0	$35,800
Hueston Hennigan LLP	$43,200	$83	$36,183
Gibson, Dunn & Crutcher	$41,900	$308	$21,011
Robinson, Calcagnie & Robinson	$37,090	$25	$18,910
Dreyer, Babich et al	$34,950	$0	$5,620

Energy Secretary Jennifer Granholm

Before She Became Energy Secretary, Jennifer Granholm Served As The Attorney General Of Michigan From 1999 To 2003 And Governor Of Michigan From 2003 To 2011. ("Jennifer Granholm," Ballotpedia)

Granholm Discussed Public Nuisance Lawsuits During Her Tenure As Michigan AG And Has Benefitted From Political Donations By Trial Lawyers Over The Years. (Joe Mathews, "New York, Connecticut Consider Suits Against Gun Manufacturers; 'We Are On The Verge,' Says Spokesman For One Attorney General," *The Baltimore Sun*, 2/24/99; James K. Glassman, "Is Government Strangling The New Economy?" *The Wall Street Journal*, 4/6/00)

- **As Attorney General, Granholm Expressed A Favorable View Of Using Public Nuisance Law To Pursue Litigation Against Gun Manufacturers.** "Some lawyers and gun-control advocates suggested that Michigan is also considering a lawsuit. But in a letter faxed to The Sun yesterday, that state's newly elected attorney general, Jennifer M. Granholm, wrote, 'I have made no plans to sue gun manufacturers.' … Lawyers said that two main legal theories -- a 'product liability' claim that guns lack safety features, and a 'public nuisance' claim that guns are negligently marketed and distributed to criminals -- are under consideration in both states. Granholm, the Michigan attorney general, indicated that if her state were to file, she prefers the public nuisance theory because 'guns function as they were designed.'" (Joe Mathews, "New York, Connecticut Consider Suits Against Gun Manufacturers; 'We Are On The Verge,' Says Spokesman For One Attorney General," *The Baltimore Sun*, 2/24/99)

- **In April 2000, After Gun Manufacturers Settled For Millions Following A Tsunami Of Public Nuisance Lawsuits, Granholm Stated "We Want To Do A Smith & Wesson-Like Thing With DoubleClick" – An Internet Advertising Company Accused Of Privacy Abuses.** "The same team that gang-tackled the makers of cigarettes and guns is going after not just Microsoft, but smaller high-tech companies. The Justice Department, state attorneys general and plaintiffs lawyers are setting their sights on such firms as DoubleClick, the Internet advertising company accused of privacy abuses. 'We want to do a Smith & Wesson-like thing with DoubleClick,' said Jennifer Granholm, attorney general of Michigan, last week." (James K. Glassman, "Is Government Strangling The New Economy?" *The Wall Street Journal*, 4/6/00)

Justice PAC Was A Top Donor To Granholm's 2002 Gubernatorial Campaign, According To The Michigan Campaign Finance Network. ("A Citizen's Guide To Michigan Campaign Finance," Michigan Campaign Finance Network)

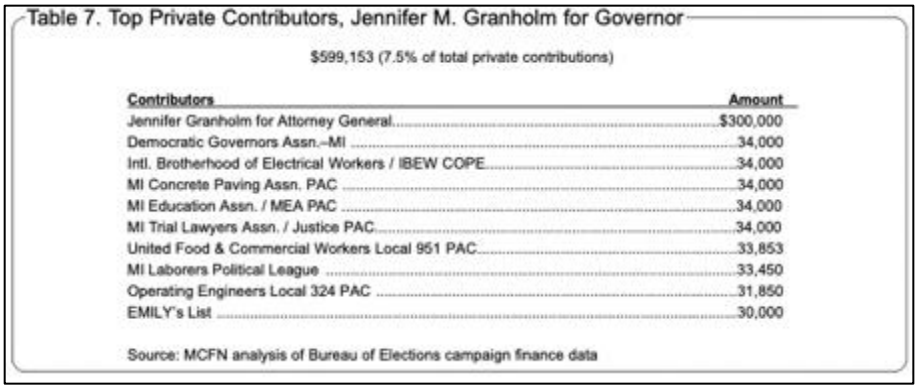


Table 7. Top Private Contributors, Jennifer M. Granholm for Governor

$599,153 (7.5% of total private contributions)

Contributors	Amount
Jennifer Granholm for Attorney General	$300,000
Democratic Governors Assn.–MI	34,000
Intl. Brotherhood of Electrical Workers / IBEW COPE	34,000
MI Concrete Paving Assn. PAC	34,000
MI Education Assn. / MEA PAC	34,000
MI Trial Lawyers Assn. / Justice PAC	34,000
United Food & Commercial Workers Local 951 PAC	33,853
MI Laborers Political League	33,450
Operating Engineers Local 324 PAC	31,850
EMILY's List	30,000

Source: MCFN analysis of Bureau of Elections campaign finance data

Senator Sheldon Whitehouse (D-RI)

Senator Sheldon Whitehouse (D-RI) Previously Served As A U.S. Attorney From 1994 To 1998, And As Rhode Island Attorney General From 1999 To 2003, Before He Was Elected To Congress. ("Sheldon Whitehouse," Ballotpedia)

Whitehouse Was Involved With Public Nuisance Litigation While Serving As Rhode Island Attorney General. He Has Since Expressed Continued Support For These Kinds Of Lawsuits. ("Landmark R.I. Lead-Paint Trial Set To Start," *The Associated Press*, 9/4/02; Todd Shepherd, "Sen. Whitehouse Fails To Disclose Donor Relationship In Court Filing," *The Washington Free Beacon*, 2/25/19)

- **In 2003, Rhode Island Pursued Public Nuisance Litigation Against Lead Paint Manufacturers.** "Nearly three decades after lead paint was banned, Rhode Island is trying to become the first state to hold manufacturers accountable for the decades-long poisoning of children from lead paint. Attorney General Sheldon Whitehouse has sued eight companies, claiming they created a public nuisance by selling lead paint. Opening statements before a six-person jury are to be held today in Providence Superior Court. Ultimately, the state seeks to hold the manufacturers responsible for poisoning thousands of children in a state with one of the highest rates of child poisoning in the nation. 'We are looking at both present and threatened harm,' said Whitehouse, also a Democratic candidate for governor. 'Even lead paint that's not yet exposed is still potentially subject to such litigation.' … The attorney general estimates that about 330,000 properties - from the gilded, early 20th century mansions in Newport to deteriorating triple-deckers in poor neighborhoods - have lead paint. They say the tainted paint in the dwellings constitutes a public nuisance." ("Landmark R.I. Lead-Paint Trial Set To Start," *The Associated Press*, 9/4/02)

