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Coming to Colorado – Climate Change Nuisance Suits

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At least one Colorado city is likely to join New York City and other local municipalities in filing climate change nuisance suits against energy producers, as recently reported in the Boulder Daily Camera. Details remain scarce, and no defendants have been identified. But one city council member described the suit as "a no-brainer," particularly since a Washington, DC law firm likely will be providing *pro bono* representation.

If the Colorado suit resembles the other recent lawsuits, named defendants are likely to be current and historic Colorado oil and gas producers and can expect common law claims, including public nuisance, private nuisance, and trespass. For example, New York City's complaint against five large oil and gas producers filed earlier this month in federal court seeks to recover billions of dollars in "compensatory damages" to offset the effects of climate change, which New York City blames on the producers' historic and ongoing production and sale of oil, natural gas, and refined products like gasoline. The lawsuit also seeks "an injunction to abate the public nuisance and trespass." According to the City, the producers are responsible for general climate effects like sea level rise, and more specific effects including Hurricane Sandy and summertime heat stroke suffered by the City's elderly, children, and low-income communities. Similar lawsuits were filed this summer in California state court.

These recent climate change suits have not yet survived the initial pleading stage, and defendants are mounting strong challenges. The local governments' standing to sue the defendants appears dubious, and even if they can establish standing, the plaintiffs will be hard pressed to meet their burdens of proof, particularly as to causation. To date, similar suits have been unsuccessful in holding individual corporations responsible. But these new efforts appear well-funded, and reliant on new legal tactics designed to avoid some of the pitfalls from the prior cases, most notably the courts' deference to federal regulatory action.

Even if the lawsuits have dubious merit, companies named in these actions need an aggressive defense to, at a minimum, prevent misuse of the discovery process to obtain irrelevant or confidential information. If you have any questions about the status of these cases, please contact Chris Chrisman.

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