- **In 2019, Whitehouse Filed An Amicus Brief In Support Of Climate Litigation Bought By Sher Edling, Without Disclosing His Donations From The Firm's Partners.** "Rhode Island senator Sheldon Whitehouse (D.) filed an amicus brief in court cases where cities and counties in California are suing major energy production companies for damages related to climate change, but did not disclose he had taken political donations from the attorneys who are conducting that litigation. … Victor Sher and Matt Edling are the two named partners of the law firm Sher Edling, which is bringing suits on behalf of the cities of San Francisco and Oakland and other governments such as Marin and Santa Cruz counties against oil producers such as Exxon, BP, and Shell. Federal Election Commission records show Sher and Edling have given $6,400 and $1,000 to Whitehouse's political campaign committee, respectively, since 2016." (Todd Shepherd, "Sen. Whitehouse Fails To Disclose Donor Relationship In Court Filing," *The Washington Free Beacon*, 2/25/19)

- **Whitehouse Also Gave Remarks At An Event Promoting Sher Edling's Climate Lawsuit In Rhode Island.** "Sher Edling is also the firm representing Whitehouse's home of Rhode Island, which became the first state to go after energy producers when the 'Ocean State' announced its suit in July of last year at a press event at which Whitehouse was in attendance and contributed remarks. … The lawsuits, whether municipal or state, all seek to have the courts force the energy companies pay for abatement funds to pay for past and future damages the governments believe they have suffered or will suffer due to climate change." (Todd Shepherd, "Sen. Whitehouse Fails To Disclose Donor Relationship In Court Filing," *The Washington Free Beacon*, 2/25/19)

Overall, Lawyers And Law Firms Have Been Top Supporters Of Whitehouse Throughout His Political Career, According OpenSecrets. ("Sheldon Whitehouse Profile," OpenSecrets)

Federal Campaign Donations from Trial Lawyers

Donations From Key Firms			
Source	**2018 Cycle**	**2020 Cycle**	**2022 Cycle**
American Association for Justice PAC	$9,000	$0	$1,000
Lieff, Cabraser et al	$3,200	$0	$0
Motley Rice	$29,775	$0	$6,800
Baron & Budd	$1,812	$0	$0
Cohen Milstein	$1,000	$0	$0

Top Donations From Other Trial Law/Personal Injury Firms			
Source	**2018 Cycle**	**2020 Cycle**	**2022 Cycle**
Landry & Swarr	$3,000	$0	$13,600
Power Rogers LLP	$10,100	$0	$11,600
Mandell, Schwartz & Boisclair	$7,900	$0	$8,700
Clifford Law Offices	$5,700	$0	$6,700

Senator Richard Blumenthal (D-CT)

Senator Richard Blumenthal Was Described In Media Reports As A "Leader" In The Litigation Against Big Tobacco While Serving As Connecticut Attorney General. He Was Also Among The Attorneys General Considering Public Nuisance Lawsuits Against Gun Manufacturers. "The attorneys general in New York and Connecticut have senior aides working on strategies and draft complaints that would seek to recover many of the medical costs of treating gunshot victims, according to interviews with one attorney general, gun industry sources, and lawyers in both states. 'Clearly, Connecticut has been disastrously affected by gun violence,' said Connecticut Attorney General Richard Blumenthal, who has been a leader in the legal fight against tobacco, in a telephone interview this week. 'And so we have a number of attorneys actively considering legal action. … Lawyers said that two main legal theories -- a 'product liability' claim that guns lack safety features, and a 'public nuisance' claim that guns are negligently marketed and distributed to criminals -- are under consideration in both states.'" (Joe Mathews, "New York, Connecticut Consider Suits Against Gun Manufacturers; 'We Are On The Verge,' Says Spokesman For One Attorney General," *The Baltimore Sun*, 2/24/99)

- **Blumenthal Served As Connecticut Attorney General From 1991 To 2011.** ("Richard Blumenthal," Ballotpedia)

Overall, Blumenthal Has Received $2,939,889 From Lawyers And Law Firms Since 2009. ("Richard Blumenthal," Ballotpedia; "Richard Blumenthal," OpenSecrets)

Federal Campaign Donations from Trial Lawyers

Donations From Key Firms			
Source	**2018 Cycle**	**2020 Cycle**	**2022 Cycle**
American Association for Justice PAC	$0	$0	$10,000
Lieff, Cabraser et al	$0	$50	$26,648
Motley Rice	$0	$1,000	$26,750
Baron & Budd	$0	$250	$2,000
Grant & Eisenhofer	$0	$0	$5,800
Cohen Milstein	$0	$250	$0
Simmons Hanly	$0	$0	$32,600
Keller Rohrback	$0	$0	$333

Top Donations From Other Trial Law/Personal Injury Firms			
Source	**2018 Cycle**	**2020 Cycle**	**2022 Cycle**

Paul, Weiss et al	$0	$0	$49,800
Koskoff, Koskoff & Bieder	$0	$1,400	$29,282
Clifford Law Offices	$0	$0	$24,000
Greenberg Traurig LLP	$1,000	$3,000	$21,500

Gov. Mike DeWine (R-OH)

While Serving In The Senate, Mike DeWine Opposed Legislation Drafted In Response To An Onslaught Of Lawsuits Brought By Municipalities Against Weapons Manufacturers. "The Protection of Lawful Commerce in Arms Act was conceived and written after several municipalities—Atlanta, Chicago, Gary, and New York City—filed lawsuits against firearms manufacturers and distributors alleging that their actions had undermined public health and caused those municipalities to incur substantial financial obligations. In contrast to this claim, PLCAA's supporters said the law was enacted to end 'frivolous' and 'politically motivated' lawsuits. Former Senator Larry Craig (R-ID), the Act's sponsor, was a champion of the latter point of view, and claimed, 'These outrageous lawsuits attempting to hold law-abiding industry responsible for the acts of criminals are a threat to jobs and the economy, jeopardize the exercise of constitutionally-protected freedoms, undermine national security, and circumvent Congress and state legislatures.' Senator John Cornyn (R-TX) echoed these sentiments during a Motion to Proceed on PLCAA in 2003, stating, 'This bill is simple: It provides that lawsuits may not be brought against lawful manufacturers and sellers of firearms or ammunition if the suits are based on criminal or unlawful use of the product by someone else—when a criminal, not the manufacturer, commits a crime.' Craig attempted to assuage doubts about the Act by assuring Americans that the gun industry was not protected 'from being sued for their own misconduct.' The Act was aimed at an 'extremely narrow category of lawsuits,' he argued. Opponents of the Act saw things quite differently, arguing that existing litigation against the gun industry was far from frivolous. Former Senator Mike DeWine (R-OH) stated during debate on PLCAA, 'I oppose this bill because it denies certain victims in this country their day in court. It singles out one particular group of victims and treats them differently than all other victims in this country ... It denies them their access to court ... There are legitimate victims who when this legislation is passed will not be able to file their lawsuits.'" ("Justice Denied: The Case Against Gun Industry Immunity," The Educational Fund To Stop Gun Violence)

- **DeWine Served In The Senate Until 2007. He Went On To Serve As Ohio Attorney General From 2011 To 2019 And Has Been Governor Of Ohio Since 2019.** ("Mike DeWine," Ballotpedia)

In 2017, Attorney General Mike DeWine Brought A Public Nuisance Lawsuit Against Opioid Manufacturers And Related Companies Over The Opioid Crisis. "Ohio Attorney General Mike DeWine today filed a lawsuit against five leading prescription opioid manufacturers and their related companies in Ross County Court of Common Pleas. The lawsuit alleges that the drug companies engaged in fraudulent marketing regarding the risks and benefits of prescription opioids which fueled Ohio's opioid epidemic. 'We believe the evidence will also show that these companies got thousands and thousands of Ohioans -- our friends, our family members, our co-workers, our kids -- addicted to opioid pain medications, which has all too often led to use of the cheaper alternatives of heroin and synthetic opioids. These drug manufacturers led prescribers to believe that opioids were not addictive, that addiction was an easy thing to overcome, or that addiction could actually be treated by taking even more opioids' said Ohio Attorney General Mike DeWine. 'They knew they were wrong, but they did it anyway -- and they continue to do it. Despite all evidence to the contrary about the addictive nature of these pain medications, they are doing precious little to take responsibility for their actions and to tell the public the truth.' The five manufacturers which are listed as defendants include: Purdue Pharma, which sold OxyContin, MS Contin, Dilaudid, Butrans, Hyslingla, and Targiniq Endo Health Solutions, which sold Percocet, Percodan, Opana, and Zydone Teva Pharmaceutical Industries and its subsidiary Cephalon, which sold Actiq and Fentora Johnson & Johnson and its subsidiary Janssen Pharmaceuticals, which sold Duragesic and Nucynta Allergan, which sold Kadian, Norco, and several generic opioids[.] The lawsuit alleges, among several counts, that the drug companies violated the Ohio Consumer Sales Practices Act and created a public nuisance by disseminating false and misleading statements about the risks and benefits of opioids." (Press Release, "Attorney General DeWine Files Lawsuit Against Opioid Manufacturers For Fraudulent Marketing; Fueling Opioid Epidemic," Ohio Attorney General, 5/31/17)

Attorney General DeWine Used Outside Counsel To File The State's Lawsuit Against Opioid Manufacturers, Namely Attorneys John Davidson And Mike Moore. "Mr. DeWine said Ohio's lawsuit is

among the most comprehensive taken by any state against a broad group of opioid painkiller makers. He said the only other similar lawsuit was filed by Mississippi in state court in December 2015, alleging similar wrongdoing against the same five companies. That suit is pending. One lawyer in private practice in Mississippi, John Davidson, is listed as outside counsel for the plaintiffs in both the Ohio and Mississippi cases. Another lawyer listed as outside counsel for the state on the Ohio case, Mike Moore of Flowood, Miss., was Mississippi's attorney general in 1994 when the state filed the first state lawsuit against the tobacco industry, alleging companies misrepresented the health risks of their products. His suit touched off a flurry of litigation by states against the industry that ultimately concluded with a $206 billion settlement. In an email, Mr. Moore said he sees 'parallels' between the tobacco and opioid litigation, including the 'misleading marketing.'" (Jeanne Whalen, "Opioid Makers Sued For Stoking Addiction – WSJ," Fox Business, 6/1/17).

- **Attorney John Davidson Is The Managing Partner At Davidson Bowie, PLLC And Currently Represents Mississippi, Ohio, Arkansas, And Louisiana In Ongoing National Opioid Litigation.** "John L. Davidson is the managing partner of Davidson Bowie, PLLC. His firm represents clients throughout the Country in matters ranging from complex securities cases to catastrophic injury cases. … Mr. Davidson filed the FIRST opioid case in the country on behalf of a state government and currently represents Mississippi, Ohio, Arkansas, and Louisiana in the ongoing national opioid litigation." ("Our Team," Davidson Bowie)

- **Moore Was The Attorney General Of Mississippi From 1988 To 2004, And Now Runs His Own Law Firm. He Received National Attention In 1994 For Leading The National Litigation Effort Against Tobacco Companies.** "Mike Moore was Attorney General of the State of Mississippi from 1988 – 2004 and now practices law in the areas of dispute resolution and governmental relations with his own firm, Mike Moore Law Firm, LLC, in Flowood, Mississippi. Prior to opening his own firm, Mr. Moore practiced with Phelps Dunbar in Jackson, Mississippi. … He received national attention in 1994, when he filed the first suit against 13 tobacco companies making Mississippi the first state to insist that cigarette manufacturers reimburse the State for costs it incurred treating smoking-related illnesses. The suit resulted in a $4.1 billion settlement for the State of Mississippi. Mr. Moore also led the national tobacco litigation effort, which resulted in a $246 billion recovery for all of the states." ("Who We Are," Mike Moore Law Firm, LLC, Archived 3/17/22)

State & Local Governments

Public Nuisance Lawsuits Have Emerged As An Attractive Option For Elected Officials As A Means To Tackle Public Policy Issues Through Litigation, With Little Financial Downside. "For elected officials, signing up for this litigation is enticing. They get to tell their constituents that they are trying to solve a local, national, or even international problem and it isn't going to cost them anything. Who doesn't want free money? Then, the government-deputized contingency-fee lawyers target businesses – often large, faceless, out-of-state companies – that they can vilify in the media and blame for the problem because their products are associated with the crisis." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort,'" American Tort Reform Association, 3/1/20)

Governments Have Claimed That The Historical Restraints On Public Nuisance Suits Should Not Apply To Them, As They Are Uniquely Positioned To Bring Claims On Behalf Of The Public. "Enterprising plaintiffs and their counsel would like to break the public nuisance 'monster' out of its judicially constructed cage. Governmental entity plaintiffs, often represented by contingency fee counsel, have argued that many of the historical restraints that courts apply to public nuisance suits should not apply to them due to their unique ability to bring representative claims on behalf of their constituents." (Joshua Payne & Jess Nix, "Waking The Litigation Monster: The Misuse Of Public Nuisance," U.S. Chamber Of Commerce, 3/1/19)

- **"The Historical Restraints They Seek To Avoid Include The Requirement That There Be An Injury To A Right Common To The Public At Large, Limitations On The Recovery Of Damages, And Proving Causation."** (Joshua Payne & Jess Nix, "Waking The Litigation Monster: The Misuse Of Public Nuisance," U.S. Chamber Of Commerce, 3/1/19)

Public Nuisance Lawsuits, Such As The Ones Filed By Municipalities Against Oil Companies Over Climate Change, Provide An Alluring Option For Cash-Strapped Local Governments To Backfill Budget Holes On The Back Of Corporate Litigation. "Liberals want to use racketeering laws to prosecute so-called climate-change skeptics. But the real conspiracy may be between plaintiff lawyers and Democratic politicians who have ganged up to shake down oil companies. … Cities are demanding billions for an 'abatement fund' that will help backfill their budgets. San Francisco schools' retirement costs have more than doubled since 2012. New York City subways are in disrepair, which its lawyers attribute to hurricane damage caused by climate change but everyone knows is the result of decades of neglect. The real public nuisances in these progressive sanctuaries are vagrancy, public urination and open drug use that are all increasingly common. Hagens Berman, which has negotiated a 23.5% contingency fee in the San Francisco and Oakland cases, is hoping the oil giants will pay to make the lawsuits go away, which may be tempting as cases pile up." (Editorial, "The Climate-Change Tort Racket," *The Wall Street Journal*, 6/8/18)

Left-Leaning Governments And Entities Regularly Back Lawsuits Involving Political Issues Such As Climate Change And Gun Control. ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort'," American Tort Reform Association, 3/1/20; Note: See The Bevy Of Liberal Cities In California, New York, Connecticut, Washington, & Others Bringing These Cases)

- **However, Conservatives Are Not Completely Left Out Of The Public Nuisance Space. A Number Of Right-Leaning Cities, Counties, And Local Politicians Are Involved In Opioid Litigation, As Seen In Oklahoma (Republican AG John O'Connor) And West Virginia (Republican AG Patrick Morrisey**). (Brian Mann, "Oklahoma's Supreme Court Tossed Out A Landmark $465 Million Opioid Ruling," NPR, 11/9/21; Nate Raymond, "McKesson To Pay $37 Million To Resolve West Virginia Opioid Lawsuit," *Reuters*, 5/2/19)

State Attorneys General And Municipalities From Across The Country Have Been Involved In The Multidistrict Litigation Filed Against Opioid Manufacturers, Distributers, And Retailers. ("Global Settlement Tracker," Opioid Settlement Tracker)

- **More Than 3,000 State And Local Governments Joined The Litigation, Largely Recruited By Contingency Fee Attorneys.** "Over the past three years, more than 3,000 state and local governments – recruited by contingency fee counsel – have sued the entire prescription opioid medication supply chain, seeking to recover billions of dollars in damages for costs expended to combat opioid abuse, an issue plaintiffs characterized as a national 'epidemic' long before the current COVID-19 pandemic." ("Risk Assessments Need To Account For Public Nuisance Litigation," Ropes & Gray, 10/13/20)

- **For Example, West Virginia Attorney General Patrick Morrisey Worked With Motley Rice To File Public Nuisance Lawsuits Against Opioid Manufacturers And Pharmacies.** "[Patrick] Morrisey

initially filed dubious claims against opioid manufacturers and wholesale distributors. More recently, he decided to stretch his discredited legal theories to the max by lobbing them against pharmacies such as Rite Aid, Walgreens, and Walmart, claiming that they too were liable. He went so far as to allege that these pharmacies were liable because they dispensed opioids to customers, even though they did so when filling valid prescriptions written by doctors who were registered by the DEA, licensed by the state of West Virginia, and often approved by the state-run Medicaid or federal Medicare programs. And at every step of Morrisey's public-nuisance odyssey, he has brought along his ambulance-chasing pals at Motley Rice." (Carrie Campbell Severino, "State AG Monitor: What Happened To Patrick Morrisey?" *National Review*, 5/14/21)

The Swell Of Environmental Cases Have Originated From Municipalities In Left-Leaning States, Especially California, And Spread From There:

- **Climate Change Lawsuits Brought Against Energy Producers Began With A Handful Of California Municipalities In 2017.** "More than a dozen local and state governments are suing energy producers for the costs they say they will have to spend to deal with the impacts of climate change, such as building sea walls to protect shorelines. These lawsuits began with a handful of California municipalities in 2017 and echo the themes from the lead paint case." ("The Plaintiffs' Lawyer Quest For The Holy Grail: The Public Nuisance 'Super Tort'," American Tort Reform Association, 3/1/20)

- **The Municipalities Included San Mateo County, Marin County, And Imperial Beach. They Were Later Joined By San Francisco, Oakland, And Santa Cruz.** (David Hasemyer, "Fossil Fuels On Trial: Where The Major Climate Change Lawsuits Stand Today," Inside Climate News, 1/17/20)

- **In 2018, Similar Lawsuits Were Brought By New York City (NY), Richmond (VA), Boulder (CO), San Miguel County (CO), King County (WA), The State Of Rhode Island, And Baltimore (MD).** (David Hasemyer, "Fossil Fuels On Trial: Where The Major Climate Change Lawsuits Stand Today," Inside Climate News, 1/17/20)

In One Of The Newest Areas Of Public Nuisance Litigation, School Districts And Municipalities Have Brought Public Nuisance Lawsuits Against Vape Manufacturers. "School districts across the U.S. sued Juul Labs Inc. in federal courts over the economic burden created by teen vaping, opening a new legal front as the country grapples with a widening public-health crisis. Suburban districts near New York City, Kansas City and St. Louis accused Juul of intentionally targeting teens with its product and creating a public nuisance with the health problems tied to vaping. A fourth suit in Washington state included Juul investor Altria Group Inc. as a defendant. The complaints filed Monday make many of the same arguments local governments are using against opioid makers over a nationwide addiction epidemic." (Tiffany Kary & Jef Feeler, "Juul Accused By School Districts Of Creating Vaping 'Nuisance,'" Bloomberg, 10/7/19)

Nonprofits

Nonprofit Advocacy Groups Are Commonly Involved In Bringing Forth Public Nuisance Litigation, Especially In The Climate Sector. "Over the past two decades, plaintiffs' lawyers and environmental groups have sought to join forces with public officials to sue America's energy manufacturers over global climate change. Climate tort litigation has attracted an array of plaintiffs from small and big municipalities to crab fishermen to the State of Rhode Island. The lawsuits all ask courts to make energy manufacturers pay for impacts of global climate change by blaming them for selling products that contribute to climate change." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **These Groups Often Provide Money To Law Firms And Public Relations Consultants In A Coordinated Effort To Bring Litigation Against Corporate Targets.** "As the report shows, a handful of nonprofit foundations are providing money to law firms and public relations consultants to generate the litigation. Their goals are to use media attention from the lawsuits to drive the debate on climate public policies and harm energy manufacturers and their supporters politically by publicly blaming them for climate change. For these parties, winning the litigation is secondary, though the lawyers have secured huge contingency fees in hopes of generating personal wealth from a successful outcome in these cases." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

For Instance, The Nonprofit Earth Island Institute Has Been A Major Player In Bringing Public Nuisance Lawsuits Against Producers Of Plastic Packaging, Including Coca-Cola, Pepsi, Nestlé, And Others. "Today, Earth Island Institute, represented by Cotchett, Pitre, & McCarthy, filed the first major lawsuit against Crystal Geyser Water Company, The Clorox Company, The Coca-Cola Company, Pepsico, Inc., Nestlé USA, Inc., Mars, Incorporated, Danone North America, Mondelez International, Inc., Colgate-Palmolive Company, and The Procter & Gamble Company for polluting our waterways, coasts, and oceans with millions of tons of plastic packaging. The lawsuit was filed in California State Superior Court in the County of San Mateo alleging violations of the California Consumers Legal Remedies Act, public nuisance, breach of express warranty, defective product liability, negligence, and failure to warn of the harms caused by their plastic packaging." (Press Release, "CPM Helps Earth Island Institute Take On Big Plastic," Cotchett Pitre & McCarthy LLP, 2/26/20)

While No Longer Active, The Nonprofit Global Warming Legal Action Project (GWLAP) Provided The Support Needed By Environmental Attorney Matt Pawa To Bring The Public Nuisance Case *American Electric Power v. Connecticut,* Which Eventually Made It To The Supreme Court. "The first group to articulate the legal strategy for suing companies in the energy industry for contributing to climate change was the now-disbanded Global Warming Legal Action Project. Founded in 2001 by environmental attorney Matt Pawa as a special project for the Civil Society Institute … Matt Pawa worked through his law firm at the time, Pawa Law Group P.C., to mount the project's cases against companies in the energy industry. In 2004, GWLAP joined the attorneys general of California, Connecticut, Iowa, New Jersey, New York, Rhode Island, Vermont, Wisconsin and the New York City to file an initial tort case against the American Electric Power Company and five other electric utility companies. It was the first climate change case resting on the theory of public nuisance—a claim that argues that the public (as opposed to any number of individuals) suffered a harm as a result of an unreasonable activity that interferes with a public right. … The case, generally known as AEP v. Connecticut, eventually went to the U.S. Supreme Court, which issued a unanimous decision in favor of the utilities. … Operating through a nonprofit provided Pawa with the financial latitude to work on these highly speculative cases on a contingency fee basis, while preserving the potential for his law firm to profit from successful litigation." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **GWLAP Was Funded By A Number Of Left-Wing Foundations, Including The Dark Money Tides Foundation.** "All told, GWLAP received at least half a million dollars from major philanthropies such as the Rockefeller Brothers Fund, Wallace Global Fund, Tides Foundation and Energy Foundation organizations that would later be instrumental financial backers for other groups involved in climate tort litigation." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **Attorney Matt Pawa And GWLAP Eventually Brought Similar Public Nuisance Lawsuits Against Other Entities.** "AEP v. Connecticut was one of four climate change public nuisance cases filed at that time. GWLAP's website claims involvement in one of these other cases—Native Village of Kivalina v.

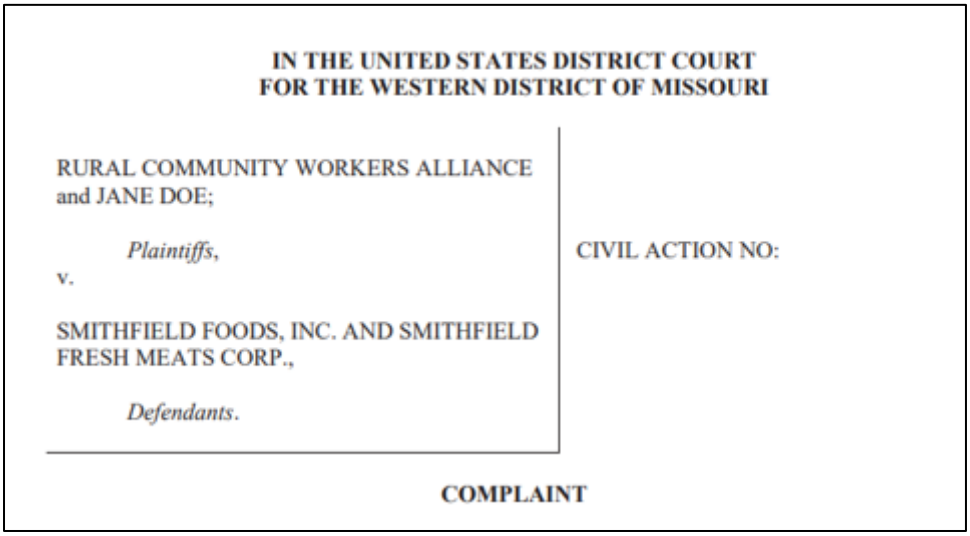
ExxonMobil Corp. —a case filed in 2008 that targeted a few dozen oil, gas and other energy manufacturers. GWLAP does not appear on any of the court documents. Matt Pawa and Pawa Law Group P.C. are listed as counsel for the plaintiffs." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

The Washington, D.C.-Based Niskanen Center Joined With EarthRights International In 2018 To Serve As Counsel On Behalf Of The City Of Boulder (CO) And San Migel County (CO) In Their Public Nuisance Lawsuit Against Exxon And Suncor Energy. "In April 2018, the Niskanen Center joined with EarthRights International and the Denver-based Hannon Law Firm as counsel for the City and County of Boulder and San Miguel County in Colorado in filing a public nuisance lawsuit against ExxonMobil and Suncor Energy, a Canadian oil producer." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **EarthRights International Also Attempted To Convince Fort Lauderdale (FL) To Pursue Climate Tort Litigation Against Energy Manufacturers.** "It also attempted to convince Fort Lauderdale, Florida, to pursue a climate tort lawsuit against energy manufacturers. ERI's General Counsel Marco Simons met with the Fort Lauderdale City Commission to pitch the municipality on bringing a lawsuit against energy manufacturers to pay for climate change damages. Simons also reportedly participated in closed-door meetings with city attorney Alain Boileau, scheduled by Seth Platt, a registered lobbyist for the Institute for Governance & Sustainable Development. ERI was ultimately unsuccessful in its attempt to influence Fort Lauderdale to pursue litigation." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

- **The Niskanen Center Received Funding From Left-Leaning Philanthropies, Like The Hewlett Foundation And George Soros' Open Society Foundation.** "The Washington, D.C.-based Niskanen Center launched in 2015 as a libertarian think tank, but stopped identifying with libertarianism three years later. Niskanen has received funding from philanthropies engaged in environmental advocacy such as the Hewlett Foundation and the Open Society Foundation. Niskanen also received a $200,000 grant 'for its climate program' in February 2018 from the Rockefeller Brothers Fund. The grant from the Rockefeller Brothers Fund was well-timed." ("Beyond The Courtroom: Climate Tort Litigation In The United States," National Association Of Manufacturers Legal Center, 12/28/21)

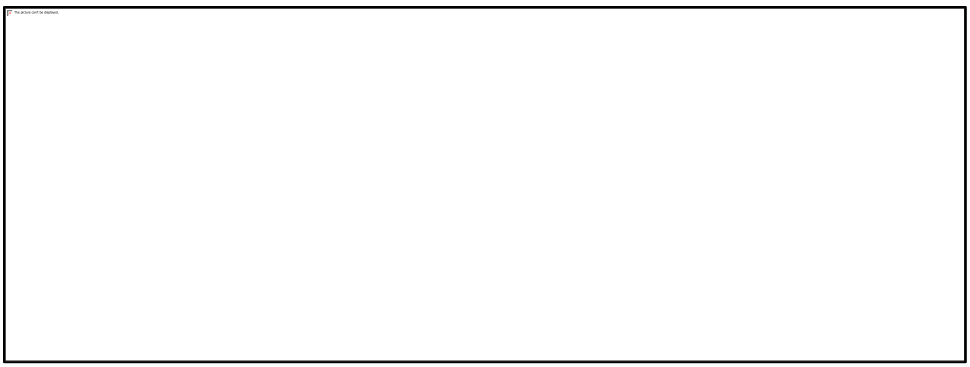
In *Rural Community Workers Alliance v. Smithfield Foods,* A Nonprofit Brought A Lawsuit Alleging That Smithfield Foods Created A "Public Nuisance" By Keeping Facilities Open During The COVID-19 Pandemic. (*Rural Community Worker's Alliance Et Al. v. Smithfield Foods, Inc. Et Al*, "Complaint," Filed 4/23/20, C# 5:20-cv-06063-DGK)



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

RURAL COMMUNITY WORKERS ALLIANCE and JANE DOE; *Plaintiffs*, v. SMITHFIELD FOODS, INC. AND SMITHFIELD FRESH MEATS CORP., *Defendants*.	CIVIL ACTION NO:

COMPLAINT



Resources Legacy Fund & Sher Edling

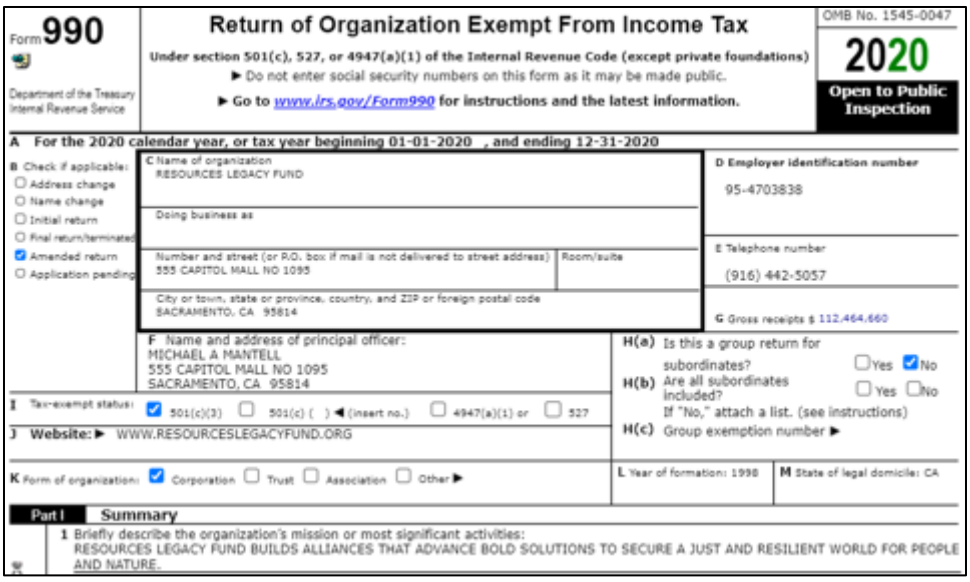
The Trial Law Firm Sher Edling Has Led Climate Change-Focused Public Nuisance Litigation Against Energy Companies Utilizing Funding From Nonprofits. "Sher Edling represents cities, counties, and states in lawsuits to hold fossil fuel industry defendants accountable for their decades-long campaigns of deception about the science of climate change and the role their products play in causing it, as well as their failure to take steps to avoid the harm they knew would arise from the use their products or even to warn anyone about it. Sher Edling's team has a successful track record of holding fossil fuel companies accountable for actions that harm people and the planet." ("Climate Damage And Deception," Sher Edling LLP))

- **Between 2017 And 2020, The Resources Legacy Fund (RLF) – A Nonprofit Organization – Gave $5.3 Million To The Sher Edling Law Firm.** "But potentially even more problematic, since 2017, Sher Edling, the law firm acting for plaintiffs in more than two dozen climate lawsuits, has also received close to $5.3 million just from the Rockefeller-backed Resources Legacy Fund, a tax exempt 501(c)(3) organization. This money appears to be defraying Sher Edling's costs in litigating these cases, thus raising questions about the propriety of these contingent fee arrangements." (Lauren Sheets Jarrell, "Attorneys General For Hire: A Disturbing Usurpation Of Traditional State Policies By Private Political Activists," American Tort Reform Association, 6/15/22)

Chuck Savitt – An Attorney With Sher Edling – Has Stated That His Firm Has Relied On Support From The "Collection Action Fund For Accountability, Resilience, And Adaptation" (CAF) – Which Is Managed By The RLF – To Support The Firm's Climate Change Lawsuits. "Savitt mentioned in that email that Sher Edling's first lawsuits were filed with the support of the Collective Action Fund for Accountability, Resilience and Adaptation, a fund managed at the time by dark money group Resources Legacy Fund (RLF)." (Thomas Catenacci, "Leonardo DiCaprio Funneled Grants Through Dark Money Group To Fund Climate Nuisance Lawsuits, Emails Show," Fox News, 8/15/22)

A Spokesperson For RLF Has Admitted That The Organization Provided Grants To Sher Edling To "Hold Fossil Fuel Companies Accountable For The Accuracy Of Information they Had Disseminated To Consumers And The Public About The Role Their Products Played In Causing Climate Change." "'From 2017 to 2020, Sher Edling received grants from RLF to pursue charitable activities to hold fossil fuel companies accountable for the accuracy of information they had disseminated to consumers and the public about the role their products played in causing climate change,' an RLF spokesperson Mark Kleinman told Fox News Digital in an email." (Thomas Catenacci, "Leonardo DiCaprio Funneled Grants Through Dark Money Group To Fund Climate Nuisance Lawsuits, Emails Show," Fox News, 8/15/22)

Headquartered In Sacramento, The Resources Legacy Fund (RLF) Is A Nonprofit That Purports To "Build Alliances That Advance Bold Solutions To Secure A Just And Resilient World For People And Nature." ("2020 Form 990," Resources Legacy Fund, Filed 2/2/22)



Form 990

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2020

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

A For the 2020 calendar year, or tax year beginning 01-01-2020 , and ending 12-31-2020

B Check if applicable:
☐ Address change
☐ Name change
☐ Initial return
☐ Final return/terminated
☑ Amended return
☐ Application pending

C Name of organization
RESOURCES LEGACY FUND

Doing business as

Number and street (or P.O. box if mail is not delivered to street address) 555 CAPITOL MALL NO 1095

Room/suite

City or town, state or province, country, and ZIP or foreign postal code
SACRAMENTO, CA 95814

D Employer identification number
95-4703838

E Telephone number
(916) 442-5057

G Gross receipts $ 112,464,660

F Name and address of principal officer:
MICHAEL A MANTELL
555 CAPITOL MALL NO 1095
SACRAMENTO, CA 95814

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☐ No
If "No," attach a list. (see instructions)

H(c) Group exemption number ▶

I Tax-exempt status: ☑ 501(c)(3) ☐ 501(c) ( ) ◀ (insert no.) ☐ 4947(a)(1) or ☐ 527

J Website: ▶ WWW.RESOURCESLEGACYFUND.ORG

K Form of organization: ☑ Corporation ☐ Trust ☐ Association ☐ Other ▶

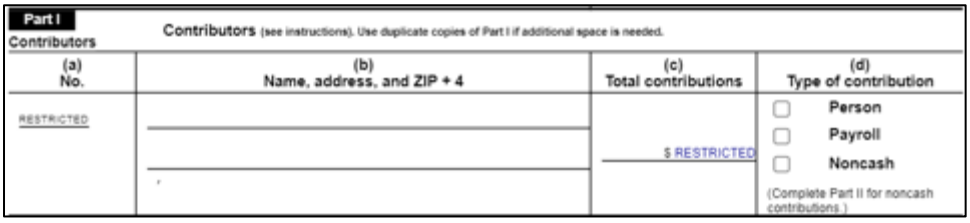
L Year of formation: 1990

M State of legal domicile: CA

Part I Summary

1 Briefly describe the organization's mission or most significant activities:
RESOURCES LEGACY FUND BUILDS ALLIANCES THAT ADVANCE BOLD SOLUTIONS TO SECURE A JUST AND RESILIENT WORLD FOR PEOPLE AND NATURE.

- **The Resources Legacy Fund Is A Dark Money Nonprofit That Does Not Publicly Reveal Its Donors.** ("2020 Form 990," Resources Legacy Fund, Filed 2/2/22)



Part I Contributors

Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
RESTRICTED		$ RESTRICTED	☐ Person ☐ Payroll ☐ Noncash (Complete Part II for noncash contributions.)

Though RLF Does Not Reveal It's Donors, Some Organizations Have Touted Their Support For The Nonprofit:

- **For Instance, RLF Received $3 Million From The MacArthur Foundation In 2017 To Support Climate Change Legal Efforts.** "Resources Legacy Fund was awarded $3,000,000 in 2017, including 1 grant in Climate Solutions. … The Collaborative Action Fund for Accountability, Resilience, and Adaptation (CAF) at RLF supports precedent-setting lawsuits to hold major corporations accountable for costs associated with the effects on climate of their pollutants. The award enables support for the legal process associated with a variety of lawsuits filed in support of counties and cities affected by sea-level rise." ("Resources Legacy Fund," MacArthur Foundation))

- **In 2018, The RLF Received $175,000 From The Rockefeller Brothers Fund And $301,000 From Rockefeller Philanthropy Advisors.** ("Grants Search," Rockefeller Brothers Fund); "Rockefeller Philanthropy Advisors Inc," IRS Form 990, ProPublica, 2018)

Resources Legacy Fund

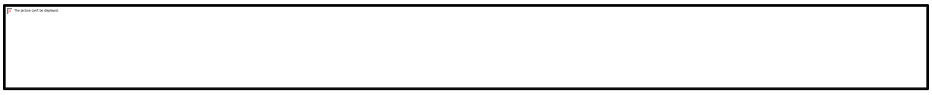
$100,000 FOR 12 MONTHS AWARDED: AUG 28, 2018

For the climate communications work of its project, the Collective Action Fund for Accountability, Resilience, and Adaptation.

Special Initiatives and Opportunities

Other

("Grants Search," Rockefeller Brothers Fund))



("Rockefeller Philanthropy Advisors Inc," IRS Form 990, ProPublica, 2018)

- **The Resources Legacy Fund Has Also Received Significant Funding From The David & Lucille Packard Foundation, The Walton Family Foundation, The William & Flora Hewlitt Foundation, And More.** ("2019 Form 990-PF," William & Flora Hewlett Foundation, Filed 11/3/20; "Search Our Grants," The David & Lucile Packard Foundation; "Grant Search," Walton Family Foundation)

The New Venture Fund And Windward Fund Have Also Made Donations To The Resources Legacy Fund. Both A Major Progressive "Dark Money" Organizations Managed By Arabella Advisors And Funded By Donors Including George Soros. ("2018 Form 990," New Venture Fund, Filed 11/5/19; "2016 Form 990," New Venture Fund, Filed 11/13/17; "2014 Form 990," New Venture Fund, Filed 11/16/15; "2017 Form 990," Windward Fund, Filed 11/12/18)

RESOURCES LEGACY FUND 555 CAPITOL MALL SACRAMENTO, CA 95814	95-4703838	501(C)(3)	40,000				CIVIL RIGHTS, SOCIAL ACTION, ADVOCACY

("2018 Form 990," New Venture Fund, Filed 11/5/19)

RESOURCES LEGACY FUND 555 CAPITOL MALL STE 1095 SACRAMENTO, CA 95814	95-4703838	501(C)(3)	1,791,585				ENVIRONMENTAL PROGRAMS

("2016 Form 990," New Venture Fund, Filed 11/13/17)

RESOURCES LEGACY FUND SUITE 1095 SACRAMENTO,CA 95814	30-0043771	501C3	105,000				ENVIRONMENTAL (CLIMATE, CONSERVATION & ENERGY) PROGRAMS

("2014 Form 990," New Venture Fund, Filed 11/16/15)

RESOURCES LEGACY FUND 555 CAPITOL MALL STE 1095 SACRAMENTO, CA 95814	95-4703838	501(C)(3)	25,000				ENVIRONMENTAL PROGRAMS

("2017 Form 990," Windward Fund, Filed 11/12/18)

In August 2022, Leonardo DiCaprio Was Found To Be A Major Donor To The RLF's Climate Change Litigation. "Leonardo DiCaprio's non-profit foundation awarded grants to a dark money group which, in turn, funneled money to a law firm spearheading climate nuisance lawsuits nationwide… Correspondence between Dan Emmett, a major philanthropist, and Ann Carlson — a University of California, Los Angeles (UCLA) climate professor — in 2017 revealed that the two worked with law firm Sher Edling to raise money for its efforts to sue oil companies over alleged climate change deception on behalf of state and local governments. … Emmett also forwarded a message Savitt sent him three days earlier on July 19, 2022 asking for his support, according to the records. Savitt mentioned in that email that Sher Edling's first lawsuits were filed with the support of the Collective Action Fund for Accountability, Resilience and Adaptation, a fund managed at the time by dark money group Resources Legacy Fund (RLF)." (Thomas Catenacci, "Leonardo DiCaprio Funneled Grants Through Dark Money Group To Fund Climate Nuisance Lawsuits, Emails Show," Fox News, 8/15/22)

- **In 2017, The DiCaprio Foundation Revealed It Had Donated An Unspecified Amount To The "Collective Action Fund (Resources Legacy Fund)" To Support "Legal Actions To Hold Major Corporations In The Fossil Fuel Industry Liable For The Effects Of Climate Change."** (Press Release, "Leonardo DiCaprio Foundation Awards $20 Million In Environmental Grants," Leonardo DiCaprio Foundation, 9/19/17, Archived)

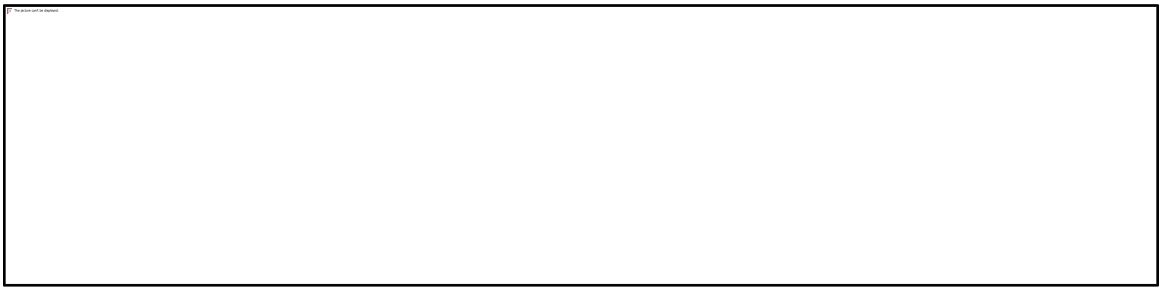
Michael Bloomberg's Special Assistant Attorneys General Program

Michael Bloomberg's Special Assistant Attorneys General (SAAGs) Program Pays Lawyers To Work In State Attorney General Offices In Pursuit Of Climate Based Litigation. "A program funded by 2020 presidential candidate Michael Bloomberg is paying the salaries of lawyers who are farmed out to liberal state attorney general offices to pursue climate-based litigation -- a compact critics say amounts to Bloomberg buying state law enforcement employees to advance his preferred political agenda. The arrangement, which currently pays the salaries of Special Assistant Attorneys General (SAAGs) in 10 Democratic AG offices, is drawing new scrutiny now that Bloomberg is running for president. The New York University School of Law's State Energy & Environmental Impact Center, which was started in 2017 with $5.6 million from Bloomberg's nonprofit, hires mid-career lawyers as 'research fellows' before providing them to state AGs where they assist in pursuing 'progressive' policy goals through the courts." (Tyler Olson, "Bloomberg's 'Mercenaries': Billionaire Dem Funding Network Of Climate Lawyers Inside State AG Offices," Fox News, 2/18/20)

The Program Is Operated Through New York University (NYU) School Of Law's State Energy & Environmental Impact Center, Which Itself Was Launched With A $5.6 Million Donation From The Bloomberg Family Foundation. "The NYU center was first announced in an August 2017 press release, noting that it was boosted with funding from 'Bloomberg Philanthropies,' the informal name for Bloomberg Family Foundation Inc. According to the foundation's 2017 IRS 990 form, the $5.6 million came in the form of one $2.8 million payment in 2017 and another to follow in 2018. The Bloomberg Family Foundation's 990 forms are not available for 2018 or 2019, so it is unclear whether Bloomberg continued to fund the State Impact Center last year or if he has yet in 2020." (Tyler Olson, "Bloomberg's 'Mercenaries': Billionaire Dem Funding Network Of Climate Lawyers Inside State AG Offices," Fox News, 2/18/20)

- **The Center Hires Mid-Career Lawyers As "Research Fellows" And Provides Them To State Attorneys General To Serve As SAAG's.** "A program funded by 2020 presidential candidate Michael Bloomberg is paying the salaries of lawyers who are farmed out to liberal state attorney general offices to pursue climate-based litigation -- a compact critics say amounts to Bloomberg buying state law enforcement employees to advance his preferred political agenda. … The New York University School of Law's State Energy & Environmental Impact Center, which was started in 2017 with $5.6 million from Bloomberg's nonprofit, hires mid-career lawyers as 'research fellows' before providing them to state AGs where they assist in pursuing 'progressive' policy goals through the courts." (Tyler Olson, "Bloomberg's 'Mercenaries': Billionaire Dem Funding Network Of Climate Lawyers Inside State AG Offices," Fox News, 2/18/20)

- **These Attorneys Remain Employees Of NYU, Though All Work Performed By Them Is Entirely Identified And Managed By Their Respective AG Offices.** ("Fellows Program," State Energy & Environmental Impact Center – NYU School Of Law)



The NYU State Impact Center Has Placed SAAGs In Washington, D.C., Delaware, Connecticut, Illinois, Massachusetts, Maryland, Minnesota, New Mexico, New York, Oregon, And Washington AG Offices. "NYU Law Fellows have served in the following attorney general offices: DC, DE, CT, IL, MA, MD, MN, NM, NY, OR and WA." ("Fellows Program," State Energy & Environmental Impact Center – NYU School Of Law)

- **Two Of These SAAGs Working In Minnesota AG Keith Ellison's Office Brought A 2020 Lawsuit Against The American Petroleum Institute, Exon Mobil Corporation, Koch Industries, Inc., And More.** "On June 25, 2020, Minnesota Attorney General Keith Ellison filed suit against the American Petroleum Institute, Exxon Mobil Corporation, Koch Industries, Inc., and Koch subsidiaries Flint Hills Resources LP and Flint Hills Resources Pine Bend. Ellison's climate lawsuit was actually filed by two lawyers provided and paid for by Michael Bloomberg's private foundation for the purpose of advancing the 'climate' agenda." ("Private Funders, Public Institutions: 'Climate' Litigation And A Crisis Of Integrity," Government Accountability & Oversight, P.C., 5/18/21)

- **Bloomberg's SAAG Program Also Assisted A Public Nuisance Climate Lawsuit Brought By The City Of Baltimore Against Fossil Fuel Companies, Including B.P.** "As an example of the cases these SAAGs are working on, Frosh filed a brief in federal court supporting a suit brought by the city of Baltimore against B.P. and a gaggle of other fossil fuel companies. The suit sought monetary damages from those companies for pollution and climate change issues allegedly caused by the companies. Frosh's brief, which several other states involved in the State Impact Center's program joined, lists as counsel on the brief Frosh's first 'Bloomberg Fellow,' Segal, and one other SAAG for Maryland." (Tyler Olson, "Bloomberg's 'Mercenaries': Billionaire Dem Funding Network Of Climate Lawyers Inside State AG Offices," Fox News, 2/18/20)

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